

PUBLIC HEARING ON
THE “SPORTS WAGERING AND FAIR COMPETITION AMENDMENT ACT OF
2022,” BILL 24-1063

Before the
Committee on Business and Economic Development
Council of the District of Columbia

The Honorable Kenyan R. McDuffie, Chairman

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Virtual Meeting Platform



Testimony of
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Good morning, Chairman McDuffie and members of the Committee on Business and Economic Development. I am Frank Suarez, Executive Director of the Office of Lottery and Gaming (“OLG”). I appreciate this opportunity to present testimony on Bill 24-1063, the “Sports Wagering and Fair Competition Amendment Act of 2022” (the “Bill”). Joining me virtually today are my colleagues Ridgely Bennett, Chief Counsel for OLG, Craig Lindsey, Agency Fiscal Officer; and Peter Alvarado, Director of Regulation and Oversight.

OLG’s mission is “to responsibly maximize revenue generation for the District of Columbia through the sale of innovative lottery and sports wagering products while providing gaming regulation and oversight that upholds the highest standards of integrity and public trust.” We are committed to our mission of responsibly maximizing revenue for the District. As such, OLG believes that enacting the Bill would significantly reduce sports wagering revenue for the District; place the overall annual revenue from OLG at risk; and negatively impact dozens of the city’s small businesses.

When the District’s original sports wagering legislation was proposed, prior to the pandemic and with the best information then available, revenue projections made were significantly higher than what we now know can be expected from the District given the size of its population. But we were not alone in those optimistic projections. The New York Times (“Times”) recently completed an in-depth investigation into the proliferation of sports wagering in the United States. The Times reported that “[t]he gambling industry used dubious data to push to legalize sports betting, in part by predicting states would be greeted by gushers of new tax revenue.”¹ The Times analyzed the industry’s claims and found “that many of the projections, at least so far, have

¹ David Enrich, “A Risky Wager: Key Findings From The Times’ Investigation of Sports Betting,” *The New York Times*, November 20, 2022, <https://www.nytimes.com/2022/11/20/business/sports-betting-investigation.html>.

been wildly optimistic.”² The New York Times investigation substantiates statements that OLG has consistently made in past public testimonies regarding the inflated expectations that were placed on sports wagering in the District. “Wildly optimistic” projections provided by private operators have continued to perpetuate a false narrative that the District sports wagering program would generate more revenue by allowing private operators to obtain Class C licenses for mobile and online sports wagering across the District.

In Fiscal Year 2022, GambetDC, the OLG-operated sportsbook, achieved a total handle of \$58.3 million, which was a 38% year-over-year increase. This handle resulted in an estimated transfer to the District of \$2.7 million. In contrast, private operators in the District grew at a much lower rate of 9% year-over-year and achieved a handle of \$160 million. Although private operator handle was almost three times as large as GambetDC, the tax revenue from private operators in Fiscal Year 2022 was \$1.4 million, down 33% compared to the prior year and about half as much as GambetDC transferred to the District. Private operators had almost three times the handle, but provided half of the revenue to the District when compared to GambetDC.

The Bill proposes a 15% tax rate on gross gaming revenue (“GGR”), which is total handle minus payout. This proposed rate is lower than the 20% tax rate currently allowed by District law if OLG were to open mobile and online sports wagering across the District to private operators. At the lower 15% tax rate, and assuming the Fiscal Year 2022 average payout from private operators of 91%, private operators would need to achieve a mobile/online handle of about \$204 million in order to match the revenue transferred to the District by GambetDC. That is 350% more than the GambetDC handle of \$58.3 million, if the private operators were to provide the same \$2.7 million in tax revenue from mobile/online as GambetDC provided in total transfer to the District

² *Id.*

in Fiscal Year 2022. Note that this scenario does not include the current Class A and Class B retail sportsbook operator tax revenue that would maintain a tax rate of 10% per the proposed Bill, and which experienced a 33% decline in Fiscal Year 2022 compared to the prior year. This is specific to mobile/online sports wagering only and, again, would require private operators to grow GambetDC's handle in the District by 350% to ensure the District breaks even on the change. Even if we utilized the legally authorized 20% tax rate, private operators would still have to increase GambetDC's District-wide handle by 260% to achieve the same \$2.7 million in tax revenue from mobile/online sports wagering. That is likely an insurmountable task for private operators given the much lower 9% growth in handle that private operators were able to attain in Fiscal Year 2022 and the increased competition and anticipated negative impact of Maryland's recent launch of mobile/online sports wagering last month.

Moreover, according to the New York Times, "The gambling industry managed to scare state lawmakers into keeping tax rates low, in part by trotting out data about a sprawling underworld of illegal gambling³." The Times found that "those figures, which suggested that Americans were placing as much as \$400 billion of illicit bets each year, were unreliable."⁴ One expert stated that "The number is pretty much pulled from the air"⁵ when referring to the often referenced \$400 billion estimate.

The current 33% decline in tax revenue from private operators in Fiscal Year 2022 illustrates how an increased reliance on privately-operated sports wagering is also a riskier revenue stream for the District. While the GambetDC model guarantees that the District will receive a

³ Eric Lipton and Kenneth P. Vogel, "Cigars, Booze, Money: How a Lobbying Blitz Made Sports Betting Ubiquitous," The New York Times, November 20, 2022, <https://www.nytimes.com/2022/11/20/business/sports-betting-lobbying-kansas.html>

⁴ *Id.*

⁵ *Id.*

minimum of 10% of handle before expenses, regardless of the actual payout of the sportsbook, private operators offer no guaranteed tax revenue. The Bill will only require private operators to provide 15% of GGR. In highly competitive markets like the District, private operators are offering higher payouts to attract players from competitors, which has led to a much lower GGR and therefore lower tax revenue. Fiscal Year 2022 illustrated the impact of this risk: Class A private operators like BetMGM failed to provide any tax revenue for the month of October 2021 and Caesar's Sportsbook, the District's largest retail sportsbook, provided only \$6,092 in tax revenue to the District in February 2022 after having taken in \$11.3 million in handle that month.

Not only does the Bill likely reduce the potential sports wagering revenue for the District, but it also puts annual OLG revenue from both DC Lottery and GambetDC at risk. Sections 3(a) and 3(b) of the Bill prevent OLG from extending its current contract with Intralot. The contract covers the general Lottery, in addition to Sports Wagering Gaming Systems, and related services. This prohibition places over \$40 million of annual lottery and sports wagering transfer at risk if any of the following occur:

- OLG receives no proposals to our competitive solicitation leaving the District without a gaming system vendor while OLG goes through a subsequent procurement process.
- OLG receives bids, but none of the bids are satisfactory or cannot be accepted because of legal prohibitions leaving the District without a gaming system vendor while OLG goes through a subsequent procurement process.
- OLG receives a protest on the solicitation leaving the District without a gaming system vendor while the contract is pending before the Contracts Appeals Board (CAB), or the CAB issues a ruling requiring OLG to rebid the contract leaving the

District without a vendor while OLG goes through a subsequent procurement process.

- The Council does not approve a recommended contract, leaving the District without a vendor while OLG goes through a subsequent procurement process.
- The new vendor is unable to timely convert to the new system, leaving the District without a vendor during the conversion process.

The Bill also limits OLG's ability to make any needed enhancements prior to the ending of the contract and may deter future vendors from bidding on any new gaming procurement. OLG would be unable to modify the contract to provide for enhanced performance or enhanced revenue to the District if the modification requires additional compensation to the vendor. Also, if Intralot proposed a modification necessary to performing the contractual requirements and that modification could not be executed because it requires additional compensation, Intralot could litigate this as a material change to the contract, potentially resulting in damages that would need to be paid by the District. Additionally, for any potential Offeror, this proposed amendment is a deterrent as OLG will not be able to guarantee our ability to maintain the current state of our gaming system or transition its gaming system by the time of award of a new contract.

The negative consequences of the Bill go beyond OLG and the revenue to the District. It will also harm the 58 small businesses throughout the District that are current GambetDC retailers, as well as others that would like to be part of the sports wagering industry since GambetDC offers small businesses in the District the lowest barrier of entry into sports wagering by providing all sports wagering equipment and fully operating the sportsbook. GambetDC retailers earned \$577,154 in commissions during Fiscal Year 2022. This revenue stream will be significantly reduced as small retailers will not be able to compete against the heavy advertising and promotions

coming from private operators. The increased competition will also make it difficult for GambetDC to provide resources for retailers as the overall revenue will likely decline and make less funds available for marketing and promotions.

Furthermore, the addition of D.C. Code § 36-621.06(c-1) in the Bill would grant an exclusive geofence for the premises of all Class B operators. The geolocation restrictions District players currently face with the Class A two-block radius and the federal enclave exclusionary zones are already complicated for players and businesses to understand and manage. Adding additional exclusionary zones for Class B locations will further confuse and frustrate players. In addition, this provision provides no protection for GambetDC retail locations, and prioritizes Class B businesses over other small businesses in the District that elected to offer sports wagering through GambetDC, thereby giving Class B operators an unfair advantage.

Under the current model, OLG can ensure that sports wagering across the District is done responsibly. The New York Times describes the sports wagering industry as an “advertising free for all.”⁶ in which “[g]ambling companies have carpeted social media, stadiums, billboards and airwaves with advertisements plugging their risk-free bets and other promotions. From January to October 2022, sports-betting platforms bought more than a quarter of a billion dollars of ads on national television — nearly four times what they spent in all of 2020.”² Private operators have been competing heavily to acquire players and, unlike lottery, sports wagering poses a higher risk of gambling addiction⁷, particularly among younger adults.⁸ Studies show that constant, aggressive advertising can have a negative impact on player health; allowing the District to be

⁶ *Id.*

⁷ Eric Adelson, “As sports betting goes mainstream, addiction experts are on high alert,” The Washington Post, September 6, 2022, <https://www.washingtonpost.com/sports/2022/09/06/sports-gambling-addiction/>

⁸ Marsha Mercer, “As sports betting grows, states tackle teenage problem gambling,” Stateline, July 12, 2022, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/07/12/as-sports-betting-grows-states-tackle-teenage-problem-gambling>

saturated by private operators will put increasingly more District players at risk. In contrast to private operators, OLG's business model is responsible and does not support over-saturation from GambetDC. Our core value of Responsible Growth, as a public service-oriented government agency, ensures that we will work to do what is best for our community. Careful and responsible gaming, supervised by OLG, will continue to provide revenue growth while protecting players.

GambetDC is experiencing strong growth across the board with significant handle, wager, and transfer growth in Fiscal Year 2022 (as of September 30, 2022). GambetDC has had more than 1.9 million wagers placed, equaling about \$58.3 million in handle, which is an increase of 59% in wagers and 38% in handle compared to Fiscal Year 2021. This strong growth has been driven by OLG's ongoing implementation of product enhancements. This includes increasing the GambetDC payout to 90%, which better aligns with the competitive payouts offered in Maryland and Virginia. GambetDC has also rapidly expanded its retail locations in Fiscal Year 2022. As of November 30, 2022, GambetDC has a total of 58 licensed retailers. Our continued enhancements to the player experience have also contributed to growth. This October, GambetDC launched a new mobile app with a significantly enhanced user experience that is more in line with what players experience when wagering with private operators.

As previously stated, OLG has a mission to responsibly maximize revenue, and we are confident that maintaining a District operated sportsbook as the sole operator of mobile/online sports wagering accomplishes that mission. The proposed Bill will have an adverse impact on the District's revenue, players, and small businesses. I look forward to the opportunity to ensure continued, responsible growth of gaming revenue for the District.

In closing Chairman McDuffie, I would like to thank you, the Council, and the Mayor for continued support of the Office of Lottery and Gaming and for this opportunity today. This concludes my testimony, and I am happy to answer any questions the Committee may have.



DC Sports Wagering Fact Sheet

2022 FY Snapshot (Unaudited)
October 1, 2021 - September 30, 2022

	GambetDC	Private Operators
Tax Revenue	--	\$1,437,521
General Fund Transfer	\$2,718,520	--
Wagers	1,948,640	2,272,702
Handle	\$58,288,932	\$160,046,007

Fiscal Year-Over-Year Comparison

	FY 2022	FY 2021	% Change
GambetDC Transfer	\$2,718,520	0	N/A ↑
GambetDC Wagers	1,948,640	1,226,366	59% ↑
GambetDC Handle	\$58,288,932	\$42,223,806	38% ↑
Private Operator Tax Revenue	\$1,437,521	\$2,156,293	(33.3%) ↓
Private Operator Wagers	2,272,702	1,573,673	44.4% ↑
Private Operator Handle	\$160,046,007	\$146,887,958	9.0% ↑

Key Facts

- Private operators are taxed at 10% of Gross Gaming Revenue (GGR), which is handle minus payout.
- The GambetDC contract guarantees that the District receives 10% of total handle before expenses.
- Total tax revenue received from private operators since inception of sports wagering through September 30, 2022 equals \$3,867,057. Total privately operated sports wagering license fees collected since inception (through September 30, 2022) equals \$2,143,900. When combined, total tax revenue and license fees equal \$6,010,957 received from private operators.
- Total expenses incurred by the District for regulating privately operated sports wagering since inception (through September 30, 2022) equals \$5,879,013. Therefore, the District has netted an overall gain of \$131,944 from privately operated sports wagering thus far.
- An analysis of the most recent 11 months (October 1, 2021, through August 30, 2022, unaudited) of U.S. sports wagering revenue data shows that the District provided \$5.46 per capita of sports wagering revenue to the general fund during that time. This is 55% higher than Virginia which reported obtaining \$3.52 per capita in tax revenue during the same time period.

Mobile/Online Sports Wagering Jurisdictions - Transfer/Tax Revenue (October 2021 - September 2022)

	Jurisdiction	Handle	Transfer/Tax Revenue		Population	Transfer/Tax Revenue per Capita
1	Rhode Island	\$524,510,305	51%	\$22,530,988	1,095,610	\$20.56
2	New Hampshire	\$884,207,098	51%	\$27,131,559	1,388,992	\$19.53
3	New Jersey*	\$11,518,209,151	8.5%/13%	\$98,822,066	9,267,130	\$10.66
4	Pennsylvania	\$7,198,464,728	36%	\$129,316,970	12,964,056	\$9.98
5	Illinois	\$9,073,548,513	15%	\$109,694,587	12,671,469	\$8.66
6	Tennessee	\$3,648,108,009	20%	\$55,231,170	6,975,218	\$7.92
7	Washington DC**	\$218,334,942	10%	\$4,156,042	670,050	\$6.20
8	Indiana	\$4,525,723,276	9.50%	\$34,058,282	6,805,985	\$5.00
9	Virginia	\$4,621,568,703	15%	\$37,708,076	8,642,274	\$4.36
10	Iowa	\$2,466,517,027	6.75%	\$11,643,146	3,193,079	\$3.65
11	Colorado	\$5,012,790,490	10%	\$16,137,392	5,812,069	\$2.78
12	West Virginia	\$601,269,116	10%	\$3,997,714	1,782,959	\$2.24
13	Michigan	\$4,829,531,347	8%	\$13,112,397	10,050,811	\$1.30

* New Jersey is a unique jurisdiction with Atlantic City as a major gambling/sports betting center similar to Nevada. The tax rate is 8.5% for retailer and 13% for mobile/online.

** Washington DC includes both privately operated sports betting and GambetDC.

Tax revenue numbers do not account for costs associated with regulation and oversight.

Source for Handle and Tax Revenue data: <https://www.legalsportsreport.com/sports-betting/revenue/>.

Source for 2021 Population Estimates: https://www.census.gov/data/datasets/time-series/demo/popest/2020s-state-total.html#par_textimage_500989927.