DEPARTMENT OF TAXATION
2016 Fiscal Impact Statement

1. Patron Bill R. DeSteph, Jr.

2. Bill Number SB 751

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

3. Committee Senate Finance

4. Title Procedures for the Taxation and Regulation of Limited Residential Lodging and Short-Term Rental Transactions

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

5. Summary/Purpose:

This bill would establish the Limited Residential Lodging Act, which would allow primary residents of a home to rent out all or a portion of the home on a temporary basis and would provide procedures for the regulation and taxation of these transactions. Specifically, the bill would establish rules and procedures for online facilitators ("hosting platforms") that elect to collect and remit state and local retail sales and use taxes and transient occupancy taxes on behalf of the residents who engage in these transactions ("limited residential lodging operators" or "lodging operators"). The bill would allow a hosting platform to enter into agreements with and register with the Department of Taxation to collect and remit the taxes on behalf of the lodging operators, and once registered, would require the platform to remit to the Department any such taxes. The bill would also authorize localities to impose the Business Professional and Occupational License Tax on any limited lodging operator with total sales that exceed $4,000 per year ("short-term lodging operator). Additionally, the bill would prohibit the Department from disclosing any information obtained from the hosting platform in connection with limited lodging transactions without the written consent of the hosting platform or in accordance with an agreement between the platform and the Department. Also, the bill would allow only the Department or its authorized agent to audit applicable taxes payable by the hosting platform, unless the audit involved taxes payable by a short-term lodging operator that is subject to BPOL taxes under the bill. The bill would prohibit the Department from auditing an individual operator or occupant when the taxes are payable by the hosting platform. Finally, the bill would impose penalties on hosting platforms that register with the Department of Taxation, but fail to file the required returns or pay the full amount of tax due.

The effective date of this bill is not specified.

6. Budget amendment necessary: Yes
Page 1, Revenue Estimates
Item 275 and 277, Department of Taxation

7. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

7a. Expenditure Impact:

Fiscal Year	*Dollars*	*Positions*	*Fund*
[2015-16]	$29,000	0	NGF
[2016-17]	$394,000	0	NGF
[2017-18]	$20,000	0	NGF
[2018-19]	$0	0	NGF
[2019-20]	$0	0	NGF
[2020-21]	$0	0	NGF
[2021-22]	$0	0	NGF

8. Fiscal implications:

Administrative Costs Impact

The Department would incur administrative costs of $29,000 in Fiscal Year 2016, $394,000 in Fiscal Year 2017, and $20,000 in Fiscal Year 2018 in implementing this bill. There would be minor expenses in Fiscal Year 2016 associated with analyzing and designing new forms and schedules to be utilized by the hosting platform. The majority of expenses in Fiscal Year 2017 would involve systems analysis, development, and testing. The Department would recover its administrative costs for collecting and distributing the local transient occupancy tax from the tax receipts.

Revenue Impact

Because this bill would help the Commonwealth realize the sales tax and transient occupancy tax revenues generated from these temporary lodging transactions that otherwise may go unreported, the bill would result in a revenue gain to the state and to local governments. Based upon industry information as to the number of these transactions conducted in Virginia, the bill would generate additional sales and use tax revenues of $768,000 in Fiscal Year 2017, $1.05 million in Fiscal Year 2018, $1.08 million in Fiscal Year 2019, $1.11 million in Fiscal Year 2020, $1.13 million in Fiscal Year 2021, and $1.16 million in Fiscal Year 2022. The bill would generate additional transient occupancy tax revenues of $870,000 in Fiscal Year 2017, $1.19 million in Fiscal Year 2018, $1.22 million in Fiscal Year 2019, $1.25 million in Fiscal Year 2020, $1.28 million in Fiscal Year 2021, and $1.32 million in Fiscal Year 2022. A breakdown of these estimates is provided in the chart below:

Sales Tax Distribution	Effective September 1, 2016					
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
State Sales and Use Tax (5.3%)	$718,036	$981,315	$1,006,830	$1,033,007	$1,059,865	$1,087,422
GF-Unrestricted	$308,021	$420,962	$431,907	$443,137	$454,658	$466,479
GF-Restricted	$151,631	$207,229	$212,616	$218,145	$223,816	$229,635
Transportation*	$108,793	$148,684	$152,550	$156,516	$160,586	$164,761
Local Option	$135,992	$185,855	$190,687	$195,645	$200,732	$205,951
HMOF (GF transfer)	$13,599	$18,586	$19,069	$19,565	$20,073	$20,595
Regional Trans. Funds (0.7%)	$50,317	$68,766	$70,554	$72,389	$74,271	$76,202
Hampton Roads (TPO)	$17,679	$24,161	$24,789	$25,434	$26,095	$26,774
Northern Virginia (NVTA)	$32,638	$44,605	$45,765	$46,955	$48,176	$49,428
Total Sales and Use Tax	**$768,353**	**$1,050,082**	**$1,077,384**	**$1,105,396**	**$1,134,136**	**$1,163,624**
Total GF	**$459,652**	**$628,191**	**$644,523**	**$661,281**	**$678,474**	**$696,115**
Local Impact (TO Only)*	$870,346	$1,189,473	$1,220,400	$1,252,130	$1,284,685	$1,318,087
Local Impact (TO + Local Option)	$1,006,338	$1,375,328	$1,411,087	$1,447,775	$1,485,417	$1,524,038

*Includes 2% state regional transient occupancy tax

Additionally, to the extent that a locality that imposes BPOL taxes has limited residential lodging operators within their locality with total sales in excess of $4,000 annually, this bill would result in an unknown revenue increase for that locality. In Fiscal Year 2014, the BPOL tax generated approximately $674.3 million for the counties, cities and towns that imposed the tax. The BPOL tax is imposed in all cities, 48 of the 95 counties, and many of the towns.

9. Specific agency or political subdivisions affected:

Department of Taxation
All localities

10. Technical amendment necessary: Yes.

In order to: 1) ensure that the revenues collected from the applicable taxes imposed in this bill are distributed to the proper funds after the Department of Taxation recovers its direct costs from collecting these taxes; 2) enable the Department to provide clarification as to how the taxes are to be collected; and 3) ensure that the Department has sufficient time to implement the bill's provisions, the Department recommends the following technical amendments:

Page 3, Line 177,

Strike: provisions of subsections D, E, and F of § 58.1-605 shall be applicable to any remaining funds so remitted to the Department, mutatis mutandis.

Insert: remaining revenues shall be distributed by the Tax Commissioner in the same manner as the applicable taxes are distributed pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, § 58.1-1742 and Articles 6 (§ 58.1-3819 et seq.) and 8 (§ 58.1-3840 et seq.) of Chapter 38 of Title 58.1 mutatis mutandis.

Page 4, Line 224, after "paid."

Insert: I. The Department of Taxation is hereby authorized to develop procedures or guidelines for implementation of the provisions of this Chapter. Any such guidelines shall be exempt from the provisions of the Administrative Process Act (Section 2.2-4000 et. seq. of the Code of Virginia).

Page 5, Line 245,

Insert: 2. That the provisions of this Act shall take effect September 1, 2016.

11. Other comments:

Retail Sales and Use Tax on Transient Accommodations

The Retail Sales and Use Tax applies to the sale or charge for any room or rooms, lodging, or accommodations furnished to transients by any hotel, motel, inn, tourist cabin, camping grounds, club or other similar place in which rooms, lodging, space or accommodations are regularly furnished to transients for a consideration. This statutory language imposes an obligation upon renters of residences to collect the sales and use tax on transactions in which the rental accommodations are furnished to transients for fewer than 90 continuous days, and the transient has not obtained an interest in the property. It is not necessary that the accommodations offered by a taxpayer be provided on a continuous basis in order for them to be considered furnished "regularly" within the meaning of the statute. Rather, the accommodations need only be offered with some frequency, such as on a weekly, monthly, seasonal or some other recurring basis to be considered furnished regularly.

Transient Occupancy Taxes

Under current law, any county may impose a transient occupancy tax at a maximum rate of two percent, upon the adoption of an ordinance, on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. Several counties are authorized by statute to impose the tax at higher rates. Cities and towns are not limited in the rate of the transient occupancy tax they may impose. The tax, however, does not apply to rooms rented on a continuous basis by the same individual or group for 30 or more continuous days. The tax applies to rooms intended or suitable for dwelling and sleeping. Therefore, the tax does not apply to such rooms used for alternative purposes, such as banquet rooms and meeting rooms.

In addition to the transient occupancy taxes that may be imposed in counties, cities, and towns, legislation enacted in 2013 imposes a new two percent regional transient occupancy tax in the Northern Virginia Planning District. The Northern Virginia region consists of the Counties of Arlington, Fairfax, Loudoun and Prince William and the Cities

of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Revenues from this tax are deposited by the local treasurer into the state treasury and transferred by the Comptroller into special funds. Although the regional tax is a state tax, it is administered and collected by the locality in which the room or space is located in the same manner as its current local transient occupancy tax.

BPOL Tax Generally

The BPOL Tax is a tax on businesses for the privilege of engaging in business at a definite place of business within a Virginia locality. The measure or basis of the BPOL tax generally is the gross receipts of the business. The BPOL tax is a tax on gross receipts, not net income. The locality may not assess a license tax on gross receipts upon which it charges a license fee. Localities are not permitted to levy BPOL taxes on real property owners that rent out their real property, other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses and boarding houses. A total of twenty-five localities reported imposing BPOL taxes on these businesses in Fiscal Year 2014.

Under current BPOL law, any locality may charge a license fee in an amount not to exceed:

- $50 for any locality of 25,000 and greater
- $30 for any locality with a population smaller than 25,000

The locality may not assess a license tax on gross receipts upon which it charges a license fee. Additionally, the locality may not impose a license tax on a business with gross receipts:

- less than $100,000 in any locality with a population greater than 50,000
- less than $50,000 in any locality with a population of 25,000 but no more than 50,000.

Any business with gross receipts in excess of these thresholds may be subject to license tax at a rate not to exceed the rates set forth below

- Contracting - sixteen cents per $100 of gross receipts
- Retail sales - twenty cents per $100 of gross receipts
- Financial, real estate and professional services - fifty eight cents per $100 of gross receipts
- Repair, personal and business services, and all other businesses - thirty six cents per $100 of gross receipts

The BPOL tax is collected annually. Although there are several exceptions, for most localities, the filing and payment dates are March 1st.

Proposal

Property owners who wish to offer all or a portion of their homes for temporary rental for a charge, generally for fewer than 30 consecutive days, frequently utilize website platforms that enable the property owner to list and describe the property being offered for rental, and allow tourists and other transients to arrange for the rental of the property and payment of the booking. This bill would provide procedures for the regulation and taxation of these temporary rental transactions. The bill would apply to "limited residential lodging" activities, which involve the secondary use of a residential dwelling for rental for a period of fewer than 30 consecutive days provided that 1) the property continues to be used primarily as a residence; 2) sales and use and occupancy taxes are collected and remitted by the limited residential lodging operator or the hosting platform; and 3) the rental does not include simultaneous occupancy by more than one party under separate contracts. Additionally, the bill would apply to short-term rental lodging, which would include limited residential lodging operators with sales that exceed $4,000 per year.

Regulatory Provisions

The bill would allow any dwelling unit to be used for limited residential lodging, and with the exception of those units that exceed $4,000 in sales annually that are subject to the BPOL tax, would preclude such lodging from being deemed a hotel, motel, bed and breakfast inn, lodging house, or other commercial enterprise. The bill would preempt other future state or local laws regulating this activity. Localities would be authorized to: 1) enact ordinances regulating noise, parking, trash, and other issues in order to protect the character and livability of the surrounding area, according to the specific limitations in the bill; and 2) impose penalties for the violation of these ordinances, capped at $200 per violation. Under the bill's terms, any local ordinance requiring a special exception, special use or conditional use permit for short-term rental lodging would need to contain specific regulatory provisions outlined in the bill regarding these areas. Additionally, the bill would prohibit hosting platforms from posting a limited residential lodging unit or short-term rental lodging unit on its platform unless the operator has demonstrated its compliance with this bill's requirements to the hosting platform. Any hosting platform in violation of this provision would be subject to a $50 per day penalty payable to the locality for each day the unit is listed on the platform.

Imposition and Collection of Applicable Taxes

The bill would allow for "applicable taxes" only to be imposed upon limited residential lodging. The bill would define "applicable taxes" to include the state and local retail sales and use tax, the regional transient occupancy tax, and any local transient occupancy tax imposed by a county, city, or town on the booking transaction for the temporary rental of all or a portion of a primary residence. Additionally, the term would include the BPOL tax imposed on short term lodging operators with sales in excess of $4,000 per year.

The sales and use tax would apply to "booking transactions", defined as "any transaction in which there is a charge to a limited lodger or short-term lodger by an operator for the occupancy of any dwelling, sleeping or lodging accommodations" where the rental period falls below 90 consecutive days, and the local and regional transient occupancy taxes would apply to "booking transactions" when the residences are rented for the time period

subject to the transient occupancy tax under current law in the county, city, or town in which the rental takes place.

The bill would allow for the state and local sales and use taxes and the local and regional transient occupancy taxes to be collected and remitted to the Department in one of two ways. As one alternative, the bill would authorize a hosting platform to enter into an agreement with the Department of Taxation and to register for and collect these taxes on behalf of the lodging operator. Once registered, the hosting platform would be required to collect and monthly remit the sales and transient occupancy taxes to the Department of Taxation, a schedule listing the aggregated total amounts owed to the state and to each locality, and the tax identification number for each operator for which the hosting platform collected and remitted the applicable taxes that month. If the hosting platform has notified the lodging operator of the platform's intent to collect the applicable taxes on the lodging operator's behalf, the lodging operator would be relieved from liability for collecting or remitting the state and local sales and use taxes and transient occupancy taxes.

Under the terms of the bill, if the hosting platform does not agree to collect and remit the applicable taxes on the lodging operator's behalf, the lodging operator would need to register with the Department of Taxation and the locality to collect and remit the applicable sales and use and transient occupancy taxes.

In addition, the bill would allow the Department to recover its administrative costs incurred in collecting the taxes remitted by the hosting platform. The remaining tax revenues would be distributed according to the provisions under current law for the distribution of the sales and use tax, regional transient occupancy tax, and local transient occupancy tax.

In addition to the sales and use and transient occupancy taxes, the bill would allow counties, cities and towns to impose the BPOL tax on short-term lodging operators with total sales that exceed $4,000 per year, with the tax rate capped at 20 cents per $100 of sales of short-term rentals. Operators whose residential lodging activities take place on fewer than 45 days in a calendar year and whose sales do not exceed $4,000 in a calendar year would be exempt from the BPOL tax. Additionally, hosting platforms would be exempt from the tax under this bill.

Because the hosting platform's obligation to collect and remit taxes relates only to "each booking transaction" under the bill's language, the Department understands that the local hosting platform would not be required to collect any applicable BPOL taxes imposed upon short-term rental lodging, nor would such tax revenues be remitted to the Department under the terms of this bill. Instead, it is the Department's understanding that the lodging operator would remit these taxes directly to the locality.

Audit and Confidentiality Provisions

This bill names the Department as the only agency that would be authorized to conduct sales and use and transient occupancy tax audits for transactions for which the hosting platform has agreed to collect and remit the taxes on behalf of the lodging operator. Counties, cities, and towns would be authorized to conduct their own audits only for short-term lodging operators that are subject to the BPOL tax as a result of this bill. The

Department's audits would need to be based solely on the operator tax identification number and data provided by the operator, and not on any personally identifiable information regarding the limited lodger or the short-term lodger. The Department would be prohibited from auditing an individual operator or limited lodger.

The bill would also prohibit the Department from disclosing any confidential information obtained regarding these transactions, including that regarding the return filed by the hosting platform or relating to an audit or investigation, unless the hosting platform has consented to the disclosure in writing or pursuant to its agreement with the Department.

In the event that the hosting platform does not agree to collect and remit the applicable taxes on behalf of the lodging operator, the Department of Taxation and local government and taxing officials would follow the rules provided under current law for conducting audits and disclosing confidential taxpayer information.

Penalties

Additionally, the bill would impose the following penalties on hosting platforms that register with the Department and fail to file a required return or pay the tax due:

- *Failure to file a return*: Regardless of whether any tax is due for the period in question, the hosting platform would owe a $500 penalty if it fails to file a required return within one month of the due date, with an additional penalty of $1,000 for each additional month, not to exceed five percent of the applicable tax due in the aggregate. The Department would have the discretion to waive the penalty for good cause.
- *Underpayment*: The hosting platform would owe three percent of the underpayment if the failure to pay the full amount is not for more than one month, and an additional three percent would be added each month the failure continues, capped at 15 percent of the underpayment;
- *False or fraudulent return:* The hosting platform would be subject to a specific penalty of 50 percent of the amount of the proper tax.

Recordkeeping Provisions

The bill would also require that the lodging operators and short-term lodging operators maintain records that show the primary residency, the dates of any limited residential lodging use, and the number of limited lodgers per activity for a minimum of three years. Lodging operators would need to make this information available to the Department or locality if either entity makes a request for this information in writing in order to investigate and resolve a complaint or respond to an incident alleging that the provisions of this bill have been violated. Under the terms of the bill, short-term lodging operators would have to make such information available to the Department or locality regardless of whether or not the Department or locality makes a written request for such information.

The effective date of this bill is not specified.

Similar Legislation

House Bill 1268 is identical to this bill.

House Bill 812 and **Senate Bill 416** (identical) are similar to this bill, but would not impose the BPOL tax on limited residential lodging operators, nor on short-term rental lodging operators.

House Bill 544 would require online travel companies and other third party intermediaries that facilitate the sale of accommodations and act as the merchant of record to collect and remit sales and use taxes and local transient occupancy taxes on the full retail price it charges its customers.

cc : Secretary of Finance

Date: 2/15/2016 KP
DLAS File Name: SB751F161