

File No. 160391

Committee Item No. _____

Board Item No. 35

COMMITTEE/BOARD OF SUPERVISORS

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Committee: _____

Date: _____

Board of Supervisors Meeting

Date: May 3, 2016

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OTHER

- California State Senate Bill 1102 - February 17, 2016
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Prepared by: John Carroll

Date: April 28, 2016

Prepared by: _____

Date: _____

1 [Opposing California State Senate Bill 1102 (McGuire) - Short-Term Rentals and Collection of
2 Transient Occupancy Taxes]

3 **Resolution opposing California State Senate Bill 1102, authored by Senator McGuire,**
4 **which would infringe upon the City’s longstanding home rule powers, preclude the City**
5 **from effectively enforcing the application of its transient occupancy tax to short-term**
6 **residential rentals, and prevent the City from obtaining information from platforms that**
7 **may allow the City to enforce its zoning, housing, building, and life safety laws.**

8
9 WHEREAS, Senate Bill 1102, which as currently drafted purports to apply to charter
10 cities and counties and to restrict the City’s collection of transient occupancy taxes (“TOT”)
11 imposed on short-term residential rentals to three methods:

12 (1) Short-term residential rental platforms (“platforms”) could elect to collect and remit
13 TOT to the City for transactions they facilitate, as long as the City does not bar such
14 option to all platforms. If the platforms make this election and the City does bar it, only
15 the State Controller would be permitted to audit the platforms’ TOT collection, and the
16 state law would deny City access to information in the possession of the State
17 Controller or the platforms regarding the short-term residential rental hosts’ (“host”)
18 names or addresses, or any other personally identifiable information about the hosts or
19 their guests, whether for TOT enforcement purposes or otherwise;

20 (2) If the platforms do not elect to collect and remit the TOT to the City for the
21 transactions they facilitate, or the City elects to preclude any such elections, then state
22 law would deny the City the right to require the platforms to collect the TOT and
23 effectively force the City to engage in the costly and highly inefficient collection of the
24 TOT from the individual hosts; and

1 (3) If, prior to June 1, 2016, a platform and the City enter into a binding legal
2 agreement relating to the collection of the TOT, such agreement would govern the
3 collection of the TOT and would preclude application of paragraphs (1) and (2) to that
4 platform, unless the platform and the City mutually agree to terminate the agreement;
5 and

6 WHEREAS, Under the California Constitution, the City's power to tax is a core element
7 of its fundamental home rule power over municipal affairs as a charter city. Indeed, the City's
8 TOT is a uniquely local tax with the rate, base, exemptions, and collection procedures that the
9 City has established and adapted to correspond to the City's rental market for tourist and
10 transient lodgings; and

11 WHEREAS, Senate Bill 1102 would conflict with the City's home rule power and its
12 ability to govern its municipal affairs, including the power to collect its taxes, which is a purely
13 local matter that presents no matter of statewide concern; and

14 WHEREAS, Senate Bill 1102's preclusion of City access to the hosts' names,
15 addresses, and other personally identifiable information from both the State Controller and the
16 platforms would effectively prevent the City from enforcing the application of its TOT to short-
17 term residential rentals; and

18 WHEREAS, Senate Bill 1102's bar against the City to the hosts' names, addresses,
19 and personally identifiable information from both the State Controller and the platforms for any
20 purpose may also impair the City's capacity to enforce the City's zoning, housing, building,
21 and life safety laws; now, therefore, be it

22 RESOLVED, That the San Francisco Board of Supervisors opposes Senate Bill 1102
23 particularly in its application to charter cities or counties, such as San Francisco; and be it

24 FURTHER RESOLVED, That the San Francisco Board of Supervisors directs the Clerk
25 of the Board to transmit this resolution upon passage to SB 1102 Sponsor, State Senator

1 McGuire, as well as to the City's Lobbyist, in order to fully execute his or her charge to
2 advocate on behalf of the City and County of San Francisco and convey the City's policy
3 positions.

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AMENDED IN SENATE APRIL 6, 2016

SENATE BILL

No. 1102

Introduced by Senator McGuire

February 17, 2016

An act to ~~amend Section 53051 of the Government~~ *add Section 7282.5 to the Revenue and Taxation Code, relating to local government: hosting platforms.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1102, as amended, McGuire. ~~Local government: cities, counties, and other agencies: Transient occupancy taxes: hosting platforms.~~

(1) Existing law authorizes a city, county, or city and county to impose a tax on the privilege of occupying a room 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.

This bill, on and after July 1, 2017, would require every platform, as defined, that elects to assume the responsibility of collecting and remitting transient occupancy taxes on behalf of an operator to collect and remit the amount of the tax levied on a rental transaction facilitated by the platform for a unit that is offered for tourist or transient use and is located within a city, county, or city and county that has not elected to retain the responsibility for directly collecting the tax from operators, as specified. The bill would authorize a platform to make its election to assume responsibility, and a city, county, or city and county to make its election to retain responsibility, by notifying the Controller of the election on or before April 30, 2017. The bill would authorize a platform that does not make its election by April 30, 2017, to elect to assume responsibility by notifying the Controller on or after July 1, 2017, and would make this election effective 6 months after the Controller's receipt

of the notification or on the date specified in the notice, whichever is later. The bill would authorize a platform to discontinue an election, and a city, county, or city and county to make or discontinue an election, by notifying the Controller on or before June 30, 2019, or June 30 of any odd-numbered year thereafter, and would make this discontinuance or election effective on July 1, 2020, or July 1 of the first even-numbered year after notification.

This bill, commencing on January 1, 2017, and by December 31 of each year thereafter, would require the Controller to review or audit a platform's collection and remittance of tax revenue pursuant to the bill and would prohibit the Controller or any person who obtains access to information contained in, or derived from, the review or audit to disclose information pertaining to any platform or other person required to provide information subject to audit or review, as specified. The bill would provide that a platform and a city, county, or city and county that, on or before June 1, 2016, have entered into a binding legal agreement relating to the collection of transient occupancy taxes are bound by the agreement and are required to notify the Controller of the agreement, that any election made to the Controller by the platform or the city, county, or city and county is not effective as to any other party to the agreement, and that the platform's collection and remittance of transient occupancy taxes pursuant to the agreement are not subject to audit or review by the Controller pursuant to the bill, unless the platform and the city, county, and city and county mutually agree to terminate the agreement.

(2) The California Constitution authorizes a city or county to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

This bill would find and declare that providing short-term rental online platforms with uniform transient occupancy tax administration requirements is a matter of statewide concern, and that the bill therefore applies to charter cities, charter counties, and charter cities and counties.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(4) *The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.*

This bill would make legislative findings to that effect.

~~Existing law requires the governing body of each public agency, as defined, within 70 days after the commencement of its legal existence, to file, with the Secretary of State and the county clerk of each county in which the public agency maintains an office, a statement containing specified information about the public agency and its governing board and officers. Existing law requires, within 10 days after any change in that information, an amended statement to be filed.~~

~~This bill instead would require the statement to be filed within 50 working days after the date of commencement of an agency legal existence and would require an amended statement to be filed within 10 working days after any change in the information.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7282.5 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 7282.5. (a) For purposes of this section, the following terms
- 4 have the following meanings:
- 5 (1) "Collecting platform" means a platform that elects to
- 6 assume the responsibility for collecting and remitting to a city,
- 7 county, or city and county on behalf of an operator, the amount
- 8 of any tax levied pursuant to an ordinance adopted pursuant to
- 9 this chapter on a rental transaction that is facilitated by the
- 10 platform for a unit that is offered for occupancy for tourist or
- 11 transient use for compensation to the operator.
- 12 (2) "Collecting jurisdiction" means a city, county, or city and
- 13 county that elects to retain the responsibility for collecting a tax
- 14 levied pursuant to an ordinance adopted pursuant to this chapter
- 15 directly from operators, rather than having a collecting platform
- 16 collect and remit the tax on an operator's behalf pursuant to
- 17 subdivision (b).

1 (3) "Operator" means a person offering, through a platform,
2 to make a unit available for tourist or transient use.

3 (4) "Platform" means a marketplace that is created for the
4 primary purpose of facilitating the rental of a unit offered for
5 occupancy for tourist or transient use for compensation to the
6 operator of that unit, and the owner of the marketplace derives
7 revenues, including booking fees or advertising revenues, from
8 providing or maintaining that marketplace. "Facilitating" includes,
9 but is not limited to, the act of allowing the operator of the unit to
10 offer or advertise the unit on the Internet Web site provided or
11 maintained by the owner of the platform.

12 (b) On and after July 1, 2017, every collecting platform shall
13 collect on behalf of an operator the amount of any tax levied
14 pursuant to an ordinance adopted pursuant to this chapter on
15 every rental transaction that is facilitated by the collecting platform
16 for a unit that is offered for occupancy for tourist or transient use
17 for compensation to the operator and is not located within a
18 collecting jurisdiction. The collecting platform shall remit the
19 amount to the city, county, or city and county that levied the tax
20 pursuant to applicable requirements of local ordinances governing
21 the tax.

22 (c) (1) On or before March 1, 2017, the Controller shall develop
23 and publicly notice both of the following:

24 (A) Procedures that a platform shall use to notify the Controller
25 if the platform elects to become a collecting platform.

26 (B) Procedures that a city, county, or city and county shall use
27 to notify the Controller if the city, county, or city and county elects
28 to become a collecting jurisdiction.

29 (2) The Controller shall also develop and publicly notice both
30 of the following:

31 (A) Procedures that a collecting platform shall use to notify the
32 Controller if the collecting platform discontinues its election to
33 become a collecting platform.

34 (B) Procedures that a collecting jurisdiction shall use to notify
35 the Controller if the collecting jurisdiction discontinues its election
36 to become a collecting jurisdiction.

37 (d) (1) On or before April 30, 2017, a platform may elect to
38 become a collecting platform by using the procedures developed
39 pursuant to paragraph (1) of subdivision (c) to notify the Controller
40 of the platform's election.

1 (2) On or before April 30, 2017, a city, county, or city and
2 county may elect to become a collecting jurisdiction by using the
3 procedures developed pursuant to paragraph (1) of subdivision
4 (c) to notify the Controller of the city's, county's, or city and
5 county's election. The legislative body of the city, county, or city
6 and county shall approve the notice in a public hearing before
7 submitting the notice to the Controller.

8 (3) An election made pursuant to this subdivision is effective
9 upon receipt by the Controller and until discontinued by the
10 platform or city, county, or city and county pursuant to subdivision
11 (f).

12 (4) The Controller shall publicly identify, by posting on the
13 Controller's Internet Web site, each platform and each city, county,
14 or city and county that has provided a notice to the Controller
15 pursuant to this subdivision as soon as possible upon receipt, but
16 in no event later than May 31, 2017.

17 (e) On or after July 1, 2017, a platform that did not elect to
18 become a collecting platform pursuant to subdivision (d) may elect
19 to become a collecting platform by using the procedures developed
20 pursuant to paragraph (1) of subdivision (c) to notify the Controller
21 of the platform's election. An election made pursuant to this
22 subdivision is effective six months after receipt by the Controller
23 or the date specified in the notice, whichever is later, and until
24 discontinued by the platform pursuant to subdivision (f). The
25 Controller shall publicly identify, by posting on the Controller's
26 Internet Web site, each platform that has provided a notice to the
27 Controller pursuant to this subdivision as soon as possible upon
28 receipt.

29 (f) (1) On or before June 30, 2019, or June 30 of any
30 odd-numbered year thereafter, a collecting platform may elect to
31 discontinue its status as a collecting platform by using the
32 procedures developed pursuant to paragraph (2) of subdivision
33 (c) to notify the Controller of the collecting platform's election.

34 (2) On or before June 30, 2019, or June 30 of any odd-numbered
35 year thereafter, a collecting jurisdiction may elect to discontinue
36 its status as a collecting jurisdiction, or a city, county, or city and
37 county may elect to become a collecting jurisdiction, by using the
38 procedures developed pursuant to subdivision (c) to notify the
39 Controller of the collecting jurisdiction's or city's, county's, or
40 city and county's election.

1 (3) *An election made pursuant to this subdivision is effective*
2 *on July 1, 2020 or, if the election is submitted on or before June*
3 *30 of an odd-numbered year thereafter, July 1 of the first*
4 *even-numbered year after the election, whichever is later.*

5 (g) (1) *Commencing on January 1, 2017, and by December 31*
6 *of each year thereafter, the Controller shall review or audit a*
7 *collecting platform's collection and remittance of tax revenue*
8 *pursuant to subdivision (b). For each collecting platform reviewed*
9 *or audited, the Controller shall submit a report to each city, county,*
10 *or city and county in which the collecting platform collected and*
11 *remitted taxes. The report shall contain a description of the review*
12 *or audit findings and identify any errors in the collection and*
13 *remittance of tax revenues within each city, county, or city and*
14 *county that were determined as a result of the review or audit. The*
15 *audit or review shall not reveal any personally identifiable*
16 *taxpayer or operator information, including, but not limited, to a*
17 *taxpayer's or operator's name and property address.*

18 (2) *It is unlawful for the Controller, any person having an*
19 *administrative duty under this section, or any person who obtains*
20 *access to information contained in, or derived from, any audit or*
21 *review, report, or other records of the Controller pursuant to this*
22 *section, to make known in any manner whatever the business*
23 *affairs, operations, or any other information pertaining to any*
24 *platform or any other person required to provide information*
25 *subject to audit or review to the Controller or the amount or source*
26 *of income, profits, losses, expenditures, or any particular thereof,*
27 *set forth or disclosed in any such information provided to the*
28 *Controller, or to permit any audit or review or copy thereof or*
29 *any book containing any abstract or particulars thereof to be seen*
30 *or examined by any person.*

31 (3) *When requested by a city, county, or city and county that is*
32 *not a collecting jurisdiction, the Controller shall permit any duly*
33 *authorized officer or employee of that city, county, or city and*
34 *county to examine the records of the Controller pertaining to the*
35 *audit or review of collections by a platform within that city, county,*
36 *or city and county. Except as otherwise provided herein, this*
37 *paragraph shall not be construed to allow any officer or employee*
38 *of that city, county, or city and county to examine any records of*
39 *any platform. Information obtained by examination of Controller*

1 records as permitted in this paragraph shall be used only for
2 purposes related to the collection of local transient occupancy tax.

3 (4) If the Controller believes that any information obtained
4 pursuant to paragraph (3) has been disclosed to any person or
5 has been used for purposes not permitted by paragraph (3), then
6 notwithstanding paragraph (3), the Controller may impose
7 conditions on access to the Controller's records that the Controller
8 considers reasonable in order to protect the confidentiality of those
9 records.

10 (5) A platform, city, county, or city and county may appeal any
11 findings identified in a review or audit report submitted pursuant
12 to paragraph (1) by providing a notice of appeal to the Controller's
13 General Counsel. The notice of appeal shall be filed within 60
14 days from the date of the final review or audit report and shall
15 identify the issues being appealed and the basis and reason for
16 the appeal. The Controller's General Counsel shall review the
17 issues appealed and may hold an informal appeal conference for
18 purposes of taking additional information and shall issue a
19 determination within 90 days of receipt of the appeal.

20 (6) The Controller may recover the reasonable costs, measured
21 by the Controller's standard rate, of an audit or review conducted
22 pursuant to paragraph (1) from the collecting platform that was
23 audited or reviewed.

24 (h) Unless the platform and the city, county, or city and county
25 mutually agree to terminate the agreement, all of the following
26 shall apply to a platform and a city, county, or city and county
27 that, on or before June 1, 2016, have entered into a binding legal
28 agreement relating to the collection of any tax levied pursuant to
29 this chapter:

30 (1) The platform and the city, county, or city and county shall
31 continue to be bound by the agreement and any election made by
32 the platform or the city, county, or city and county pursuant to this
33 section shall not be effective as to any other party to the agreement.

34 (2) The platform and the city, county, or city and county shall
35 notify the Controller of the agreement.

36 (3) The platform's collection or remittance of taxes levied
37 pursuant to this chapter pursuant to the agreement shall not be
38 subject to review or audit by the Controller pursuant to subdivision
39 (g).

1 (i) A collecting platform that complies with review or audit
2 parameters established by the Controller pursuant to this section
3 shall not be required to provide to any local jurisdiction, including
4 a collecting jurisdiction, personally identifiable information
5 relating to operators using the collecting platform, or concerning
6 transactions facilitated in the local jurisdiction by the collecting
7 platform.

8 (j) This section does not limit the existing authority of a local
9 jurisdiction to regulate operators, including any local regulation
10 that requires operators to provide information concerning
11 transactions conducted in the jurisdiction, provided that the
12 requirements do not discriminate against transactions facilitated
13 through a platform.

14 SEC. 2. The Legislature finds and declares that providing
15 short-term rental online platforms with uniform transient
16 occupancy tax administration requirements will establish a level
17 playing field among all providers and decrease the cost of
18 complying with statutory collection and remittance requirements,
19 and is therefore a matter of statewide concern and shall apply to
20 charter cities, charter counties, and charter cities and counties.

21 SEC. 3. The Legislature finds and declares that Section 1 of
22 this act, which adds Section 7282.5 to the Revenue and Taxation
23 Code, imposes a limitation on the public's right of access to the
24 meetings of public bodies or the writings of public officials and
25 agencies within the meaning of Section 3 of Article I of the
26 California Constitution. Pursuant to that constitutional provision,
27 the Legislature makes the following findings to demonstrate the
28 interest protected by this limitation and the need for protecting
29 that interest:

30 Limiting disclosure of records obtained or generated by the
31 Controller or a city, county, or city and county pertaining to audits
32 or reviews of a platform's collection and remittance of transient
33 occupancy taxes furthers the purposes of Section 3 of Article I of
34 the California Constitution by appropriately balancing the interest
35 in public disclosure with the interest in preserving the
36 confidentiality of taxpayer information and ensuring that this
37 information is not used for improper purposes.

38 SEC. 4. The Legislature finds and declares that Section 1 of
39 this act, which adds Section 7282.5 to the Revenue and Taxation
40 Code, furthers, within the meaning of paragraph (7) of subdivision

1 (b) of Section 3 of Article I of the California Constitution, the
 2 purposes of that constitutional section as it relates to the right of
 3 public access to the meetings of local public bodies or the writings
 4 of local public officials and local agencies. Pursuant to paragraph
 5 (7) of subdivision (b) of Section 3 of Article I of the California
 6 Constitution, the Legislature makes the following findings:

7 The preservation of the confidentiality of taxpayer information
 8 is furthered by ensuring that cities, counties, and cities and counties
 9 do not disclose information contained in, or derived from, any
 10 audit or review conducted by the Controller of a platform's
 11 collection and remittance of transient occupancy taxes.

12 SECTION 1. Section 53051 of the Government Code is
 13 amended to read:

14 53051. (a) Within 50 working days after the date of
 15 commencement of its legal existence, the governing body of each
 16 public agency shall file with the Secretary of State on a form
 17 prescribed by the Secretary of State and also with the county clerk
 18 of each county in which the public agency maintains an office, a
 19 statement of the following facts:

- 20 (1) The full, legal name of the public agency.
- 21 (2) The official mailing address of the governing body of the
 22 public agency.
- 23 (3) The name and residence or business address of each member
 24 of the governing body of the public agency.
- 25 (4) The name, title, and residence or business address of the
 26 chairman, president, or other presiding officer, and clerk or
 27 secretary of the governing body of such public agency.

28 (b) Within 10 working days after any change in the facts
 29 required to be stated pursuant to subdivision (a), an amended
 30 statement containing the information required by subdivision (a)
 31 shall be filed as provided therein. The information submitted to
 32 the Secretary of State shall be on a form prescribed by the Secretary
 33 of State.

34 (c) It shall be the duty of the Secretary of State and of the county
 35 clerk of each county to establish and maintain an indexed "Roster
 36 of Public Agencies," to be so designated, which shall contain all
 37 information filed as required in subdivisions (a) and (b), which
 38 roster is hereby declared to be a public record.

O

Print Form

RECEIVED IN
BOARD
4.19.16
Time stamp
or meeting date

Introduction Form

By a Member of the Board of Supervisors or the Mayor

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

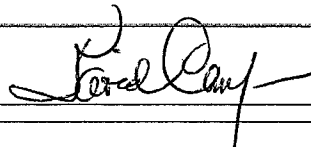
Campos, Peskin

Subject:

Resolution Urging State Legislators to Oppose Senate Bill 1102

The text is listed below or attached:

Please see attached resolution.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: