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SENATE BILL NO. 780

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 1, 2023)

(Patron Prior to Substitute—Senator Morrissey)

A BILL to amend and reenact §§ 58.1-4100, 58.1-4107, 58.1-4110, 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 §§ 58.1-4100, 58.1-4107, 58.1-4110, and 58.1-4123 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-4100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Adjusted gross receipts" means the gross receipts from casino gaming less winnings paid to winners.
"Board" means the Virginia Lottery Board established in the Virginia Lottery Law (§ 58.1-4000 et seq.).

"Casino gaming" or "game" means baccarat, blackjack, twenty-one, poker, craps, dice, slot machines, roulette wheels, Klondike tables, Mah Jongg, electronic table games, hybrid table games, punchboards, faro layouts, numbers tickets, push cards, jar tickets, or pull tabs, or any variation of the aforementioned games, and any other activity that is authorized by the Board as a wagering game or device under this chapter. "Casino gaming" or "game" includes on-premises mobile casino gaming.

"Casino gaming establishment" means the premises, including the entire property located at the address of the licensed casino, upon which lawful casino gaming is authorized and licensed as provided in this chapter. "Casino gaming establishment" does not include a riverboat or similar vessel.

"Casino gaming operator" means any person issued a license by the Board to operate a casino gaming establishment.

"Cheat" means to alter the selection criteria that determine the result of a game or the amount or frequency of payment in a game for the purpose of obtaining an advantage for one or more participants in a game over other participants in a game.

"Counter check" means an interest-free negotiable instrument for a specified amount executed by a player and held by the casino that serves as evidence of the casino gaming patron's obligation to pay the casino and that can be exchanged by the casino gaming patron for the specified amount in chips, tokens, credits, electronic credits, electronic cash, or electronic cards.

"Department" means the independent agency responsible for the administration of the Virginia Lottery created in the Virginia Lottery Law (§ 58.1-4000 et seq.).

"Director" means the Director of the Virginia Lottery.

"Eligible host city" means any city described in § 58.1-4107 in which a casino gaming establishment is authorized to be located.

"Entity" means a person that is not a natural person.

"Gaming operation" means the conduct of authorized casino gaming within a casino gaming establishment.

"Gross receipts" means the total amount of money exchanged for the purchase of chips, tokens, electronic credits, electronic cash, or electronic cards by casino gaming patrons. "Gross receipts" shall not include the cash value of promotions or credits provided to and exchanged by casino gaming patrons for chips, tokens, electronic credits, electronic cash, or electronic cards. "Gross receipts" shall also not include uncollectable counter checks.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as an officer or employee and who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Individual" means a natural person.

"Licensee" or "license holder" means any person holding an operator's license under § 58.1-4111.

"On-premises mobile casino gaming" means casino gaming offered by a casino gaming operator at a casino gaming establishment using a computer network of both federal and nonfederal interoperable packet-switched data networks through which the casino gaming operator may offer casino gaming to individuals who have established an on-premises mobile casino gaming account with the casino gaming operator and who are physically present on the premises of the casino gaming establishment, as authorized by regulations promulgated by the Board.

"Permit holder" means any person holding a supplier or service permit pursuant to this chapter.

"Person" means an individual, partnership, joint venture, association, limited liability company, stock corporation, or nonstock corporation and includes any person that directly or indirectly controls or is

60 under common control with another person.

61 "Preferred casino gaming operator" means the proposed casino gaming establishment and operator
62 thereof submitted by an eligible host city to the Board as an applicant for licensure.

63 "Prepaid access instrument" means a system device that allows a casino gaming patron access to
64 funds that have been paid in advance and can be retrieved or transferred at some point in the future
65 through such a device. In order to transfer funds for gaming purposes, a prepaid access instrument shall
66 be redeemed for tokens, chips, credits, electronic credits, electronic cash, electronic cards, or used in
67 conjunction with an approved cashless wagering system or interactive gaming account.

68 *"Prevailing wage rate" means the rate, amount, or level of wages, salaries, benefits, and other*
69 *remuneration prevailing for the corresponding classes of workers employed by a casino gaming*
70 *operator, as determined by the Commissioner of Labor and Industry on the basis of applicable*
71 *prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the*
72 *Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended.*

73 "Principal" means any individual who solely or together with his immediate family members (i) owns
74 or controls, directly or indirectly, five percent or more of the pecuniary interest in any entity that is a
75 licensee or (ii) has the power to vote or cause the vote of five percent or more of the voting securities
76 or other ownership interests of such entity, and any person who manages a gaming operation on behalf
77 of a licensee.

78 "Professional sports" means the same as such term is defined in § 58.1-4030.

79 "Security" has the same meaning as provided in § 13.1-501. If the Board finds that any obligation,
80 stock, or other equity interest creates control of or voice in the management operations of an entity in
81 the manner of a security, then such interest shall be considered a security.

82 "Sports betting" means the same as such term is defined in § 58.1-4030.

83 "Sports betting facility" means an area, kiosk, or device located inside a casino gaming establishment
84 licensed pursuant to this chapter that is designated for sports betting.

85 "Supplier" means any person that sells or leases, or contracts to sell or lease, any casino gaming
86 equipment, devices, or supplies, or provides any management services, to a licensee.

87 "Voluntary exclusion program" means a program established by the Board pursuant to § 58.1-4103
88 that allows individuals to voluntarily exclude themselves from engaging in the activities described in
89 subdivision B 1 of § 58.1-4103 by placing their names on a voluntary exclusion list and following the
90 procedures set forth by the Board.

91 "Youth sports" means the same as such term is defined in § 58.1-4030.

92 **§ 58.1-4107. Eligible host city; certification of preferred casino gaming operator.**

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

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

98 2. Any city that had (i) an annual unemployment rate of at least five percent in 2018, according to
99 data provided by the U.S. Bureau of Labor Statistics; (ii) an annual poverty rate of at least 20 percent in
100 2017, according to data provided by the U.S. Census Bureau; and (iii) a population decrease of at least
101 20 percent from 1990 to 2016, according to data provided by the U.S. Census Bureau;

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

108 4. Any city (i) with a population greater than 200,000 according to the 2018 population estimates
109 from the Weldon Cooper Center for Public Service of the University of Virginia; (ii) in which at least
110 24 percent of the assessed value of all real estate in such city is exempt from local property taxation,
111 according to the Virginia Department of Taxation Annual Report for Fiscal Year 2018; and (iii) that
112 experienced a population decrease of at least five percent from 1990 to 2016, according to data provided
113 by the U.S. Census Bureau; and

114 5. a. Any city (i) with a population greater than 200,000 according to the 2018 population estimates
115 from the Weldon Cooper Center for Public Service of the University of Virginia; (ii) in which at least
116 24 percent of the assessed value of all real estate in such city is exempt from local property taxation,
117 according to the Virginia Department of Taxation Annual Report for Fiscal Year 2018; and (iii) that had
118 a poverty rate of at least 24 percent in 2017, according to data provided by the U.S. Census Bureau; or

119 b. Any city (i) in which at least 17 percent of the assessed value of all real estate in such city is
120 exempt from local property taxation, according to the Virginia Department of Taxation Annual Report
121 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 businesses for the purchase of goods and services.

10. *The proposer's commitment to paying its employees no less than the prevailing wage rate.*

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

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

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

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

§ 58.1-4110. Issuance of operator's license to preferred casino gaming operator; standards for licensure; temporary casino gaming allowed under certain conditions.

A. If a preferred casino gaming operator, as certified by the applicable eligible host city, submits an application that meets the standards for licensure set forth in this article, the Board shall issue an operator's license to such preferred casino gaming operator. The Board shall not consider an application from any applicant that has not been certified as a preferred casino gaming operator by an eligible host city.

B. The Board may issue an operator's license to an applicant only if it finds that:

1. The applicant submits a plan for addressing responsible gaming issues, including the goals of the

183 plan, procedures, and deadlines for implementation of the plan;

184 2. The applicant has established a policy requiring all license and permit holders who interact directly
185 with the public in the casino gaming establishment to complete a training course acceptable to the
186 Department in how to recognize and report suspected human trafficking;

187 3. The casino gaming establishment the applicant proposes to use on a permanent basis is or will be
188 appropriate for gaming operations consistent with the purposes of this chapter;

189 4. The city where the casino gaming establishment will be located certifies that the proposed project
190 complies with all applicable land use ordinances pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title
191 15.2;

192 5. Any required local infrastructure or site improvements, including necessary sewerage, water,
193 drainage facilities, or traffic flow, are to be paid exclusively by the applicant without state or local
194 financial assistance;

195 6. If the applicant is an entity, its securities are fully paid and, in the case of stock, nonassessable
196 and have been subscribed and will be paid for only in cash or property to the exclusion of past services;

197 7. All principals meet the criteria of this subsection and have submitted to the jurisdiction of the
198 Virginia courts, and all nonresident principals have designated the Director as their agent for receipt of
199 process;

200 8. If the applicant is an entity, it has the right to purchase at fair market value the securities of, and
201 require the resignation of, any person who is or becomes disqualified under subsection C;

202 9. *The applicant pays its employees no less than the prevailing wage rate;*

203 10. The applicant meets any other criteria established by this chapter and the Board's regulations for
204 the granting of an operator's license;

205 ~~10.~~ 11. The applicant is qualified to do business in Virginia or is subject to the jurisdiction of the
206 courts of the Commonwealth; and

207 ~~11.~~ 12. The applicant has not previously been denied a license pursuant to subsection C.

208 C. The Board shall deny a license to an applicant if it finds that for any reason the issuance of a
209 license to the applicant would reflect adversely on the honesty and integrity of the casino gaming
210 industry in the Commonwealth or that the applicant, or any officer, principal, manager, or director of the
211 applicant:

212 1. Is or has been guilty of any illegal act, conduct, or practice in connection with gaming operations
213 in this or any other state or has been convicted of a felony;

214 2. Has had a license or permit to hold or conduct a gaming operation denied for cause, suspended, or
215 revoked, in this or any other state or country, unless the license or permit was subsequently granted or
216 reinstated;

217 3. Has at any time during the previous five years knowingly failed to comply with the provisions of
218 this chapter or any Department regulation;

219 4. Has knowingly made a false statement of material fact to the Department or has deliberately failed
220 to disclose any information requested by the Department;

221 5. Has defaulted in the payment of any obligation or debt due to the Commonwealth and has not
222 cured such default; or

223 6. Has operated or caused to be operated a casino gaming establishment for which a license is
224 required under this chapter without obtaining such license.

225 D. The Board shall make a determination regarding whether to issue the operator's license within 12
226 months of the receipt of a completed application.

227 E. The Board shall be limited to the issuance of one operator's license for each eligible host city.

228 F. If, at the time of application, the applicant has not satisfied the capital investment requirement of
229 at least \$300 million pursuant to subsection B of § 58.1-4108 but otherwise meets the standards for
230 licensure set forth in this article, the Department shall issue the operator's license, which, prior to
231 satisfying the capital investment requirement, may not be used to conduct gaming other than temporary
232 casino gaming pursuant to subsection G.

233 G. The Department may authorize casino gaming to occur on a temporary basis for a period of one
234 year under the following conditions:

235 1. The request to authorize casino gaming is made by a preferred casino gaming operator that has
236 been issued a license consistent with this section.

237 2. The preferred casino gaming operator has submitted as a part of its application for licensure a
238 construction schedule for a casino gaming establishment that has been approved by the eligible host city
239 and the Department.

240 3. The temporary casino gaming is to be conducted at the same site referenced in the referendum
241 held pursuant to § 58.1-4123.

242 4. The preferred casino gaming operator has secured suppliers and employees holding the appropriate
243 permits required by this chapter and sufficient for the routine operation of the site where the temporary
244 casino gaming is authorized.

5. A performance bond is posted in an amount acceptable to the Board.

H. No portion of any facility developed with the assistance of any grants or loans provided by a redevelopment and housing authority created pursuant to § 36-4 shall be used as a casino gaming establishment.

The Department may renew the authorization to conduct temporary casino gaming for an additional year if it determines that the preferred casino gaming operator has made a good faith effort to comply with the approved construction schedule.

I. An operator issued a license under this chapter shall not be precluded from operating a sports betting facility for individuals to participate in sports betting activities in a casino gaming establishment, which may include in-person sports betting where the bettor places a bet directly with an employee of the casino or the sports betting permit holder, or through a kiosk or device.

§ 58.1-4123. Local referendum required; limitation.

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

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

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

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

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

[] Yes

[] No"

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

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

F. When an eligible host city is located within 25 miles of another eligible host city, the governing body of any such city that holds a local referendum pursuant to this section that subsequently fails shall be prohibited from holding another local referendum on the same question until the other eligible host city has had a reasonable opportunity to hold a local referendum pursuant to this section. For purposes of this subsection, a "reasonable opportunity" shall not exceed the date of the 2023 regular general election unless a court of competent jurisdiction sets an alternative date.

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

2. That for the purposes of subsection F of § 58.1-4123 of the Code of Virginia, as amended by this act, the local referendum held on November 2, 2021, by the eligible host city described in subdivision A 5 a of § 58.1-4107 of the Code of Virginia, as amended by this act, shall be deemed the most recent local referendum such that the governing body in such eligible host city shall be prohibited from holding another local referendum on the same question until the governing body in the eligible host city described in subdivision A 5 b of § 58.1-4107 of the Code of Virginia, as amended by this act, has had a reasonable opportunity to hold a local referendum pursuant to the provisions of § 58.1-4123 of the Code of Virginia, as amended by this act.

3. That the provisions of subdivision B 10 of § 58.1-4107 of the Code of Virginia, as amended by this act, shall only apply to the selection of a preferred casino gaming operator by an eligible host city that occurs on or after the effective date of this act.