

**FOR IMMEDIATE REVIEW - REQUEST FOR ACTION BY MONDAY, APRIL 25, 2016**

SB 1102 (McGuire) (amended April 6, 2016) Transient occupancy taxes: residential short-term rentals units

Next Hearing and Prior Action: Senate Appropriations Hearing on April 25, 2016; Senate Governance and Finance Hearing on April 13, 2016 (Passed 5-0)

Clients,

MuniServices is an SB 1102 local government stakeholder. The bill attempts to create a method for collecting transient occupancy taxes (collected by on-line platforms and remitted to locals; the State Controller would provide oversight and audit reviews) on some rental transactions for residential units that are offered for short-term rental through an online platform. In December 2015, MuniServices outlined broad considerations for municipalities when collaborating with on-line platforms who approached them to enter into contract for tax collection (see below link). They include:

- **Enforce an Existing TOT Ordinance:** Ensure the ability to continue to equitably enforce the jurisdiction's TOT ordinance for both traditional lodging providers as well as short term residential rentals.
- **Data Requirements:** Require the necessary data from any platform program to ensure the proper tracking, collection and remittance of revenues.
- **Access to Data and Audits:** Ensure access to the data and adequate audit frequency.
- **Transparency:** Consider the impact open data and transparency requirements when entering into a contract (confidential or not).
- **Future Laws and Technology:** Ensure that the provisions of any contract with respect to new laws and technology with an operator protect revenues and enforcement.
- **Protecting Enforcement:** Are health and safety requirements being met and as well as policy with respect to illegal operators and provide information for city to ensure code enforcement policies are followed.

http://www.muniservices.com/wp-content/uploads/122815_MuniServices_Policy_Report_-_Shared_Economy_-_Short_Term_Rentals_-_Considerations.pdf

MuniServices has not taken a formal position on the April 6, 2016 version of the bill, but we have initial concerns. Our review of SB 1102 will be weighed against our earlier perspective for locals to consider when collaborating with on-line platforms. We share the concerns below outlined by the League and CSAC. SB 1102 also for example and as currently drafted would require the State Controller to perform an annual review of the platform's collection and remittance of tax revenue. The bill would require the State Controller's office to set up procedures to implement the bill including audit requirements. Under the bill a local agency may request to review the records of the Controller pertaining to the audit and review. We are cautions about adopting policy that impacts local revenues when the procedures are unclear and have not been vetted by locals.

REQUEST FOR FEEDBACK BY MONDAY, APRIL 25 – LEAGUE AND CSAC PREPARED

Last year, Senator McGuire advanced SB 593, which was supported by the League and CSAC in its final form. That measure would have required online rental platforms to collect and remit the applicable local taxes, and provide data to local agencies on the units being rented, with various penalties for noncompliance. In that proposal, local agencies retained the ability to either "opt in" to this regulatory scheme, or continue to administer their local ordinances. Unfortunately, SB 593 did not proceed past the Senate Floor due to opposition from the affected platforms. The language in SB 1102, which came into print on April 6th, proposes an alternative approach where platforms that "opt in" to become "collecting platforms" will be required to collect and remit local transient occupancy tax and be subject to review and audits from the State Controller and be provided additional privacy protection for their data. This 'privacy protection' needs to be vetted to protect privacy while still allowing locals to audit and enforce code compliance.

**ATTACHED DRAFT AMENDMENTS**

The draft amendments attempt to address the anticipated concerns of local agencies with the April 6 language, by proposing the following substantive modifications:

- 1) Provide cities and counties with similar “opt in” flexibility, as the current version provides for platforms. Those local agencies that opt in to become “accepting local jurisdictions” would presumably do so to get enhanced revenue flow from collecting platforms. The State Controller would audit the collecting platforms, and the accepting local jurisdictions would have a chance to review data provided to the Controller (but not data revealing the location of the operator renting the units). The local agency would have an opportunity to appeal to the Controller’s General Counsel over disputed issues. What audit standards will Controller use. Also need to address the locals ability to enforce code such as parking, garbage, noise, etc. If location kept private, big issue for locals.
- 2) Cities and counties that did not “opt in” to this program would continue with the status quo, just as it would be for platforms that did not decide to opt in.
- 3) Both collecting platforms and accepting local jurisdictions that decide to “opt in” preserve their ability to later “opt out” in accordance with noticing timelines in the bill.
- 4) Both platforms and cities and counties that do not initially opt in, can do so later within timelines established in the bill.
- 5) Two new definitions are added:
 - a. “Accepting local jurisdiction” a city or county that consciously agrees to allow the collecting platform to collect and remit revenues, and the audit and other provisions that apply to it under the bill.
 - b. “Residential unit” the definition used in last year’s SB 593 is incorporated into the bill. This is very important to avoid creating any confusion over TOT collection from existing hotels and motels.
- 6) A collecting jurisdiction may not:
 - a. Violate the provisions of the local ordinances within an accepting local jurisdiction.
 - b. Facilitate rentals of residential units within jurisdictions that prohibit them.
 - c. Collect the tax within a jurisdiction that is not an accepting jurisdiction.
- 7) City and county authority is preserved to:
 - a. Regulate the operators of residential units.
 - b. Prohibit the rental of residential units for tourist or transient use.
 - c. Enforce all aspects of local ordinances.
- 8) Sunset this law on January 1, 2024, so its effectiveness can be evaluated by the Legislature.

CLIENT FEEDBACK REQUESTED BY APRIL 25, 2016

- Would your jurisdiction view such a bill, as proposed to be amended, as helpful?
- Are there any other issues or problems with language that should be addressed?

- Over the last several years there has been significant discussion at the local and state level over the growing role of online internet host platforms that facilitate the rental of residential units for tourist and transient use. At the local level, there has been significant concern from local communities on a variety of local issues:
 - Collecting applicable transient occupancy tax.
 - Enforcing other aspects of local ordinances that regulate land use and other impacts.
 - Attempting to identify which units are being rented out, so that local ordinances can be enforced, and local revenue collected.

Contact: Please send your feedback to MuniServices (Brenda Narayan and Fran Mancina) as well as Dan Carrigg (League Staff) at CarriggD@cacities.org.