

Department of Planning and Budget

2013 Fiscal Impact Statement

1. Bill Number: SB714

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Lucas

3. Committee: General Laws and Technology

4. Title: Va. Toll Mitigation Act & Virginia Casino Gaming Commission; regulation of casino gaming, penalties.

5. Summary: Creates the Virginia Casino Gaming Commission as the licensing body for casino gaming. The bill sets up the regulatory system for casino gaming and provides penalties for violations of the casino gaming law. Proceeds of the gross receipts tax and admission tax imposed on casino gaming operators will be paid into the Toll Mitigation Fund, which shall be used to mitigate the tolls established to support construction and maintenance of the (i) Dominion Boulevard Bridge and Roadway Improvement Project and (ii) Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project. Under the bill, a referendum of the location of a casino gaming operation shall be limited to localities within the Hampton Roads Transportation District, and no initial license to operate a casino gaming operation may be issued unless a regional referendum approving casino gaming has been conducted and approved. In addition to the Toll Mitigation Fund, the bill establishes the Casino Gaming Commission Operations Fund, which shall be used for the Commission's operating expenses.

6. Budget Amendment Necessary: Yes. See items 8 and 11, below.

7. Fiscal Impact Estimates are indeterminate. See items 8 and 11, below.

8. Fiscal Implications: It is anticipated that the proposed bill will have a state revenue and expenditure impact; however, the impacts are indeterminate. Additionally, the proposed bill may have a local revenue impact that is also indeterminate.

The bill establishes the Virginia Casino Gaming Commission as an entity in the Commerce and Trade Secretariat responsible for the regulation of casino gaming in the Commonwealth. In furtherance of this responsibility, the Commission is authorized to hire an executive director and staff, including accountants, guards, and investigators. The Commission is required to establish an office for the transaction of its business and meet as necessary. Expenditures will include salaries and benefits, rent, information technology, travel, etc. Under the provisions of the bill, the Commission's operating expenses will be paid from the Casino Gaming Commission Operations Fund. Until casino gaming operations in the

Commonwealth authorized under the proposed legislation can generate sufficient revenue to support the Commission's functions, the Commission would require a treasury loan or a general fund appropriation.

The Casino Gaming Commission Operations Fund shall be used solely for the Commission's operations as it relates to the administration and regulation of casino gaming. The revenue stream for this fund is unclear. Proposed §59.1-560 in the bill provides for the revenue collected pursuant to the proposed §59.1-579, which creates a \$2.00 per person admissions tax for entry into a casino gaming operation, to be deposited to this fund. However, as drafted, proposed §59.1-579 states that revenue collected pursuant to the admissions tax is to be deposited to the newly created Toll Mitigation Fund. Proposed §59.1-580 provides for the monthly transfer of one-twelfth of the amount appropriated in the Appropriation Act for the Commission's operations from the Transportation Trust Fund to the Casino Gaming Commission Operations Fund, however, the bill does not address the deposit of revenue to the Transportation Trust Fund.

In addition to the Casino Gaming Commission Operations Fund, the bill establishes the Toll Mitigation Fund. Revenue deposited to the Toll Mitigation Fund will consist of revenue generated from a wagering tax equal to 20 percent of each licensed operator's adjusted gross receipts received from casino games and an admissions tax at a rate of \$2.00 per individual admitted to a casino. Both taxes will be paid to the Commission by the licensed operator. Moneys in the Toll Mitigation Fund shall be used solely for the purposes of mitigating the tolls established to support construction and maintenance for (i) the Dominion Boulevard Bridge and Roadway Improvement Project and (ii) the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project. The amount of revenue either tax may generate is indeterminate.

While the bill specifically establishes two taxes directly related to casino gaming operation, the bill may have an indeterminate impact on revenue generated from the following taxes: withholding; individual income; sales; transient occupancy, Business, License and Occupation License (BPOL); and meals. Under the provisions of the bill, casino operations may sell alcoholic beverages and will pay the requisite state and local license taxes.

Gambling winnings are subject to federal withholding tax under §3402 of the Internal Revenue Code (IRC). The Code of Virginia requires Virginia withholding whenever amounts are subject to federal withholding under IRC §3402. Therefore, most gambling winnings in excess of \$600, or that pay out more than 300-to-one odds will be subject to both federal and Virginia withholding. Also, Gambling winnings are also subject to federal and state income tax. To the extent that casinos do business in Virginia, the winnings of their customers will be subject to income tax. In addition, to the extent that the casinos are profitable, their income will also be subject to income tax. The amount of income tax revenue that would be generated by casinos and their customers cannot be estimated because there is no information as to the number, location, size, and timing of casinos that would open in Virginia.

While gambling permitted under the provisions of the bill would not be subject to sales tax, casinos would have to collect sales tax on any meals, drinks, cigarettes, souvenirs and other tangible property that they sell. Under current law, any county may impose a transient occupancy tax at a maximum rate of two percent on hotels, motels, boarding houses, campgrounds, and other facilities offering guest rooms, upon the adoption of an ordinance. The transient occupancy tax applies to rooms intended or suitable for dwelling or sleeping. Numerous counties have been authorized to impose the tax at a maximum rate of five percent; any city or town having general taxing powers is authorized to impose an excise tax on transient accommodations.

Additionally, casinos would be subject to a tax on their gross receipts if located in a city or county that imposes the BPOL tax. Finally, if approved by a referendum of voters, every county is authorized to levy a tax on food and beverages sold for human consumption, by a restaurant, as not to exceed four percent of the amount charged for such food and beverages. Certain counties are currently authorized to levy a tax on food and beverages without holding a referendum. Any city or town having general taxing powers is authorized to impose an excise tax on meals.

Also, the bill provides for several license and application fees. Along with an application for an operator's license, any individual desiring to operate a casino gaming operation shall pay a \$50,000 application fee to the Commission. The fee shall be used to defray the costs associated with the background investigation on the applicant conducted by the Commission. A supplier's permit is required in order to sell or lease, or lease, gaming equipment and supplies, or provide management services. The bill provides for an application fee of up to \$5,000 for a supplier's permit. In addition to revoking a license or suppliers permit, the Commission may assess a \$100,000 civil penalty fee for either a violation of the statute governing casino gaming or a regulation of the Commission. Similarly, in addition to revoking a service permit, the Commission may assess a \$10,000 civil penalty against the permit holder in violation of either the casino gaming statute or the Commission's regulations. The bill does not specify where such revenue will be deposited.

Finally, the proposed legislation establishes several new criminal offenses—Class 1 misdemeanors, Class 6 felonies, and Class 4 felonies. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to one year in jail, or 1 to 5 years in prison. A Class 4 felony carries a possible sentence of two to ten years in prison. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanant or otherwise local responsible prisoner held in a jail and \$12.00 a day for each state responsible inmate. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies

from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2012), the estimated total state support for local jails averaged \$26.54 per inmate, per day in FY 2011.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 3 of the 2012 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

Several state agencies within the Commonwealth regulate some form of gaming. The Office of Charitable and Regulatory Programs (OCRP) at the Virginia Department of Agriculture and Consumer Services (VDACS) regulates charitable gaming. The State Lottery Department runs the Virginia Lottery, which supports public K-12 education in the Commonwealth. The Virginia Racing Commission (VRC) promotes a native horse racing industry and regulates pari-mutuel wagering in the Commonwealth.

According to VDACS, the proposed bill is not anticipated to have an impact on its operations. Both the Lottery and VRC anticipate that the proposed bill will impact the amount of future revenue their operations generate. From a Lottery revenue perspective, although casino gaming tends to appeal to consumers differently from traditional lottery games, the expansion of game offerings to citizens who enjoy gaming, both lottery and casino, would likely reduce overall lottery sales and profits. It is anticipated that when a casino gaming facility opens in Virginia, some reduction in overall lottery sales revenues and profits would occur. Similarly, any additional gaming in the state would more than likely lessen the amount wagered on horse racing, which could mean less money would be available for transfer to the general fund, a reduction in the amount of funding deposited to the Virginia Breeders Fund to promote the horse racing industry, and a reduction in the amount of funding available to localities where the racetrack and satellite wagering facilities are located.

The Commission cannot issue an initial license to operate a casino gaming operation unless a regional referendum approving casino gaming is conducted and approved by the counties of Accomack, Greensville, Isle of Wight, James City, Northampton, Southampton, Surry, Sussex, and York, and the cities of Chesapeake, Emporia, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, and Virginia Beach. The State Board of Elections will be responsible for managing the referendum process, and its expenses will be defrayed.

9. Specific Agency or Political Subdivisions Affected: State Board of Elections; Departments of Alcoholic Beverage Control, Transportation, Corrections, and Taxation; Secretary of Commerce and Trade; Compensation Board; local and regional jails; State Lottery Department; and the Virginia Racing Commission.

10. Technical Amendment Necessary: Yes. Page 23, line 1409. The reference to the Transportation Trust Fund is unclear.

Also, proposed §59.1-560 provides for the deposit of revenue collected pursuant to the proposed §59.1-579, which establishes a \$2.00 per person admissions tax for entry into a casino gaming operation, to this fund. However, as drafted, proposed §59.1-579 states that revenue collected pursuant to the admissions tax is to be deposited to the newly created Toll Mitigation Fund. Proposed §59.1-580 provides for the monthly transfer of one-twelfth of the amount appropriated in the Appropriation Act for the Commission's operations from the Transportation Trust Fund to the Casino Gaming Commission Operations Fund, however, the bill does not address the deposit of revenue to the Transportation Trust Fund.

- 11. Other Comments:** Currently, 20 U.S. states allow some form of commercial casino gambling on non-Indian lands; all but two of those states (Mississippi and Nevada) also have established state lottery operations. In recent history, in particular, states that have legalized casino-style gambling have combined the oversight and control within their state lottery departments (Maryland, West Virginia, and New York). In total, seven state lotteries have regulatory oversight responsibility for casino gambling. Some of the remaining states have assigned the regulation and oversight of casino gambling to State Police, others regulate activities in conjunction with horse racing, or in conjunction with overall joint control over both commercial and Indian gaming. The coordination of oversight and regulation of casino gambling seems to depend upon the longevity of casino operations within the state, the size and scope of that state's lottery operation, and the size and scope of horse racing within that state.

Date: 1/18/13

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