

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 555 (McGuire)
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Fiscal: Yes
Urgency: No
AWM

SUBJECT

Local agencies: transient occupancy taxes: online short-term rental facilitator:
collection

DIGEST

This bill establishes a system by which local governments may require short-term rental platforms to collect local charges and contract with the California Department of Tax and Fee Administration (CDTFA) to collect those charges from the short-term rental platforms and remit them to the local governments.

EXECUTIVE SUMMARY

Short-term rental platforms such as Homeaway, VRBO, and Airbnb are increasingly a source of revenue for cities and counties. State law permits cities and counties to levy a tax on the privilege of occupying a room or other space on a short-term basis – known as Transient Occupancy Taxes (TOTs) – but because short-term rental hosts are often unaware they are responsible for collecting and remitting these taxes, cities and counties are likely not receiving all TOT revenue due.

This bill allows a local government to pass an ordinance requiring a short-term rental platform to collect TOTs from purchasers (renters) and contract with the CDTFA to collect the TOTs from those platforms in their jurisdictions. Under such an ordinance, a platform would collect TOTs directly from the renter and the CDTFA would collect the TOTs from the platform and hold them in trust until transmitted to the local agency.

This bill is sponsored by the author and is supported by several cities, counties, and short-term rental associations. There is no known opposition. This bill passed out of the Senate Governance and Finance Committee with a 5-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes the legislative body of any city, county, or city and county to levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days, with certain exclusions for time shares and campgrounds. (Rev. & Tax. Code, § 7280(a)-(c).)
- 2) Authorizes the redevelopment agency of any city which has levied a transient occupancy tax to, by ordinance, levy a transient occupancy tax not in excess of the city's transient occupancy tax rate if the city's ordinance entitles any person subject to a transient occupancy tax under the city's ordinance to credit the amount of transient occupancy taxes due to the redevelopment agency of that city against the payment of taxes due under the city's ordinance. (Rev. & Tax. Code, § 7280.5.)

This bill:

- 1) Finds and declares that occupancy taxes are local taxes, not state taxes, which are due and payable to local agencies and support vital programs and services provided by California's cities and counties.
- 2) States that the Legislature encourages short-term rental facilitators to ensure the full and prompt collection and remission directly to local agencies of all due and payable occupancy taxes derived from their facilitation of the occupancy of short-term rentals including entering into voluntary agreements with cities and counties to ensure that any occupancy taxes due and payable to a city or county are timely paid in full, or continue any existing agreements previously entered into with a local agency for these purposes.
- 3) Establishes the Fair and Effective Collection of Due and Payable Transient Occupancy Taxes Derived from Short-term Rentals Arranged by Short-Term Rental Facilitators Act of 2021, with the following relevant definitions:
 - a) "Department" means the CDTFA.
 - b) "Local agency" means a city, county, or city and county, including a charter city, county, or city and county.
 - c) "Local charge" is a TOT imposed by a local agency on the privilege of occupying a home, house, a room in a home or house, or other lodging that is not a hotel or motel in this state for a period of 30 days or fewer and under any other circumstances specified by the local agency in its ordinance.
 - d) "Ordinance" is an ordinance of a local agency imposing a local charge, including any local enactment relating to the filing of a refund or claim arising under the ordinance; and also refers to an ordinance of a local agency

- exclusively delegating the collection of transient occupancy taxes imposed on short-term rentals within its jurisdiction to the department.
- e) "Purchaser" is a person who uses a short-term rental facilitator to facilitate the occupation of a short-term rental in this state.
 - f) "Short-term rental" is the occupancy of a home, house, a room in a home or house, or other lodging that is not a hotel or motel in this state for a period of 30 days or fewer and under any other circumstances specified by the local agency in its ordinance that is facilitated by a short-term rental facilitator.
 - g) "Short-term rental facilitator" is a person that facilitates for consideration, regardless of whether it is deducted as fees from the transaction, the rental of a home, house, a room in a home or house, or other lodging that is not a hotel or motel that is not owned by the person facilitating the rental, through a marketplace operated by the person or a related person, and who does both of the following:
 - i. Directly or indirectly, through one or more related persons, (1) transmits or otherwise communicates the offer or acceptance between the purchaser and the operator; (2) owns or operates the infrastructure or technology that brings purchasers and operators together; (3) provides a virtual currency that purchasers are allowed or required to use to rent a lodging from the operator; and/or (4) software development or research and development activities related to any of the activities described in Part 3.d.ii below, if such activities are directly related to facilitating short-term rentals.
 - ii. Directly or indirectly, through one or more related persons, engages in any of the following with respect to facilitating short-term rentals: (1) payment processing services; (2) listing homes, houses, or rooms in homes or houses, or other lodgings that are not a hotel or motel, and that are not owned by that person or a related person, for rental on a short-term basis; (3) setting prices; (4) branding short-term rentals as those of the short-term rental facilitator; and/or (5) order or reservation taking.
- 4) Provides that, on or after July 1, 2022, a local charge imposed by a local agency on a short-term rental shall be collected from the purchaser by a short-term rental facilitator, and the CDTFA shall perform all functions incident to the collection and administration of that local charge, where the local agency does all the following:
- a) Enacts an ordinance exclusively delegating its authority to collect local charges imposed by that local agency on short-term rentals to the CDTFA. The ordinance must contain the effective date of the delegation, which must correspond with the date that commences a calendar quarter, and be at least six months from the date the local agency enacts the ordinance.
 - b) Enters into a contract with the CDTFA for purposes of registration, rate posting, collection, and transmission of revenues necessary to collect and administer the local charges of a local agency imposed on a short-term rental. In the contract, the local agency shall certify to the CDTFA that its ordinance applies its local charge on short-term rentals, the applicable transient

- occupancy tax rate for short-term rentals, any other information the CDTFA deems necessary to implement this part, and that the local agency agrees to indemnify, and hold and save harmless, the CDTFA, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract.
- 5) Provides deadlines by which a local agency must notify the CDTFA of its adoption of a new charge, or elimination or reduction of a charge, imposed on short-term rentals to be collected by the CDTFA, and requires the CDTFA to provide written notice of any such new charges, eliminations, or reductions to short-term rental facilitators.
 - 6) Requires the local agency in the contract to certify to the CDTFA that the ordinance applies to short-term rentals and any other information the CDTFA deems necessary, and to agree that it will indemnify, and hold and save harmless, the department, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract.
 - 7) Provides that, upon the effective date of a local agency's ordinance delegating collection authority to the CDTFA, the local agency's authority to collect local charges is suspended.
 - 8) Provides that a local agency may enact an ordinance terminating the delegation of authority to the CDTFA where the effective date of the termination of the delegation corresponds with the date that commences a calendar quarter and is at least six months from the date the local agency enacts the ordinance terminating the delegation. In the event of a termination, the CDTFA shall provide notice to the short-term rental facilitators within 30 days of termination.
 - 9) Provides that, under a delegating ordinance enacted under this bill, the CDTFA shall perform the registration, rate posting, collection, and transmission of revenues necessary to collect and administer local charges, but the local agency will remain solely responsible for:
 - a) Defending any claim regarding the validity of the ordinance in its application to short-term rentals.
 - b) Interpreting any provision of the ordinance, except to the extent specifically superseded by this statute.
 - c) Responding to any claim for refund by a purchaser arising under local charges collected pursuant to an ordinance. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.
 - d) Certifying that the ordinance of the local agency applies the local charge to short-term rentals and agreeing to indemnify and hold harmless the department and its officers, agents, and employees for any and all liability for damages that may result from collection of the local charge.

- e) Reallocation of local charges as a result of correcting errors relating to the location of the short-term rental, for up to two past quarters from the date of knowledge.
- 10) Establishes the Local Charges for Short-term Rentals Fund (Fund) in the State Treasury, and provides that all local charges collected by the CDTFA shall be deposited in the Fund and held in trust for the local agency, not to be used for any other purpose.
- a) Local charges consist of all taxes, charges, interest, penalties, and other amounts collected and paid to the CDTFA resulting from the imposition of the transient occupancy tax, less payments for refunds and reimbursement to the CDTFA for expenses incurred in the administration and collection of the local charges.
 - b) All amounts in the Fund are continuously appropriated to the CDTFA, which shall transmit the funds to the local agencies periodically as promptly as feasible, but at least once in each calendar quarter. The CDTFA shall furnish a quarterly statement indicating the amounts paid and withheld for expenses of the department.
- 11) Provides that the CDTFA shall prescribe and adopt rules as may be necessary or desirable for the administration of the collection and distribution of TOTs, reporting and refunds, and appeals. The CDTFA may also adopt emergency regulations as necessary, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
- 12) Provides that the CDTFA's audit duties relating to TOTs collected under an ordinance are limited to verification that the short-term rental facilitator complied with the provisions of this bill.
- 13) Provides that the CDTFA shall make available to a requesting local agency any information that is reasonably available to the CDTFA regarding the proper collection and remittance of a TOT.
- a) For disclosures other than those requested by a local agency or as necessary to administer the bill, it is a misdemeanor punishable by a fine not exceeding \$1,000 by imprisonment in a county jail not exceeding one year, or by both, in the discretion of the court, for any deputy, agent, clerk, or other officer or employee of the CDTFA, or any former officer or employee or other individual, who in the course of that individual's employment or duty has or had access to returns, reports, or documents required to be filed, to disclose or make known in any manner information as to the amount of any local charges or any particulars, including the business affairs of a corporation, set forth or disclosed therein.
 - b) Any information requested by a local agency is exempted from disclosure under the CPRA pursuant to Government Code section 6254(i) and (k).

- 14) Provides that, in connection with any claims or actions relating to or arising from the invalidity of a local tax ordinance, the short-term rental facilitator shall not be liable to any consumer as a consequence of collecting the tax and, where the local agency is ordered to refund the tax, it is the sole responsibility of the local agency to do so. In any action seeking to enjoin collection of a local charge by a short-term rental facilitator or seeking declaratory relief concerning a local charge, any action seeking a refund of a local charge, or in any action seeking to otherwise invalidate a local charge, the sole necessary defendant shall be the local agency on whose behalf the CDTFA collects the charge, and there shall be no recovery from the state for the imposition of any unconstitutional or otherwise-invalid local charge collected under this bill.
- 15) Provides that a local agency may request that the CDTFA use amounts collected for the local agency to offset other amounts owed to the CDTFA, under specified circumstances. The local agency must pay to the CDTFA its pro rata share of the cost of collection and administration.
- 16) Requires the CDTFA to annually prepare a report showing the amount of reimbursed and unreimbursed costs incurred in administering the collection of local charges.
- 17) Provides that, where a local agency has delegated its authority to collect TOTs to the CDTFA as provided above, a short-term rental facilitator engaged in business in California is responsible for collecting TOTs from the purchaser and shall remit those charges to the CDTFA on a quarterly basis. The local agency must file a return and the CDTFA shall administer and collect the local charges pursuant to the Fee Collection Procedures Law, set forth in Part 30 of the Revenue and Taxation Code.
- 18) Requires the CDTFA to publish and maintain a list on its website of local agencies delegating authority to collect TOTs and the rate for each, along with any other information determined to be relevant for the proper collection of the charges.
- 19) Provides that a short-term rental facilitator that is subject to a local ordinance delegating TOT collection authority to the CDTFA must register with the department and provide specified information to the CDTFA.

COMMENTS

1. Author's comment

According to the author:

SB 555 establishes a new, innovative, and streamlined statewide system for collecting and dispensing Transit Occupancy Taxes (TOT) revenue for vacation hosting platforms. This bill will ensure that cities and counties can receive the

revenues collected in their jurisdiction that they are entitled to. This revenue – projected to be in the high hundreds of millions – will be reinvested in fire and police services, local schools, libraries, and economic development projects that will promote healthy economies and safe neighborhoods. This would be a voluntary service available to cities and counties, but they would also be free to continue with their own TOT collection efforts and/or voluntarily agreements they have established with vacation rental platforms.

2. This bill gives local governments the option to require short-term rental platforms to collect TOTs and contract with the CDTFA to collect those TOTs on behalf of the local agency

Short-term rentals are a thriving business in California. According to the analysis of the Senate Governance and Finance Committee, California has the second-most short-term rental listings in the country, after Florida. Short-term rentals also make up a significant portion of many cities and counties' revenues. For example, the City of Half Moon Bay, writing in support of the bill, states that TOTs usually make up 40 percent of its local budget. Many short-term rental hosts, however, are unaware that they are required to collect TOTs from renters, so many local governments are likely missing out on substantial amounts of TOT revenue.

Under current law, short-term rental platforms are not required to collect TOTs as part of the rental facilitation process, e.g., as a component of the fees collected in an online transaction. Some local jurisdictions have entered into voluntary collection agreements with short-term rental platforms, wherein the platform agrees to collect TOTs as part of the transaction between the host and the renter.¹ While these voluntary agreements have likely reduced the volume of uncollected TOTs for the local governments who have them, it appears that only a small portion of local governments have such agreements. Moreover, these agreements have to be negotiated individually between each local government and each short-term rental platform, a process that can be expensive and time-consuming; the author also reports that short-term rental platforms are concerned that entering into these voluntary agreements is disadvantageous if their competitors do not also enter into similar agreements, meaning they are less likely to make such agreements going forward.

This bill would allow local governments to level the playing field. Under the bill, a local government may enact an ordinance exclusively delegating its authority to collect TOTs to the CDTFA, and enter into a contract with the CDTFA for purposes of registration, rate posting, collection, and transmission of revenues necessary to collect and administer the TOTs. Once a local government has completed these steps, the short-term rental platform must collect all TOTs directly from the renter and remit them to

¹ E.g., VRBO Help, *What lodging taxes do you collect for California?*, VRBO.com (2020), <https://help.vrbo.com/articles/What-lodging-taxes-do-you-collect-for-California> [last visited Apr. 4, 2021].

the CDTFA as specified. The bill contains additional specifications relating to when and how a local government may opt into our out of the CDTFA-administered system and how a local government may modify TOTs; the analysis by the Senate Governance and Finance Committee discusses these procedures in greater detail, and is incorporated here by reference.

3. This bill allocates liability for TOTs collected by a short-term rental facilitator and remitted to the CDTFA, collected and remitted in accordance with the law, to the local agency imposing the TOT

Under this bill, any local agency seeking to contract with the CDTFA to have the CDTFA collect TOTs from a short-term rental platform must agree to indemnify, and hold and safe harmless, the CDTFA and its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract. Relatedly, the bill makes the local agency solely responsible for defending any claim regarding the validity of the ordinance, interpreting the ordinance, and reallocating TOTs as a result of correcting errors relating to the location of a short-term rental. These provisions thus keep any burdens relating to the substance of the TOTs with the local agency. These provisions do not, however, make a local agency responsible for independent wrongdoing by the CDTFA, because the indemnity provision extends only to collections made pursuant to the contract. Thus, if the CDTFA engaged in activities not contemplated by a contract with a local agency, the indemnity provision would not hold the local agency responsible for the CDTFA's conduct.

This approach—requiring a local agency to broadly indemnify the CDTFA when it takes on the responsibility for collecting local charges—is not novel. The Local Prepaid Mobile Telephony Services Collection Act,² which permits local agencies to contract with CDTFA for the collection of local charges on prepaid cellular services, contains a virtually identical indemnity provision.³ There does not appear to have been any litigation challenging this provision.

The Committee has not received any information suggesting that the bill's grant of indemnity for damages and defending an ordinance is overbroad or unjust. Nor has any local government or agency expressed concern about these provisions. Given that these provisions grant the CDTFA immunity for damages arising from TOTs and make the local agency responsible for defending its own ordinances, but do not indemnify the CDTFA for its actions that exceed the bounds of its contract with a local agency, it appears to reasonably allocate the risk of liability when the CDTFA collects TOTs on behalf of a local agency.

Relatedly, the bill provides that a short-term rental facilitator shall not be liable to any consumer in any action or claim arising from the invalidity of a local tax ordinance as a

² Rev. & Tax Code, div. 2, part 21.1, §§ 42011 et seq.

³ See Rev. & Tax. Code, § 42101.5(a)(1).

consequence of collecting the tax, and that the local agency retains the sole responsibility for refunding a tax when ordered to do so. The bill also makes clear that short-term rental facilitators are not necessary parties in any action challenging or attempting to enjoin enforcement of a local charge, and that the sole necessary party is the local agency on whose behalf the CDTFA collects the charge. Given that a properly complying short-term rental facilitator has no discretion as to whether to collect a TOT adopted by a local agency, and that the short-term rental facilitator would have no basis to weigh in on the validity of the TOT, it appears reasonable to exempt the short-term rental facilitator from participation in, and liability arising from, such actions. As with the bill's allocation of responsibility as between local agencies and the CFDFA, this Committee has not received any information suggesting local agencies object to this provision.

4. This bill exempts information related to collection of TOTs from disclosure under the California Public Records Act

This bill requires the CDTFA to make available, on request from a local agency, information reasonably available to the CDTFA regarding the proper collection and remittance of a TOT by a short-term rental platform. This bill makes this information exempt from disclosure under the California Public Records Act (CPRA),⁴ under two specific CPRA exemptions. First, the bill makes the information exempt from disclosure under the exemption for information required from a taxpayer, received in confidence, in connection with the collection of local taxes, and the disclosure of which would result in unfair competitive disadvantage to the person supplying the information.⁵ Second, the bill makes the information exempt under the CPRA's exemption for records for which disclosure is exempted or prohibited pursuant to federal or state law.⁶

With respect to the exemption for local tax information which would result in unfair competitive disadvantage to the person supplying the information, it appears that disclosure of a short-term rental facilitator's returns could provide its competitors with information relating to its quarterly revenues and popularity by county. These could conceivably put a short-term rental facilitator at a competitive disadvantage within the meaning of the CPRA exemption.

With respect to the exemption for records for which disclosure is exempted or prohibited under federal or state law, releasing tax returns is prohibited under state law and punishable as a misdemeanor, except under specified narrow circumstances.⁷ The tax documents in question therefore appear to fall squarely within this CPRA disclosure exemption.

⁴ Gov. Code, tit. 1, div. 7, ch. 3.5, §§ 6250 et seq.

⁵ See *id.*, § 6254(i).

⁶ See *id.*, § 6254(k).

⁷ Rev. & Tax Code, §§ 19542.

5. Arguments in support

According to bill supporter California Asian Pacific Chamber of Commerce:

Currently, hundreds of cities in California do not have any TOT collection agreements with short-term rental platforms. This lack of agreement or collection mechanism often leads to under-collection because of noncompliant operators. Local jurisdictions would benefit from the streamlined process under SB 555 by reducing a local government's administrative costs and increasing the amount of TOT collected. SB 555 would offer all cities and counties, regardless of size or location, a clear and equitable path to ensure their jurisdiction has a path to collect TOT from hosting platforms. This would be a voluntary service available to cities and counties, but they would also be free to continue with existing TOT collection efforts and/or voluntary agreements with short-term rental platforms.

We urge swift passage of SB 555 to aid California's post-pandemic economic recovery, to support local governments, small businesses, and vital public services that rely on TOT revenue.

According to bill supporter City of Campbell:

TOT revenue is the city's fourth largest revenue source and currently, the City only collects tax from traditional lodging establishments such as hotels and motels. As a result of the pandemic, all of these establishments were significantly impacted as the public health orders have either prohibited or limited leisure travel and lodging for over a year now. As online marketplaces for lodging have become popular search destinations for temporary and leisure lodging, Campbell and other cities will be looking to expand TOT collection to those online platforms. SB 555 will provide a helpful tool for cities to collect the revenues collected in their jurisdiction.

The City of Campbell values the abilities for cities to establish policies that are in the best interest of our residents. As such, the City appreciates that SB 555 establishes a voluntary service that would be available to cities and counties but not mandate participation. As some of our neighboring cities have established voluntary agreements with online vacation rental marketplaces, the City would like to maintain the flexibility to create our own TOT collection system if such a system is more advantageous.

SUPPORT

Airbnb, Inc.

Bay Area Council

California Asian Pacific Chamber of Commerce

California Hispanic Chambers of Commerce

City of Campbell
City of Half Moon Bay
City of Orange Short-Term Rental Alliance
Home Share Alliance Los Angeles
Home Sharers Democratic Club
Huntington Beach Short-Term Rental Alliance
Long Beach Hosting Club
Painters & Allied Trades District Council 36
Rural County Representatives of California
San Francisco Chamber of Commerce
sf.citi
Short Term Rental Alliance of San Diego
Sonoma County Board of Supervisors

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 60 (Glazer, 2021) raises the maximum fines for violation of an ordinance relating to a residential short-term rental that is an infraction and poses a threat to health or safety, to \$1,500 for a first violation, \$3,000 for a 2nd violation of the same ordinance within one year, and \$5,000 for each additional violation of the same ordinance within one year of the first violation, subject to the process for granting a hardship waiver. SB 60 is pending before the Assembly.

AB 964 (Boerner Horvath, 2021) provides that an ordinance, policy, or program enacted by a city or county, including a charter city or county, that regulates or licenses the rental of residential units for tourist or transient-use occupancy within the coastal zone through a hosting platform is not considered development subject to the California Coastal Act. AB 964 is pending before the Assembly Committee on Natural Resources.

Prior Legislation:

SB 1441 (McGuire, Ch. 179, Stats. 2020) removed the sunset on the Local Prepaid Mobile Telephony Services Collection Act and moved the responsibility for collecting the state and local fees to the CDTFA.

SB 1072 (McGuire, 2020) would have enacted a system for short-term rental platforms to collect local taxes, and for localities to contract with the CDTFA to collect the taxes, that is substantially similar to the bill at issue. SB 1072 was held in the Senate Committee on Governance and Finance due to the COVID-19-related bill limitations.

SB 1049 (Glazer, 2020) would have raised the maximum fines for violation of an ordinance relating to a residential short-term rental that is an infraction and poses a threat to health or safety, to \$1,500 for a first violation, \$3,000 for a 2nd violation of the same ordinance within one year, and \$5,000 for each additional violation of the same ordinance within one year of the first violation, subject to the process for granting a hardship waiver. SB 1049 died on the Senate inactive file.

AB 3284 (Bauer-Kahan, 2020) would have specified that the legislative body of a city or the board of supervisors of a county may license and fix rates of a license fee for short-term rentals, and post specified information on its internet website with respect to each licensee. AB 3284 was held in the Assembly Committee on Local Government.

AB 147 (Burke, Ch. 5, Stats. 2019) established the Marketplace Facilitator Act, which requires marketplace facilitators located outside the state and with sales in excess of \$500,000 in California to collect and remit state and local sales and use taxes when facilitating these sales to CDTFA.

SB 1102 (McGuire, 2016) would have allowed short-term rental platforms to elect the responsibility of collecting TOTs and require the Controller to review the collections of each short-term rental platform that made such an election. SB 1102 died in the Senate Appropriations Committee.

SB 593 (McGuire, 2015) would have authorized a locality to adopt an ordinance that would require a short-term rental platform to report specified information quarterly to the locality, and to establish, by ordinance, a fine or penalty on a transient residential hosting platform for failure to provide the report; and would have prohibited a short-term rental platform from facilitating occupancy of a residential unit offered for tourist or transient use in violation of any ordinance, regulation, or law of the locality. SB 593 died in the Senate.

AB 1717 (Perea, Ch. 885, Stats. 2014) established the Local Prepaid Mobile Telephony Services Collections Act, which provides a method for various state and local fees on prepaid wireless communications services to be collected by retailers, who then remit the fees to the Board of Equalization, which in turn is required to transfer the revenue to the relevant agencies; local agencies are required to indemnify the BOE for liability and damages that result from taxes collected by the BOE.

PRIOR VOTES:

Senate Governance and Finance Committee (Ayes 5, Noes 0)
