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OFFICE OF THE
COUNTY COUNCIL

MEMO TO: PEA-3(1) File

F R O M: Council Chair Mike White



SUBJECT: **TRANSMITTAL OF REVISED LEGISLATIVE PROPOSAL
RELATING TO 2018 HAWAII STATE ASSOCIATION OF
COUNTIES LEGISLATIVE PACKAGE** (PAF 17-178)

The attached revised legislative proposal pertains to Item 3(1) on the Committee's agenda.

paf:mcc:17-178ca

Attachment

Resolution

No. _____

APPROVING FOR INCLUSION IN THE 2018 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE A STATE BILL TO REQUIRE ONLINE TRAVEL COMPANIES AND OTHER TRANSIENT ACCOMMODATIONS REMARKETERS TO PAY TRANSIENT ACCOMMODATIONS TAX ON THEIR RESPECTIVE PORTIONS OF GROSS RENTAL PROCEEDS FROM THE PAYMENT OF ACCOMMODATIONS

WHEREAS, since the enactment of the Transient Accommodations Tax (TAT) in 1986, the method visitors use to book reservations to stay in Hawaii has changed significantly and now includes online booking and payment through third-party websites; and

WHEREAS, amending the Transient Accommodations Tax law to require online travel companies and other transient accommodations remarketers to pay TAT on their portion of proceeds from the booking of accommodations would increase TAT revenue, to the benefit of every county in the State of Hawaii; and

WHEREAS, the share of the TAT to the counties has been capped at \$93 million and the additional tax revenues generated by this proposed bill will be added to the counties' \$93 million allocation; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit "A," to require online travel companies and other transient accommodations remarketers to pay transient accommodations tax on their respective portions of gross rental proceeds from the payment of accommodations, is approved for inclusion in the 2018 Hawaii State Association of Counties Legislative Package; and
2. That a copy of this resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS TAX.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1

PART I

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SECTION 1. Since the enactment of Act 340 in 1986,

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visitors to Hawaii have paid a tax on the retail value of their

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lodging. Known as the "transient accommodations tax," or "TAT,"

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the tax is assessed and collected by the operator on the gross

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rental proceeds derived from furnishing transient accommodations

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to visitors. Operators are obligated to impose the TAT, collect

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it from visitors, and pay the tax to the State each month. TAT

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revenues are then used to support the Hawaii Convention Center;

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allocated to a special fund to protect, preserve, and maintain

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natural resources, including beaches, important to the visitor

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industry; and distributed to the counties to help support

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services relied upon by tourists such as police and fire

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protection, ocean safety personnel, parks, water, sewer, and

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roadways.

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Act 340 was written prior to the explosion of internet

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sales of hotel rooms and fails to capture all required TAT owed

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to the State. There are a variety of ways visitors can book

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1 hotel rooms, such as pre-paying their hotel stays through Online
2 Travel Companies ("OTCs"). Wholesale travel companies and OTCs
3 contract for rooms with hotels at wholesale rates, add their
4 mark-up, and then resell rooms to guests. Hotels may only know
5 the wholesale, or net, rental rate paid for the room by the OTCs
6 and not the full retail rate paid by the guest. OTCs are billed
7 for rooms at the wholesale rate and the TAT is collected by
8 hotels and paid to the State based on this discounted rate.
9 With each online transaction processed in this way, the State
10 loses the difference in tax between the wholesale or net rental
11 rate and the full retail or gross rental rate.

12 The purpose of this Act is to ensure the State receives the
13 full amount of TAT calculated based upon the full or gross
14 rental price paid by the visitor, whether that amount is
15 collected by the local Hawaii operator, travel agent, wholesale
16 travel company, or online by an OTC.

17 PART II

18 SECTION 2. Section 237D-1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§237D-1 Definitions. Whenever used in this chapter,
21 unless the context otherwise requires:

22 "Department" means the department of taxation.

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1 "Director" means the director of taxation.

2 "Fair market rental value" means an amount equal to
3 one-half of the gross daily maintenance fees that are paid by
4 the owner and are attributable to the time share unit located in
5 Hawaii. Gross daily maintenance fees include maintenance costs,
6 operational costs, insurance, repair costs, administrative
7 costs, taxes, other than transient accommodations taxes, resort
8 fees, and other costs including payments required for reserves
9 or sinking funds. Amounts paid for optional goods and services
10 such as food and beverage services or beach chair or umbrella
11 rentals shall be excluded from fair market rental value.

12 "Gross rental" or "gross rental proceeds" means the
13 gross receipts, cash or accrued, of the taxpayer received as
14 compensation for the furnishing of transient accommodations and
15 the value proceeding or accruing from the furnishing of such
16 accommodations without any deductions on account of the cost of
17 property or services sold, the cost of materials used, labor
18 cost, taxes, royalties, interest, discounts, or any other
19 expenses whatsoever. Every taxpayer shall be presumed to be
20 dealing on a cash basis unless the taxpayer proves to the
21 satisfaction of the department of taxation that the taxpayer is
22 dealing on an accrual basis and the taxpayer's books are so

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1 kept, or unless the taxpayer employs or is required to employ
2 the accrual basis for the purposes of the tax imposed by chapter
3 237 for any taxable year in which event the taxpayer shall
4 report the taxpayer's gross income for the purposes of this
5 chapter on the accrual basis for the same period.

6 The words "gross rental" or "gross rental proceeds"
7 shall not be construed to include the amounts of taxes imposed
8 by chapter 237 or this chapter on operators of transient
9 accommodations and passed on, collected, and received from the
10 consumer as part of the receipts received as compensation for
11 the furnishing of transient accommodations. Where transient
12 accommodations are furnished through arrangements made by a
13 transient accommodations remarketer or travel agency [~~or tour~~
14 ~~packager~~] as defined under section 468L-1 at noncommissioned
15 negotiated contract rates and the gross income is divided
16 between the operator of transient accommodations on the one hand
17 and the transient accommodations remarketer, or travel agency
18 [~~or tour packager~~] on the other hand, [~~gross rental or gross~~
19 ~~rental proceeds to the operator means only the respective~~
20 ~~portion allocated or distributed to the operator,~~] the tax
21 imposed by this chapter shall apply to each such person with
22 respect to such person's respective portion of the proceeds, and

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1 no more. For purposes of this definition, where the operator
2 maintains a schedule of rates for identifiable groups of
3 individuals, such as kamaainas, upon which the accommodations
4 are leased, let, or rented, gross rental or gross rental
5 proceeds means the receipts collected and received based upon
6 the scheduled rates and recorded as receipts in its books and
7 records.

8 "Lease", "let", or "rental" means the leasing or
9 renting of living quarters or sleeping or housekeeping
10 accommodations in hotels, apartment hotels, motels, condominium
11 property regimes or apartments defined in chapter 514A or units
12 defined in chapter 514B, cooperative apartments, rooming houses,
13 or other places in which lodgings are regularly furnished to
14 transients for a consideration, without transfer of the title of
15 such property.

16 "Local contact" means an individual residing on the
17 same island as the transient accommodation or resort time share
18 vacation unit or an entity with a place of business and at least
19 one employee, officer, partner, member, or other person working
20 on behalf of the company who is residing on the same island as
21 the transient accommodation or resort time share vacation unit.

1 "Occupant" means an owner of a resort time share
2 vacation plan or other person occupying the resort time share
3 vacation unit.

4 "Operator" means any person operating a transient
5 accommodation, whether as owner or proprietor or as lessee,
6 sublessee, mortgagee in possession, licensee, or otherwise, or
7 engaging or continuing in any service business which involves
8 the actual furnishing of transient accommodation.

9 "Owner" means any person who owns a resort time share
10 vacation interest; provided that to the extent and for those
11 purposes provided in an agreement of sale, the vendee under the
12 agreement of sale shall be considered the owner of the resort
13 time share vacation interest.

14 "Plan manager" means a person who undertakes the
15 duties, responsibilities, and obligations of managing a resort
16 time share vacation plan or is required to act for a resort time
17 share vacation plan under this chapter.

18 "Resort time share vacation interest" means any
19 interest in a resort time share vacation unit or plan which
20 entitles the owner thereof to the use, occupancy, or possession
21 of a resort time share vacation unit on a periodically recurring
22 basis.

1 "Resort time share vacation plan" means any plan or
2 program subject to chapter 514E in which the use, occupancy, or
3 possession of one or more resort time share vacation units
4 circulates among various persons for less than a sixty-day
5 period in any year, for any occupant. The term resort time
6 share vacation plan includes both resort time share vacation
7 ownership plans and resort time share vacation use plans, as
8 follows:

9 (1) "Resort time share vacation ownership plan" means
10 any arrangement whether by tenancy in common,
11 sale, deed, or by other means, whereby the
12 purchaser receives an ownership interest and the
13 right to use the property for a specific or
14 discernible period by temporal division.

15 (2) "Resort time share vacation use plan" means any
16 arrangement, excluding normal hotel operations,
17 whether by membership agreement, lease, rental
18 agreement, license, use agreement, security, or
19 other means, whereby the purchaser receives a
20 right to use accommodations or facilities, or
21 both, in a resort time share vacation unit for a
22 specific or discernible period by temporal

1 division, but does not receive an ownership
2 interest.

3 "Resort time share vacation unit" means the actual and
4 promised accommodations, and related facilities, which are the
5 subject of a resort time share vacation plan.

6 "Transient accommodations" means the furnishing of a
7 room, apartment, suite, single family dwelling, or the like to a
8 transient for less than one hundred eighty consecutive days for
9 each letting in a hotel, apartment hotel, motel, condominium
10 property regime or apartment as defined in chapter 514A or unit
11 as defined in chapter 514B, cooperative apartment, dwelling
12 unit, or rooming house that provides living quarters, sleeping,
13 or housekeeping accommodations, or other place in which lodgings
14 are regularly furnished to transients.

15 "Transient accommodations [~~broker~~] remarketer" means
16 any person or entity, including but not limited to persons who
17 operate online websites, online travel agencies, or online
18 booking agencies, that offers, lists, advertises, or accepts
19 reservations or collects whole or partial payment for transient
20 accommodations or resort time share vacation interests, units,
21 or plans."

1 SECTION 3. Section 237D-2, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Every operator, transient accommodations remarketer
4 or travel agency, who collect whole or partial payment for
5 transient accommodations shall pay to the State the tax imposed
6 by subsection (a), as provided in this chapter."

7 SECTION 4. Section 237D-4, Hawaii Revised Statutes, is
8 amended by amending subsection (d) to read as follows:

9 "(d) Failure to meet the requirements of subsection (c)
10 shall be unlawful. The department may issue citations to any
11 person, including operators, plan managers, travel agencies and
12 transient accommodations [~~brokers~~] remarketers, who violates
13 subsection (c). A citation issued pursuant to this subsection
14 for each transient accommodation or resort time share vacation
15 interest, plan, or unit in violation of subsection (c) shall
16 include a monetary fine of not less than:

- 17 (1) \$500 per day, for a first violation for which a
18 citation is issued;
- 19 (2) \$1,000 per day, for a second violation for which
20 a citation is issued; and
- 21 (3) \$5,000 per day, for a third and any subsequent
22 violation for which a citation is issued."

1 SECTION 5. Section 237D-6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) On or before the twentieth day of each calendar
4 month, every [~~operator taxable, or plan manager~~] taxpayer liable
5 under this chapter during the preceding calendar month shall
6 file a sworn return with the director in such form as the
7 director shall prescribe together with a remittance for the
8 amount of the tax in the form required by section 237D-6.5.
9 Sections 237-30 and 237-32 shall apply to returns and penalties
10 made under this chapter to the same extent as if the sections
11 were set forth specifically in this section."

12 SECTION 6. Section 237D-6.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§237D-6.5 Remittances; distribution to counties.** (a)
15 All remittances of taxes imposed under this chapter shall be
16 made by cash, bank drafts, cashier's check, money order, or
17 certificate of deposit to the office of the taxation district to
18 which the return was transmitted.

19 (b) Revenues collected under this chapter shall be
20 distributed in the following priority, with the excess revenues
21 to be deposited into the general fund:

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- 1 (1) \$1,500,000 shall be allocated to the Turtle Bay
2 conservation easement special fund beginning July
3 1, 2015, for the reimbursement to the state
4 general fund of debt service on reimbursable
5 general obligation bonds, including ongoing
6 expenses related to the issuance of the bonds,
7 the proceeds of which were used to acquire the
8 conservation easement and other real property
9 interests in Turtle Bay, Oahu, for the
10 protection, preservation, and enhancement of
11 natural resources important to the State, until
12 the bonds are fully amortized;
- 13 (2) \$26,500,000 shall be allocated to the convention
14 center enterprise special fund established under
15 section 201B-8;
- 16 (3) \$82,000,000 shall be allocated to the tourism
17 special fund established under section 201B-11;
18 provided that:
 - 19 (A) Beginning on July 1, 2012, and ending on
20 June 30, 2015, \$2,000,000 shall be expended
21 from the tourism special fund for
22 development and implementation of

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1 initiatives to take advantage of expanded
2 visa programs and increased travel
3 opportunities for international visitors to
4 Hawaii;

5 (B) Of the \$82,000,000 allocated:

6 (i) \$1,000,000 shall be allocated for the
7 operation of a Hawaiian center and the
8 museum of Hawaiian music and dance at
9 the Hawaii convention center; and

10 (ii) 0.5 per cent of the \$82,000,000 shall
11 be transferred to a sub-account in the
12 tourism special fund to provide funding
13 for a safety and security budget, in
14 accordance with the Hawaii tourism
15 strategic plan 2005-2015; and

16 (C) Of the revenues remaining in the tourism
17 special fund after revenues have been
18 deposited as provided in this paragraph and
19 except for any sum authorized by the
20 legislature for expenditure from revenues
21 subject to this paragraph, beginning July 1,
22 2007, funds shall be deposited into the

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1 tourism emergency special fund, established
2 in section 201B-10, in a manner sufficient
3 to maintain a fund balance of \$5,000,000 in
4 the tourism emergency special fund;
5 (4) \$103,000,000 for fiscal year 2014-2015,
6 \$103,000,000 for fiscal year 2015-2016,
7 \$103,000,000 for fiscal year 2016-2017, and
8 \$93,000,000 for each fiscal year thereafter shall
9 be allocated as follows: Kauai county shall
10 receive 14.5 per cent, Hawaii county shall
11 receive 18.6 per cent, city and county of
12 Honolulu shall receive 44.1 per cent, and Maui
13 county shall receive 22.8 per cent; provided that
14 commencing with fiscal year 2018-2019, a sum that
15 represents the difference between a county public
16 employer's annual required contribution for the
17 separate trust fund established under section
18 87A-42 and the amount of the county public
19 employer's contributions into that trust fund
20 shall be retained by the state director of
21 finance and deposited to the credit of the county
22 public employer's annual required contribution

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1 into that trust fund in each fiscal year, as
2 provided in section 87A-42, if the respective
3 county fails to remit the total amount of the
4 county's required annual contributions, as
5 required under section 87A-43; and

6 (5) \$3,000,000 shall be allocated to the special land
7 and development fund established under section
8 171-19; provided that the allocation shall be
9 expended in accordance with the Hawaii tourism
10 authority strategic plan for:

11 (A) The protection, preservation, maintenance,
12 and enhancement of natural resources,
13 including beaches, important to the visitor
14 industry;

15 (B) Planning, construction, and repair of
16 facilities; and

17 (C) Operation and maintenance costs of public
18 lands, including beaches, connected with
19 enhancing the visitor experience.

20 All transient accommodations taxes shall be paid into
21 the state treasury each month within ten days after collection

1 and shall be kept by the state director of finance in special
2 accounts for distribution as provided in this subsection.

3 As used in this subsection, "fiscal year" means the
4 twelve-month period beginning on July 1 of a calendar year and
5 ending on June 30 of the following calendar year.

6 (c) In addition to the taxes apportioned to the
7 counties in subsection (b) (4), any TAT collected from transient
8 accommodations remarketers or travel agencies shall be paid to
9 the counties in the same percentage as set forth in subsection
10 (b) (4).

11 [~~e~~] (d) On or before January or July 1 of each year
12 or after the disposition of any tax appeal with respect to an
13 assessment for periods after June 30, 1990, the state director
14 of finance shall compute and pay the amount due as provided in
15 subsection (b) to the director of finance of each county to
16 become a general realization of the county expendable as such,
17 except as otherwise provided by law."

18 SECTION 7. Section 237D-7, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§237D-7 Annual return. On or before the twentieth day of
21 the fourth month following the close of the taxable year, every
22 person who has become liable for the payment of the taxes under

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1 this chapter during the preceding tax year shall file a return
2 summarizing that person's liability under this chapter for the
3 year, in such form as the director prescribes. The [~~operator or~~
4 ~~plan manager~~] taxpayer shall transmit with the return a
5 remittance covering the residue of the tax chargeable to the
6 [~~operator or plan manager~~] taxpayer, if any, to the office of
7 the appropriate state district tax assessor designated in
8 section 237D-8. The return shall be signed by the taxpayer, if
9 made by an individual, or by the president, vice-president,
10 secretary, or treasurer of a corporation, if made on behalf of a
11 corporation. If made on behalf of a partnership, firm, society,
12 unincorporated association, group, hui, joint adventure, joint
13 stock company, corporation, trust estate, decedent's estate,
14 trust, or other entity, any individual delegated by the entity
15 shall sign the same on behalf of the taxpayer. If for any
16 reason it is not practicable for the individual taxpayer to sign
17 the return, it may be done by any duly authorized agent. The
18 department, for good cause shown, may extend the time for making
19 the return on the application of any taxpayer and grant such
20 reasonable additional time within which to make the return as
21 the department may deem advisable.

1 Section 232-2 applies to the annual return, but not to a
2 monthly return."

3 SECTION 8. Section 237D-9, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) If any [~~operator or plan manager~~] taxpayer fails to
6 make a return as required by this chapter, the director shall
7 make an estimate of the tax liability of the [~~operator or plan~~
8 ~~manager~~] taxpayer from any information the director obtains, and
9 according to the estimate so made, assess the taxes, interest,
10 and penalty due the State from the [~~operator or plan manager~~]
11 taxpayer, give notice of the assessment to the [~~operator or plan~~
12 ~~manager~~] taxpayer, and make demand upon the [~~operator or plan~~
13 ~~manager~~] taxpayer for payment. The assessment shall be presumed
14 to be correct until and unless, upon an appeal duly taken as
15 provided in section 237D-11, the contrary shall be clearly
16 proved by the person assessed, and the burden of proof upon such
17 appeal shall be upon the person assessed to disprove the
18 correctness of assessment."

19 SECTION 9. Section 237D-10, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§237D-10 Overpayment; refunds.** Upon application by [~~an~~
22 ~~operator or plan manager~~] a taxpayer, if the director determines

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1 that any tax, interest, or penalty has been paid more than once,
2 or has been erroneously or illegally collected or computed, the
3 tax, interest, or penalty shall be credited by the director on
4 any taxes then due from the [~~operator or plan manager~~] taxpayer
5 under this chapter. The director shall refund the balance to
6 the [~~operator or plan manager~~] taxpayer or the [~~operator's or~~
7 ~~plan manager's~~] taxpayer's successors, administrators,
8 executors, or assigns in accordance with section 231-23. No
9 credit or refund shall be allowed for any tax imposed by this
10 chapter, unless a claim for such credit or refund is filed as
11 follows:

12 (1) If an annual return is timely filed, or is filed
13 within three years after the date prescribed for
14 filing the annual return, then the credit or
15 refund shall be claimed within three years after
16 the date the annual return was filed or the date
17 prescribed for filing the annual return,
18 whichever is later.

19 (2) If an annual return is not filed, or is filed
20 more than three years after the date prescribed
21 for filing the annual return, a claim for credit
22 or refund shall be filed within:

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- 1 (A) Three years after the payment of the tax; or
- 2 (B) Three years after the date prescribed for
- 3 the filing of the annual return, whichever
- 4 is later.

5 Paragraphs (1) and (2) are mutually exclusive. The
6 preceding limitation shall not apply to a credit or refund
7 pursuant to an appeal, provided for in section 237D-11.

8 As to all tax payments for which a refund or credit is
9 not authorized by this section (including, without prejudice to
10 the generality of the foregoing, cases of unconstitutionality),
11 the remedies provided by appeal or by section 40-35 are
12 exclusive."

13 SECTION 10. Section 237D-12, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§237D-12 Records to be kept; examination.** Every
16 [~~operator and plan manager~~] taxpayer shall keep in the English
17 language within the State, and preserve for a period of three
18 years, suitable records of gross rental, gross rental proceeds,
19 or fair market rental value relating to the business taxed under
20 this chapter, and such other books, records of account, and
21 invoices as may be required by the department, and all such
22 books, records, and invoices shall be open for examination at

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1 any time by the department or the Multistate Tax Commission
2 pursuant to chapter 255, or the authorized representative
3 thereof."

4 SECTION 11. Statutory material to be deleted is bracketed
5 and in strike through. New statutory material is underscored.

6 SECTION 12. This Act shall take effect on July 1, 2018.

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INTRODUCED BY: _____

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