

LABtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 11:19 AM
To: LABtestimony
Cc: grapozo@kauai.gov
Subject: *Submitted testimony for HB707 on Jan 31, 2017 09:00AM*

HB707

Submitted on: 1/30/2017

Testimony for LAB on Jan 31, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Gerald T. Rapozo	Dept. of Liquor Control	Oppose	No

Comments:

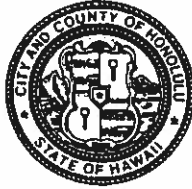
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**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR



January 30, 2017

The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair
and Members of the Committee on Labor & Public Employment

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FRANKLIN DON PACARRO, JR.
ADMINISTRATOR

ANNA C. HIRAI
ASSISTANT ADMINISTRATOR

Hearing: Tuesday, January 31, 2017
9:00 AM; Room 309

Position: Support in Part, Oppose in Part HB 707, Relating to Intoxicating Liquor

Dear Chair Johanson, Vice Chair Holt, and Members:

The Liquor Commission, City and County of Honolulu (Commission), appreciates the opportunity to provide testimony on House Bill 707, Relating to Intoxicating Liquor.

1. *Oppose Section 1.*

Section 1 proposes to amend HRS Section 281-17(a)(5) to exempt the appointment and removal of a liquor commission administrator from civil service law, and to require council advice and consent as part of the appointment process. The Commission opposes this proposed amendment as unnecessary. Effective July 1, 2011, a Honolulu City Council-initiated resolution culminated in an amendment to the Revised Charter of the City & County of Honolulu, which established the positions of Liquor Administrator and Assistant Administrator as civil service exempt.

Further, Section 3-9.2, Revised Ordinances of Honolulu, provides that Council approval shall be limited to the mayoral appointment of the Commission's five-member commission, while Charter Section 4-104 specifically identifies which department head appointments are subject to the advice and consent of Council. As the Commission is attached by Charter to the Department of Budget & Fiscal Services, and is not a separate department, making the appointment of the Commission Administrator subject to Council approval would be unwarranted.

2. *Support Section 2.*

Section 2 proposes to amend HRS Section 281-45(3) to permit the issuance of a Temporary liquor license when a party to a liquor license transfer is unable to provide a federal or state tax clearance certificate under specified circumstances. The inability of a liquor license applicant to obtain its Temporary license under the specified circumstances has not been an issue for this Commission. However, to the extent that the proposed amendment would benefit applicants in other counties, we would support the proposed amendment.

3. *Oppose Section 3.*

Section 3 proposes to amend HRS Section 281-51 to require the phrase "in a reputable way" as it pertains to the proposed operation of an applicant under a liquor license to be defined by rule. The inability of a liquor license applicant to determine what may be a "reputable way" to conduct business has not been an issue for this Commission, nor a reason for application denial in this Commission's history. Instances of misconduct or illegal activity associated with liquor license operations are adequately addressed by violation issuance and adjudication. We submit that requiring the definition of "in a reputable way" is similar to the requirement to define "dancing" that was imposed on the county liquor commissions in the 2015 legislative session.

4. *Support Section 4.*

Section 4 proposes to amend HRS Section 281-53.5 to add new paragraph (d) to specify which individuals are subject to criminal history record checks if the applicant is a corporation or other entity. While the Commission supports the purpose of this proposed amendment, we submit that the treatment of the subject matter as reflected in HB 1465 and SB 1291 would be more comprehensive in that said bills propose to make conforming changes to all sections of HRS Chapter 281 that touch upon business entity licensees (e.g., HRS Sections 281-41, -45, -53, and -53.5), and not just Section 281-53.5.

5. *Oppose Section 5.*

Section 5 proposes to amend HRS Section 281-104 to allow, rather than require, the representation and defense of liquor commission employees (including investigators) who are named in a criminal or civil action arising out of the individual's employment. The Commission opposes this proposed amendment as unnecessary and duplicative of current practice. In Honolulu County, if a Commission employee is named in either a criminal proceeding or a civil cause the Commission is required to determine if the actions of said employee were conducted within the course and scope of his or her employment. If the action of said employee is determined to be outside of the course and scope of employment, representation and defense at Commission expense is denied. We submit that the existing practice provides adequate and reasonable controls over the use of Commission funds for this type of activity, and is a more objective standard in determining whether an employee is or is not entitled to representation and defense at Commission expense.

The Liquor Commission appreciates the opportunity to provide testimony on House Bill 707, Relating to Intoxicating Liquor.

Respectfully submitted,


FRANKLIN DON PACARRO, JR.
Administrator

FDP:ACH

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Modify Tax Clearance Requirements for Liquor License Renewal

BILL NUMBER: HB 707

INTRODUCED BY: Souki by request

BRIEF SUMMARY: Amends HRS section 281-45(3) to allow the county liquor administrator to issue a temporary liquor license when the applicant, transferor, or transferee of the license is actively challenging a tax assessment, penalty, or other proceeding that prevents the issuance of a clearance from the appropriate federal or state tax agency.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: In general, a tax clearance is issued when a taxpayer has filed all required returns and has paid all tax assessed on those returns.

One of the primary uses of a tax clearance is to allow persons to bid on, and receive final payment on, a contract with state or county government. HRS section 103D-328, however, provides for two exceptions: (1) if the taxpayer is in good standing on a payment plan with the tax agency; and (2) if the taxpayer is contesting the validity of a tax debt in an administrative or judicial appeal.

The law requiring tax clearances upon application for an initial liquor license or to transfer a license allows for only the first of the above two exceptions. This bill would add the second one, and would make the law consistent with procurement law.

There is a defensible policy rationale for allowing a licensee to pass the tax clearance requirement if a licensee has not paid the tax because the licensee is contesting the liability in good faith through the administrative or judicial processes.

Digested 1/29/2017



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NOTICE OF HEARING

DATE: Tuesday, January 31, 2017

TIME: 9 AM

PLACE: Conference Room 309

TESTIMONY OF THE OCEAN TOURISM COALITION

SPEAKING IN STRONG SUPPORT OF HB 707

My name is James E. Coon, President of the Ocean Tourism Coalition. The OTC represents over 300 small ocean tourism businesses state wide. Most of these are family businesses which are locally owned and operated. Many of them have been in business for several decades and are an important and valued part of their respective communities. Many of these companies also have liquor licenses and these proposed housekeeping amendments will help the liquor departments operate more effectively and ensure that a responsible licensee will not unduly deprived of their license privilege. We humbly ask you to pass HB 707.

Sincerely,

James E. Coon, President