

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
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To: House Committee on Economic Development

From: Cheryl Kakazu Park, Director

Date: February 2, 2024, 10:30 a.m.
State Capitol, Conference Room 423

Re: Testimony on H.B. No. 2762
Relating to Gaming

Thank you for the opportunity to submit testimony on this bill, which would license a gaming resort on lands under the control of the Office of Hawaiian Affairs and establish a Hawaii Gaming Commission. The Office of Information Practices (OIP) takes no position on the substance of this bill, but has concerns regarding (1) a provision providing complete confidentiality for financial information in a gaming license application that contradicts the Uniform Information Practices Act (UIPA) and (2) a confusing special meeting provision for the Commission that may conflict with the Sunshine Law. Therefore, **OIP has suggested amendments** to the bill for the following reasons.

Proposed subsection __-8(b), at page 32, lines 5-12, would provide complete confidentiality for all financial information submitted as part of a license application. For privately held companies, most if not all financial information included in a license or grant application or a contract bid can be withheld as confidential business information in any case under chapter 92F, HRS, the UIPA, but this provision would require confidentiality even for published financial information, such as the public filings a publicly held company must make or

puffery about a company's holdings from a sales brochure. It would be ridiculous to treat such information as confidential. **OIP therefore recommends that this subsection be amended so that lines 7-10 instead read “. . . any financial information submitted by each applicant shall be kept confidential by the commission to the extent permitted by law.”**

The Sunshine Law is only **part I** of chapter 92, HRS. The proposed Commission meets the definition of a “board” in section 92-2, HRS, and thus will be required to follow the Sunshine Law's requirements, as is appropriate given its powers and responsibilities. It is not necessary to specifically state that the Commission is subject to Sunshine Law, as the bill incorrectly attempts to do by referring to chapter 92 (without also adding “part I”) on page 13, line 13. **Although the Commission would be required to follow the Sunshine Law's requirements, the special meeting provision in proposed subsection __-3(e), at page 13 line 16 to page 14 line 2, confusingly appears to set separate and slightly different requirements for special meetings and may be based on an incorrect assumption that special meetings would not be subject to the Sunshine Law's requirements.**

First, under this bill a special meeting may be called “upon seventy-two hours written notice to each member.” The Sunshine Law does not set a requirement for giving notice to board members, but does require filing public notice of meetings at least six days before the meeting date. **Thus, if the Commission tried to call a special meeting by giving written notice to each member four days ahead of the meeting date, it would meet the 72-hour requirement in this proposal, but would not meet the Sunshine Law's 6-day notice requirement, and so it could not hold the meeting.** It could, of course, post public notice of the meeting six or more days ahead and also give written notice to

its members seventy-two hours ahead, so strictly speaking this is not a conflict between the bill and the Sunshine Law, but it is confusing since it implies that written notice to the members would be the only requirement for calling a special meeting.

Second, the bill also requires the commission to “keep a complete and accurate record of all its meetings,” but since the Sunshine Law already has detailed minutes requirements that would apply to the Commission’s meetings, the **additional “complete and accurate record” requirement in this bill is duplicative and confusing.**

To avoid confusion resulting from requirements that overlap and duplicate the Sunshine Law, OIP recommends that subsection (e) be replaced with the following:

(e) The commission~~[, subject to chapter 92,]~~ shall hold at least one meeting in each quarter of the State’s fiscal year. The commission shall hold its initial meeting within one year of the effective date of this Act. Special meetings may be called by the chairperson or any three members ~~[upon seventy-two hours written notice to each member]~~. Three members shall constitute a quorum to conduct business. Any action to vote or make a final determination shall require a majority vote of all members to which the commission is entitled. ~~[The commission shall keep a complete and accurate record of all its meetings.]~~

Thank you for considering OIP’s proposed amendments.



HOUSE BILL 2762
RELATING TO GAMING
House Committee on Economic Development

February 2, 2024

10:30 am

Room 423

The Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees (BOT) provide **COMMENTS** on this House Bill 2762, which grants a forty-year gaming license for a single integrated resort property on lands under the control of the Office of Hawaiian Affairs designated for commercial use on the island of O‘ahu excluding lands west of Ko Olina, establishes the Hawai‘i Gaming Commission, imposes wagering tax on gross gaming revenue, creates the State Gaming Fund and appropriates funds.

OHA recognizes the ways in which gaming provides an economic driver that can provide a steady revenue stream to support programs and services that improve the lives of Native Hawaiians here in our homeland. Much of what we have learned comes from state and federally recognized native nations on the Continental U.S. According to the National Indian Gaming Commission, revenues from the nation's gaming tribes have risen steadily, from \$14.7 billion in 2012 to \$40.9 billion in 2022, eclipsing the take of commercial casinos.

Gaming dollars have appreciably improved the basic health and education on reservations. The assistant secretary of Indian affairs at the U. S. Department of the Interior wrote in 2008 that “Indian gaming is simply the most successful economic venture ever to occur consistently across a wide range of American Indian reservations.” The revenue generated by native gaming directly funds social and health services critical for tribal members and citizens. Further, these kinds of ventures also offer employment opportunities that can benefit native and non-native peoples alike.

OHA would also like to highlight the way gaming may be a first step into a broader, diversified economic engine for our agency. Many native tribes and nations have matured these economic drivers to include entertainment venues, hotels and conference centers.



HOUSE BILL 2762
RELATING TO GAMING
House Committee on Economic Development

While this economic driver can have positive impacts, OHA would also like to bring to this committee’s attention some counterbalancing considerations. Despite its prohibition, Hawai‘i continues to carry an economic burden from gambling. A 2009 study by the National Council on Problem Gambling estimated that the social costs of gambling addiction in Hawai‘i from 20,000 problem gamblers and 10,000 pathological gamblers may be as high as \$26,300,000. Further, a 2016 survey update by the National Council on Problem Gambling indicated that the number of problem gamblers had risen to nearly 25,000 and that Hawai‘i remained one of ten states that did not set aside funds to specifically address problem gambling.

We are especially sensitive to these alarming statistics because of the ways gambling addiction impacts native peoples and those in poverty. A 2016 study found that Native Americans had twice the rate of problem gambling.¹ Additionally, a 2013 study “found that problem gambling was twice as likely in neighborhoods with the highest levels of concentrated poverty compared to neighborhoods with the lowest poverty levels.”²

OHA also recognizes that the process for establishing the various components necessary for a successful gaming venture requires development of a complex governance infrastructure. As outlined in the proposal, it would include the establishment of a commission, administrative rules and more. Because of the length and complexity of this measure, OHA is not equipped to provide comments on specific language at this moment. If the committee chooses to advance this measure, OHA will continue to analyze the bill as is written so that our Board of Trustees may consider offering comments on specific language in future hearings.

Mahalo nui for the opportunity to testify on HB2762.

¹ Patterson—Silver Wolf, David A., et al. [“Sociocultural Influences on Gambling and Alcohol Use among Native Americans in the United States.”](https://doi.org/10.1007/s10899-014-9512-z) Journal of Gambling Studies, vol. 31, no. 4, 19 Nov. 2014, pp. 1387–1404, <https://doi.org/10.1007/s10899-014-9512-z>.

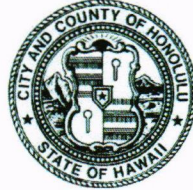
² Wilde, Cathy. [“People in Poor Neighborhoods Are Twice as Likely to Have Gambling Problems, Study Finds.”](http://www.buffalo.edu/newsroom/2014/01/03/people-in-poor-neighborhoods-are-twice-as-likely-to-have-gambling-problems-study-finds/) University of Buffalo, 3 Jan. 2014.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

POLICE DEPARTMENT
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HOPE LUNA NUI MĀKA'I

OUR REFERENCE **ML-HR**

February 2, 2024

The Honorable Daniel Holt, Chair
and Members
Committee on Economic Development
House of Representatives
415 South Beretania Street, Room 423
Honolulu, Hawaii 96813

Dear Chair Holt and Members:

SUBJECT: House Bill No. 2762, Relating to Gaming

I am Mike Lambert, Major of the Narcotics/Vice Division of the Honolulu Police Department (HPD), City and County of Honolulu.

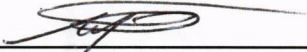
The HPD opposes House Bill No. 2762, Relating to Gaming.

The HPD believes that all forms of gambling are associated with a great amount of social ills and financial ruin for many people. Gambling greatly affects a person's job, family, and overall life. Additionally, gambling creates a substantial negative impact on public safety and welfare in our community.

Numerous studies have confirmed that gambling causes problems such as bankruptcy, theft, embezzlement, suicide, child abuse and neglect, divorce, incarceration, and homelessness.


The HPD urges you to oppose House Bill 2762, Relating to Gaming. Thank you for the opportunity to testify.

APPROVED:



Arthur J. Logan
Chief of Police

Sincerely,


Mike Lambert, Major
Narcotics/Vice Division

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Casino gaming on Hawaiian home lands

BILL NUMBER: HB 2762

INTRODUCED BY: HOLT

EXECUTIVE SUMMARY: Grants forty-year gaming license for a single integrated resort property on lands under the control of the Office of Hawaiian Affairs designated for commercial use on the island of Oahu excluding lands west of Ko Olina. Establishes the Hawai'i Gaming Commission. Imposes wagering tax on gross gaming revenue. Creates the State Gaming Fund. Appropriates funds.

SYNOPSIS: Adds a new chapter to the HRS authorizing casino gaming. Creates a gaming commission with powers necessary to supervise casino gaming and to collect taxes imposed by the chapter. The gaming commission may award one nontransferable gaming license, along with supplier's licenses and occupational licenses.

Section -8(d) provides that the application fee to compete for the gaming license is \$1 million, supposedly to defray the costs associated with an applicant's background investigation, so that if the investigation costs more than \$1 million the applicant will have to pay the difference.

Section -19 provides for a wagering tax of 45% of gross gaming revenues.

Section 7 of the bill provides that the successful licensee will be expected to pay an additional \$5 million to DHHL no later than the day on which the casino opens.

Provides other technical and conforming provisions.

EFFECTIVE DATE: July 1, 2024.

STAFF COMMENTS: When deciding to legalize gaming, we need to be mindful about the possibility of opening Pandora's box to a degree greater than we may have anticipated.

This possibility arises because of a federal law called the Indian Gaming Regulatory Act, or IGRA, 25 U.S.C. §§ 2701 et seq. President Ronald Reagan signed it into law on October 17, 1988, and, interestingly enough, the primary legislators involved in drafting it were Senator Daniel Inouye of Hawaii, Representative and then (as of 1987) Senator John McCain of Arizona, and Representative Mo Udall of Arizona.

The IGRA allows Indian tribes to conduct gaming operations in a State, even if the State doesn't agree, under certain conditions. Basically, you need to have an Indian tribe, Indian lands, and gambling that is permitted by the State.

We now have neither Indians nor Indian lands here. However, there's nothing to prevent Native Americans headquartered elsewhere from packing their bags and moving here if the opportunity

is right. Indian lands usually means a reservation, but it could be any lands over which an Indian tribe exercises governmental power. It is possible for any of the federally recognized Native American tribes from whipping out a checkbook, buying up some land, and then going to the Department of the Interior to invoke a process called “fee-to-trust.” That process would result in the tribe acquiring governmental power over the land. See <https://www.doi.gov/ocl/trust-land-acquisition>.

Once those elements are in place, the IGRA says that the State will need to allow casino gaming on tribal lands if it allows casino gaming anywhere else. Those are the rules for what the IGRA calls “Class III gaming.” Thus, if this bill passes, casino gaming can be allowed in other locations in Hawaii for Indians on Indian lands.

There will be some temporary hurdles. A tribal ordinance permitting the gaming needs to be approved by the National Indian Gaming Commission, which shouldn’t be tough for a tribe that already conducts Class III gaming in another state. Finally, either the state and the tribe need to negotiate a compact, or deal, or the Department of the Interior needs to approve regulatory procedures over the gaming. In other words, if the tribe and the State don’t agree to a deal the Department of the Interior can shove one down the State’s throat.

And here is the kicker. The IGRA also provides that States are not allowed to levy taxes or fees on tribal gambling, unless specifically allowed in the compact. Thus, not only can an Indian tribe come to Hawaii to conduct casino gambling, but it might be able to conduct the gambling free of State tax. Here, that could be a tremendous competitive advantage over the proposed DHHL casino, where this bill specifically provides for a forty-five per cent (45%) tax on gross gaming revenues. And that may be on top of the familiar Hawaii GET, no exemption for which is provided in this bill.

The reason none of this has happened yet in Hawaii is simple. Hawaii has not allowed any form of gambling so far. So, under the IGRA, not even Class II gaming (bingo games and similar) is allowed in Hawaii.

All of that being said, are we in Hawaii ready for Class III gaming and the consequences that may well ensue from them?

Digested: 1/31/2024

HB-2762

Submitted on: 1/30/2024 1:05:16 PM

Testimony for ECD on 2/2/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Oppose	Written Testimony Only

Comments:

I **oppose** this Bill.

HB-2762

Submitted on: 1/31/2024 2:38:57 AM

Testimony for ECD on 2/2/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

Please support this bill! Mahalo.

HB-2762

Submitted on: 2/2/2024 8:49:32 AM

Testimony for ECD on 2/2/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Angela Melody Young	CARES	Oppose	Remotely Via Zoom

Comments:

Kapalama NSW testifies in strong opposition.