

Department of Planning and Budget

2023 Fiscal Impact Statement

1. **Bill Number:** SB1143

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. **Patron:** McPike

3. **Committee:** Rules

4. **Title:** Regulation of charitable gaming and historical horse racing.

5. **Summary:** Transfers regulatory control of charitable gaming and historical horse racing from the Department of Agriculture and Consumer Services and the Virginia Racing Commission, respectively, to the Virginia Lottery, renamed in the bill as the Virginia Lottery and Gaming Department. The bill directs the Virginia Lottery Board, renamed as the Virginia Lottery and Gaming Oversight Board, to promulgate regulations necessary for the conduct of (i) historical horse racing, with the assistance of the Virginia Racing Commission, by December 1, 2023, and (ii) charitable gaming, with the assistance of the Department of Agriculture and Consumer Services, by July 1, 2024. All relevant regulations of the Department of Agriculture and Consumer Services and the Virginia Racing Commission shall remain in full force and effect until the effective transfer of such regulations to the Virginia Lottery and Gaming Oversight Board.

6. **Budget Amendment Necessary:** Yes. Items 106, 111, and 494 of SB800.

7. **Fiscal Impact Estimates:** Preliminary. See Item 8.

7a. Expenditure Impact:

Item 494 - Virginia Lottery

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|--------------------|----------------|------------------|-------------|
| 2024 | \$5,700,000 | 41 | nongeneral |
| 2025 | \$5,700,000 | 41 | nongeneral |
| 2026 | \$5,700,000 | 41 | nongeneral |
| 2027 | \$5,700,000 | 41 | nongeneral |
| 2028 | \$5,700,000 | 41 | nongeneral |
| 2029 | \$5,700,000 | 41 | nongeneral |
| 2030 | \$5,700,000 | 41 | nongeneral |

Item 106 - Virginia Department of Agriculture and Consumer Services

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|--------------------|----------------|------------------|-------------|
| 2024 | (\$2,023,409) | (27) | general |
| 2025 | (\$2,023,409) | (27) | general |
| 2026 | (\$2,023,409) | (27) | general |

| | | | |
|------|---------------|------|---------|
| 2027 | (\$2,023,409) | (27) | general |
| 2028 | (\$2,023,409) | (27) | general |
| 2029 | (\$2,023,409) | (27) | general |
| 2030 | (\$2,023,409) | (27) | general |

Item 111 - Virginia Racing Commission

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|--------------------|----------------|------------------|-------------|
| 2024 | (\$110,000) | - | nongeneral |
| 2025 | (\$110,000) | - | nongeneral |
| 2026 | (\$110,000) | - | nongeneral |
| 2027 | (\$110,000) | - | nongeneral |
| 2028 | (\$110,000) | - | nongeneral |
| 2029 | (\$110,000) | - | nongeneral |
| 2030 | (\$110,000) | - | nongeneral |

Item 404 – Department of Corrections

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|--------------------|----------------|------------------|-------------|
| 2024 | \$50,000 | - | general |

7b. Revenue Impact:

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| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Fund</i> |
|--------------------|----------------|-------------|
| 2024 | (\$3,295,470) | general |
| 2025 | (\$3,295,470) | general |
| 2026 | (\$3,295,470) | general |
| 2027 | (\$3,295,470) | general |
| 2028 | (\$3,295,470) | general |
| 2029 | (\$3,295,470) | general |
| 2030 | (\$3,295,470) | general |

Note: currently, residual historical horse racing (HHR) revenue collected by the Virginia Racing Commission (VRC) is deposited to the general fund. If this does not continue, it will result in an annual general fund revenue loss of approximately \$28 million. See Item 8, below.

- 8. Fiscal Implications:** This fiscal impact estimate is preliminary and will be updated if additional information becomes available. It is anticipated that this bill will have nongeneral and general fund revenue and expenditure impacts.

This bill renames the Virginia Lottery the Virginia Lottery and Gaming Department and the Virginia Lottery Board the Virginia Lottery and Gaming Board and transfers programs currently under the Virginia Department of Agriculture and Consumer Services (VDACS) and the VRC to the renamed department. Regulation of charitable gaming would transfer from VDACS to the Lottery, and regulation of historical horse racing would transfer from VRC to the Lottery. Additionally, the bill increases the membership of the Virginia Lottery and Gaming Board from seven to nine members. This fiscal impact estimate assumes that the funding and employees currently supporting the charitable gaming program within VDACS would move to the Lottery and that the Lottery would require additional staffing and

spending authority for the full implementation of the consolidation of activities in future years.

Currently, the best estimate for Lottery's immediate costs comes from the 2022 Joint Legislative Audit and Review Commission (JLARC) report, which states:

“Consolidation would not achieve staffing, administrative, or procedural efficiencies because VRC and VDACS are currently understaffed for the gaming responsibilities, and additional staff are needed to adequately regulate charitable gaming and HHR wagering. ...Consolidating regulation of gaming under Lottery would cost more than keeping regulation at VRC and VDACS because of Lottery's higher employee salaries. Virginia Lottery would need at least 20 new staff positions, and 21 existing positions would need to be transferred from VDACS to Lottery. Consolidation under Lottery would cost approximately \$5.7 million in total, which is \$3.5 million more than is currently being spent on regulating HHR and charitable gaming. Most of the increase, \$3.1 million, is because of additional positions that will be needed, and the rest, \$0.4 million, is because of higher salary costs at Lottery.” (page iii-iv)

It is anticipated that the Lottery would require resources to enhance or expand agency support services, including legal, human resources, information technology, finance, and procurement, and would need to source and secure additional office space for regulatory program staff.

The Lottery is currently working with the Department of General Services (DGS) to construct a space for existing casino and sports regulatory oversight needs. While currently leased space is sufficient for current staff, after ongoing construction projects are finalized within that space, additional space would need to be sought to house staff transferring from VDACS, new regulatory hires, and additional support staff in administration, finance, human resources, and information technology. The Lottery cannot determine the costs of acquiring and customizing this additional space at this time amid fluid variables like potential location, future costs, and amount of space needed.

Virginia Racing Commission

This bill establishes the Historical Horse Racing Operations Fund into which the Lottery is to deposit revenue generated by HHR. This Fund is to support the Lottery's costs incurred in the operation and administration of HHR, and revenue not needed for those activities is to be sent to the VRC for disbursement as directed by §59.1-392, Code of Virginia. Currently, the state's portion of revenue that VRC collects from horse racing in the Commonwealth, including HHR, is deposited to the State Racing Operations Fund and used to support VRC's operations.

VRC has four current full-time employees, none of which are dedicated to HHR, and would not transfer any positions to the Lottery. The removal of regulatory requirements for VRC would result in \$110,000 of annual cost savings from contract services supporting HHR. A budget amendment would be needed to transfer this appropriation from VRC to the Lottery.

Most of the racing revenue collected by VRC is generated from HHR. Currently, the state collects approximately \$28.0 million per year from HHR. Following HHR, the largest revenue stream is the 1.5 percent of advanced deposit account wagering (ADW) retained by VRC, or approximately \$1.89 million. VRC's third revenue stream is the 1.5 percent of traditional pari-mutuel wagering revenues VRC retains, or approximately \$540,000 per year. VRC indicates that language in this bill would effectively eliminate ADW by striking "or electronically" in its definition. ADW is conducted almost exclusively through websites, so removing this phrase would mean an additional reduction in revenues to the VRC of \$1.89 million with no accompanying revenue increase at Lottery.

VRC's projected annual expenses are approximately \$3.0 million. This is comprised of \$1.5 million of day-to-day operating expenses, \$1.25 million to support an estimated 25 weeks of live racing at a cost of \$50,000 per week, and \$250,000 to support an anticipated increase in the number of live race days. Language in Item 111 C. of Chapter 2, 2022 Acts of Assembly, Special Session I (the 2022 Appropriation Act) and in the Introduced Budget Bill allows VRC to retain a \$900,000 year-end cash balance for operating expenses and specifies that any remaining balance is to revert to the general fund. Without revenue from HHR on a minimum monthly basis, VRC does not and will not have sufficient revenues to support ongoing expenses.

Under this bill, after recovering its expenses, the Lottery will transfer the balance of HHR revenue to VRC. VRC normally receives the state license tax derived from HHR on a weekly basis. The timing of the transfer of funds from the Lottery to VRC is unknown. If the transfer occurs monthly, VRC could continue normal operations, but if disbursements are not made until the end of the fiscal year, VRC could incur a deficit as early as November 2023.

Lines 5063 through 5065 of the introduced bill modify the current definition of historical horse racing, removing the inclusion of a racetrack owned or operated by a significant infrastructure limited licensee. It is anticipated that this may result in a decrease in revenues from this source. VRC received \$3.8 million last year from HHR wagering at Colonial Downs. Thus, though current annual revenue projections for VRC are estimated at nearly \$28 million, this bill could generate only \$24 million in revenue from HHR.

As indicated above, budget language allows VRC to keep \$900,000 at the end of each fiscal year for cash flow purposes and requires VRC to transfer any remaining balance to the general fund. Recent transfers to the general fund have ranged from \$20 million to \$30 million at the end of FY 2022. It is unclear whether any remaining balances would continue to be deposited to the general fund or whether they would become part of the Virginia Lottery Fund and then the Lottery Proceeds Fund to support public education in accordance with § 58.1-4022, Code of Virginia. If the funds are deposited to the Virginia Lottery Fund and the Lottery Proceeds Fund, the general fund transfer will be eliminated.

Virginia Department of Agriculture and Consumer Services

Budget language in Item 106 of the 2022 Appropriation Act and included in the Introduced Budget bill overrides the Code and directs the deposit of any and all fees paid by any

organization conducting charitable gaming under a permit issued by the department to the general fund. Amounts have varied in years past but range from approximately \$1.8 million to \$3.3 million in FY 2022. VDACS receives a general fund appropriation to support charitable gaming activities.

The general fund appropriation in the Introduced Budget Bill for charitable gaming is \$2.0 million. VDACS currently has 27 positions budgeted to the regulation of charitable gaming, of which 11 are filled. The positions and appropriation would need to be transferred to the Lottery. To transfer currently budgeted appropriations and positions to the Lottery, budget amendments would be needed to the budgets of both the Lottery and VDACS.

Virginia State Police (VSP)

Fiscal impact estimates are not yet available from the State Police. This bill would maintain VSP's requirement to assist in charitable gaming investigations and investigate violations of gaming law referred by the Lottery.

Other

Additional language in the bill expands the potential pool of individuals who could be subject to criminal penalties. The bill establishes additional Class 1 misdemeanor and Class 4 felony penalties.

Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both.

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 misdemeanant 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 varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2022), the estimated total state support for local jails averaged \$40.39 per inmate, per day in FY 2021.

A Class 4 felony is punishable by two to ten years' imprisonment and a fine of up to \$100,000. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

Due to the lack of data, the Virginia Criminal Sentencing Commission (VCSC) has concluded, pursuant to § 30-19.1:4, Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 2, 2022 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill. See VCSC's impact statement for more detail. A budget amendment to appropriate \$50,000 from the general fund would be needed under the Department of Corrections.

9. Specific Agency or Political Subdivisions Affected: Virginia Lottery, Virginia Department of Agriculture and Consumer Services, Virginia Racing Commission, law enforcement agencies, courts

10. Technical Amendment Necessary: No.

11. Other Comments: None