

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Legalizes poker rooms and other gaming activities

BILL NUMBER: HB 383

INTRODUCED BY: TODD

EXECUTIVE SUMMARY: Establishes a state poker commission to oversee the licensing and operation of specified gaming activities in the State, including live poker rooms. Designates as commissioners the respective directors of business, economic development, and tourism; commerce and consumer affairs; and taxation; or their designees. Appropriates funds.

SYNOPSIS: Adds a new chapter to the HRS establishing the state poker commission and specifying regulation of the gaming industry.

Amends section 712/1220, HRS, to decriminalize gaming conducted in accordance with the new chapter.

EFFECTIVE DATE: 7/1/2021.

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>. Under 25 U.S.C. section 5108 and 25 CFR sections 151.10 and 151.11, the State and local governments would be notified of and would have the opportunity to object to such acquisitions, but the Secretary of the Interior would make the final call; neither the State nor local government is given veto authority over a fee-to-trust application.

Once those elements are in place, the IGRA says that the State will need to allow gaming on tribal lands if it allows similar gaming anywhere else. Those are the rules for what the IGRA calls “Class III gaming.” Thus, if this bill passes, poker rooms 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. That could be a tremendous competitive advantage over the proposed state poker rooms.

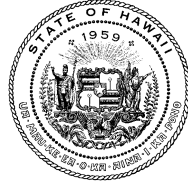
The reason none of this has happened yet in Hawaii is simple. Hawaii has not allowed any form of gambling so far. So, under the IGRA, not even Class II gaming (bingo games and similar) is allowed in Hawaii.

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

Digested 2/8/2021

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

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DEPARTMENT OF TAXATION
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To: The Honorable Sean Quinlan, Chair;
The Honorable Daniel Holt, Vice Chair;
and Members of the House Committee on Economic Development

From: Isaac W. Choy, Director
Department of Taxation

Date: February 10, 2021
Time: 9:30 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 383, Relating to a State Poker Commission

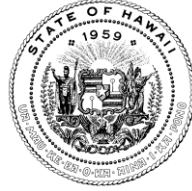
The Department of Taxation (Department) offers the following comments regarding H.B. 383, for your consideration.

H.B. 383 creates a state poker commission comprised of three members, including the Director of Taxation or the Director's assignee. The commission is tasked with reviewing and approving applications for gaming licenses across the state, including for live poker rooms and other gaming activities approved by the commission.

The Department notes it has no expertise in gaming. Beyond certification of tax compliance as required by statute, the Department should not have input on whether licenses are issued for gaming. This is especially true given the wide authority of the commission to approve and license "other gaming activities" beyond the poker rooms specifically contemplated by this bill. The Department recommends the commission be comprised of parties with substantive knowledge and expertise of gaming and its regulation.

The Department is willing and able to provide certification of tax compliance and other records that are required by statute for any license applicant or operator.

Thank you for the opportunity to provide comments.



DAVID Y. IGE
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**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Economic Development
Wednesday, February 10, 2021
9:30 a.m.
Via Videoconference**

**On the following measure:
H.B. 383, RELATING TO A STATE POKER COMMISSION**

WRITTEN TESTIMONY ONLY

Chair Quinlan and Members of the Committee:

My name is Catherine Awakuni Colón, and I am the Director of the Department of Commerce and Consumer Affairs (DCCA or Department). The Department offers comments on this bill, which appoints the DCCA director, or the director's designee, to serve as one of three commissioners on a state poker commission attached to the Department of Business, Economic Development, and Tourism.

The Department notes that there are no fewer than three House bills and four Senate bills that propose some form of gaming, including casino gaming, lottery, poker, and sports gambling. In addition, one House bill expands the offense of promoting gambling in the first degree by including the act of hosting activities that advance gambling activity on real property.

Although the Department recognizes the need for the Legislature to explore various means of economic recovery for the State, it urges the Committee to consider a

Testimony of DCCA

H.B. 383

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more comprehensive review of Hawaii's potential legalization of gambling before directing already limited state resources¹ to a particular form of gaming.

Thank you for the opportunity to testify on this bill.

¹ This bill would require the commission to conduct activities such as: reviewing applications and awarding gaming licenses to operate live poker rooms and other gaming activities; establishing and enforcing terms and conditions for maintaining a valid gaming license; and promulgating administrative rules to effectuate the bill's proposed statutory chapter.

HB-383

Submitted on: 2/9/2021 9:14:03 AM

Testimony for ECD on 2/10/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jamil Newirth	Individual	Support	No

Comments:

Dear Committee Members hearing HB383 related to the formation of a state poker commission here in Hawaii. I do not play poker and thus, I am not very familiar with the game. I am, however, aware that unauthorized, illegal poker games are taking place here in Hawaii and that such are conducive to creating an opportunity for crime and even violence. These underground, illegal games taking place appear to be prevalent and present a risk to our community, which I believe will continue until safe and legal live poker venues are offered to people here in Hawaii who play poker. Additionally, having legal live poker rooms here in Hawaii would provide a source of tax revenue for the State, employment opportunities for residents and the chance to hold televised poker tournaments whereby the State could promote itself. I hope this Committee is able to see the benefits of HB383 and thank you for the opportunity to submit this testimony.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT
ON
HOUSE BILL NO. 383

February 10, 2021
9:30 a.m.
Room 312

RELATING TO A STATE POKER COMMISSION

The Department of Budget and Finance (B&F) offers comments on House Bill (H.B.) No. 383.

H.B. No. 383 establishes a State Poker Commission (Commission) to oversee the licensing and operation of specified gaming activities; designates members to serve on the Commission; establishes a Gaming Regulation Special Fund; and appropriates an unspecified amount of general funds for FY 22 for operating expenses relating to the establishment of the Commission and an unspecified number of full-time equivalent positions for staffing of the Commission.

The measure further outlines the powers and duties of the Commission, such as the review of applications; awarding gaming licenses; establishing terms and conditions for licenses and licensees; adoption of rules; and compliance with Commission established terms, conditions, and rules. It also establishes fees and penalties related to license applications or violations and specifies that the Directors of the Departments of Business, Economic Development and Tourism; Commerce and Consumer Affairs; and Taxation serve on the commission or their respective designees.

As a matter of general policy, B&F does not support the creation of any special fund which does not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. Regarding H.B. No. 383, it is difficult to determine whether the proposed special fund would be self-sustaining.

B&F notes that H.B. No. 383 does not provide for a special tax on poker or other Commission authorized gaming revenues, and defers to the Office of the Governor and Department of the Attorney General for policy impacts and implications of poker and any other authorizing gaming activities pursuant to this measure.

Thank you for your consideration of our comments.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE SEAN QUINLAN, CHAIR
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT
Thirty-First State Legislature
Regular Session of 2021
State of Hawai`i

February 10, 2021

RE: H.B. 383; RELATING TO STATE POKER COMMISSION.

Chair Quinlan, Vice Chair Holt, and members of the House Committee on Economic Development, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong opposition to H.B. 383.

The purpose of this bill is to establish a state poker commission to oversee and regulate "live poker rooms" and potentially other types of gaming activities. While the Department understands there is an urgent need to develop new industries, in order to safeguard Hawaii's future, we strongly urge the Legislature not to turn to poker rooms or other forms of gambling, which are highly likely to have a substantial negative impact on public safety and welfare.

While there is limited research on the effects of non-casino commercial gambling and crime, there is a known correlation between problem gamblers and crime.¹ In 2010, an Australian study found that 15.2% of problem gamblers admitted to illegal activity; the most common "gambling-related illegal offense[s] were] theft, fraud, robbery and assault, and breach of apprehended violence orders."² And while problem gamblers comprise only a small portion of any population, it is estimated that "one person's gambling problem typically affects 5 to 10 people."³ Moreover, "38% of problem gamblers had experienced physical [intimate partner violence], and 37% were perpetrators of physical [intimate partner violence]."⁴

¹ Wheeler, Sarah A., David K. Round, John K. Wilson; Centre for Regulation and Market Analysis, School of Commerce, University of South Australia; "The Relationship Between Crime and Electronic Gaming Expenditure: Evidence from Victoria, Australia" (October 19, 2010), citing . Available online at: <http://stoppredatorygambling.org/site/wp-content/uploads/2012/12/The-Relationship-Between-Crime-and-Electronic-Gaming-Expenditure.pdf>; last accessed February 8, 2021.

² *Id.*, at 4.

³ Latvala, T., Lintonen, T. & Konu, A. Public health effects of gambling – debate on a conceptual model. *BMC Public Health* 19, 1077 (2019). <https://doi.org/10.1186/s12889-019-7391-z>

⁴ *Id.*

To the extent a poker room can be compared to a small-scale casino, it has been found that, with the opening of a new Indian-owned casino, violent crime, auto thefts, larceny & bankruptcies in the area increased by approximately 10%.⁵ Moreover, crime in the surrounding communities also increased, suggesting an overall increase in aggregate crime, rather than just transferring from one community to the next.⁶ A nationwide study in 2004 also found a sharp increase in crime after the opening of a new casino, with a relatively low effect shortly after the casino opens, which grows over time.⁷ Overall, that study concluded that approximately 8% of crime in “casino counties” was attributable to the casino, resulting in an average social cost of approximately \$75 per adult. While poker rooms are clearly not the exact equivalent of a casino, multiple poker rooms could have a similar effect, and it does appear that H.B. 383 anticipates the opening of multiple poker rooms, in addition to other unspecified future gambling activities.

In the same vein, a recent study commissioned by the Hawaii State Commission on the Status of Women (“HSCSW”) anticipated a significant increase in sex trafficking and domestic in our community, if a casino were to open on Oahu.⁸ “In 2020, Child and Family Services...identified 97 sex trafficking victims among its clients,” statewide; this spanned five different islands.”⁹ Susannah Wesley Community Center, another community-based service provider, reported a 65% increase in the number of people needing sex trafficking-specific therapy, during the COVID-19 pandemic alone.¹⁰

Seeing that Hawaii’s sex trafficking industry is clearly subject to increase, given changes in the economic climate, one can only infer that adding multiple poker rooms and other unspecified gambling activities into the mix would further exacerbate this already staggering problem. As with casinos, poker rooms could be expected to attract large numbers of men with disposable income, and a 2010 federal study found that “casino patrons were 17% more likely than the average survey respondent to have paid for sex in the past year.”¹¹

Despite the substantial hardship of steering Hawaii’s economic recovery in the coming years, from the first global pandemic seen in over 100 years, the Department strongly urges the Legislature not to give in to temptation to introduce such dangerous—albeit lucrative—industries as poker rooms, casinos, or other forms of commercial gambling into Hawaii’s communities. In the long-run, the high risk for increased crime—including sex trafficking and domestic violence—outweighs any potential income.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly opposes H.B. 383. Thank you for the opportunity to testify on this matter.

⁵ Kearney, Melissa Schettini; Brookings Institution; “The Economic Winners and Losers of Legalized Gambling,” pp. 6-7, internal references omitted (February 2005). Available online at: <https://www.brookings.edu/wp-content/uploads/2016/06/200502kearney.pdf>; last accessed February 9, 2021.

⁶ *Id.*

⁷ *Id.*, at 8, *citing* Grinols, Earl L. and David B. Mustard. 2004. Casinos, Crime, and Community Costs. University of Illinois and University of Georgia working paper. That study was based on an analysis of 3,165 counties across the United States, using county-level crime data on the 7 FBI Index 1 offenses (robbery, aggravated assault, rape, murder, larceny, burglary, and auto theft) from 1977 to 1996.

⁸ Hawai‘i State Commission on the Status of Women, “Gambling With Women’s Safety: A Feminist Assessment of Proposed Resort-Casino,” January 26, 2021. Available online at https://humanservices.hawaii.gov/wp-content/uploads/2021/02/1.26.21-r2.1.21-GIS-FINAL_DHHL-Casino.pdf; last accessed February 4, 2021.

⁹ *Id.*, at page 3.

¹⁰ *Id.*, at page 4.

¹¹ *Id.*, at page 4. Internal references omitted.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

DAVID Y. IGE
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CHUNG I. CHANG
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Statement of
MIKE MCCARTNEY
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

Wednesday, February 10, 2021
9:30 AM
State Capitol, Conference Room 312

In consideration of
HB383
RELATING TO RELATING TO A STATE POKER COMMISSION.

Chair Quinlan, Vice Chair Holt and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) opposes HB383 that would establish a state poker commission within the Department of Business, Economic Development, and Tourism.

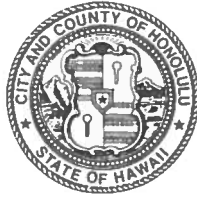
I am in opposition of this bill because the benefits would not exceed the social costs of gambling in the State of Hawai'i. After many years of studying this issue, I don't see the economic value to our community.

Thank you for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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RICK BLANGIARDI
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
AARON TAKASAKI-YOUNG
DEPUTY CHIEFS

OUR REFERENCE PJ-GK

February 10, 2021

The Honorable Sean Quinlan, Chair
and Members
Committee on Economic Development
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 312
Honolulu, Hawaii 96813

Dear Chair Quinlan and Members:

SUBJECT: House Bill No. 383, Relating to a State Poker Commission

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

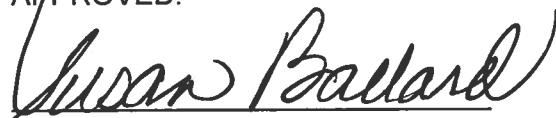
The HPD opposes House Bill No. 383, Relating to a State Poker Commission.

The HPD opposes the legalization of gambling in Hawaii. Numerous studies have confirmed that gambling causes problems such as bankruptcy, theft, embezzlement, suicide, child abuse and neglect, divorce, incarceration, and homelessness. Studies have also demonstrated that gambling schemes are essentially regressive taxes on low-income people, those who can least afford to participate.

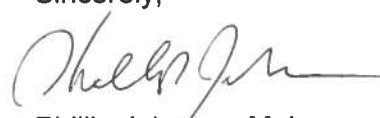
The financial burden associated with these problems will far outweigh any benefit realized in the name of community betterment.

The HPD urges you to oppose House Bill No. 383, Relating to a State Poker Commission, and thanks you for the opportunity to testify.

APPROVED:


Susan Ballard
Chief of Police

Sincerely,


Phillip Johnson, Major
Narcotics/Vice Division