

AMENDED IN SENATE APRIL 12, 2021

SENATE BILL

No. 555

Introduced by Senator McGuire

February 18, 2021

An act to add Part 1.65 (commencing with Section 7279.61) to Division 2 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 555, as amended, McGuire. Local agencies: transient occupancy taxes: ~~online~~ short-term rental facilitator: collection.

Existing law authorizes a city, county, or city and county to impose taxes within its jurisdiction, as provided, including a transient occupancy tax, which is generally paid by a person for the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging for a period of less than 30 days.

This bill would authorize a local agency, defined to mean a city, county, or city and county, including a charter city, county, or city and county, to enact an ordinance exclusively delegating its authority to collect any transient occupancy tax imposed by that local agency on short-term rentals to the California Department of Tax and Fee Administration and to enter into a contract with the department for purposes of registration, rate posting, collection, and transmission of revenues necessary to collect and administer any transient occupancy tax imposed on a short-term rental as specified in this bill. This bill would define a short-term rental to mean the occupancy of a home, house, a room in a home or house, or other lodging that is not a hotel or motel in this state for a period of 30 days or less and under any other circumstances specified by the local agency in its ordinance that is

facilitated by ~~an online~~ a short-term rental facilitator, as defined. This bill would require the department to perform those functions, as specified, and would require all local charges collected by the department to be deposited in the Local Charges for Short-term Rentals Fund, which would be created by the bill in the State Treasury. This bill would continuously appropriate all amounts in the fund to the department and would require the department to transmit the funds to the local agencies periodically as promptly as feasible, as provided.

This bill would require ~~an online~~ a short-term rental facilitator engaged in business in this state to be responsible for collecting from the purchaser any local charge imposed on a short-term rental by any local agency exclusively delegating its authority to the department pursuant to this bill to collect those charges and would require the ~~online~~ short-term rental facilitator to register with the department. The bill would require the department to administer and collect the local charges pursuant to the Fee Collection Procedures Law. This bill would also make it a misdemeanor for any deputy, agent, clerk, or other officer or employee of the department, or any former officer or employee or other individual, who in the course of that individual's employment or duty has or had access to returns, reports, or documents required to be filed under this bill, to disclose or make known in any manner information as to the amount of any local charges or any particulars, including the business affairs of a corporation, set forth or disclosed therein.

By extending the application of the Fee Collection Procedures Law, the violation of which is a crime, and imposing a new crime, this bill would impose a state-mandated local program.

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

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

SECTION 1. (a) The Legislature finds and declares that occupancy taxes are local taxes, not state taxes, which are due and payable to local agencies, and support vital programs and services provided by California's cities and counties.

(b) The Legislature encourages short-term rental facilitators to ensure the full and prompt collection and remission directly to local agencies of all due and payable occupancy taxes derived from their facilitation of the occupancy of short-term rentals, including by entering into voluntary agreements with cities and counties to ensure that any occupancy taxes due and payable to a city or county are timely paid in full or continuing existing agreements previously entered into with a local agency for these purposes.

SEC. 2. Part 1.65 (commencing with Section 7279.61) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 1.65. FAIR AND EFFECTIVE COLLECTION OF DUE
AND PAYABLE TRANSIENT OCCUPANCY TAXES
DERIVED FROM SHORT-TERM RENTALS ARRANGED BY
~~ONLINE~~ SHORT-TERM RENTAL FACILITATORS ACT OF
2021

7279.61. This part shall be known, and may be cited, *as* the “Fair and Effective Collection of Due and Payable Transient Occupancy Taxes Derived from Short-term Rentals Arranged by ~~Online~~ Short-term Rental Facilitators Act of 2021.”

7279.62. All of the following definitions shall apply for purposes of this part:

(a) “Department” means the California Department of Tax and Fee Administration.

(b) “Local agency” means a city, county, or city and county, which includes a charter city, county, or city and county.

(c) “Local charge” means a transient occupancy tax imposed by a local agency on the privilege of occupying a home, house, a room in a home or house, or other lodging that is not a hotel or motel in this state for period of 30 days or less and under any other circumstances specified by the local agency in its ordinance.

1 ~~(d) “Online short-term rental facilitator” means a person who~~
2 ~~facilitates for consideration, regardless of whether it is deducted~~
3 ~~as fees from the transaction, the rental of a home, house, a room~~
4 ~~in a home or house, or other lodging that is not a hotel or motel~~
5 ~~that is not owned by the person facilitating the rental, through an~~
6 ~~online marketplace operated by the person or a related person, and~~
7 ~~who does both of the following:~~

8 ~~(1) Directly or indirectly, through one or more related persons,~~
9 ~~engages in any of the following:~~

10 ~~(A) Transmits or otherwise communicates the offer or~~
11 ~~acceptance between the purchaser and the operator.~~

12 ~~(B) Owns or operates the infrastructure, electronic or physical,~~
13 ~~or technology that brings purchasers and operators together.~~

14 ~~(C) Provides a virtual currency that purchasers are allowed or~~
15 ~~required to use to rent a lodging from the operator.~~

16 ~~(D) Software development or research and development~~
17 ~~activities related to any of the activities described in paragraph~~
18 ~~(2), if such activities are directly related to facilitating short-term~~
19 ~~rentals.~~

20 ~~(2) Directly or indirectly, through one or more related persons,~~
21 ~~engages in any of the following activities with respect to facilitating~~
22 ~~short-term rentals:~~

23 ~~(A) Payment processing services.~~

24 ~~(B) Listing homes, houses, or rooms in homes or houses, or~~
25 ~~other lodgings that are not a hotel or motel, and that is not owned~~
26 ~~by that person or a related person, for rental on a short-term basis.~~

27 ~~(C) Setting prices.~~

28 ~~(D) Branding short-term rentals as those of the online short-term~~
29 ~~rental facilitator.~~

30 ~~(E) Order taking.~~

31 ~~(e)~~

32 ~~(d) “Ordinance” refers to an ordinance of a local agency~~
33 ~~imposing a local charge, including any local enactment relating to~~
34 ~~the filing of a refund or a claim arising under the ordinance.~~
35 ~~“Ordinance” also refers to an ordinance of a local agency~~
36 ~~exclusively delegating the collection of transient occupancy taxes~~
37 ~~imposed on short-term rentals within its jurisdiction to the~~
38 ~~department.~~

39 ~~(f)~~

1 (e) “Purchaser” means a person who uses ~~an online~~ a short-term
2 rental facilitator to facilitate the occupation of a short-term rental
3 in this state.

4 ~~(g)~~

5 (f) “Short-term rental” means the occupancy of a home, house,
6 a room in a home or house, or other lodging that is not a hotel or
7 motel in this state for a period of 30 days or less and under any
8 other circumstances specified by the local agency in its ordinance
9 that is facilitated by ~~an online~~ a short-term rental facilitator.

10 (g) “Short-term rental facilitator” means a person that
11 facilitates for consideration, regardless of whether it is deducted
12 as fees from the transaction, the rental of a home, house, a room
13 in a home or house, or other lodging that is not a hotel or motel
14 that is not owned by the person facilitating the rental, through a
15 marketplace operated by the person or a related person, and that
16 does both of the following:

17 (1) Directly or indirectly, through one or more related persons,
18 engages in any of the following:

19 (A) Transmits or otherwise communicates the offer or
20 acceptance between the purchaser and the operator.

21 (B) Owns or operates the infrastructure, electronic or physical,
22 or technology that brings purchasers and operators together.

23 (C) Provides a virtual currency that purchasers are allowed or
24 required to use to rent a lodging from the operator.

25 (D) Software development or research and development
26 activities related to any of the activities described in paragraph
27 (2), if such activities are directly related to facilitating short-term
28 rentals.

29 (2) Directly or indirectly, through one or more related persons,
30 engages in any of the following activities with respect to facilitating
31 short-term rentals:

32 (A) Payment processing services.

33 (B) Listing homes, houses, or rooms in homes or houses, or
34 other lodgings that are not a hotel or motel, and that are not owned
35 by that person or a related person, for rental on a short-term basis.

36 (C) Setting prices.

37 (D) Branding short-term rentals as those of the short-term rental
38 facilitator.

39 (E) Taking orders or reservations.

1 7279.64. For purposes of this part, a person is related to another
2 person if both persons are related to each other pursuant to Section
3 267(b) of Title 26 of the United States Code, as that section was
4 amended by Public Law 114-113, and the regulations thereunder.

5 7279.66. (a) (1) On or after July 1, 2022, a local charge
6 imposed by a local agency on a short-term rental shall be collected
7 from the purchaser by ~~an online~~ a short-term rental facilitator
8 pursuant to Section ~~7279.70~~ 7279.70, and the department shall
9 perform all functions incident to the collection and administration
10 of that local charge pursuant to Section 7279.68 if the local agency
11 does ~~all~~ both of the following:

12 (A) Enacts an ordinance exclusively delegating its authority to
13 collect local charges imposed by that local agency on short-term
14 rentals to the department. The ordinance ~~must~~ shall contain the
15 effective date of the delegation, which must correspond with the
16 date that commences a calendar quarter, and be at least six months
17 from the date the local agency enacts the ordinance.

18 (B) Enters into a contract with the department for purposes of
19 registration, rate posting, collection, and transmission of revenues
20 necessary to collect and administer the local charges of a local
21 agency imposed on a short-term rental as specified in Section
22 7279.68. In the contract, the local agency shall certify to the
23 department that its ordinance applies its local charge on short-term
24 rentals, the applicable transient occupancy tax rate for short-term
25 rentals, any other information the department deems necessary to
26 implement this part, and that the local agency agrees to indemnify,
27 and hold and save harmless, the department, its officers, agents,
28 and employees for any and all liability for damages that may result
29 from collection pursuant to the contract.

30 (2) ~~In the event that~~ If a local agency adopts a new local charge
31 that is imposed on short-term rentals on or after the effective date
32 of this part, the local agency can enact an ordinance exclusively
33 delegating the collection of its transient occupancy taxes imposed
34 on short-term rentals to the department and enter into a contract
35 with the department to perform the functions set forth in this part,
36 on or before December 1 of each year, with collection of the local
37 charge to commence April 1 of the next calendar year. In the
38 contract, the local agency shall certify to the department that its
39 ordinance applies its local charge on short-term rentals, the
40 applicable transient occupancy tax rate for short-term rentals, any

1 other information the department deems necessary to implement
2 this part, and that the local agency agrees to indemnify, and hold
3 and save harmless, the department, its officers, agents, and
4 employees for any and all liability for damages that may result
5 from collection pursuant to the contract.

6 (3) ~~In the event that~~ If a local agency increases its local charge
7 after the effective date of this part, the local agency shall provide
8 the department with written notice of the increased local charge
9 on or before December 1, with collection of the local charge to
10 commence April 1 of the next calendar year.

11 (4) ~~In the event that~~ If a local agency reduces or eliminates a
12 local charge imposed on short-term rentals, the local agency shall
13 provide the department with written notice within 30 days of the
14 reduction or elimination. The reduction or elimination shall become
15 operative on the first day of the calendar quarter commencing more
16 than 60 days from the date the local agency notifies the department
17 that it no longer imposes a local charge or that the rate of its local
18 charge has been reduced.

19 (5) *If a local agency enters into a contract with the department*
20 *pursuant to paragraph (2), provides the department with written*
21 *notice of an increased local charge pursuant to paragraph (3), or*
22 *provides the department with written notice of a reduction or*
23 *elimination pursuant to paragraph (4), the department shall*
24 *provide short-term rental facilitators with written notice within*
25 *30 days of that event.*

26 (b) Notwithstanding any other law, the authority of a local
27 agency to collect a local charge imposed on a short-term rental is
28 suspended as of the effective date specified in its ordinance
29 described in paragraph (1) of subdivision (a).

30 (c) (1) A local agency may enact an ordinance terminating the
31 delegation of authority to the department pursuant to paragraph
32 (1) of subdivision (a), so long as the effective date of the
33 termination of the delegation corresponds with the date that
34 commences a calendar quarter, and is at least six months from the
35 date the local agency enacts the ordinance terminating the
36 delegation.

37 (2) *The department shall provide notice of a termination*
38 *pursuant to this subdivision to the short-term rental facilitators*
39 *within 30 days of the local agency terminating the delegation of*
40 *authority to the department.*

1 7279.68. (a) If delegated the authority pursuant to an ordinance
2 described in Section 7279.66, the department shall perform the
3 registration, rate posting, collection, and transmission of revenues
4 necessary to collect and administer local charges, subject to the
5 limitations set forth in subdivision (f).

6 (b) All local charges collected by the department shall be
7 deposited in the Local Charges for Short-term Rentals Fund, which
8 is hereby created in the State Treasury, and shall be held in trust
9 for the local agency, and shall not be used for any other purpose.
10 Local charges shall consist of all taxes, charges, interest, penalties,
11 and other amounts collected and paid to the department resulting
12 from the imposition of the transient occupancy tax, less payments
13 for refunds and reimbursement to the department for expenses
14 incurred in the administration and collection of the local charges.
15 Notwithstanding Section 13340 of the Government Code, all
16 amounts in the Local Charges for Short-term Rentals Fund are
17 continuously appropriated to the department. The department shall
18 transmit the funds to the local agencies periodically as promptly
19 as feasible, but shall be made at least once in each calendar quarter.
20 The department shall furnish a quarterly statement indicating the
21 amounts paid and withheld for expenses of the department.

22 (c) The department shall prescribe and adopt rules and
23 regulations as may be necessary or desirable for the administration
24 and collection of local charges and the distribution of the local
25 charges collected.

26 (d) The department's audit duties under this part shall be limited
27 to verification that the ~~online~~ short-term rental facilitator complied
28 with this part.

29 (e) (1) The department shall make available to a requesting
30 local agency any information that is reasonably available to the
31 department regarding the proper collection and remittance of a
32 local charge of the local agency by ~~an online~~ a short-term rental
33 facilitator.

34 (2) Except as otherwise provided in paragraph (1) and as
35 required to administer this part, it is a misdemeanor punishable by
36 a fine not exceeding one thousand dollars (\$1,000), by
37 imprisonment in a county jail not exceeding one year, or by both,
38 in the discretion of the court, for any deputy, agent, clerk, or other
39 officer or employee of the department, or any former officer or
40 employee or other individual, who in the course of that individual's

1 employment or duty has or had access to returns, reports, or
2 documents required to be filed under this part, to disclose or make
3 known in any manner information as to the amount of any local
4 charges or any particulars, including the business affairs of a
5 corporation, set forth or disclosed therein.

6 (3) Any information subject to paragraph (1) is exempted from
7 any requirement of public disclosure by the department pursuant
8 to subdivisions (i) and (k) of Section 6254 of the Government
9 Code.

10 (f) The local agency that has adopted an ordinance to impose a
11 local charge that applies to short-term rentals and exclusively
12 delegates the authority to the department shall be solely responsible
13 for:

14 (1) Defending any claim regarding the validity of the ordinance
15 in its application to short-term rentals.

16 (2) Interpreting any provision of the ordinance, except to the
17 extent specifically superseded by this statute.

18 (3) Responding to any claim for refund by a purchaser arising
19 under local charges collected pursuant to an ordinance described
20 in Section 7279.66. The claim shall be processed in accordance
21 with the provisions of the local enactment that allows the claim to
22 be filed.

23 (4) Certifying that the ordinance of the local agency applies the
24 local charge to short-term rentals and agreeing to indemnify and
25 hold harmless the department and its officers, agents, and
26 employees for any and all liability for damages that may result
27 from collection of the local charge.

28 (5) Reallocation of local charges as a result of correcting errors
29 relating to the location of the short-term rental, for up to two past
30 quarters from the date of knowledge.

31 (g) In connection with any actions or claims relating to or arising
32 from the invalidity of a local tax ordinance, in whole or in part,
33 ~~the online~~ short-term rental facilitator shall not be liable to any
34 consumer as a consequence of collecting the tax. In the event a
35 local agency is ordered to refund the tax, it shall be the sole
36 responsibility of the local agency to refund the tax. In any action
37 seeking to enjoin collection of a local charge by ~~an online a~~
38 short-term rental facilitator, in any action seeking declaratory relief
39 concerning a local charge, in any action seeking a refund of a local
40 charge, or in any action seeking to otherwise invalidate a local

1 charge, the sole necessary party defendant in the action shall be
2 the local agency on whose behalf the department collects the
3 charge. There shall be no recovery from the state for the imposition
4 of any unconstitutional or otherwise invalid local charge that is
5 collected pursuant to this part.

6 (h) For purposes of this section:

7 (1) “Quarterly local charges” means the total amount of local
8 charges transmitted by the department to a local agency for a
9 calendar quarter.

10 (2) “Refund” means the amount of local charges deducted by
11 the department from a local agency’s quarterly local charges in
12 order to pay the local agency’s share of a local charge refund due
13 to one taxpayer.

14 (3) “Offset portion” means that portion of the refund which
15 exceeds the greater of fifty thousand dollars (\$50,000) or 20 percent
16 of the local agency’s quarterly local charges.

17 (i) Except as provided in subdivision (j), if the department has
18 deducted a refund from a local agency’s quarterly local charges
19 that includes an offset portion, then the following provisions apply:

20 (1) Within three months after the department has deducted an
21 offset portion, the local agency may request the department to
22 transmit the offset portion to the local agency.

23 (2) As promptly as feasible after the department receives the
24 local agency’s request, the department shall transmit to the local
25 agency the offset portion as part of the department’s periodic
26 transmittal of local charges.

27 (3) The department shall thereafter deduct a pro rata share of
28 the offset portion from future transmittals of local charges to the
29 local agency over a period to be determined by the department,
30 but not less than two calendar quarters and not more than eight
31 calendar quarters, until the entire amount of the offset portion has
32 been deducted.

33 (j) The department shall not transmit the offset portion of the
34 refund to the local agency if that transmittal would reduce or delay
35 either the department’s payment of the refund to the taxpayer or
36 the department’s periodic transmittals of local charges to other
37 local agencies.

38 (k) A local agency shall pay to the department its pro rata share
39 of the department’s cost of collection and administration.

1 (l) The department shall annually prepare a report showing the
2 amount of both reimbursed and unreimbursed costs incurred by it
3 in administering the collection of local charges pursuant to this
4 part.

5 7279.70. (a) (1) ~~An online~~ A short-term rental facilitator
6 engaged in business in this state shall be responsible for collecting
7 from the purchaser any local charge imposed on a short-term rental
8 by any local agency exclusively delegating its authority to the
9 department pursuant to Section 7279.66 to collect those charges.
10 The ~~online~~ short-term rental facilitator shall remit those local
11 charges collected to the department. The responsibility for the
12 charge is not extinguished until it has been paid to this state.

13 (2) All amounts collected by the ~~online~~ short-term rental
14 facilitator pursuant to this section ~~is~~ are due and payable to the
15 department on or before the last day of the month following each
16 calendar quarter. On or before the last day of the month following
17 each quarterly period, a return for the preceding quarterly period
18 shall be filed with the department by each ~~online~~ short-term rental
19 facilitator using electronic media. Returns shall be authenticated
20 in a form or pursuant to methods as may be prescribed by the
21 department.

22 (b) The department shall administer and collect the local charges
23 exclusively delegated by a local agency under this part pursuant
24 to the Fee Collection Procedures Law (Part 30 (commencing with
25 Section 55001)). For purposes of this part, the references in the
26 Fee Collection Procedures Law to “fee” shall include local charges
27 delegated by a local agency to be collected by the department
28 pursuant to this part, and references to “feepayer” shall include
29 any ~~online~~ short-term rental facilitator required to collect and remit
30 local charges exclusively delegated by a local agency to be
31 collected by the department pursuant to this part.

32 (c) The department shall publish and maintain a list of local
33 agencies delegating its authority to collect local charges on
34 short-term rentals on its internet website, including the rate. The
35 list shall also include any other information determined to be
36 relevant to the department for the proper collection of the local
37 charges, including, but not limited to, the duration period of the
38 short-term rental, or any other circumstances specified by the local
39 agency applicable in those jurisdictions for determining whether
40 any local charge is due for the occupancy of a short-term rental.

(d) (1) The department may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

(2) The department may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

7279.72. ~~An online~~ A short-term rental facilitator that is subject to a local agency ordinance that delegates authority for collection of a local charge to the department pursuant to Section 7279.66 is required to register with the department. Every application for registration shall be made upon a form prescribed by the department and shall set forth the name under which the applicant transacts or intends to transact business, the location of its place or places of business, and such other information as the department may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the department.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 7279.68 to the Revenue and Taxation Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to comply with existing law and to prevent unfair competitive disadvantages, it is necessary for information provided to local agencies by the California Department of Tax and Fee Administration pursuant to Section 2 of this act to remain confidential.

~~SEC. 2.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O