

Hawai'i State Association of Counties (HSAC)

Counties of Kaua'i, Maui, Hawai'i and City & County of Honolulu



MINUTES

HSAC EXECUTIVE COMMITTEE MEETING

Monday, July 31, 2017

Honolulu Hale, Committee Meeting Room

530 South King Street

Honolulu, Hawaii 96813

I. CALL TO ORDER

The HSAC Executive Committee was called to order by HSAC President Dru Kanuha at 11:40 a.m. The following members comprising a quorum were present:

County of Hawaii:

President Dru Kanuha
Councilmember, Hawaii County Council

County of Kauai:

Vice President Derek Kawakami
Councilmember, Kauai County Council

County of Maui:

Secretary Stacy Crivello
Presiding Officer Pro Tempore, Maui County Council

City and County of Honolulu:

Treasurer Ikaika Anderson
Councilmember, Honolulu City Council

Others Present:

Council Chair Mel Rapozo, Kauai County Council
Council Chair Mike White, Maui County Council
Councilmember Riki Hokama, Maui County Council

Leinani Wessel, Council Aide to Councilmember Dru Kanuha, Hawaii County Council

Aida Kawamura, Legislative Assistant, Office of Council Services, Kauai County Council

Brandon Mitsuda, Administrative Support Services, Honolulu City Council

Francisco Figueiredo, Office of Councilmember Ikaika Anderson, Honolulu City Council

Todd Swisher, Legislative Analyst, Office of Council Services, Honolulu City Council

Carla Nakata, Legislative Attorney, Office of Council Services, Maui County Council

Scott Ishikawa, Senior Account Executive, Becker Communications, Inc.



II. APPROVAL OF AGENDA

Treasurer Anderson moved to amend Section 18 of the Bylaws to change the word “shall” to “may,” so that the Section reads:

SECTION 18. The corporation is not a “board” under chapter 92, Hawai`i Revised Statutes (HRS), having been created by other than the “constitution, statute, rule, or executive order.” The corporation, however, in the conduct of its business, [shall] may comply with the procedures and requirements set forth under chapter 92, HRS.

Vice President Kawakami seconded the motion. President Kanuha noted the meeting agenda had not been posted at the meeting site six days prior to the meeting. Honolulu staff contacted the Office of Information Practices to confirm the meeting could proceed. Because HSAC is not a board for purposes of the Sunshine Law, and is not bound by the Sunshine Law other than through its Bylaws, the motion was made to amend the Bylaws to allow the meeting to proceed. The motion was unanimously carried.

There being no objections, the agenda was approved as circulated.

III. MINUTES

A. Minutes of the June 19, 2017 HSAC Executive Committee meeting

Treasurer Anderson moved to approve the Minutes as circulated. The motion was seconded by Vice President Kawakami and unanimously carried.

IV. REPORTS

A. Treasurer’s Report

1. Treasurer’s Report for June 2017.

Treasurer Anderson reported that HSAC started the month of June with a balance of \$164,607.06 and had expenses of \$7,796, leaving an ending balance of \$156,813.69. See attached worksheet for additional information.

The Executive Committee thanked Kauai (Council Chair Rapozo and staff Aida Kawamura) for a good conference, raising revenues, and a job well done. Vice President Kawakami moved to approve the Treasurer’s Report for June 2017. The motion was seconded by Secretary Crivello and unanimously carried.



B. County Reports.

1. City and County of Honolulu Report. Treasurer Anderson provided the attached update on Honolulu City Council meetings and events.
2. County of Hawaii Report. President Kanuha reported that on June 23, 2017, the Hawaii County Council passed a resolution increasing the fuel tax rate. The new rate takes effect August 1, 2017, and will be 15 cents per gallon (previously 8.8 cents per gallon). It is anticipated to generate about \$4.5 million for the current fiscal year. He said the Council took a tiered approach, with the fuel tax rate increasing to 19 cents for the following fiscal year, then to 23 cents per gallon the year after. The fuel tax will bring in much needed revenue. He said on July 7, the Council authorized the County to enter into a sister-city relationship with Cabugao in the Philippines. The Council sent to the Environmental Management Commission changes to legislation concerning Styrofoam food containers and food service ware. He said Hawaii County has been undergoing repairs to Kona water wells. Because of maintenance problems, there had been a 25-percent mandatory restriction on water use in the Kona area. They are trying to upgrade the wells as soon as possible. On July 18, the Council amended the Hawaii County Code to comply with National flood insurance program regulations.
3. County of Kauai Report. Vice President Kawakami reported upwards of \$90,000 in revenue was raised from the HSAC Conference. He said Kauai has already circulated an internal timeline for legislative priorities for HSAC.
4. County of Maui Report. Secretary Crivello reported the Maui County Council's Infrastructure and Environmental Management Committee is working on a proposed moratorium on sand mining. She noted the Council's Policy, Economic Development, and Agriculture Committee is beginning to consider a recent Charter amendment allowing the Council to establish by ordinance additional qualifications for administrative heads appointed by the mayor. She said a resolution has been proposed to urge the Mayor to allow an additional deferred compensation plan for County employees.

Treasurer Anderson made a motion to receive the reports. Secretary Crivello seconded the motion, which was unanimously carried.

C. National Association of Counties (NACo) Report.

- July 21-24, 2017 NACo Annual Conference – Franklin County, Ohio

Councilmember Hokama reported that the content of the annual conference was solid. President Kanuha has been appointed an at-large director. By National



Bylaws, all past presidents continue to serve as board directors until they leave County service. With Councilmembers Arryl Kaneshiro from Kauai and Councilmember Ikaika Anderson from Honolulu, the State of Hawaii has four directors on the NACo board (including past president Hokama). Next year the conference will be held in Nashville, Tennessee. There is a board meeting in December in Tarrant County, Texas, for board directors. The National Council of County Association Executives has extended an invitation to Hawaii to be the conference site of choice for 2019. About 150 people would attend. Any county could be the host. He said it might be a good time for Hawaii to consider whether it wants to have an executive director. NACo is willing to consider Hawaii as an associate member. Key committees will be Transportation (aviation reauthorization) and Water (farm bill and water bill).

The motion to receive the report was unanimously carried (individuals making and seconding the report were inaudible).

D. Western Interstate Region (WIR) Report.

President Kanuha said the WIR Fall meeting will be held in Wyoming in October. He encouraged other members to attend the WIR conferences. He asked whether the Executive Committee wants another person from Hawaii on the WIR board of directors. Secretary Crivello said that may be an issue for posting on the next HSAC Executive Committee meeting agenda. Vice President Kawakami said it was a good point to bring Hawaii's issues, such as sea level rise, to WIR.

Secretary Crivello made a motion to receive the report, which was seconded and unanimously carried.

E. Communications Report – Scott Ishikawa – Becker Communications

Mr. Ishikawa distributed an outline of his proposed media communications strategy and timeline for the 2018 State legislative session. He suggested focusing on three or four top legislative priorities. A copy of his proposal is attached. He said that because some bills did not die, lobbying can begin in October or November. He said he would await feedback on the upcoming Special Session. President Kanuha said Mr. Ishikawa was hired to help HSAC with communications and media this past year. Vice President Kawakami noted the Becker Communications draft strategy needs to be flexible because the Executive Committee still needs to identify priorities, and new pieces of legislation may be developed. Councilmember Hokama said he believed emphasis should be given to online communications to get the message out. Council Chair White noted the lifeguard liability measure and the transient accommodations tax and rail funding are big issues. He said every one percent increase in TAT would take away about \$26.7 million from the Big Island, Kauai, and Maui economies, and bring it to Honolulu. Treasurer Anderson said



he understands the neighbor island position on rail funding. Secretary Crivello said there may be other legislative considerations from the counties. She said the body needs to decide how the Facebook account and HSAC website will be maintained moving forward. Councilmember Hokama said community television allows free five-minute public service announcements on Maui and asked whether Special Session issues could be communicated in this manner.

Treasurer Anderson moved to receive the report. The motion was seconded by Vice President Kawakami and unanimously carried.

V. NEW BUSINESS

- A. Nationwide's consideration to submit proposals to provide services for all counties.

Secretary Crivello said a decision needs to be made whether this is something the individual counties want to pursue or whether HSAC should talk to the mayors. She said Maui County has proposed a resolution to request its Mayor to seek opportunities for an additional deferred compensation plan. It was noted that Kauai is considering whether this is something they can do, and that Honolulu already offers a separate deferred compensation plan (not Nationwide). Councilmember Hokama cautioned care should be taken in structuring a proposal and that procurement laws would need to be followed. If an entity comes in and does a presentation, there is a potential to disqualify that entity from bidding. The Executive Committee decided to keep this matter on the agenda for further discussion.

- B. 2018 HSAC Legislative Package.

President Kanuha said there are continued considerations from 2017. Secretary Crivello noted unfunded liabilities may be a good consideration for next legislative session. President Kanuha asked about a schedule for introducing measures for the 2018 package. Secretary Crivello said HSAC should not wait until the Legislature gets back in session. She asked whether ERS and unfunded liabilities will occupy next session. Vice President Kawakami said for the bills that are still alive, HSAC may want to reintroduce them and get new bill numbers, and start reaching out to advocates.

- C. Hawai'i State Legislature Special Session relating to the transient accommodations tax (TAT).

The Special Session has been announced for August 28 through September 1, 2017. President Kanuha opened the discussion on how HSAC would address the Special Session. Secretary Crivello said the body should decide how involved it will get in the Special Session and expressed some urgency in the decision.



Council Chair White provided the attached report from the University of Hawaii Economic Research Organization (UHERO), dated March 8, 2017, entitled "Is Hawaii's Hotel Room Tax Law Obsolete?" The article discusses the State's suit against online travel companies and urges a re-examination of the State's TAT law. He said there are some states that have redone their room tax laws. When you go onto Expedia or another travel company's site, they will charge the same amount the hotel charges, but will keep the TAT and pay the GET. He suggested HSAC consider asking the State Legislature to rewrite the TAT law to include remarketers. He noted concern over a proposal to increase the TAT by 2.75 percent. Council Chair White summarized some historical TAT data, including TAT collections for 2015 through 2017. He said the counties in the State receive the smallest share of tax revenues on hotel lodging of anywhere in the country. He said perhaps the State might look at the option of a restaurant tax instead of increasing TAT.

President Kanuha asked whether these things would be valid considerations during a Special Session. Vice President Kawakami said emergency appropriations for the Hawaii Health Systems Corporation were considered during the Special Session on marriage equality, so members of the House and Senate might want to see other issues thrown in. From a revenue side, it might be something to ponder. Council Chair White said he believed HSAC needs to go into the Special Session with a very strong position.

The Executive Committee said it was difficult not knowing exactly what would be proposed during the Special Session. Vice President Kawakami said it appeared the Executive Committee would be deliberating on an official position for the Special Session. Secretary Crivello said the counties had not taken an official position on the general excise tax extension, just on the TAT. Secretary Crivello said she sees reauthorizing the GET as a means for Honolulu to support the rail. President Kanuha said the Executive Committee should keep Scott Ishikawa posted on any position the counties take. Secretary Crivello said she wants not to have to use the neighbor islands' share of TAT to fund rail.

Council Chair Rapozo said HSAC previously supported the task force recommendation. He said the only thing HSAC can lobby for is what was passed in the package, so just the TAT and lifeguard liability, because GET was not in the package. He said the Bylaws do allow the Executive Committee to act on anything that affects home rule or revenues, so HSAC's position could probably expand to include that, but to be careful, especially with GET, because all the counties are different. He said the Executive Committee will probably need to know today whether HSAC will aggressively pursue the Special Session. Council Chair Rapozo questioned whether to take out a full-page ad to identify legislators who did and did not support the counties' efforts. He said it may be simplest to use a sales tax. Council Chair White distributed calculations on tax generation and distribution to the State and County. He said the UH Maui



College might serve as a resource to help with some statistics. Councilmember Hokama said HSAC may want to consider using NACo's County Explorer program and perhaps Dr. Estrada with the NACo Research Office.

Vice President Kawakami said he would like to see HSAC take a position on the extension of the general excise tax to fund rail. Treasurer Anderson said it seems the options to fund rail right now are either to extend the existing GET surcharge for a certain number of years, or a combination of the GET extension and TAT. He noted it has also been said that the Legislature is looking at funding the rail strictly through TAT. It's been the position of the Honolulu City Council that the fairest and most equitable way to fund rail construction is through a GET extension. He said this is not a tax increase, but an extension of an existing tax Honolulu is already paying. He noted this is not a project that the other islands would benefit from. But he feels HSAC needs to see what the Legislature is proposing definitively before it figures out a position. Secretary Crivello said she likes the idea of supporting the extension of GET and leaving the TAT alone. She asked whether there would need to be a special meeting if the Executive Committee wants to come out with a position on the GET. Council Chair White said it may make some sense to have a position on both the extension of the GET and opposing the increase of the TAT. He noted the rail does not go to Waikiki either, so it may not make sense for TAT to support it. Treasurer Anderson said the only reason he has heard for using the TAT for rail is because visitors do not vote. Council Chair White said anything that increases the price of the room has to go on the web, whereas the same does not apply to restaurant taxes.

Vice President Kawakami said the difficult thing is that there is no known agreement on the Special Session. Council Chair White said we need to go back and find out the respective delegations' positions. President Kanuha said right now HSAC does not have a position on the GET. Vice President Kawakami said he has heard a lot of different proposals, and asked where that puts HSAC. He suggested the representatives go back to their delegation and House and Senate leadership to find out their positions. President Kanuha said the body should try to find a good date to come back together prior to the Special Session, and in the meantime representatives should go back to their individual counties and talk with House and Senate representatives.

Treasurer Anderson said he would like to ask his colleagues on the Honolulu City Council to support a resolution requesting HSAC support of the GET surcharge extension to support rail funding, but he wanted to make sure the Executive Committee is okay with that before he does. Secretary Crivello said she does not have a problem with that. Council Chair White asked whether he wanted the other councils to consider similar resolutions. Treasurer Anderson said he wasn't sure whether the other councils would want to see something from Honolulu before they go on record. He said he would propose a resolution at the next Council meeting and asked Honolulu staff to draft a resolution.



Council Chair White asked if he could give Maui a draft that Maui could consider posting for its next Council meeting. President Kanuha asked that the draft resolution be sent to the other HSAC representatives so that each council could do what they want with it.

VI. UNFINISHED BUSINESS

- A. 2017 Legislative Update and Plan for Lobbying Efforts (Bills still alive for next session)

President Kanuha said the Executive Committee will be talking about the lifeguard bill. He said this past session Councilmember Victorino was part of the lobbying effort. The Executive Committee discussed whether they wanted a paid lobbyist moving forward. Secretary Crivello noted she did not think a paid lobbyist is warranted at this time. Vice President Kawakami agreed. Council Chair White said perhaps HSAC should work in the direction of hiring an Executive Director stationed on Oahu who could follow the legislative session on a continual basis. President Kanuha agreed.

- B. Status of Senate Concurrent Resolution 77, requesting the establishment of a bona fide agricultural producer task force to create a definition for the term bona fide agricultural producer, which was adopted by the Senate and the House of Representatives.

Secretary Crivello noted Maui is still trying to define agriculture. She asked how the other counties handle this. Vice President Kawakami said he thinks that is the definition they have been asking for from the State for quite some time.

- C. Correspondence from U.S. Senator Mazie Hirono, relating to a draft resolution for consideration regarding potential cuts to federally funded Native Hawaiian programs and to strengthen these programs.

The Executive Committee discussed the status of this request and noted it is up to each Council to determine whether they support the resolution. The Committee received the attached correspondence dated May 12, 2017, from the Office of the County Attorney for Kauai County stating “the draft resolution would be legal according to the legal tenets governing resolutions.” President Kanuha said there are a lot of specifics in the resolution dealing with Native Hawaiian programs. It appears the concern in the resolution is with taking money away from Native Hawaiians and giving it instead to Native Americans.

Secretary Crivello moved to support the resolution. Vice President Kawakami seconded the motion, and the motion was unanimously carried. He said the resolution would be sent to each individual Council for their information.



VII. ANNOUNCEMENTS

A. Scheduling the next meeting.

The next meeting is scheduled for Thursday, August 10, 2017, at 10:00 a.m., at Honolulu Hale.

B. Other announcements.

There were no other announcements.

VIII. ADJOURNMENT

The meeting was adjourned at 2:05 p.m.

Hawaii State Association of Counties
REVENUES COLLECTED AND EXPENSES PAID
 Period June 1 through June 30, 2017

BEGINNING BALANCE				\$164,607.06
	May 2017	June 2017	FY 2017 Year to Date	FY 2017 Budget
REVENUES				
Membership Fees	\$0 00	\$0 00	\$43,680 00	\$43,680 00
Conference Income	\$0 00	\$0 00	\$19,168 26	\$18,000 00
Interest Income	\$2 92	\$2 63	\$27 81	\$28 00
Corporate Sponsorship	\$0 00	\$0 00	\$0 00	\$0 00
Miscellaneous	\$0 00	\$0 00	\$9 73	\$0 00
NACo Prescription Drug	\$542 00	\$0 00	\$3,063 60	\$6,000 00
Fund Balance, prior FY			\$0 00	\$107,164 00
Total	\$544 92	\$2 63	\$65,949 40	\$174,872 00
Total Receipts This Period				\$2.63
EXPENSES				
HSAC				
Executive Committee Travel-Air Ground Lodging & Membership	\$2,705.29	\$1,007 40	\$15,407 67	\$17 600 00
Auditing Services	\$0.00	\$0 00	\$4,166 67	\$5 000 00
Stationery	\$0.00	\$0 00	\$726 21	\$150 00
Miscellaneous	\$588.29	\$0 00	\$10,712 78	\$2 000 00
Online Quickbooks Monthly Fee	\$41.75	\$41 75	\$499 80	\$500 00
Special Committees				
Travel	\$0.00	\$0 00	\$0 00	\$500 00
Miscellaneous	\$0.00	\$0 00	\$0 00	\$100 00
			\$0 00	
NACo				
Board Travel-Air Ground and Lodging	\$4,076.19	\$1,505 18	\$17,313 19	\$20 000 00
Steering Committees Travel-Air Ground & Lodging	\$0.00	\$0 00	\$0 00	\$6 000 00
Promotional	\$0.00	\$0 00	\$0 00	\$250 00
Dues	\$3,507 00	\$0 00	\$30,258 00	\$27 268 00
Miscellaneous	\$0 00	\$0 00	\$3,442 20	\$1 000 00
WIR				
WIR Travel-Air, Ground and Lodging	\$0.00	\$0 00	\$1,953 57	\$10,500 00
WIR Promotional	\$0.00	\$0 00	\$0 00	\$0 00
WIR Dues	\$0.00	\$0 00	\$0 00	\$3,804 00
WIR Miscellaneous	\$0.00	\$0 00	\$0 00	\$1,000 00
WIR 2015 Conference	\$0.00	\$0 00	\$0 00	\$0 00
OTHER				
Adjustments for Travel and Related Expenses	\$0 00	\$0 00	\$0 00	\$6,295 00
National Conference Fund	\$0.00	\$0 00	\$0 00	\$44,000 00
Prescription Drug Scholarship Program	\$0.00	\$0 00	\$0 00	\$6,500 00
County Leadership Institute Attendee	\$0.00	\$0 00	\$0 00	\$3,000 00
Prescription Drug Promotion	\$0.00	\$0 00	\$0 00	\$5,000 00
HSAC Promotion	\$1,500.00	\$5,241.67	\$14,868 96	\$11,505 00
Total	\$12,418 52	\$7,798 00	\$99,349 05	\$171,972 00
Total Expenses This Period				\$7,798.00
ENDING BALANCE				\$156,813.69

To: The Honorable Ikaika Anderson, Treasurer
From: Brandon Mitsuda, Council Liaison
Date: July 31, 2017
Re: Honolulu Report
Hawaii State Association of Counties Executive Committee Meeting

Update on Honolulu City Council Meetings

- The Honolulu City Council at our last Full Council Meeting on July 12, 2017 passed on Third Reading **Bill 59 (2016), FD1, CD3**: Relating to the use of bags provided to customers. (Regulating the use of bags provided to customers.)
- The Honolulu City Council at our last Full Council Meeting on July 12, 2017 passed on Third Reading **Bill 43, CD1**: Relating to the maintenance of channels, streambeds, streambanks and drainageways. (Amending the conditions under which a private stream owner is held to maintain, dredge and clear such stream.)
- The Honolulu City Council at our last Full Council Meeting on July 12, 2017 passed on Third Reading **Bill 79 (2015), CD2**: Relating to the Land Use Ordinance. (Making miscellaneous amendments to the Land Use Ordinance.)
- The Honolulu City Council at our last Full Council Meeting on July 12, 2017 passed on Third Reading **Bill 67**: Relating to curb ramps. (Preserving access to curb ramps designed for use by persons with disabilities.)
- The Honolulu City Council at our last Full Council Meeting on July 12, 2017 passed on First Reading **Bill 68**: Relating to special transit service. [Clarifying the operations of the City's special transit service (The Handi-Van) and establishing policies for improved and efficient operations of special transit services in the City and County of Honolulu.]

Update on Honolulu City Council Projects and Events

- The Honolulu City Legislative Branch has begun preparations for the 2017 Honolulu City Lights Celebration that showcases the Holiday Spirit here at Historic Honolulu Hale.

BECKER

COMMUNICATIONS ♦ INC

ONLINE, OFFLINE AND INLINE WITH YOUR GOALS

HAWAII STATE ASSOCIATION OF COUNTIES (HSAC) Media Communications Strategy/Timeline (Summer 2017 – May 2018)

OVERARCHING POSITIONING STATEMENT:

During each legislative session, the Hawaii State Association of Counties (HSAC) submits measures in hopes of improving the quality of life for residents across the state. All measures presented before this upcoming legislative session are meant to provide the following:

- Maximize the effectiveness and performance of the county governments;
- Enhance the fiscal health of our county-level governments, and in turn;
- Benefit the taxpayers by avoiding the need for future increased taxes and user fees to make up for unnecessary deficits.

GOALS:

1. Lobby the state Legislature to approve HSAC-related measures
2. Build groundswell of public support using a variety of communications tactics
3. Enable and encourage public advocacy among existing supporters
4. Attain our legislative goals as ONE entity; not allowing outside forces to divide and conquer us

TOP LEGISLATIVE PRIORITIES:

Here are the suggested HSAC issues to have media and public focus on:

- 1) Fairer TAT distribution between state and counties
- 2) Return of limited liability protection for county lifeguards
- 3) Additional ambulance services for Kauai and Hawaii Island

TIMING	ACTIVITY / DESCRIPTION
July through September 2017 (Determination of legislation for submittal during 2017 session)	Community Outreach: Determine organizations/business groups/unions to reach out to regarding speaking engagements and potential support for HSAC-related legislation: <ul style="list-style-type: none">• Chambers of Commerce (COC)<ul style="list-style-type: none">○ COC of Hawaii○ Hawaii Island COC○ Maui COC○ Kauai COC• Other major business associations on each island

	<ul style="list-style-type: none"> • Hotel industry <ul style="list-style-type: none"> ○ Hawaii Tourism Authority ○ Hawaii Lodging and Tourism Association • Unions <ul style="list-style-type: none"> ○ HGEA ○ UPW ○ HSTA ○ SHOPO ○ Hawaii Fire Fighters Association ○ Private unions <p>Online Marketing and Communications:</p> <ul style="list-style-type: none"> • Monthly E-Blast <ul style="list-style-type: none"> ○ Draft editorial calendar for 2018 legislative session • Website <ul style="list-style-type: none"> ○ Draft text for upcoming legislative session • Facebook <ul style="list-style-type: none"> ○ Work with four counties on social media plan
<p>October 2017 (Continual planning and scheduling)</p>	<p>Editorial Solicitation:</p> <ul style="list-style-type: none"> • Begin scheduling editorial board meetings for December • Confirm speaking engagements to begin in late November/early December <p>Community Outreach:</p> <ul style="list-style-type: none"> • Speaking engagements (October-early January)
<p>November 2017</p>	<p>Community Outreach:</p> <ul style="list-style-type: none"> • Speaking engagements (October-early January) <p>Editorial Solicitation:</p> <ul style="list-style-type: none"> • Finalize schedule for editorial board meetings/media briefings
<p>December 2017 (Pre-Legislative Session Coverage)</p>	<p>Community Outreach:</p> <ul style="list-style-type: none"> • Speaking engagements (October-early January) <p>Editorial Solicitation/Scheduled Coverage:</p> <p>Interviews with respective neighbor island newspapers before the session (Early January):</p> <ul style="list-style-type: none"> • Big Island (Hawaii Tribune-Herald, West Hawaii Today) • Maui (Maui News) • Kauai (The Garden Island) <p>Line up potential signees for letters to editor throughout session</p>

	<p>Press Release:</p> <ul style="list-style-type: none"> • Finalize HSAC legislative press release for internal approval
<p>January 2018 (Beginning of Legislative Session)</p>	<p>Community Outreach:</p> <ul style="list-style-type: none"> • Speaking engagements (October-early January) <p>Editorial Solicitation:</p> <p>Hold editorial board meeting/briefings with Oahu media publications covering legislative session (early January):</p> <p><u>Suggested Media Organizations for Editorial Board Meetings:</u></p> <ul style="list-style-type: none"> • Honolulu Star-Advertiser (Lucy Young-Oda, Kevin Dayton, Sophie Cocke) • Hawaii Public Radio (Wayne Yoshioka) • Civil Beat (Nathan Eagle) • Pacific Business News (Kam Napier) <p><u>Benefits of Meeting with the Editorial Board:</u></p> <ul style="list-style-type: none"> • They could assign a story to a reporter about topics discussed at the meeting. • They will come away from this meeting with a better understanding of HSAC's priorities. • It will improve the lines of communication between the two parties and provide an opportunity to gain a better understanding of the media's needs and deadlines. • They are less likely to publish future stories about the topic without first reaching out to get our reaction. • The editors might even be motivated to write an editorial about topics discussed. <p>Potential appearances on the following media outlets:</p> <ul style="list-style-type: none"> • KHON2 "Wake Up 2Day" • Hawaii Public Radio's "The Conversation" • Hawaii News Now's "Sunrise" show <p>Press conference/media availability at HSAC Open House</p> <ul style="list-style-type: none"> • Also make HSAC members available to media during first week of Legislative session (Jan. 15-19) <p>Press Release:</p> <ul style="list-style-type: none"> • Also release HSAC legislative agenda/ objectives release during first week of 2017 legislative session <p>Letters To Editor:</p> <ul style="list-style-type: none"> • Start drafting third-party letters to editors

<p>February 2018 (Mid-February – First Lateral)</p>	<p>Legislative Deadlines/Benchmarks:</p> <p>Editorial Solicitation:</p> <ul style="list-style-type: none"> • Begin assigning letters to editors to third-parties for submission
<p>March 2018 (Mid-session)</p>	<p>Editorial Solicitation:</p> <ul style="list-style-type: none"> • Op-ed to island newspapers providing HSAC legislative agenda update • Make HSAC members available to media during committee hearings • Have third-party submit letters to editor during budget crossover
<p>April 2018 (Crossover periods)</p>	<p>Editorial Solicitation:</p> <ul style="list-style-type: none"> • Make HSAC members available to media during conference committee • Have third-party supporters submit letters to editor during crossover periods
<p>May 2018 (Final vote on legislative measures, wrap-up of legislative session)</p>	<p>Editorial Solicitation:</p> <ul style="list-style-type: none"> • Provide op-ed to each island daily newspapers at end of 2018 legislative session on HSAC progress report

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IS HAWAII'S HOTEL ROOM TAX LAW OBSOLETE?

MARCH 8, 2017

With tax collections falling behind expectations, State lawmakers are pressuring the tax department to increase effort to collect uncollected taxes from internet sales. In 2015 the State Attorney General's Office scored a "major" victory when the Hawaii Supreme Court ruled that online travel companies (OTCs) are required to pay Hawaii's general excise tax (GET) on their hotel bookings. Subsequently, the Tax Appeal Court ordered OTCs to pay \$53.1 million in back general excise taxes plus interest to the state.

The State had also sued the OTCs for underpaying Hawaii's transient accommodation tax (TAT), also known as the hotel room tax.¹ That was a major loss for the Attorney General's Office. At issue in that suit was whether the OTCs should have been remitting TAT on the full retail price of the rooms they charge their consumers, or only the tax on the wholesale room rates (called net rates) that they pay to hotels for the rooms they contract with the hotels and resell to consumers. The State argued that OTCs should have been paying TAT on the full retail room rates; OTCs disagreed. The Hawaii Supreme Court (March 17, 2015) sided with the OTCs.²

Hawaii enacted its TAT in 1986. Hawaii's TAT is levied on the operator of transient accommodations. Hawaii Revised Statutes Chapter 237D states: the TAT is "assessed and collected each month...on the gross rental or gross rental proceeds received from furnishing transient accommodations. Every operator shall pay to the State the tax imposed by this section as provided in this chapter. An "operator" is "any person operating a transient accommodations whether as owner or proprietor or as lessee, sublessee, mortgagee in possession, licensee, or otherwise, or engaging or continuing in any service business which involves the actual furnishing of transient accommodation."

The Hawaii Supreme Court, basing its decision on the legislative history of the TAT, determined that "...a single operator is associated with the furnishing of transient accommodations...Here the hotels in the Assessed Transactions are acknowledged by all parties to be an operator within the meaning of the use of that term as provided by HRS & 237D-1; thus, for purposes of the TAT Assessments, only the hotels are operators in the Assessed Transactions. Therefore, the OTCs are not operators and the TAT is not applicable to the OTCs in the Assessed Transactions." That Hawaii lost so handily shouldn't have been surprising from the very beginning given the way the TAT statute was written.

¹ *In the Matter of Travelocity v. Dir. of Taxation*, 346 P.3d 157 (Haw. 2015)

² *In the Matter of Travelocity v. Dir. of Taxation*, 346 P.3d 157 (Haw. 2015)

The dispute between states and local governments in the U.S. and OTCs over the appropriate tax base for online lodging sales has been going on since at least 2004. According to the Tax Foundation, which keeps tabs on the ongoing litigations, as of February 2016, tax jurisdictions in 34 states and the District of Columbia have filed similar lawsuits against the OTCs; OTCs have won in 23 states and lost in 6 states.³

That OTCs have won most of the litigations is not surprising because in most cities and states hotel occupancy tax statutes were written before the advent of OTCs, and were not worded in a way that would allow state and local governments to prevail. Travelocity and Expedia didn't even exist before 1996.

Traditionally, hotel guests booked directly with hotels or with the assistance of travel agencies. Travel agencies acted as brokers and received a commission from the hotels. Under this "agency model" the hotel is the merchant of record. (The agency model is still in use by brick-and-mortar travel agencies and online travel companies.) The hotel guest paid his/her room rent to the hotel and not to the travel agency. Either way, what the hotel received from the guest was the same whether the booking was made directly with the hotel or through a travel agency. Typically, hotel occupancy tax statutes—including Hawaii's TAT—specify that the hotel room tax is some percent of the room rental revenues/price hotels received.

In the digital era, the relationship between hotels, guests and travel intermediaries changed as the OTCs found a more profitable business model. Under the "merchant model" OTCs are the merchants of record. They contract for rooms with hotels at wholesale rates (net rates), add their mark-up and "service fee and taxes" (bundled together) and resell them to customers. Hoteliers contract with OTCs to collect all the money, including applicable taxes. Consumers pre-pay their stay to the OTCs and not to the hotels. After check out, hotels invoice the OTCs; OTCs then pay the hotels the negotiated net rates and the taxes collected from the guest based on the net rate.

Thus, under the merchant model of distribution what a hotel guest pays to the OTC for the right to occupy the room and what the hotel receives from the OTC are not the same. Obviously, under traditional hotel occupancy tax statutes, taxes calculated on the net rates are lower than if they were calculated on the full retail rates paid by consumers. The same room booked by a hotel guest directly with a hotel will have a higher tax bill than one purchased from a merchant model OTC, assuming the rooms are sold at about the same price.⁴

For the consumer, the only price that matters is the total price charged by the OTC, inclusive of the net rate, mark-up, fees and taxes. If he/she does not pay the total price, he/she cannot occupy the room. Indeed, in 2014, the Wyoming Supreme Court ruled that OTCs' mark-ups were "services necessary to complete the sale" and hence part of the sale price subject to Wyoming's sales tax.⁵

³ Tax Foundation, *Litigation Ongoing against Online Travel Companies for Hotel Occupancy Taxes*, February 17, 2016. Most of the law suits have been filed by cities.

⁴They are. See Michael Mazerov, *State and Local Governments Should Close Online Hotel Tax Loophole and Collect Taxes Owed*, Center on Budget and Policy Priorities, April 12, 2011. Agreements between hotel chains and OTCs tend to maintain price parity between the two channels of distribution.

⁵ *Travelocity.Com LP, et al. v. Wyoming Department of Revenue*, Wyoming Supreme Court, No. S-13-0078, April 3, 2014, reported in Sales Tax Institute, "Online Travel Companies Liable for Tax on Total Amount Paid by Customers in Wyoming," April 7, 2014.

If one agrees that the appropriate tax base should achieve tax neutrality—i.e. the correct tax base should be the rental price paid by the hotel guest (excluding taxes)⁶ regardless of how the room was purchased--then many existing hotel occupancy tax statutes should be rewritten.⁷

New York State did just that. In 2010 New York State revised its state sales tax statute to ensure that OTC mark-up and fees are fully taxed. Chapter 57 of the Laws of 2010 effective September 1, 2010 was enacted “to ensure that state and local sales taxes (sales tax) are paid on the full amount charged to customers by businesses such as Web-based travel companies (hereinafter room remarketers) for hotel occupancy in New York State.”⁸ The new law defines “*room remarketer* as ‘a person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by the room remarketer, directly or indirectly, whether pursuant to a written or other agreement’...Businesses, such as travel agencies, that reserve rooms on behalf of their customers and do not have the right to determine the amount of rent their customer pays for the room...are not room remarketers for purposes of this new law.” Under the new law, a room remarketer is considered a hotel operator.⁹

New York State’s law also applies to the hotel room occupancy tax imposed and administered by New York City requiring the hotel room occupancy tax in the City to be paid on the entire amount paid by consumers for a hotel room. Expedia filed a law suit against New York City, but the City won.¹⁰

In 2010 the District of Columbia also amended its lodging tax statute (Title 47 of the District of Columbia Office Code.) requiring online travel companies to pay sales tax on the total amount paid by consumers to online travel companies, including the retail margins.¹¹ Section 47-2202 (2) was amended to read as follows: “If the occupancy of a room or rooms, lodging, or accommodations is reserved, booked, or otherwise arranged for by a room remarketer, the tax imposed by this paragraph shall be determined based on the net sale or net charges received from the transient by the room remarketer.” Net sale or net charges is defined as “the gross receipts from the sale of or charges for any room or accommodations received by a retailer from a room remarketer.” The law was upheld by the D.C. Superior Court in 2012 and again by the D. C. Court of Appeals in 2015.¹²

⁶This would require the OTS to separate the “fees and taxes” on consumer bills.

⁷ Mak, J. 2012. “What Should Be the Appropriate Tax Base for OTCs’ Hotel Room Sales?” Pages 775-786 *Tax Analysts*. Tax Analysts, Falls Church, Virginia.; Mazerov, 2011; National Conference of State Legislatures, *NCSL Task Force on State and Local Taxation Principles for the Taxation of Online Travel Companies*, August 12, 2013.

⁸New York State Department of Taxation and Finance, Office of Tax Policy Analysis, Taxpayer Guidance Division, *Amendments Affecting the Application of Sales Tax to Rent Received for Hotel Occupancy by Room Remarketers*, TSB-M-10(10)S, Sales Tax, August 13, 2010; also Breen M. Schiller, “Mind the Gap: The Current Debate Between States & Municipalities and Online Travel Companies over the Taxability of the Remittance Gap,” *Journal of State Taxation*, January-February 2011.

⁹ New York State Department of Taxation and Finance, *A Guide to Sales Tax for Hotel and Motel Operators*, Publication 848 (2/15), p.9.

¹⁰ Schiller, 2011; <http://law.justia.com/cases/new-york/court-of-appeals/2013/180-1.html>

¹¹ D.C. Law 18-364. Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010.

¹² www.taxrate.com, “Online Travel Companies Liable for D.C. Sales Tax, Again,” July 24, 2015.

Likewise, in 2010 North Carolina amended its state sales tax statute—G.S. 105-164.4(a) (3)—effective January 1, 2011 to tax the gross receipts of “facilitators” (OTCs) at “applicable combined state and county sales tax rates.”¹³ The “sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the accommodation rental.”

In 2003 the Oregon Legislature passed House Bill (HB) 2267 to establish a state lodging tax; then in 2013 the Legislature passed HB 2656 which “requires transient lodging providers and transient lodging intermediaries to collect and remit taxes computed on the total retail price paid for occupancy of transient lodging.”¹⁴

According to the National Conference of State Legislatures, as of 2015, seven states—Georgia, South Carolina, North Carolina, New York, Minnesota, Wyoming and Oregon—and the District of Columbia require OTCs to pay taxes based on the full retail rates paid by consumers.¹⁵ The amended statutes have generally survived legal challenges in their highest courts.¹⁶ However, there are strong anti-tax sentiments in some parts of the U.S. Florida failed to pass similar legislation. Missouri passed legislation stating specifically that OTC mark-ups and fees are not taxable.¹⁷ Indeed, the Tax Foundation advocates a federal law that would bar “discriminatory taxation of online travel company services.”¹⁸

The National Conference of State Legislatures has developed a number of principles regarding the taxation of online travel companies, among them: “To ensure full collection of taxes that are due and to promote equity and fairness in tax code, states should consider requiring OTCs to remit taxes based on the rental price paid by the user.”¹⁹ Moreover, “To ensure that taxation is efficient, states should consider imposing any tax on online travel companies through statutory provisions and not through administrative regulation.” Hawaii state lawmakers should re-examine the state’s transient accommodation tax law and determine if it should be amended to take account of changes in the way visitor accommodations are distributed in the digital age.

¹³ Sales and Use Tax Division, North Carolina Department of Revenue, *Important Notice: Tax on Accommodations* at <http://www.dornrc.com/taxes/sales/impnotice1210.pdf>

¹⁴ Oregon Department of Revenue, *State of Oregon Lodging Tax Program*, 150-604-401 (Rev.01-17). A lawsuit filed by OTCs against the Oregon Department of Revenue was voluntarily dismissed in 2015.

¹⁵ *The Baltimore Sun*, “Lawmakers stir travel industry furor over taxing online hotel bookings,” March 28, 2015.

¹⁶ Laws in Georgia, South Carolina and Wyoming survived challenges by the OTCs in their respective Supreme Courts.

¹⁷ *Travel Weekly Daily Bulletin*, “New Missouri Law Says OTA Hotel Markups are Tax Free,” July 13, 2012

¹⁸ Tax Foundation, *Special Report 230*, February 2016; also, Tax Foundation, *Special Report No. 198*, *Taxation of Online Travel Service*, May, 2012.

¹⁹ National Conference of State Legislatures, *NCSL Task Force on State and Local Taxation Principles for the Taxation of Online Travel Companies*, August 12, 2013.

JAMES MAK, PH.D.

UHERO FELLOW, PROFESSOR EMERITUS OF ECONOMICS

COUNTY OF KAUA'I

OFFICE OF THE COUNTY ATTORNEY

May 12, 2017

RECEIVED

TO: Mel Rapozo, Council Chair

'17 MAY 12 P3:44

FROM: Mauna Kea Trask, County Attorney

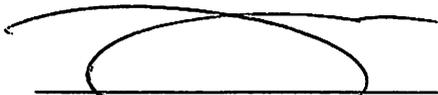
RE: REQUEST FOR A LEGAL REVIEW OF PROPOSED RESOLUTION
LANGUAGE
(Tracking No. 17-0678)

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUA'I

The Office of the County Attorney ("Office") is in receipt of your memorandum dated April 26, 2017, requesting a legal review of a draft resolution from Senator Mazie Hirono, relating to a collaborative method to address concerns regarding potential cuts to federally funded native Hawaiian programs. In your request you also indicated that it is your intent to share this legal review and after discussion with you it is my position that therefore this is not considered a confidential attorney-client communication under HRS§ 626-503 and you may share this communication.

After review it is the opinion of the Office that the draft resolution would be legal according to the legal tenets governing resolutions. Furthermore, the subject matter of the resolution is appropriate under state and federal law regarding the status of native Hawaiians and their special relationship with various governmental entities as an indigenous people under various state and federal statutes.

Please accept this information in response to your request and please contact me at (808) 241-4930 if you have any further questions.



MAUNA KEA TRASK
County Attorney

COUNTY COUNCIL

Mel Rapozo, Chair
Ross Kagawa, Vice Chair
Arthur Brun
Mason K. Chock
Arryl Kaneshiro
Derek S.K. Kawakami
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Līhu'e, Kaua'i, Hawai'i 96766

MEMORANDUM

April 26, 2017

**CONFIDENTIAL
ATTORNEY - CLIENT
COMMUNICATION**

TO: Mauna Kea Trask, County Attorney

FROM: Mel Rapozo, Council Chair *MR*

RE: **REQUEST FOR LEGAL REVIEW OF PROPOSED
RESOLUTION LANGUAGE**

I would like to request your assistance in providing a legal review of the attached resolution, which we received from Senator Mazie Hirono as a collaborative method to address concerns regarding potential cuts to federally funded Native Hawaiian programs. My intent is to share your legal review with the Hawai'i State Association of Counties Executive Committee to help us make an informed decision regarding the resolution.

A response by May 12, 2017 is requested. Should you have any questions, please feel free to contact me or Council Services Staff at 241-4188.

AMK:cy
Attachment

**A RESOLUTION TO ACKNOWLEDGE THE IMPORTANCE OF
MAINTAINING CRITICAL FEDERAL PROGRAMS FOR THE NATIVE
HAWAIIAN COMMUNITY**

Whereas, Native Hawaiians are the aboriginal, indigenous people who settled the Hawaiian archipelago as early as 300 A.D; and

Whereas, the land that now comprises the State of Hawai'i was once commanded by a monarchical government, established in 1810 under Kamehameha I; and

Whereas, the Kingdom of Hawai'i was recognized as an independent sovereign nation by foreign governments, entering in diplomatic relations with countries such as the United States; and

Whereas, western influence throughout the Kingdom of Hawai'i increased following first contact by Europeans in 1778, leading to devastating effects to the health, culture, and social conditions of Native Hawaiians; and

Whereas, the Kingdom of Hawai'i was illegally overthrown by a small group of non-Hawaiian residents of the Kingdom of Hawai'i, along with citizens of the United States in 1893, resulting in the abolition of the sovereign government of the Native Hawaiian community; and

Whereas, the Organic Act passed by Congress in 1900, established:

- a. Hawai'i's territorial government; and
- b. defined the political structure and powers, along with the special trust relationship between the United States and Native Hawaiians; and

Whereas, certain Ali'i, or chiefs, established perpetual trusts for the benefit of Native Hawaiians; and

Whereas, the Association of Hawaiian Civic Clubs was founded in 1918 by Prince Jonah Kuhio Kalaniana'ole, delegate to the United States House of Representatives, for the purpose of advocating for the improved welfare of Native Hawaiians in culture, health, economic development, education, social welfare, and nationhood; and

Whereas, in recognition of the depressed economic conditions of Native Hawaiians, Congress enacted the Hawaiian Homes Commission Act, 1920 which:

- a. designated 200,000 acres of land for exclusive homesteading and agricultural pursuits by native Hawaiians; and
- b. affirmed the trust relationship between the United States and the Native Hawaiian community; and

Whereas, on March 18, 1959 Congress established an Act to Provide for the admission of Hawai'i into the Union, dissolving the Territory of Hawai'i, and establishing the State of Hawai'i; and

Whereas, on August 21, 1959 President Eisenhower issued a presidential proclamation formally accepting Hawai'i into the Union; and

Whereas, in 1981 Congress instructed the Office of Education to submit a comprehensive report on the status of Native Hawaiian education; and

Whereas, the report released in 1983 and entitled the Native Hawaiian Educational Assessment Project confirmed:

- a. Native Hawaiians scored below national benchmarks on standardized achievement tests; and
- b. were disproportionately represented in many negative social and physical statistics, indicative of special educational needs; and
- c. had educational needs that were related to their unique cultural situation; and

Whereas, in response to the failing health of Hawai'i's indigenous population, language contained in the 1984 Supplemental Appropriations Act directed the U.S. Department of Health and Human Services to conduct the first-ever comprehensive study of the health care needs of Native Hawaiians; and

Whereas, results of the 1984 study indicated that Native Hawaiian communities were at a severe health disadvantage as compared to other ethnic groups in the State of Hawai'i, prompting Congress to pass the Native Hawaiian Health Care Act in 1988 (renamed the Native Hawaiian Health Care Improvement Act, following reauthorization in 1992); and

Whereas, the Native Hawaiian Health Care Improvement Act authorized the Native Hawaiian Health Board, Papa Ola Lokahi, to carry out a master health care plan with programs related to health promotion, disease prevention, and primary care services for Native Hawaiians; and

Whereas, in 1988, Congress also passed the Native Hawaiian Education Act, addressing the unique educational needs of the Native Hawaiian community, along with the role of the federal government in empowering Native Hawaiian organizations to assist with those needs; and

Whereas, in 1993, 100 years after the overthrow of the Kingdom of Hawai'i, Congress enacted the Apology Resolution, in which it:

- 5
- a. apologized to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawai'i; and
 - b. acknowledged the historical significance of that event, which resulted in the deprivation of the rights of Native Hawaiians to self-determination; and
 - c. urged the President of the United States to support reconciliation efforts between the United States and Native Hawaiians; and

Whereas, in 1996, the Native American Housing Assistance and Self-Determination Act (hereinafter referred to as NAHASDA) was passed in 1996, transforming the way American Indians and Alaska Natives were assisted in addressing affordable housing issues; and

Whereas, NAHASDA was amended in 2000 to include Title VIII, which addresses the housing and related community development needs of Native Hawaiians, providing affordable housing assistance to low-income Native Hawaiians eligible to reside on Hawaiian home lands; and

Whereas, the federal government has long recognized Native Hawaiians as a distinct indigenous group with which Congress has a special political, trust relationship similar to American Indian and Alaska Native groups, evident in the more than 150 enacted statutes aimed at improving the housing, health, education, and economic well-being of Native Hawaiians; and

Whereas, reauthorization of critically necessary Native Hawaiian programs:

- a. is essential in helping to combat the devastating effects on the health, culture, and social conditions of Native Hawaiians; and
- b. shows continued progress by the United States in its affirmation of the special trust relationship with the Native Hawaiian community;

Whereas, Congress recognizes that Native Hawaiians share all of the attributes and needs common to other indigenous peoples and are entitled to any and all benefits extended to such population; now, therefore,

Be it Resolved by the Hawai'i State Association of Counties that it supports the continuation of Native Hawaiian programs at the federal level to ensure:

- a. continued provision of services by the United States to meet the special needs of Hawai'i's indigenous, Native Hawaiian population; and
- b. an ongoing acknowledgment of the special political, trust relationship between the United States and the Native Hawaiian community.