

Legislative Analysis - Regulation of Certain Short-term Rentals and Hosting Platforms House Bill 5438 as introduced

The stated purpose of House Bill 5438 (HB5438) is “to provide for the registry, **promotion**, and regulation of certain short-term rentals and hosting platforms; to create certain databases; to provide for **the imposition and collection of a statewide excise tax**; to provide for the disbursement of the excise tax; **to provide for the powers and duties of certain state and local governmental officers and entities**; and to prescribe penalties and remedies.” Curiously, however, nowhere in the remaining 11 pages of HB5438 does the word ‘promote’ or ‘promotion’ appear, nor does any other reference to what a reader might reasonably interpret as a ‘promotional’, marketing or similar other related activity. Clearly, HB5438 does impose a statewide excise tax, but it exempts hotels and motels, as well as hotel condominiums, homes, and condominium units that are located within a resort that offers amenities such as golf, a skiing restaurant facility, or group meeting accommodation; exemptions that would appear to reflect key constituents, lobbyists and self-interests of the HB5438’s authors (sarcasm intended). Finally, while HB5438 purports to “provide for the powers and duties of certain local governmental officers and entities”, upon review it provides no power beyond what is already available to a local unit of government (LUG).

Simply put, what HB5438 does is impose a six-percent (6%) Excise Tax on short-term rentals (ST Rentals), in addition to the 6% Use Tax for which ST Rental owners are already liable, and it authorizes the Department of Licensing & Regulatory Affairs (the Department) to levy annual registration fees to ST Rental owners and hosting platforms such as VRBO and AirB&B, which in the case of these platforms can be as high as \$50,000 per year. In what appears to be an effort to gain the support of LUGs, HB5438’s authors provide that the lesser of 1% or \$1,000,000 of the Excise Tax proceeds be distributed to the Department and “the balance to the LUG in which the ST Rental is located for which the Excise Tax was paid.” However, because HB5438 lacks clarity with respect to a variety of issues, not the least of which is whether the 1% or \$1,000,000 is to be calculated on a state-wide basis or on the basis of each LUG in which the Excise Tax was paid, a reader is left to wonder what exactly the financial benefit to a LUG might be. The same uncertainty exists with the annual ST Rental owner and hosting platform registration fees; who gets them?

Other than the creation of a statewide ST Rental database, HB5438 serves little purpose than to levy taxes on the owners of ST Rentals, who are already subject to a 6% Michigan Use Tax (1937 PA 94, MCL 205.91 to 205.111). HB5438 provides no services or benefits to the owners of ST Rentals, and (in fact) the majority of reporting obligations required to populate the proposed database appear geared more toward assuring the collection and transfer of the new excise tax revenue that would result from HB5438 becoming legislation than to providing any meaningful utility to LUGs. Plain and simple, LUGs can already create their own database of ST Rentals, charge annual registration fees and impose regulations without any new authority. LUGs can also regulate every aspect of what the authors of HB5438 purport to be offering as some new or expanded local control. HB5438 appears therefore to represent a veiled attempt to placate the historical resistance of organizations like the Michigan Municipal League and Michigan Townships Association by not usurping local control and to buy the support of LUGs through the promise of sharing what would be a new tax for the benefit of state government.

Promote ST Rentals; not hardly. If anything, **HB5438 will put the owners of ST Rentals at a competitive and financial disadvantage and thereby discourage the inflow of commerce among the very LUGs in which they are located.**