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## SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Robert Hertzberg, Chair  
2015 - 2016 Regular

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**Bill No:** SB 593  
**Author:** McGuire  
**Version:** 4/29/15  
**Consultant:** Weinberger

**Hearing Date:** 5/6/15  
**Tax Levy:** No  
**Fiscal:** No

### ***RESIDENTIAL UNITS FOR TOURIST OR TRANSIENT USE: HOSTING PLATFORMS***

*Requires "hosting platforms" that facilitate short-term rentals of residential housing to report specified data about rentals and comply with local ordinances relating to short-term rentals.*

#### **Background and Existing Law**

State allows the legislative body of a city or county to levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home, motel or other lodging unless the occupancy is for a period of more than 30 days. The tax is typically collected from consumers by lodging providers. Revenues raised through local transient occupancy taxes (TOTs) are most commonly deposited in local general funds for general use. More than 400 cities and 55 counties levy a TOT. According to data from the State Controller's Office, in the 2011-12 fiscal year, TOTs generated more than \$1.5 billion in local government revenues, of which more than \$1.2 billion was for general use.

In recent years, Internet-based hosting platforms, like Homeaway, VRBO and Airbnb, have facilitated increasing numbers of short-term rentals of homes and rooms within residences. The rapid growth in short-term rentals of residential properties has generated concerns that these short-term residential rentals may increase housing costs, negatively affect surrounding residential neighborhoods, and place increased demands on public services while not generating local tax revenue to offset the costs of those services.

In response to these concerns, some local government officials want to improve enforcement of local TOT ordinances and other local regulations that apply to rental transactions that are facilitated through online hosting platforms. They want the Legislature to require hosting platforms that facilitate rentals of residential units for short-term occupancy to report information about rental transactions and to collect and remit TOT revenues from those rental transactions.

#### **Proposed Law**

Senate Bill 593 requires a hosting platform to report quarterly, to a city or county that has not opted out of receiving the report, all of the following information:

- The address of each residential unit that was offered on the operator's hosting platform for occupancy for tourist or transient use and was occupied for that use during that quarterly period.
- The total number of nights that the residential unit was occupied for tourist or transient use.
- The amounts paid for the occupancy of that residential unit.

SB 593 allows a city or county to impose and collect fines on an operator of a hosting platform for failing to comply with the reporting requirements and specifies limits on the amounts of the fines.

SB 593 prohibits a hosting platform from facilitating the rental of a residential unit offered for occupancy for tourist or transient use if a city or county ordinance prohibits the renting of that unit or offering of that unit, for occupancy for tourist or transient use. SB 593 allows a city or county to impose and collect fines on an operator of a hosting platform for knowingly violating this prohibition and specifies limits on the amounts of the fines.

SB 593 requires the operator of a hosting platform to comply with a local requirement that it must collect applicable transient occupancy tax imposed by a local agency, and to remit that tax to that agency.

Senate Bill 593 requires an operator of a hosting platform to disclose, in the hosting platform agreement with an owner or lessee of a residential unit, specified information about insurance coverage for liabilities that may arise as a result of the activities related to the hosting platform.

SB 593 requires an operator of a hosting platform to encourage an owner or lessee who does not have the appropriate insurance coverage to obtain the appropriate insurance coverage.

SB 593 defines a “hosting platform” as a marketplace created for the primary purpose of facilitating the rental of a residential unit offered for occupancy for tourist or transient use for compensation to the owner or lessee of that unit and the operator of the hosting platform derives revenues, including booking fees or advertising revenues, from providing or maintaining that marketplace. The bill directs that “facilitating” includes the act of allowing the owner or lessee of the residential unit to offer or advertise the residential unit on the Internet Web site provided or maintained by the operator.

SB 593 defines “residential unit” as a dwelling unit in a private residence, including a single-family residence, an apartment or other leased premises, a residential condominium unit, or any other residential real estate improvement. “Residential unit” does not include individual guest rooms, condominium units, timeshare units, cabins, or similar guest accommodations rented to transient guests in a hotel, inn, or similar transient lodging establishment operated by an innkeeper, as defined in state law.

### **State Revenue Impact**

No estimate.

### **Comments**

1. Purpose of the bill. Recent growth in short-term rentals of residential units, which has been made possible by online hosting platforms, is having powerful effects in communities throughout California. Increased and undisclosed tourist traffic alters neighborhood character, creating additional demands on local public service providers. The increase in short-term vacation rentals reduces the availability of already scarce affordable housing in many communities. Online hosting platforms receive revenues from short-term rental transactions that are not permitted by local ordinances. And in many communities, neither the hosts who make residences available for occupancy for fewer than 30 days nor the hosting platforms collect and remit applicable

transient occupancy taxes. In communities where vacation rentals are legal, SB 593 will help local governments collect transient occupancy taxes. The additional revenues recovered pursuant to the bill's provisions will be vital for local governments' efforts to respond to and mitigate short-term vacation rentals' local impacts. Additionally, by increasing TOT compliance, SB 593 will help enforce a level playing field in the vacation rental marketplace, ensuring that hosting platforms don't gain unfair pricing advantages as a result of hosts' nonpayment of taxes. In communities that prohibit short-term rentals, SB 593 will improve property owners and renters' compliance with local laws, providing local residents and their elected representatives more tools to exert control over local land uses to ensure that they reflect local priorities.

2. Burdensome. The rapid growth of online businesses that facilitate short-term rentals of residential units is a testament to the value that these online services offer both to property owners and renters who make their residences available for rent and to the travelers who stay in these accommodations. While enforcing local laws is undeniably important, enforcement efforts should avoid placing unnecessary burdens on emerging business models. SB 593's reporting requirements place additional administrative burdens on hosting platform operators that do not apply to some other short-term lodging providers. The reporting requirements also raise privacy concerns about whether government should compel online businesses to report specific transactions data about their customers without any specific limitations on the use of that data. The bill's requirement that hosting platforms must enforce local prohibitions against renting residential units for short-term occupancy also shifts some local code enforcement responsibilities from local government officials onto a narrow subset of vacation rental businesses. Legislators should consider other approaches to support local efforts to collect revenues and enforce ordinances that don't disproportionately place burdens on some online businesses.

3. New approaches for a new economy. To create a level playing field for both established short-term lodging providers and new "sharing economy" platforms, local governments' approach to regulating the business of renting residential units for short-term occupancy must evolve to reflect the rapidly changing realities of new Internet-based business models. Unlike brick-and-mortar lodging operators like hotels, not all online hosting platforms participate directly in each rental transaction completed by a property owner or renter who lists a residential unit through the hosting platform. As a result, local governments will need to find other ways to enforce TOT collection and compliance with local ordinances. One approach might be to require property owners and renters to register and report income from rental transactions and to require the hosting platforms to notify owners and renters of these registration and reporting obligations. Similarly, local governments could be required to identify, through a public clearinghouse, geographic locations in which bans on short-term rentals are in effect, providing hosting platforms with an official, consistent basis on which to accept or deny listings from property owners or renters in particular locations.

4. Definition of hosting platform. SB 593's requires that a hosting platform must provide local governments with quarterly reports of specified information about individual rental transactions. However, the bill's definition of a hosting platform seems to include businesses that don't receive revenues or information about rentals on a per-transaction basis. Under the bill's definition, a hosting platform includes a business that derives revenues solely from advertising the availability of a residential unit for short-term rental. It is unclear, how such a business, which effectively functions only as a listing service without any direct involvement in executing individual rental transactions, could reasonably be expected to comply with the bill's data

reporting and tax collection requirements. The Committee may wish to consider amending SB 593 to clarify the definition of a “hosting platform” to include only those businesses that receive revenues from, or are directly involved in executing, individual rental transactions.

5. Insurance disclosure. SB 593 requires that a hosting platform’s agreement with a property owner or renter must disclose specified information about insurance coverage. The bill requires a hosting platform to encourage a property owner or renter who lacks appropriate insurance coverage to obtain appropriate coverage. The bill does not define what constitutes “appropriate” insurance coverage and does not specify how a hosting platform operator is supposed to obtain information about a property owner or renter’s insurance coverage in order to determine whether it is appropriate coverage. The bill also does not specify what specific actions a hosting platform must take to “encourage” a property owner or renter to obtain appropriate coverage. To help hosting platform operators comply with the intent of this ambiguous requirement, the Committee may wish to consider amending SB 593 to define appropriate insurance coverage, specify how a hosting platform must determine whether a property owner or renter has appropriate coverage, and clarify what actions must be taken to encourage the acquisition of appropriate coverage.

6. Related bills. Senate Bill 761 (Hall) requires an operator of an online platform or Internet Web site that facilitates the rental of real property located in California for short-term occupancy to provide a specified notice to tenants about potential violations of their rental contracts or leases. Assembly Bill 1220 (Harper) would prohibit a city or county from levying a tax on the privilege of occupying a residential short-term rental unit.

7. Double referral. The Senate Transportation & Housing Committee considered SB 593 at its hearing on April 21 and approved the bill on the vote of 8-0. The Senate Rules Committee then referred the bill the Senate Governance & Finance Committee, which has jurisdiction over bills relating to local governments’ powers and local revenues, including transient occupancy taxes.

### **Support and Opposition** (4/30/15)

Support: American Federation of State, County, and Municipal Employees, AFL-CIO; Asian American Hotel Owners Association; Association of California Insurance Companies; Association for Los Angeles Deputy Sheriffs; California Association of Boutique and Breakfast Inns; California Association of County Treasurers and Tax Collectors; California Apartment Association; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotics Officers Association; California Police Chiefs Association; California Hotel and Lodging Association; California Labor Federation; California Professional Firefighters; California State Association of Counties; California Teamsters Public Affairs Council; Contra Cost County Treasurer-Tax Collector Russell Watts; Paul Desterman, Mindy Desterman; El Dorado County Treasurer-Tax Collector C.L. Raffety; Humboldt County Convention and Visitors Bureau; Los Angeles Alliance for a New Economy; Los Angeles Police Protective League; Marin County Council of Mayors and Councilmembers; Denise McNicol; Mendocino County Treasurer-Tax Collector Shari Schapmire; Mono County Board of Supervisors; Ashok Mukherje; Neighbors for Overnight Oversight; Jenny Oaks; Sam Pahlavan; Riverside Sheriffs Association; Rural County Representatives of California; Santa Cruz County Convention and Visitors Council; ShareBetter San Francisco; Sierra County Auditor-Treasurer-Tax Collector Van Maddox; Siskiyou County Treasurer-Tax Collector Wayne Hammar; Sonoma County Auditor-Controller-Tax Collector David Sundstrom; Sonoma County Board of Supervisors; Tuolumne County Treasurer-Tax Collector Shelley Piech; UNITE-HERE, AFL-CIO.

Opposition: Airbnb; Consumer Watchdog; Internet Association.

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