

HOUSE BILL REPORT

HB 1667

As Passed House:
February 13, 2004

Title: An act relating to local government land use and zoning powers over gambling activities.

Brief Description: Clarifying local government land use and zoning powers over gambling activities.

Sponsors: By Representatives Conway, Hankins, Kenney, Crouse, Kirby, Delvin, Hudgins, Lantz, Sullivan, McCoy and Campbell.

Brief History:

Committee Activity:

Commerce & Labor: 1/14/04, 1/19/04 [DP].

Floor Activity:

Passed House: 2/13/04, 96-0.

Brief Summary of Bill

- States that the Gambling Act does not limit a local jurisdiction's authority to exercise land use and zoning powers with respect to gambling activities authorized under the Act.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 9 members: Representatives Conway, Chair; Wood, Vice Chair; McMorris, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse, Holmquist, Hudgins, Kenney and McCoy.

Staff: Chris Cordes (786-7103).

Background:

Under the Washington Gambling Act of 1973 (Act), the Washington State Gambling Commission (Commission) has exclusive authority to license and regulate gambling activities. The Act preempts local licensing and regulatory authority over gambling, except for those powers and duties specifically granted to a city or county under the Act. A city or county may enact only such local ordinances related to gambling that do not conflict with the rules of the Commission and that are consistent with the powers and duties granted to local jurisdictions under the Act.

A license issued by the Commission is legal authority to engage in the gambling activity for which the license is issued throughout incorporated and unincorporated areas of the state. However, a city or county may absolutely prohibit any or all of the gambling activities for which the license is issued, but may not change the scope of the license.

Article XI, section 11 of the State Constitution provides that a city or county may make and enforce local police, sanitary, and other regulations that are not in conflict with general laws. Local governments implement their comprehensive plans by adopting zoning ordinances. Zoning is a means of controlling use of land by placing certain restrictions on structures and improvements located on property in a particular zone.

According to information compiled by the Commission, nearly 60 local jurisdictions have prohibitions or other limits on gambling activities as of January 8, 2004. In 17 jurisdictions, a ban on card rooms also includes allowances for existing card rooms or provisions to phase out of card rooms. Six jurisdictions include some kind of zoning restrictions on gambling activities.

In June 2003, the Washington Court of Appeals, Division I, decided a case involving an ordinance adopted by the City of Edmonds. This ordinance banned card rooms and phased out existing card rooms. The Court upheld the ban, but also found that the provisions to phase out existing card rooms were preempted by state law. The Court explained that the city was authorized under state law to ban a gambling activity, but that it was not authorized to regulate such activity by phasing it out. The card room owner also claimed a vested right under a building permit that had been granted by the city before adopting its card room ban. The Court held that any claim to a vested right was extinguished when the city adopted its card room ban.

Summary of Bill:

A city, town, city-county, or county may exercise its land use and zoning powers with respect to any land uses involving gambling activities authorized by the Act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The only businesses that local jurisdictions cannot zone are those that engage in gambling activities. The state needs to get beyond the era that brought about this law. Citizens do not want either of the only two choices that the local jurisdictions are given: either ban a gambling activity or allow it completely. Local jurisdictions only want authority to prohibit the location of gambling activities near residential areas, schools, and other similar

areas. The bill clarifies the role of local jurisdiction in deciding business locations. It is not intended to apply to tribal gaming activities. Currently, cities use high tax rates to deter gambling activities. When buyers purchase property, they should know what the local zoning requirements are. In the best case, there should be cooperation between businesses and the local jurisdiction to place businesses where they are welcome.

Testimony Against: The current policy regarding enforcement of gambling is the best policy for the state because it takes politics out of approving gambling licenses. Local jurisdictions are permitted to ban activities and close existing locations, and the bill would not change that authority. It might, however, make the issues more complicated, and an unintended consequence might be to encourage the growth of card rooms.

Persons Testifying: (In support) Helen McGovern, City of Lakewood; Dave Arbaugh, City of Richland; Bob Mack, City of Bellevue; and Bob Higley, Washington Evangelicals for Responsible Government.

(Opposed) Rick Day and Ed Fleisher, Washington State Gambling Commission.

(In support, with concerns) Dolores Chiechi and Gary Murrey, Recreational Gaming Association.

Persons Signed In To Testify But Not Testifying: (In support) Jim Justin, Association of Washington Cities.