

## Department of Planning and Budget 2014 Fiscal Impact Statement

**1. Bill Number:** SB19

**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 as the licensing body for casino gaming. The bill sets up the licensing scheme for casino gaming and provides penalties for violations of the casino gaming law. Under the bill, casino gaming shall be limited to localities in which at least 40 percent of the land area is exempt from local real property taxation pursuant to federal law or Article X, Sections 6 (a) (1) through (a) 5 and (a) 7 of the Constitution of Virginia. The bill requires proceeds of the gross receipts tax and admission tax imposed on casino gaming operators to be paid as follows: (i) 10 percent to the State Local Casino Gaming Proceeds Fund for payment to the localities in which casino gaming operations are located and (ii) 90 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. This bill also establishes the Casino Gaming Commission Operations Fund to support the functions assigned to the Commission.

**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 inspectors, accountants, and guards. 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.

According to proposed § 59.1-579, the Casino Gaming Commission Operations Fund will be used to support the operation and administration of the Commission. Proposed § 59.1-579 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 proposed § 33.1-223.2:30.

Revenue deposited to the Toll Mitigation Fund will consist of 90 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. The remaining 10 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 proposed § 59.1-580.

Both the wagering tax and the admissions tax will be paid to the Commission by the licensed operator, and 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 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 \$600, 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. Also, gambling winnings are 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, 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 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 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.

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 2013), the estimated total state support for local jails averaged \$30.06 per inmate, per day in FY 2012.

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 806 of the 2013 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 (OCRCP) 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 may 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.

In order to receive an operator's license from the Commission, the casino gaming establishment must be situated in a locality in which at least 40 percent of the assessed value of all real estate situated in the locality is exempt from local property taxation pursuant to federal law or Article X, Section 6 or 6-A of the Constitution of Virginia. 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.

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

**10. Technical Amendment Necessary:** Yes. Line 1401. After "the" insert "State".

**11. Other Comments:** Currently, 18 U.S. states, Puerto Rico and the US Virgin Islands 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); New York combined their State Racing and Wagering Board and Division of Lottery into a single agency and included oversight of casino gaming within that organization. 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.