

Department of Planning and Budget 2017 Fiscal Impact Statement

1. Bill Number: SB1499

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Lucas

3. Committee: General Laws and Technology

4. Title: Virginia Riverboat Gaming Commission; regulation of riverboat gaming; penalties.

5. Summary: Creates the Virginia Riverboat Gaming Commission as the licensing body for riverboat gaming. The bill specifies the licensing requirements for riverboat gaming and imposes penalties for violations of the riverboat gaming law, and it directs that riverboat gaming shall be limited to localities that have passed a referendum on the question of allowing riverboat gaming in the locality. The bill requires proceeds of the adjusted gross receipts tax and admission tax imposed on riverboat gaming licensees to be paid as follows: (i) 50 percent to the locality in which the riverboat gaming operation is located, and (ii) 50 percent into the Transportation Trust Fund.

6. Budget Amendment Necessary: Yes, Item 394 (Department of Corrections) HB1500/SB900 as introduced. Also, see Items 8 and 11, below.

7. Fiscal Impact Estimates: Preliminary. See Items 8 and 11, below.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2017	\$0	N/A
2018	\$50,000	GF
2019	\$0	N/A
2020	\$0	N/A
2021	\$0	N/A
2022	\$0	N/A
2023	\$0	N/A

8. Fiscal Implications: It is anticipated that this bill will have a state revenue and expenditure impact; however, some impacts can be determined but others cannot. The bill may have a local revenue impact that is also indeterminate. The bill may impact the number of persons imprisoned in state adult correctional facilities.

The bill establishes the Virginia Riverboat Gaming Commission (Commission) as an entity in the Commerce and Trade Secretariat responsible for the regulation of riverboat gaming in the Commonwealth. In furtherance of this responsibility, the Commission is authorized to

hire an executive secretary and staff, including inspectors, accountants, and guards. The Commission is required to establish an office for the transaction of its business and to 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 Riverboat Gaming Commission Operations Fund. The bill 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, established under the provisions of the bill. Until riverboat 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.

Revenue deposited to the Transportation Trust Fund will consist of 50 percent of the revenue generated from a wagering tax equal to 20 percent of each licensed operator's adjusted gross receipts received from riverboat gaming and 50 percent of the revenue generated from an admissions tax at a rate of \$2.00 per individual admitted to a riverboat gaming establishment. Fifty percent of the revenue generated from the aforementioned wagering tax and admissions tax will be deposited to the Local Riverboat Gaming Proceeds Fund, established under the provisions of this bill. Moneys collected and deposited into the Local Riverboat Gaming Proceeds Fund will be paid to localities in which riverboat gaming establishments are located. The Transportation Trust Fund will be used for transportation purposes as provided under § 33.2-1526, Code of Virginia.

Both the wagering tax and the admissions tax will be paid to the Commission by the licensed operator and deposited to the Transportation Trust Fund and the Local Riverboat Gaming Proceeds Fund. The amount of revenue either tax may generate is indeterminate. While the bill specifically establishes two taxes directly related to riverboat gaming operations, the bill may have an indeterminate impact on revenue generated from the following taxes: withholding; individual and corporate income; sales; transient occupancy, Business, License and Occupational License (BPOL); and meals. Under the provisions of the bill, riverboat gaming 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 \$5,000, or that pay out more than 300-to-one odds will be subject to both federal and Virginia withholding, whether the winner is a Virginia resident or a nonresident. Because gambling winnings are subject to federal and state income tax, the winnings of customers gambling in a Virginia riverboat gaming establishment will be subject to income tax. In addition, to the extent that the riverboat gaming establishments are profitable, their income will also be subject to income tax. The amount of income tax revenue that would be generated by riverboat gaming establishments 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, riverboat gaming establishments would have to collect sales tax on any meals, alcoholic beverages, cigarettes, souvenirs, and other tangible property that they sell. If the riverboat gaming establishment also operates a hotel, the room rentals would be subject to sales tax. The admissions tax imposed by the riverboat gaming bill would preempt any local admissions tax imposed by the locality in which a casino is located.

Additionally, riverboat gaming establishments would be subject to a tax on their gross receipts if located in a city or county that imposes the BPOL tax.

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 riverboat gaming operation is required to pay a \$50,000 application fee to the Commission. The fee will 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 gaming equipment and supplies, or provide management services. The bill provides for an application fee of \$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 riverboat 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 riverboat gaming statute or the Commission's regulations. The bill does not specify where such revenue will be deposited. Additionally, the bill provides that any person who conducts a riverboat gaming operation without first obtaining a license to do so or who conducts games after the revocation of his license would be subject to a civil penalty equal to the amount of gross receipts derived from wagering on games.

The bill 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 one to five years in prison. A Class 4 felony carries a possible sentence of two to ten years in prison. Therefore, the bill 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 2016), the estimated total state support for local jails averaged \$32.82 per inmate, per day in FY 2015.

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 780 of the 2016 Acts of Assembly 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 Virginia Lottery, which supports public K-12 education in the Commonwealth, oversees the sale of all lottery tickets. The Virginia Racing Commission (VRC) promotes a native horse racing industry and regulates pari-mutuel wagering in the Commonwealth.

It is anticipated that the bill may impact the future revenue generated from both the Lottery and VRC. From a Lottery revenue perspective, although riverboat gaming tends to appeal to consumers differently from traditional lottery games, the expansion of game offerings to citizens who enjoy gaming, both lottery and riverboat, could reduce overall lottery sales and profits. It is anticipated that when a riverboat gaming establishment opens in Virginia, some reduction in overall lottery sales revenues and profits would occur. Similarly, any additional gaming in the state may lessen the amount wagered on horse racing. The potential impact on these revenue streams is indeterminate.

The bill prevents any locality from adopting any ordinance or resolution regulating or prohibiting drinking or the use or dispensing of alcoholic beverages on a riverboat. The impact on the Department of Alcoholic Beverage Control (ABC) is indeterminate. The number of new riverboat gambling establishments and patrons is indeterminate.

In order to receive an operator's license from the Commission, riverboat gaming aboard excursion vessels and riverboats must be situated on designated navigable waters within the boundaries of the Commonwealth and subject to the local land use and property taxation authority of the locality. Also, the bill requires the Commission to notify the local governing body of the locality where a proposed riverboat gaming establishment will be located and consider the support of the local governing body and impact of the proposed establishment on the locality.

Finally, the bill limits riverboat gaming to those localities that have passed a referendum allowing riverboat gaming in the locality. Section 24.2-687, Code of Virginia, requires the governing body of any county, city, or town to provide for the preparation and printing of an explanation for each referendum question to be submitted to the voters of the county, city, or town to be distributed at the polling places on the day of the referendum election. The governing body may have the explanation published by paid advertisement in a newspaper with general circulation in the county, city, or town one or more times preceding the referendum. The local referendum is not a statewide referendum; therefore, it is the responsibility of the affected localities to advertise the question prior to the election.

- 9. Specific Agency or Political Subdivisions Affected:** Departments of Alcoholic Beverage Control, Transportation, Corrections, and Taxation; Secretary of Commerce and Trade;

Secretary of Transportation; Compensation Board; local and regional jails; Virginia Lottery; Virginia Racing Commission; and localities.

10. Technical Amendment Necessary: Yes. Line 1547, replace “§ 59.1-600” with “§ 59.1-601”.

11. Other Comments: SB1010, SB1011 and SB1012 authorize casino gaming in the Commonwealth.