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SENATE BILL NO. 203

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 2, 2022)

(Patron Prior to Substitute—Senator Morrissey)

A BILL to amend and reenact §§ 58.1-4107 and 58.1-4123 of the Code of Virginia, relating to casino gaming; eligible host cities; limitation on local referendums.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-4107 and 58.1-4123 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-4107. Eligible host city; certification of preferred casino gaming operator.

A. The conduct of casino gaming shall be limited to the following eligible host cities:

1. Any city (i) in which at least 40 percent of the assessed value of all real estate in such city is exempt from local property taxation, according to the Virginia Department of Taxation Annual Report for Fiscal Year 2018, and (ii) that experienced a population decrease of at least seven percent from 1990 to 2016, according to data provided by the U.S. Census Bureau;

2. Any city that had (i) an annual unemployment rate of at least five percent in 2018, according to data provided by the U.S. Bureau of Labor Statistics; (ii) an annual poverty rate of at least 20 percent in 2017, according to data provided by the U.S. Census Bureau; and (iii) a population decrease of at least 20 percent from 1990 to 2016, according to data provided by the U.S. Census Bureau;

3. Any city that (i) had an annual unemployment rate of at least 3.6 percent in 2018, according to data provided by the U.S. Bureau of Labor Statistics; (ii) had an annual poverty rate of at least 20 percent in 2017, according to data provided by the U.S. Census Bureau; (iii) experienced a population decrease of at least four percent from 1990 to 2016, according to data provided by the U.S. Census Bureau; and (iv) is located adjacent to a state that has adopted a Border Region Retail Tourism Development District Act;

4. Any city (i) with a population greater than 200,000 according to the 2018 population estimates from the Weldon Cooper Center for Public Service of the University of Virginia; (ii) in which at least 24 percent of the assessed value of all real estate in such city is exempt from local property taxation, according to the Virginia Department of Taxation Annual Report for Fiscal Year 2018; and (iii) that experienced a population decrease of at least five percent from 1990 to 2016, according to data provided by the U.S. Census Bureau; and

5. *a. Any city (i) with a population greater than 200,000 according to the 2018 population estimates from the Weldon Cooper Center for Public Service of the University of Virginia; (ii) in which at least 24 percent of the assessed value of all real estate in such city is exempt from local property taxation, according to the Virginia Department of Taxation Annual Report for Fiscal Year 2018; and (iii) that had a poverty rate of at least 24 percent in 2017, according to data provided by the U.S. Census Bureau; or*

b. Any city (i) in which at least 17 percent of the assessed value of all real estate in such city is exempt from local property taxation, according to the Virginia Department of Taxation Annual Report for Fiscal Year 2016; (ii) that had a poverty rate of at least 21 percent in 2019, according to data provided by the U.S. Census Bureau; and (iii) that had an annual unemployment rate of at least 13 percent in 2020, according to data provided by the U.S. Bureau of Labor Statistics.

B. In selecting a preferred casino gaming operator, an eligible host city shall have considered and given substantial weight to factors such as:

1. The potential benefit and prospective revenues of the proposed casino gaming establishment.

2. The total value of the proposed casino gaming establishment.

3. The proposed capital investment and the financial health of the proposer and any proposed development partners.

4. The experience of the proposer and any development partners in the operation of a casino gaming establishment.

5. Security plans for the proposed casino gaming establishment.

6. The economic development value of the proposed casino gaming establishment and the potential for community reinvestment and redevelopment in an area in need of such.

7. Availability of city-owned assets and privately owned assets, such as real property, including where there is only one location practicably available or land under a development agreement between a potential operator and the city, incorporated in the proposal.

8. The best financial interest of the city.

9. The proposer's status as a minority-owned business as defined in § 2.2-1604 or the proposer's commitment to solicit equity investment in the proposed casino gaming establishment from one or more minority-owned businesses and the proposer's commitment to solicit contracts with minority-owned

60 businesses for the purchase of goods and services.

61 C. The Department shall, upon request of any eligible host city, provide a list of resources that may
62 be of assistance in evaluating the technical merits of any proposal submitted pursuant to this section,
63 provided that selection of the preferred casino gaming operator shall be at the city's sole discretion.

64 D. The eligible host city described in subdivision A 4 shall provide substantial and preferred
65 consideration to a proposer who is a Virginia Indian tribe recognized in House Joint Resolution No. 54
66 (1983) and acknowledged by the Assistant Secretary-Indian Affairs for the U.S. Department of the
67 Interior as an Indian tribe within the meaning of federal law that has the authority to conduct gaming
68 activities as a matter of claimed inherent authority or under the authority of the Indian Gaming
69 Regulatory Act (25 U.S.C. § 2701 et seq.).

70 E. The eligible host city described in subdivision A 5 a may provide preferred consideration to a
71 proposer who is a Virginia Indian tribe recognized in House Joint Resolution No. 54 (1983) and
72 acknowledged by the Assistant Secretary-Indian Affairs for the U.S. Department of the Interior as an
73 Indian tribe within the meaning of federal law that has the authority to conduct gaming activities as a
74 matter of claimed inherent authority or under the authority of the Indian Gaming Regulatory Act (25
75 U.S.C. § 2701 et seq.).

76 F. An eligible host city shall promptly submit its preferred casino gaming operator to the Department
77 for review prior to scheduling the referendum required by § 58.1-4123. An eligible host city shall
78 include with the submission any written or electronic documentation considered as part of the criteria in
79 subsection B, including any memorandums of understanding, incentives, development agreements, land
80 purchase agreements, or local infrastructure agreements. The Department shall conduct a preliminary
81 review of the financial status and ability of the preferred casino gaming operator to operate and properly
82 support ongoing operations in an eligible host city, as well as current casino operations in other states
83 and territories. The Department shall conduct such review within 45 days of receipt of the submission
84 by the eligible host city. An eligible host city and preferred casino gaming operator shall fully cooperate
85 with all necessary requests by the Department in that regard. Upon successful preliminary review, the
86 Department shall certify approval for the eligible host city to proceed to the referendum required by
87 § 58.1-4123. The Department shall develop guidelines establishing procedures and criteria for conducting
88 the preliminary review required by this subsection. Certification by the Department to proceed to
89 referendum shall in no way entitle the preferred casino gaming operator to approval of any application
90 to operate a casino gaming establishment.

91 **§ 58.1-4123. Local referendum required; limitation.**

92 A. The Department shall not grant any initial license to operate a gaming operation in an eligible
93 host city until a referendum on the question of whether casino gaming shall be permitted in such city is
94 approved by the voters of such city.

95 B. The governing body of any city containing an eligible host city shall petition the court, by
96 resolution, asking that a referendum be held on the question of whether casino gaming shall be
97 permitted within the city. The court, by order entered of record in accordance with Article 5 (§ 24.2-681
98 et seq.) of Chapter 6 of Title 24.2, shall require the regular election officials of the city to open the
99 polls and take the sense of the voters on the question as herein provided.

100 C. The clerk of such court of record of such city shall publish notice of such election in a newspaper
101 of general circulation in such city once a week for three consecutive weeks prior to such election.

102 D. The regular election officers of such city shall open the polls at the various voting places in such
103 city on the date specified in such order and conduct such election in the manner provided by law. The
104 election shall be by ballot, which shall be prepared by the electoral board of the city and on which shall
105 be printed the following question:

106 "Shall casino gaming be permitted at a casino gaming establishment in _____
107 (name of city and location) as may be approved by the Virginia Lottery Board?

108 [] Yes

109 [] No"

110 In the blank shall be inserted the name of the city in which such election is held and the proposed
111 location of the casino gaming establishment. Any voter desiring to vote "Yes" shall mark in the square
112 provided for such purpose immediately preceding the word "Yes," leaving the square immediately
113 preceding the word "No" unmarked. Any voter desiring to vote "No" shall mark in the square provided
114 for such purpose immediately preceding the word "No," leaving the square immediately preceding the
115 word "Yes" unmarked.

116 E. The ballots shall be counted, the returns made and canvassed as in other elections, and the results
117 certified by the electoral board to the court ordering such election. Thereupon, such court shall enter an
118 order proclaiming the results of such election and a duly certified copy of such order shall be
119 transmitted to the Department and to the governing body of such city.

120 F. *The governing body of any city containing an eligible host city that holds a local referendum*
121 *pursuant to this section that subsequently fails shall be prohibited from holding another local*

122 *referendum on the same question for a period of five years from the date of the last referendum.*

123 G. A subsequent local referendum shall be required if a license has not been granted by the Board
124 within five years of the court order proclaiming the results of the election.

125 **2. That for the purposes of subsection F of § 58.1-4123 of the Code of Virginia, as amended by**
126 **this act, the local referendum held on November 2, 2021, by the eligible host city described in**
127 **subdivision A 5 a of § 58.1-4107 of the Code of Virginia, as amended by this act, shall be deemed**
128 **the most recent local referendum such that such eligible host city shall be prohibited from holding**
129 **another local referendum on the same question until after November 2, 2026.**