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To: The Honorable Aaron Ling Johanson, Chair;
The Honorable Lisa Kitagawa, Vice Chair;
and Members of the House Committee on Consumer Protection & Commerce

From: Isaac W. Choy, Director
Department of Taxation

Date: February 17, 2021
Time: 2:00 P.M.
Place: Via Video Conference, State Capitol

Re: H.B. 137, Relating to Liquor

The Department of Taxation (Department) offers the following comments regarding H.B. 137, for your consideration.

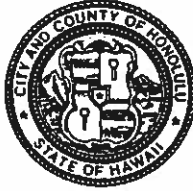
With respect to taxation, H.B. 137 removes the general right of the county liquor commissions to investigate violations of the liquor tax under chapter 244D, Hawaii Revised Statutes (HRS), or enter premises for the purposes of ensuring compliance with that chapter. This measure specifies that investigations of violations of chapter 244D, HRS, shall be referred to the Director of Taxation to hear and determine complaints. This measure is effective upon its approval.

The Department notes in general that authority for investigations and provisions for Department and county liquor commission cooperation exist in chapter 244D, HRS, as such, corresponding amendments may need to be made to other section in chapter 244D, HRS, to carry out this bill's intent.

Thank you for the opportunity to provide comments.

**LIQUOR COMMISSION
CITY AND COUNTY OF HONOLULU**

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ADMINISTRATOR

ANNA C. HIRAI
ASSISTANT ADMINISTRATOR

February 16, 2021

The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair
and Members of the Committee on
Consumer Protection & Commerce

House of Representatives
State Capitol, Room 329
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Johanson, Vice Chair Kitagawa, and Members of the Committee:

SUBJECT: House Bill 137
Relating to Intoxicating Liquor

The Liquor Commission, City and County of Honolulu (Commission), appreciates the opportunity to submit testimony in **support** of the above-referenced measure. Fundamentally, the proposed measure streamlines the licensing process and removes any undefined, arbitrary and capricious language contained within the statute. These changes are summarized below:

1. SECTION 1 CHANGE.

Jurisdiction and Powers. Proposed change to §HRS 281-17(10).

We support the removal of investigations regarding State Tax Law and the referral of those investigations to the State Department of Taxation. The investigators of the Honolulu Liquor Commission do not have the background to competently investigate tax law, nor do they have the training or experience in the forensic accounting. These investigations are better suited to the investigators in the State of Hawaii Department of Taxation, where these potential violations will be referred to. In the last 6 years and 7 months that this administration has been in place, there have been no tax fraud issues criminally investigated by this office.

2. SECTION 2 CHANGE.

General Right of Inspection. Proposed change to §HRS 281-20.

Same testimony as Item 1 above (re: Proposed change to §HRS 281-17(10)).

3. SECTION 3 CHANGE.

No license issued, when. Proposed change to HRS 281-45 (1).

We support the removal of the arbitrary “fit and proper” terminology. The language is undefined and overly broad. There are already a number of safeguards in place within the statute to disqualify individuals from holding a liquor license which are based on clear and articulable facts, and not vague presumptions and innuendos.

4. SECTION 4 CHANGES.

Application; penalty for false statements. Proposed changes to §HRS 281-53 and §HRS 281-53(4).

We support the removal of the requirement for every application to be verified by the oath of the applicant made before any official authorized by law to administer oaths. Having an applicant seek out and identify a notary willing to administer an undefined oath has been overly burdensome on applicants, many of who are attempting to navigate the licensing process on their own. We find that a notary who is able to verify the identity of the person filing the application is sufficient. Currently applications are accepted without the sworn oath requirement.

The removal of the perjury language from this statute is also appropriate as it is contrary to HRS 710-1060 Perjury. In accordance with the statute, Perjury occurs when a person in **any official proceeding** makes, under oath, a false statement which the person does not believe to be true. The mere filing of an application for a license does not constitute an official proceeding. The initial application process is merely to determine if the applicant meets the statutory requirements in order to appear before the Commission to request a liquor license.

5. SECTION 5 CHANGE.

Reference to investigator. Proposed change to §HRS 281-55.

The Commission supports the added discretion to allow the Administrator of the Liquor Commission to determine which applications are referred to the investigator for investigation. There are over 90 different types of applications, and a number of which are mere notifications or single use permits. These burdensome types of applications often require proper forms to be submitted. Removing these applications from the investigator’s workload would greatly streamline the process for the applicant, and allow the timely processing of more complex licensing applications. Currently, the Commission grants the

Administrator the specific authority to approve certain routine applications after the investigator reviews the information and reports what is already documented in the submitted documents.

6. SECTION 6 CHANGES.

Report by investigator. Proposed changes to §HRS 281-56 (6), (8), and (9).

The Commission supports the removal of any and all language which allows opinion, conjecture, innuendo, or the arbitrary, overly broad, and undefined terms such as "fit and proper" and "any and all other matters and things." By reducing the investigator's report to factual information substantiated by documentation, will allow the investigative process to be more streamlined and focused. Removing this arbitrary, and undefined language will also negate the potential for abuse in the future. This will also allow the investigator to present an investigation to the Commission based on objective facts and not subjective theory.

7. SECTION 7 CHANGE.

Entry for examination; obstructing liquor commission operations; penalty.
Proposed change to §HRS 281-79.

Same testimony as Item 1 above (re: Proposed change to §HRS 281-17(10)).

Thank you for the opportunity to testify on this proposed measure.

Sincerely,



FRANKLIN DON PACARRO, JR.
Administrator

HB-137

Submitted on: 2/16/2021 3:06:09 PM

Testimony for CPC on 2/17/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Peter Nakagawa	Honolulu Liquor Commission	Support	No

Comments:

I am in support of this bill in order to streamline the application process for businesses, and to remove any ambiguous or subjective language. Please see the written testimony by Administrator Pacarro. I will be happy to answer any questions from the Committee.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: LIQUOR, Withdraw Powers of County Liquor Inspectors to Enforce Tax Laws

BILL NUMBER: HB 137

INTRODUCED BY: TODD by request

EXECUTIVE SUMMARY: Provides that violations of liquor tax law shall be referred to the director of taxation for investigation. Repeals the general right of inspection without a warrant for potential violations of liquor tax law. Repeals the discretionary power of the liquor commission to deny a license to any person the commission finds is not fit and proper to hold a license. Requires applications for liquor licenses to be notarized. Provides the administrator of the liquor commission discretion over whether to refer applications for investigation. Repeals the requirement that investigative reports to the liquor commission include any and all matters that are relevant to the application or license in the judgment of the investigator.

SYNOPSIS: As it relates to taxation, section 281-20, HRS, currently provides that county investigators have the right to inspect the licensed premises to ascertain whether all of the conditions of the license and all provisions of chapter 281 and 244D (the Liquor Tax Law) are being complied with. The bill would delete the reference to chapter 244D.

EFFECTIVE DATE: 7/1/2021.

STAFF COMMENTS: Currently, county liquor commission examiners have primary responsibility to monitor regulatory compliance with chapter 281, HRS. County liquor investigators may well discover information relevant to compliance with the liquor tax laws as well. If they do, deletion of the language in 281-20 would prevent the county from disclosing information to the state. Such a wall would not be efficient, and DOTAX needs all the help in can get.

If this bill is not a solution in search of a problem, and erection of such a wall is considered to be desirable as a matter of public policy, then a corresponding amendment will need to be made in section 244D-10, HRS.

Digested 2/14/2021