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FISCAL AND POLICY NOTE
First Reader

Senate Bill 463 (Senator Conway)
Finance and Budget and Taxation

Business Regulation - Limited Residential Lodging

This bill incorporates “limited residential lodging” into the existing regulatory framework for other lodging establishments, including licensure, taxation, building codes, and antidiscrimination provisions. Specific requirements are established for both an innkeeper that offers limited residential lodging through a hosting platform and for a hosting platform operator that facilitates reservations and collects payments for the rental of a limited residential lodging.

Fiscal Summary

State Effect: General fund revenues increase beginning in FY 2018 from additional sales and use tax and business license fees collected under the bill. The amount cannot be reliably estimated at this time but may be significant. Penalty provisions are not anticipated to materially affect State revenues. State agencies can generally integrate the bill’s requirements into existing operations.

Local Effect: Local government revenues increase beginning in FY 2018 from accommodation taxes and business license fees collected under the bill. The amount cannot be reliably estimated at this time but may be significant. Penalty provisions are not anticipated to materially affect local government revenues. It is assumed that local law enforcement agencies can enforce the bill with existing resources.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Limited residential lodging” means the use of a residential dwelling unit, including any single-family house or dwelling, multifamily house or dwelling, condominium, or cooperative, or any portion of the unit by an innkeeper to provide accommodations to transient guests for sleeping or lodging purposes in exchange for a charge or fee imposed in a booking transaction. A limited residential lodging unit is included in the definition of lodging establishment, thereby making all existing laws for a lodging establishment apply to a limited residential lodging unit.

“Hosting platform” means an Internet-based digital entity that facilitates reservations and collects payments for booking transactions for rental of a limited residential lodging unit. A hosting platform operator is a person that owns or operates a hosting platform.

Requirements for Innkeepers

An innkeeper may not use a hosting platform to offer a limited residential lodging unit to the public unless the innkeeper meets the following requirements.

An innkeeper that owns, operates, or manages a limited residential lodging unit must:

- be licensed by the Comptroller under Title 11, Subtitle 7 of the Tax-General Article;
- display the registration number issued by the Comptroller with the license in any advertisement related to the availability of a limited residential lodging unit that is posted or exhibited to the public on a hosting platform;
- ensure that the use of the limited residential lodging unit for limited residential lodging is in accordance with the applicable laws of the local jurisdiction in which the limited residential lodging unit is located; and
- provide to the hosting platform operator, at least annually, a written attestation stating that the innkeeper has not received a notice from a local jurisdiction that the use of the limited residential lodging unit for limited residential lodging is in violation of the zoning laws or other local laws of the jurisdiction.

Recordkeeping: For each booking transaction for a limited residential lodging unit, an innkeeper must keep a record of specified information related to the transaction, including the amount paid for the transaction, the amount of sales and use tax collected from the transaction and remitted to the Comptroller, and the amount of local tax collected and remitted to the local government. The records must be maintained for four years or until the date the tax related to the booking transaction is remitted to the Comptroller, whichever is later. The records must be made available during the course of an enforcement action to

the Comptroller; Department of Labor, Licensing, and Regulation (DLLR); or a State, county, or municipal law enforcement agency.

Penalties: After determining that an innkeeper is in violation of these requirements, DLLR or a State, county, or municipal law enforcement agency may (1) order the innkeeper to cease and desist from using a hosting platform to offer a limited residential lodging unit to the public until the innkeeper complies with the requirements and (2) issue a civil citation and impose a penalty of a \$500 fine for a first violation, \$1,000 for a second violation, and \$2,500 for a third or subsequent violation. Each booking transaction that violates licensing requirements is a separate violation, but multiple violations of recordkeeping requirements for a single booking transaction are a single violation.

Requirements for Hosting Platforms

A hosting platform operator may not participate in or facilitate a booking transaction unless the hosting platform meets the following requirements.

A hosting platform operator that participates in or facilitates booking transactions of a limited residential lodging unit must:

- be licensed by the Comptroller under Title 11, Subtitle 7 of the Tax-General Article; and
- be registered in good standing with the State Department of Assessments and Taxation (SDAT) to do business in the State.

A hosting platform operator may not participate in or facilitate a booking transaction for a limited residential lodging unit on behalf of an innkeeper if:

- the innkeeper is not licensed by the Comptroller as required by the bill;
- the innkeeper has not provided to the hosting platform, within the last 12 months, the written attestation required by the bill; or
- the hosting platform has received notice from a local jurisdiction that the use of the limited residential lodging unit is in violation of a zoning law or other local law.

Recordkeeping: A hosting operator is required to keep similar transaction records for each booking transaction to those of an innkeeper. The records must be maintained and may be inspected in the same manner as innkeeper records.

Penalties: After determining that a hosting platform is in violation the above requirements, DLLR or a State, county, or municipal law enforcement agency may issue a civil citation and impose a penalty of a \$2,500 fine for a first violation, \$5,000 for a second violation, and \$7,500 for a third or subsequent violation. Each day that a hosting platform operator operates without being licensed and registered under the bill is a separate violation. Each booking transaction in violation of the other above requirements is a separate violation.

A hosting platform operator that receives a civil citation that is not related to recordkeeping is prohibited from operating and/or facilitating or participating in a booking transaction until the entity that issued the civil citation determines that the hosting platform operator and/or the innkeeper are no longer in violation.

Local Government Notification

Notwithstanding any other provision of law, a local jurisdiction may notify (1) an innkeeper that the use of a limited residential lodging unit for limited residential lodging is in violation of a zoning law or other local law and (2) a hosting platform operator for an innkeeper that operates a limited residential lodging unit in violation of a zoning law or other local law. The notice may be served on the resident agent designated by the hosting platform operator.

Existing Lodging Establishment Requirements that Now Apply

Sprinkler Systems: Under current law, since 1990, a sprinkler system must be installed in each newly constructed dormitory, hotel, lodging or rooming house, or multifamily residential dwelling. The requirement has been in place since 1992 for a newly constructed townhouse. “Lodging or rooming house” means a building (1) in which separate sleeping rooms are rented and (2) that provides sleeping accommodations for 16 or fewer individuals on either a transient or permanent basis and with or without meals, but without individual cooking facilities. It includes an inn, club, and bed and breakfast establishment. Under the bill, “lodging or rooming house” also includes a limited residential lodging unit, thereby making the sprinkler requirement apply to newly constructed units.

Nondiscrimination: Under current law, a “place of public accommodation” means, among other things, an inn, hotel, motel, or other establishment that provides lodging to transient guests. Generally, an owner or operator of a place of public accommodation or an agent or employee of the owner or operator may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of the person’s race, sex, age, color, creed, national origin, marital status, sexual orientation, gender identity, or disability. This prohibition does not apply to an establishment that provides lodging to transient guests located within a building that

contains up to five rooms for rent or hire and is also occupied by the proprietor of the establishment as the proprietor's residence.

Under the bill, "place of public accommodation" also includes a limited residential lodging unit, making the above general prohibition against discrimination apply. However, the existing exception continues to apply, provided that the establishment with five or fewer rooms that is also owner-occupied has not been listed or advertised to the general public on a hosting platform.

Current Law/Background:

Regulation of Limited Residential Lodging

There is no statewide law regarding limited residential lodging offered to the public through a hosting platform. At the local level, only a very small number of jurisdictions regulate similar types of short-term residential transactions, primarily through licensing, such as the cities of Annapolis, Easton, Bowie, and Ocean City.

Traditionally, local laws allow homeowners to exercise their property rights by renting a portion or all of their home for 30 consecutive days or more at a time, in conformance with local zoning or other requirements. A home rental for less than 30 consecutive days ("short-term"), such as for visitors to a special local event or as an alternative travel accommodation, is the type of rental that has become an issue in recent years for many areas, including cities and vacation destinations.

State and Local Accommodation Taxes

The State sales and use tax of 6% is imposed on an accommodation. Separately, hotel rental taxes are currently authorized in all counties and Baltimore City, with rates ranging from 3.0% to 9.5%.

Senate Bill 190 of 2015, which was the subject of a successful veto override in the 2016 session (Chapter 3 of 2016), clarified that the State sales and use tax applies to the sale or use of hotel accommodations facilitated by an accommodations intermediary – a person, other than the hotel, who facilitates the sale or use of an accommodation and charges a buyer the taxable price for the accommodation.

Business Licenses

A State business license is required for most businesses in Maryland. State business licenses can be obtained from the clerks of the circuit court in the county where the business is located. Prior to contacting the local clerk of the court to apply for a business license,

first-time license applicants must register with SDAT. Registration with the department includes filing information to form the legal entity of the business.

Hosting Platforms

Property owners who wish to offer all or a portion of their homes for temporary rental for a charge frequently utilize online hosting platforms that enable the property owner to list and describe the property being offered for rental, and that allow tourists and other transients to arrange for the rental of the property and payment of the booking. Founded in 2008, Airbnb is an online booking platform for people to list, find, and rent limited residential lodging. The company's website features over 3.0 million listings in 65,000 cities and 191 countries. Currently, Airbnb has made agreements with several states and local governments to collect and remit hotel rental taxes on behalf of the lodging operators. Airbnb collects the taxes for lodging operators in some states, including Alabama, Illinois, Rhode Island, Washington, the District of Columbia, and various municipalities across the country. In addition to Airbnb, other popular online platforms include Flipkey, HomeAway, and VRBO (vacation rental by owner).

State Effect: General fund revenues increase beginning in fiscal 2018 from additional sales and use tax and business license fees collected under the bill. The amount of the revenue associated with the sales and use tax depends on the number of transactions that occur and the taxable value of these transactions and, thus, cannot be reliably estimated at this time. As a point of reference, State sales taxes collected from hotel and motel room rentals, as well as apartment and cottage rentals, totaled \$100.4 million in fiscal 2015. Additional business licenses issued under the bill are not anticipated to materially affect general fund revenues. Penalty provisions are not anticipated to materially affect State revenues.

It is assumed that the bill is largely enforced through existing means for other lodging establishments, *i.e.*, mostly through licensing and local code/law enforcement. Under this assumption, DLLR does not play an active role in enforcement or regulation of limited residential lodging under the bill. However, if that is not the case, then DLLR requires additional staff to enforce laws outside of its typical purview. DLLR's estimate for the costs for staff and related expenses is approximately \$300,000 annually. Other State agencies, including the Comptroller and SDAT, can generally integrate the bill's requirements into existing operations.

Local Effect: Local government revenues increase beginning in fiscal 2018 from additional hotel taxes and business license fees collected under the bill. The amount of the revenue associated with hotel taxes depends on the number of transactions that occur and the taxable value of these transactions and, thus, cannot be reliably estimated at this time. Local governments generally retain 92% of business license fees issued by local clerks of

the court. The amount of any revenue increase cannot be reliably estimated at this time. Penalty provisions are not anticipated to materially affect local government revenues. It is assumed that local law enforcement agencies can enforce the bill with existing resources.

Small Business Effect: The bill requires many individual homeowners who currently rent their properties through a hosting platform to become a “small business” through licensing and registration. These businesses must remit State and local taxes on the value of the accommodation provided to the extent that they are not currently doing so. The businesses must also meet code requirements for other types of transient lodging – notably, sprinkler systems – and must also comply with antidiscrimination laws.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller’s Office; Judiciary (Administrative Office of the Courts); Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Maryland Department of Planning; Department of State Police; State Department of Assessments and Taxation; Maryland Municipal League; Airbnb; Department of Legislative Services

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