

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB36-ER

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

2. Patron: Lucas

3. Committee: Passed Both Houses

4. Title: Regulation of casino gaming by Virginia Lottery Board; Regional Improvement Commission; penalties.

5. Summary: Authorizes casino gaming in the Commonwealth to be regulated by the Virginia Lottery Board. The bill specifies the requirements for licensure of casino gaming operators and the conduct of casino gaming and imposes criminal and civil penalties for violations of the casino gaming law. The location of casino gaming establishments shall be limited to the Cities of Portsmouth, Richmond, Norfolk, Danville, and Bristol. The bill requires each eligible host city to hold a referendum on the question of whether to allow casino gaming in the city and, with the exception of the City of Richmond, at the November 2020 general election. The bill imposes a two-tier tax structure, with taxes ranging from 18 to 30 percent of the adjusted gross receipts of licensees and provides for the disbursement of tax revenues. The bill requires the Board to establish a voluntary exclusion program allowing individuals to voluntarily list themselves as being barred from entering a casino gaming establishment or other facility under the jurisdiction of the Board. The bill establishes the Problem Gambling Treatment and Support Fund, administered by the Department of Behavioral Health and Developmental Services, and the Virginia Indigenous People's Trust Fund, both of which are funded by proceeds from the casino gaming tax revenues. The bill requires a portion of the revenue proceeds deposited to the Gaming Proceeds Fund to support the Family and Children's Trust Fund. The bill also establishes the Regional Improvement Commission, consisting of a representative of each jurisdiction composing the transportation district in which the City of Bristol is located, to receive disbursements of gaming tax revenues and to prioritize and fund improvements in those jurisdictions. The bill requires the Virginia Racing Commission to authorize an additional 600 historical horse racing terminals each time a local referendum held by an eligible host city is approved, provided that the total number of additional machines shall not exceed 2,000 statewide, and includes other provisions relating to the placement of horse racing terminals in the Commonwealth. The bill also authorizes on-premises mobile casino gaming.

6. Budget Amendment Necessary: The Virginia Lottery would require a new Item in HB/SB 30 to support the administration of casino gaming. The operation of casino gaming in the Commonwealth is contingent upon the approval of a local referendum.

Conference budget amendment Item 3-2.03 #1c of SB 29 increases the Virginia Lottery's line of credit by \$16 million to support the agency's administrative costs related to casino

gaming, sports betting, and the sale of lottery tickets through the Internet. Conference budget amendment Item 482 #1c of SB 29 provides authorization for the Virginia Lottery to use the increase of its line of credit to support the regulation of casino gaming.

Conference budget amendment Item 488 #1c of SB 30 provides the Virginia Lottery with 96 full-time equivalent positions and authorization to use up to \$16 million from the Gaming Proceeds Fund in fiscal years 2021 and 2022 to regulate casino gaming. The amendment also includes language authorizing an interest-free treasury loan to fund start-up costs of regulating casino gaming.

7. Fiscal Impact Estimates: Indeterminate – see Item 8.

- 8. Fiscal Implications:** The bill limits casino gaming to Richmond, Norfolk, Portsmouth, Danville, and Bristol pending approval of individual, unique local referendum. The bill also places the oversight responsibilities of casino gaming establishments after local referendum passage, within the Virginia Lottery. The casino gaming applicant is required to have a minimum capital investment of \$300 million in a gaming establishment, which includes the value of the real property upon which such establishment is located and all furnishings, fixtures, and other improvements and possess an equity interest equal to at least 20 percent of the casino gaming establishment.

The bill imposes a two-tier tax structure on the licensed casino gaming operator's adjusted gross receipts. The revenue proceeds collected from casino gaming operators are to be deposited to the Gaming Proceeds Fund. The table below summarizes the tax rate allocation and revenue distribution to the city in which the taxes are collected.

State Tax Rate	Local Revenue Distribution	Licensed Casino Gaming Operator's Adjusted Gross Receipts
18 percent	6 percent	First \$200 million
23 percent	7 percent	More than \$200 million and less than \$400 million
30 percent	8 percent	More than \$400 million

The bill allocates eight-tenths of one percent of the revenue proceeds deposited to the Gaming Proceeds Fund to support the Problem Gambling Treatment and Support Fund, to be administered by the Department of Behavioral Health and Developmental Services (DBHDS), and two-tenths of one percent of the revenue proceeds deposited to the Gaming Proceeds Fund to support the Family and Children's Trust Fund, currently administered by the Department of Social Services. Any remaining revenues in the Gaming Proceeds Fund are to be appropriated to the general fund.

The bill establishes the Virginia Indigenous People's Trust Fund to be funded by a one percent tax on the adjusted gross receipts of casino gaming establishments operated by a federally-recognized Virginia Indian tribe. The Virginia Indigenous People's Trust Fund shall be used to make disbursements on a quarterly basis in equal amounts to each of the six federally-recognized Virginia Indian tribes. Expenditures and disbursements from the Virginia Indigenous People's Trust Fund are to be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Secretary of the Commonwealth.

The projected revenue impact from the proposed legislation cannot be determined at this time. The Joint Legislative Audit and Review Commission (JLARC) projected the five casinos would generate gaming revenue of approximately \$122 million at the nationwide low tax rate of 12 percent; \$262 million at the nationwide median tax rate of 27 percent; and \$378 million at the nationwide high tax rate of 40 percent in its 2019 report, "Gaming in the Commonwealth". Using the nationwide median tax rate of 27 percent, JLARC projected approximately \$29 million to \$33 million in additional state tax revenue from casino gaming. The additional state tax revenue included \$17 million in state sales tax; \$11 million in personal income tax; and \$900,000 to \$4.3 million in corporate income tax. These estimates assumed an initial capital investment between \$200 million to \$300 million. The state tax revenue estimates used for the JLARC report were based on 2018 tax collection data.

Virginia Lottery

The Virginia Lottery would require additional employees to regulate and provide oversight of casino gaming operations in the Commonwealth. JLARC estimated the Virginia Lottery would need approximately 100 staff to regulate the casino gaming industry, the Virginia Lottery Board's role and composition would need to change, and the Virginia Lottery would need to expand its mission of supporting K-12 education. The bill increases the Board's membership from five to seven members. The bill also requires at least one Board member to be a law-enforcement officer and at least one Board member to be a certified public accountant authorized to practice in the Commonwealth. JLARC estimated the Virginia Lottery's administrative costs of its casino gaming program to be at least \$16 million each year.

The bill does not set aside a portion of the revenue proceeds for the Virginia Lottery to regulate casino gaming; however, the bill does include operator licensure fees and annual audit and compliance fee assessments. These fees, along with the other licensing application and renewal fees, would likely be sufficient to cover the regulatory program's costs. The bill requires the casino gaming applicant to pay the Virginia Lottery a nonrefundable application fee of \$15 million for a casino gaming license and a nonrefundable fee of \$50,000 to defray the Virginia Lottery's costs of conducting a background investigation. The Virginia Lottery also can collect a nonrefundable fee of \$5,000 for an initial supplier permit and an annual supplier permit renewal fee not to exceed \$5,000.

The authorization of casino gaming in the Commonwealth is projected to impact lottery profits used to support public education. JLARC projected lottery sales to decrease by \$105

million and lottery proceeds to decrease by \$30 million with the introduction of casino gaming. The annual reduction of \$30 million in lottery proceeds would equal to 0.5 percent of funding provided for public education. Additional general fund revenue to support public education would be needed to address the decline in lottery proceeds. The JLARC report also identified historical horse racing and charitable gaming as other sources of state revenues that may be impacted by casino gaming.

Department of Behavioral Health and Developmental Services (DBHDS)

The bill establishes the Problem Gambling Treatment and Support Fund to be administered by DBHDS. The Problem Gambling and Treatment and Support Fund is to be used to provide counseling and support services for compulsive and problem gamblers; develop and implement compulsive and problem gambling treatment and prevention programs; and provide grants to support organizations that provide assistance to compulsive and problem gamblers. Currently, DBHDS does not provide counseling or rehabilitative services for gambling addiction. Previous estimates, based on the population density of Virginia, projected that at a minimum, a comprehensive program would require 24 local positions through the Community Services Boards and one central office position at the DBHDS central office at a cost of \$1.9 million per year in staffing. Additionally, using the costs of administering the Mental Health First Aid program as a blueprint, DBHDS projects the need for an additional \$1.1 million for training and treatment services at the regional level.

<i>Expense</i>	<i>Cost</i>	<i>Number of FTEs</i>	<i>Total</i>
<i>CSB Staff</i>	\$75,000 per position	24.0	\$1,875,000
<i>Central Office Staff</i>	\$75,000 per position	1.0	\$75,000
<i>Treatment/Training Programs</i>	\$1,100,000	-	\$1,100,000
		25.0	\$3,050,000

The figures above are in line with average per capita expenditures on problem gambling programs nationwide. Based on a 2016 survey done by the National Council on Problem Gambling, the average per capital allocation for problem gambling services for states that have such programs was \$0.37. The census of Virginia, according to the US Census Bureau, is estimated at approximately 8.5 million. The average allocation applied to the Virginia census equals \$3,145,000, which is in line with the DBHDS estimate. Since the revenues generated from this legislation would not be sufficient to cover these costs, DBHDS would either be required to absorb any additional costs from within its existing appropriations or additional general fund support would be required. If the legislation is not interpreted to require a comprehensive program, and requires only the level of service and related expenditures match of the funds deposited, there is no fiscal impact.

Virginia Racing Commission (VRC)

This bill authorizes an additional 600 historical horse racing (HHR) terminals each time a local referendum, pursuant to this bill, is approved. However, the total number of additional HHR terminals shall not exceed 2,000 statewide. JLARC concluded in its report that casino gaming would affect the revenue generated by HHR. JLARC projected that revenue generated by HHR would decline by 45 percent as a result of casino competition in Virginia, and the tax revenue generated by HHR wagering also would decline. The additional 2,000 HHR terminals taxed at a slightly higher rate as provided in the bill represent a 40 percent increase in the total number of HHR terminals allowed in the Commonwealth. The additional terminals, along with the slightly higher tax rate, is not expected to have a significant impact on the VRC's HHR revenue.

Virginia State Police (VSP)

The Virginia Lottery is required to conduct a background investigation, including criminal history records check and fingerprinting of the following: (i) every individual applying for a casino gaming license or supplier permit; (ii) every individual who is an officer, director, or principal of a licensee or applicant for a license and every employee of the licensee who conducts gaming operations; (iii) all security personnel of any licensee; (iv) all permit holders and officers, directors, principals, and employees of permit holders whose duties relate to gaming operations in Virginia; and (v) any other individual determined by the Virginia Lottery as an active participant in the casino gaming activities of any licensee or permit holder or applicant for a license or permit. The bill also requires each individual to submit their fingerprints and personal descriptive information to the Central Criminal Records Exchange (CCRE) to be forwarded to the Federal Bureau of Investigation for a national criminal records search and to VSP for a Virginia criminal history records search.

The provisions of this legislation would require additional staff for VSP to process fingerprints. According to VSP, the Fingerprint Section of CCRE is not able to absorb the additional workload expected pursuant to the passage of this legislation. Based on current work processes in the CCRE, it is estimated that one fingerprint technician can process approximately 10,000 fingerprint requests. VSP estimates two FTEs would be needed to process fingerprints and provide administrative support. The annual cost of one fingerprint technician, including salary and benefits, is \$80,602. The annual cost of one program support technician, including salary and benefits, is \$71,935. VSP also would incur a one-time nonpersonal cost of \$9,722 and ongoing nonpersonal costs of approximately \$3,000. VSP would need additional general fund support to fund the agency's projected expenses for processing fingerprints.

Penalties

The bill defines several offenses that would be punishable as a Class 4 felony, including making a false statement on an application for a casino gaming operator's license or supplier's permit and fraudulent use or possession of a credential, license or permit issued by the Virginia Lottery Board. For someone convicted of a Class 4 felony, a judge has the

option of sentencing him to two to ten years in prison. Therefore, this proposal could result in an increase in the number of persons sentenced to prison. 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 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

The bill imposes a Class 6 felony for anyone who cheats at gaming, bribes game operators, fixes a game in a player's favor as an operator, operates casino gaming where wagering is used or to be used without the proper license, or offers on-premises mobile casino gaming without approval. Any person who offers on-premises mobile casino gaming without approval is guilty of a Class 6 felony and subject to a fine of no more than \$100,000. For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to 12 months in jail, or one to five 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 the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. 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 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in fiscal year 2018. 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 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

The bill imposes a Class 1 misdemeanor for anyone under the age of 21 who wagers on or conducts any wagering on the outcome of a game and any person who wagers on or conducts any wagering on the outcome of a youth sports game. Anyone found of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. There is not enough information available to reliably estimate the increase in jail population as a result of this proposal; however, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large 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 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in fiscal year 2018.

Any person who conducts a gaming operation without first obtaining a license to do so, or who continues to conduct such games after revocation of his license shall be subject to a civil penalty assessed by the Virginia Lottery Board equal to the amount of gross receipts derived from wagering on games. The Virginia Lottery may assess a civil penalty of up to \$10,000

for a supplier permit holder who violates the provisions listed in § 58.1-4121. The Virginia Lottery also may assess a civil penalty of up to \$100,000 for any casino gaming license or supplier permit holder who violates the provisions listed in § 58.1-4116. Any civil penalties collected by the Virginia Lottery are to be deposited to the general fund.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Lottery, Department of Education, Department of Behavioral Health and Developmental Services, Department of Social Services, Virginia Racing Commission, Department of Agriculture and Consumer Services, Virginia State Police, Department of Accounts, Department of the Treasury, Secretary of the Commonwealth, and localities.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** This bill is identical to HB 4-ER (Knight).