

AMENDED IN SENATE JUNE 10, 2015

AMENDED IN SENATE MAY 6, 2015

AMENDED IN SENATE APRIL 29, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 593

**Introduced by Senator McGuire
(Coauthor: Senator Leno)**

February 27, 2015

An act to add Article 12 (commencing with Section 53170) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 593, as amended, McGuire. Residential units for tourist or transient use: *transient residential* hosting platforms.

The California Constitution authorizes a county or city to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. *Existing law also authorizes a city, county, or city and county to impose a transient occupancy tax upon occupancies of lodgings of no more than 30 days.*

~~This bill would require an operator of a hosting platform, as defined, to report specified information quarterly to the city, county, or city and county. The bill would authorize a city, county, or city and county, by ordinance, to opt out from receiving reports and to subsequently opt back in, with 90 days' advance notice of that ordinance to the operator of a hosting platform and to impose a fine or penalty on an operator that fails to provide the report, as specified. The bill would prohibit an operator of a hosting platform from facilitating the rental of a residential~~

~~unit offered for occupancy for tourist or transient use, if such a use of that residential unit, or the offering of that residential unit for such a use, is prohibited by an ordinance of the city, county, or city and county in which that residential unit is located. The bill would authorize a city, county, or city and county, by ordinance, to establish a fine or penalty on an operator of a hosting platform, as specified, for a knowing violation of this provision. The bill would authorize a city, county, or city and county to require an operator of a hosting platform to collect and remit applicable local transient occupancy tax.~~

This bill would authorize a city, county, or city and county to adopt an ordinance that would require a transient residential hosting platform, as defined, to report specified information quarterly to the city, county, or city and county, and to establish, by ordinance, a fine or penalty on a transient residential hosting platform for failure to provide the report. The bill would make the information in the report confidential and require that it not be disclosed. The bill would authorize the city, county, or city and county receiving the report to use the report solely for transient occupancy tax and zoning administration. The bill would also authorize a city, county, or city and county to require a transient residential hosting platform to collect and remit applicable transient occupancy tax.

The bill, where a specified ordinance has been adopted, would prohibit a transient residential hosting platform from facilitating occupancy of a residential unit offered for tourist or transient use in violation of any ordinance, regulation, or law of the city, county, or city and county, and would authorize a city, county, or city and county, by ordinance, to establish a civil fine or penalty on an operator of a transient residential hosting platform for a knowing violation of this provision.

This bill would also require the operator of a transient residential hosting platform to disclose specified information regarding insurance coverage in the transient residential hosting platform agreement with an offeror of a residential unit.

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

This bill would make legislative findings to that effect.

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

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

1 SECTION 1. Article 12 (commencing with Section 53170) is
2 added to Chapter 1 of Part 1 of Division 2 of Title 5 of the
3 Government Code, to read:

4
5 Article 12. Thriving Communities and Sharing Economy Act

6
7 53170. (a) This article shall be known, and may be cited, as
8 the Thriving Communities and Sharing Economy Act.

9 (b) *The Legislature finds and declares that transient residential*
10 *hosting platforms are doing business in California by facilitating*
11 *the occupancy of property located in California.*

12 53171. ~~(a)~~ For purposes of this article:

13 ~~(1)~~ “~~Hosting~~”

14 (a) (1) “*Transient residential hosting platform*” means—~~a~~
15 ~~marketplace that is created for the primary purpose of facilitating~~
16 *a person or entity that facilitates the rental of a residential unit*
17 *offered for occupancy for tourist or transient use for compensation*
18 *to the offeror of that unit, and the operator of the transient*
19 *residential hosting platform derives revenues, including booking*
20 *fees fees, subscription charges, or advertising revenues, from*
21 ~~providing or maintaining that marketplace.~~ “*Facilitating*” revenues.
22 “*Facilitate*” includes, but is not limited to, the act of allowing the
23 offeror of the residential unit to offer or advertise the residential
24 unit on the Internet Web site provided or maintained by the
25 operator.

26 (2) “*Transient residential hosting platform*” *does not include*
27 *anyone licensed to practice real estate as defined in Section 10130*
28 *of the Business and Professions Code.*

1 ~~(2)~~
 2 (b) “Offeror” ~~includes an owner or lessee~~ means the owner,
 3 lessee, or other person or entity with the legal right to occupy or
 4 authorize the occupancy of a residential unit.

5 ~~(3)~~
 6 (c) “Residential unit” means a dwelling unit in a private
 7 residence, including a single-family residence, an apartment or
 8 other leased premises, a residential condominium unit, or any other
 9 residential real estate improvement. “Residential unit” does not
 10 include individual guest rooms, condominium units, timeshare
 11 units, cabins, or similar guest accommodations rented to transient
 12 ~~guests~~ rooms in a hotel, inn, or similar transient lodging
 13 establishment operated by an innkeeper, as defined in subdivision
 14 (a) of Section 1865 of the Civil Code.

15 (d) “Tourist or transient use” means 30 days or fewer.

16 (e) “Operator” includes any corporation, partnership, or
 17 individual that provides or maintains a transient residential hosting
 18 platform.

19 ~~(b) (1) Except as provided in paragraph (2), the operator of a~~
 20 53172. All of the following shall apply only within the
 21 jurisdiction of a city, county, or city and county that adopts an
 22 ordinance applying this section within its jurisdiction:

23 (a) A transient residential hosting platform shall report quarterly
 24 to the city, county, or city and county all of the following
 25 information:

26 ~~(A)~~
 27 (1) The address of each residential unit that was ~~offered on the~~
 28 operator’s hosting platform for occupancy for tourist or transient
 29 ~~use and was occupied for that use~~ occupied for tourist or transient
 30 use during that quarterly period.

31 ~~(B)~~
 32 (2) The total number of nights that the residential unit was
 33 occupied for tourist or transient use.

34 ~~(C)~~
 35 (3) The amounts paid for the occupancy of that residential unit.
 36 unit for tourist or transient use.

37 ~~(2) A city, county, or city and county may, by ordinance, opt~~
 38 out from receiving reports from an operator of a hosting platform
 39 under paragraph (1) at any time and, subsequently, may, by
 40 ordinance, opt back in to receive the reports. A city, county, or

1 city and county shall provide the operator of a hosting platform
2 with 90 days' advance notice of an ordinance adopted under this
3 paragraph.

4 (3)

5 (b) A city, county, or city and county may, by ordinance,
6 establish a fine or penalty on ~~an operator of a~~ *a transient residential*
7 hosting platform that fails to provide a report required pursuant to
8 ~~this subdivision~~ *section* not to exceed the amount of one thousand
9 dollars (\$1,000) for the first failure, two thousand dollars (\$2,000)
10 for the second failure, and five thousand dollars (\$5,000) for a
11 third or subsequent failure, to be imposed after the city, county,
12 or city and county has provided written notice to the operator of
13 the failure, has given the ~~operator~~ *transient residential hosting*
14 *platform* an opportunity to provide the report within 30 days of
15 receiving the written notice, and the ~~operator~~ *transient residential*
16 *hosting platform* failed to provide the report within that period.

17 (4)

18 (c) Any civil fines or penalties shall be paid to the city, county,
19 or city and county that established the fine or penalty.

20 (e) ~~(1) An operator of a~~

21 (d) (1) *Notwithstanding any other law, including the California*
22 *Public Records Act, as set forth in Chapter 3.5 (commencing with*
23 *Section 6250) of Division 7 of Title 1, the information in the report*
24 *required pursuant to this subdivision is confidential and shall not*
25 *be disclosed.*

26 (2) *The city, county, or city and county receiving the report*
27 *shall use the information in the report solely for the administration*
28 *of transient occupancy tax and zoning.*

29 (e) *The city, county, or city and county may require a transient*
30 *residential hosting platform to collect the transient occupancy tax*
31 *imposed by that local agency, and to remit that tax to that agency.*
32 *The authority granted by this subdivision is in addition to any*
33 *other provision of state or local law that authorizes a city, county,*
34 *or city and county to require a transient residential hosting*
35 *platform or any other person or entity to collect and remit transient*
36 *occupancy tax.*

37 53173. (a) *A transient residential hosting platform shall not*
38 *facilitate the ~~rental~~ occupancy of a residential unit offered for*
39 *occupancy for tourist or transient use if ~~such a use of that~~*
40 *residential unit, or the offering of that residential unit for such a*

1 ~~use, is prohibited by an ordinance~~ *the occupancy will violate any*
2 *ordinance, regulation, or law of the city, county, or city and county*
3 *county, in which that residential unit is located. located, that has*
4 *applied Section 53172 within its jurisdiction.*

5 (2)

6 (b) *A city, county, or city and county that has applied Section*
7 *53172 within its jurisdiction may, by ordinance, establish a civil*
8 *fine or penalty on an operator of a transient residential hosting*
9 *platform that knowingly violates this subdivision section not to*
10 *exceed the amount of one thousand dollars (\$1,000) per day for*
11 *the first violation, two thousand dollars (\$2,000) per day for a*
12 *second violation, and five thousand dollars (\$5,000) per day for a*
13 *third or subsequent violation. An operator of a hosting platform*
14 *shall be deemed to have knowingly violated this subdivision if a*
15 *city, county, or city and county has previously provided the*
16 *operator with a copy, including a copy in electronic form, of its*
17 *ordinance prohibiting the use of a residential unit located within*
18 *its boundaries for occupancy for tourist or transient use, or the*
19 *offering of that unit for such a use, has given written notice of a*
20 *known violation to the operator, has given the operator an*
21 *opportunity to cease facilitating the rental of that residential unit*
22 *within 30 days of receiving the written notice, and the operator*
23 *failed to cease within that period. violation to be imposed after the*
24 *city, county, or city and county has provided written notice to the*
25 *operator of a transient residential hosting platform of the failure*
26 *to abide by the respective ordinance, has given the operator of the*
27 *transient residential hosting platform an opportunity to correct*
28 *the violation within 30 days of receiving the written notice, and*
29 *the operator of the transient residential hosting platform failed to*
30 *correct the violation within that period.*

31 (3)

32 (c) *Any civil fines or penalties shall be paid to the city, county,*
33 *or city and county that established the fine or penalty.*

34 (d) *A city, county, or city and county may require the operator*
35 *of a hosting platform to collect applicable transient occupancy tax*
36 *imposed by that local agency, and to remit that tax to that agency.*

37 *53174. An operator of a transient residential hosting platform*
38 *shall disclose the following in the transient residential hosting*
39 *platform agreement with an offeror:*

1 (a) That an offeror should review his or her home or renter's
2 insurance policy to ensure that there is appropriate insurance
3 coverage in the event that a person sustains an injury or loss on
4 the offeror's property, a person damages or causes loss to an
5 offeror's personal or real property, or a claim or lawsuit is made
6 against the offeror or otherwise arises out of activities related to
7 the transient residential hosting platform.

8 (b) If the operator of the transient residential hosting platform
9 provides insurance coverage, that the insurance coverage is
10 provided and the limits of liability. If the insurance provided by
11 the operator of the transient residential hosting platform is excess,
12 secondary, or contingent upon an offeror's home or rental
13 insurance, the operator of the transient residential hosting platform
14 shall explicitly explain to the offeror when the offeror's insurance
15 is primary or first in line to cover liabilities arising out of the
16 activities relating to the transient residential hosting platform.

17 53175. Nothing in this article shall be construed to preempt a
18 city, county, or city and county law regulating operators of
19 transient residential hosting platforms.

20 SEC. 2. The Legislature finds and declares that Section 1 of
21 this act, which adds Section 53172 to the Government Code,
22 imposes a limitation on the public's right of access to the meetings
23 of public bodies or the writings of public officials and agencies
24 within the meaning of Section 3 of Article I of the California
25 Constitution. Pursuant to that constitutional provision, the
26 Legislature makes the following findings to demonstrate the interest
27 protected by this limitation and the need for protecting that
28 interest:

29 Where a city, county, or city and county adopts an ordinance
30 applying Section 53172 of the Government Code within its
31 jurisdiction, in order to ensure that the information disclosed to
32 local public agencies in the reports required by Section 53172 of
33 the Government Code is not used for purposes other than the
34 limited public purposes specified in that section, it is necessary to
35 limit the disclosure of those reports.

36 SEC. 3. The Legislature finds and declares that Section 1 of
37 this act, which adds Section 53172 to the Government Code,
38 furthers, within the meaning of paragraph (7) of subdivision (b)
39 of Section 3 of Article I of the California Constitution, the purposes
40 of that constitutional section as it relates to the right of public

1 *access to the meetings of local public bodies or the writings of*
2 *local public officials and local agencies. Pursuant to paragraph*
3 *(7) of subdivision (b) of Section 3 of Article I of the California*
4 *Constitution, the Legislature makes the following findings:*

5 *If a city, county, or city and county adopts an ordinance applying*
6 *Section 53172 of the Government Code within its jurisdiction,*
7 *limiting disclosure of a record obtained by the local public agency*
8 *for purposes of tax and zoning administration furthers the purposes*
9 *of Section 3 of Article I of the California Constitution by*
10 *appropriately balancing the interest in public disclosure with*
11 *ensuring that this information is not used for improper purposes.*