

Department of Planning and Budget 2018 Fiscal Impact Statement

1. Bill Number: SB90

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

2. Patron: Lucas

3. Committee: General Laws and Technology

4. Title: Virginia Casino Gaming Commission; regulation of casino gaming; penalties.

5. Summary: Creates the Virginia Casino Gaming Commission (the Commission) as the licensing body for casino gaming. The bill specifies the licensing requirements for casino gaming and imposes penalties for violations of the casino gaming law. Casino gaming shall be limited to localities that have passed a referendum on the question of allowing casino gaming in the locality. The bill also requires the Commission to establish a voluntary exclusion program allowing persons to voluntarily exclude themselves from the gaming areas of facilities under the jurisdiction of the Commission. In addition, the bill establishes the Problem Gambling Treatment and Support Fund administered by the Commissioner of Behavioral Health and Developmental Services to provide counseling and other support services for compulsive and problem gamblers, develop problem gambling treatment and prevention programs, and provide grants to supporting organizations that provide assistance to compulsive gamblers. The bill requires proceeds of the gross receipts tax and admission tax imposed on casino gaming operators to be paid as follows: (i) one percent into the Problem Gambling Treatment and Support Fund, (ii) 10 percent to the locality in which the casino gaming operation is located, and (iii) 89 percent into the Toll Mitigation Fund, which shall be used to mitigate the tolls established to support construction and maintenance of the Dominion Boulevard Bridge and Roadway Improvement Project and the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project.

6. Budget Amendment Necessary: Yes, Item 310 (Department of Behavioral Health and Developmental Services) and Item 391 (Department of Corrections) HB30/SB30 as introduced. Also, see Items 8 and 11, below.

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

7a. Expenditure Impact, Item 313:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2018	0	0	n/a
2019	\$3,050,000	25.0	NGF
2020	\$3,050,000	25.0	NGF
2021	\$3,050,000	25.0	NGF
2022	\$3,050,000	25.0	NGF
2023	\$3,050,000	25.0	NGF
2024	\$3,050,000	25.0	NGF

Expenditure Impact, Item 391:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2018	0	n/a
2019	\$50,000	GF
2020	0	n/a
2021	0	n/a
2022	0	n/a
2023	0	n/a
2024	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. Also, the bill may impact the Department of Behavioral Health and Developmental Services as the department will administer the Problem Gambling Treatment and Support Fund.

The bill establishes the Virginia Casino Gaming Commission (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 a director 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 Casino 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 Toll Mitigation Fund, established under the provisions of the bill. 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.

Revenue deposited to the Toll Mitigation Fund will consist of 89 percent of the revenue generated from a wagering tax equal to 20 percent of each licensed operator's adjusted gross receipts received from the casino games and 90 percent of the revenue generated from an admissions tax at a rate of \$2.00 per individual admitted to a casino. Ten percent of the revenue generated from the aforementioned wagering tax and admissions tax will be deposited to the State Local Casino Gaming Proceeds Fund, established under the provisions of this bill. Moneys collected and deposited into the State Local Casino Gaming Proceeds Fund will be paid to localities in which casino gaming establishments are located. The remaining one percent of the revenue generated from the aforementioned wagering tax and admissions tax will be deposited to the Problem Gambling Treatment and Support Fund, established under the provisions of this bill. The amount of revenues generated by this proposal in support of the Toll Mitigation Fund and the Problem Gambling Treatment and Support Fund cannot be determined.

The Department of Behavioral Health and Developmental Services (DBHDS) will administer the Problem Gambling Treatment and Support Fund. The fund will be used solely for providing counseling and other support services for compulsive and problem gamblers, developing and implementing problem gambling treatment and prevention programs, and providing grants to supporting organizations that provide assistance to compulsive gamblers. Currently, DBHDS does not provide any counseling or rehabilitative services for gambling addiction. Based on the population density of Virginia, DBHDS would require 25 positions throughout its Community Services Boards and central office for an estimated expenditure impact of \$2.7 million per year. Additionally, DBHDS based the development of problem gambling treatment and prevention programs on its Mental Health First Aid program for an estimated expenditure impact of \$1.1 million per year beginning in FY 2019. The table above includes the anticipated impact to DBHDS. The FY 2019 fiscal impact is based on 22 pay periods. The FY 2020 fiscal impact is based on a full fiscal year including the cost of personnel and the development of problem gambling treatment and prevention programs.

The Toll Mitigation Fund will be used to mitigate the tolls established to support debt service on bonds issued to pay for the construction and maintenance of the Dominion Boulevard Bridge and Roadway Improvement Project and the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project. After all such bonds are paid, these revenues will be deposited to the Transportation Trust Fund.

Both the wagering tax and the admissions tax will be paid to the Commission by the licensed operator and deposited to the Toll Mitigation Fund and the State Local Casino Gaming Proceeds Fund. 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 and corporate income; sales; transient occupancy; Business, License and Occupational 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 \$5,000, if the payout was at 300-to-one odds or greater, 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 casino 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, alcoholic beverages, cigarettes, souvenirs, and other tangible property that they sell. If the casino also operates a hotel, the room rentals would be subject to sales tax. The admissions tax imposed by the casino bills would preempt any local admissions tax imposed by the locality in which a casino is located.

Additionally, casinos 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 casino gaming operation will 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 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. Additionally, the bill provides that any person who conducts a 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 civil penalty will be deposited to the general fund.

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 1 to 5 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 \$34.58 per inmate, per day in FY 2016.

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 836 of the 2017 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 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, could 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 may lessen the amount wagered on horse racing. The potential impact on these revenue streams is indeterminate.

The bill provides for a new type of mixed beverage license and new license fees that are based upon the number of gaming stations within the casino establishment. The impact on the Department of Alcoholic Beverage Control (ABC) is indeterminate. The number of new casino gambling establishments and patrons is indeterminate.

In order to receive an operator's license from the Commission, the casino gaming establishment must be situated on privately owned property 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 casino 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 casino gaming to those localities that have passed a referendum allowing casino 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, Behavioral Health and Developmental Services, 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 1241. Replace "no r" with "nor". Line 1822, remove "is" at the end of the line.
- 11. Other Comments:** SB91 also authorizes casino gaming in the Commonwealth.