

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB212 ER

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

2. Patron: Rouse

3. Committee: Passed both Houses

4. Title: Virginia Small Business Economic Development Act established; regulation of skill games.

5. Summary: This bill repeals § 18.2-334.6 (exemptions to Gambling article pertaining to amusement devices) and removes playing or offering for play of any skill game from the definition of illegal gambling in § 18.2-325, Code of Virginia. The bill establishes the Virginia Small Business Economic Development Act (the Act) for the purpose of providing a regulatory and registration structure for skill game machines in the Commonwealth.

The substitute bill places responsibility for regulating skill games machines with the Virginia Lottery Board. However, enactment clauses require the Board to adopt regulations necessary to implement the Act by January 1, 2027, and establish that until that time, the provisions will be implemented by the Virginia Alcoholic Beverage Control Authority (ABC). The enactment clause allows ABC to issue a provisional registration to any entity that provides a laboratory certification from a laboratory approved by ABC that the game being distributed, operated, or placed in an establishment is a skill game machine. The enactment clause sets fees that a payable to ABC to defray the costs associated with the implementation, monitoring, monthly reporting, and enforcement associated with provisional registrants.

The substitute bill contains an enactment clause that requires the Department of Taxation to disclose information to the Lottery Board and to ABC until the Lottery Board adopts the regulations necessary to implement the provisions of this act regarding the tax remitted by any distributor.

The bill defines certain terms associated with the Act and sets out the powers and duties of the Lottery Board, including promulgating regulations governing the ownership, placement, use, and operation of skill game machines and any associated equipment.

The bill establishes registration provisions, application fees, and requirements for bond with surety for skill game machines, sets out provisions for the suspension or revocation of such registrations, and provides that violations are subject to civil liability. The bill requires the Lottery Board to designate three nationally recognized and accredited laboratories to conduct the requisite skill game machine software evaluation and requires that software used in skill game machines be tested and formally recognized by the Lottery Board.

The bill requires the Lottery Board to adopt regulations to establish a voluntary exclusion program where any person who participates agrees to refrain from certain betting or gaming activities. The bill requires that any state agency must assist in administering the voluntary exclusion program at the request of the Department of Taxation.

The bill sets limits on the number of skill game machines at four in any ABC retail licensee and at ten at any truck stop establishment. The bill prohibits anyone younger than 21 from operating a skill game machine. The bill sets minimum requirements for the operation of skill game machines and requires the creation of a skill game accounting system that would be established and operated by the Department of Taxation.

The bill establishes the Virginia Small Business Economic Development Fund, which is a nonreverting fund, generated from fees, charges, and civil penalties authorized by this legislation, that must be used solely for the purposes of financing the administration and operation of skill game machines oversight. The bill establishes the PreK-12 Priority Fund, which would receive receipts generated by the bill and must be used solely for public education purposes in the Commonwealth in accordance with the general appropriation act. The bill requires distributors to remit a monthly tax equal to 25 percent of gross receipts and allocates the distribution of the revenue as set out in the bill.

The bill allows for the seizure of skill game devices under certain circumstances and establishes civil penalties for violation of the proposed law. Penalties are to be paid into the Virginia Small Business Economic Development Fund.

The bill establishes that skill game machines operated pursuant to the proposal are not illegal gambling.

6. **Budget Amendment Necessary:** Yes, Items 125 (Direct Aid to Public Education), 258 and 260 (TAX), and 380 (ABC). See Item 8 below.
7. **Fiscal Impact Estimates:** Final. See Item 8 below.
8. **Fiscal Implications:**

Expenditures

Alcoholic Beverage Control Authority (ABC)

The bill makes ABC responsible for administering the provisions the bill until January 1, 2027. ABC estimates that the agency will need additional auditors, positions to handle skill game registrations, and administrative and legal staff to handle the additional regulatory workload along with additional sworn enforcement personnel, which would be trained to go into establishments to inspect and audit the machines. However, the number of positions and appropriation needed to support the positions will depend on the number of skill game machines registered across the Commonwealth. For example, assuming that 10,000 skill game machines are registered, which aligns closely to the 2022 Joint Legislative Audit and Review Commission Report “Oversight and Administration of Gaming in the

Commonwealth,” ABC estimates a fiscal impact of \$8,289,080 in FY 2025, \$6,217,400 in FY 2026, and \$3,108,700 in the first half of FY 2027 until the Lottery Board assumes responsibility for the regulation of skill game machines. ABC’s estimates include salary and benefits for up to 23 additional FTE required to perform oversight across the Commonwealth. However, due to the enactment date of January 1, 2027, and the temporary nature of ABC’s role under the bill, the agency will rely on a large number of temporary workers and funding for overtime, particularly for sworn enforcement positions that cannot be filled with temporary personnel. First year estimated costs include one-time implementation costs to hire, train, and outfit the new employees, in addition to costs to implement an IT system to register skill game distributors, operators, and establishments. The bill identifies provisional registration fees (nongeneral fund) as the source of funding for the regulation and enforcement of skill game machines (see Registration Fee section below).

Estimates assume that it is the proposal’s intent for ABC to develop and implement a fully functional regulation structure that can be passed along to the Lottery Board.

The bill requires that skill game machines receive certification from one of three laboratories requires the issuance of decals bearing the Commonwealth seal that include the words "Certified Skill Game Machine" and bearing the effective dates of registration. Such decals must be affixed by the operator on each skill game machine provided to each establishment for play. The bill identifies the Lottery Board as the agency responsible for issuing the decals. However, ABC estimated cost associated with 10,000 machines at \$132,400 for 10,000 machines and stated that actual costs would vary based on the number of machines registered. This cost is included in the total costs provided above.

It should be noted that the bill does not cap the number of skill game machines in Virginia. Therefore, the estimate of 10,000 machines is uncertain and could underestimate the market for skill games in Virginia. If more skill games are in play in Virginia, ABC projects increased expenditures to implement the bill, though it is anticipated that costs would rise marginally, equal to the number of positions required to cover additional skill game machines.

Lottery Board

Regulatory program costs for Virginia Lottery will not ensue until January 1, 2027, the deadline by which Lottery regulations must be adopted. However, the Lottery Board’s estimates indicate that 60 positions and \$15 million per fiscal year starting in FY 2027 would be needed to implement the provisions of this bill. These costs include licensing, enforcement and investigations, legal support, and other staffing needs. Regulatory program costs are preliminary estimates and will vary depending on the gaming revenues each machine may generate. The bill dedicates six percent of the 25 percent tax assessed on gross receipts to the Department of Taxation to cover the costs incurred in administering the provisions of this section and, of the amounts remaining after such allocation to the Department, the remainder is dedicated to the Lottery Board for the purposes of implementing this chapter. It is not known at this time if the amounts ultimately received by the Lottery Board would be sufficient to cover all expenses.

Lottery also reports that the authority granted to the Lottery Board under the proposed legislation in terms of issuing decals, registrations, etc. as well as assessing penalties and sanctions is inconsistent with the Lottery Board's authority for other gaming activity, and these activities would need to be under the authority of the Virginia Lottery Department.

Department of Taxation

According to information the Department of Taxation (the Department) provided, this bill would require updates to existing computer systems and one additional full-time position to administer and distribute the new tax. The Department of Taxation estimates these costs at \$381,150 in the first year, \$458,208 in the second year, and \$97,158 each year ongoing thereafter (includes salary and benefits for the additional FTE), which would cover systems updates and other costs associated with processing the new tax.

These costs assume that distributors will be required to file returns electronically. The Department reports that due to ongoing implementation efforts for legislation enacted in prior sessions, the Department would not have the capacity to fully implement automatic distributions within the agency's revenue accounting system before the first distribution would be required under this bill. Instead, a temporary manual process would need to be implemented initially until the final system updates are made. Further, the Department reports that it does not have the capacity to create and administer the skill game accounting system established in the bill, which is required in each skill game machine and ticket redemption terminal operated in the Commonwealth. Therefore, the Department's estimates do not include costs for such a system.

As noted above, the bill splits six percent of the 25 percent tax assessed on gross receipts, assigning proceeds first to the Department and remainder to the Lottery Board. It is not known at this time if the amount would be sufficient to cover the Department's expenses.

Registration Fees and Civil Penalties

The bill establishes nonrefundable registration fees for skill game machines. For initial registration, fees are set at \$500,000 for distributors, \$100,000 for operators, and \$250 for establishments. For registration renewals, fees are set at \$250,000 for distributors, \$10,000 for operators, and \$100 for establishments. ABC estimates that two distributors, 50 operators, and 8,879 establishments would pay for skill game registrations. The substitute bill's third enactment clause provides that each application for a provisional registration must be accompanied by a provisional registration fee payable to ABC to defray the costs associated with the implementation, monitoring, monthly reporting, and enforcement associated with provisional registrants. Therefore, the potential for nearly \$2 million in annual revenue may be available to help offset costs associated with the nongeneral fund positions ABC identified in the expenditure section above. The enactment clause also provides that ABC would receive six percent of the gross receipts tax to further defray the costs incurred during the time period when the ABC's regulations are effective. All civil penalties assessed during this time period would be paid to ABC and used to defray the costs associated with enforcement.

After ABC transfers responsibility to the Lottery Board, registration fees and civil penalties would be paid into the Virginia Small Business Economic Development Fund.

Revenue Impact

Based on feedback from the Department of Taxation and information from JLARC's 2022 report on gaming, net revenue generated from the operation of 10,500 skill game machines was \$506.7 million in 2020. The 25 percent tax proposed by this bill applied to \$506.7 million of net gaming revenues would generate tax revenues in excess of \$126.0 million. While it is not possible to calculate the bill's exact impact based on available data, given the potential for growth in the number of skill game machines, the Department of Taxation notes that estimated revenue could grow significantly over time.

The bill requires distributors to remit to the Department of Taxation a monthly tax equal to 25 percent of the gross revenue for each skill game machine that such distributor provided for play during the previous month. The bill allocates the gross revenue tax collected as outlined below. Allocation of funds by the Department must occur no later than 60 days after such funds are collected. Actual allocations will depend on the amount of tax collected under the new law.

- Two percent to the Problem Gambling Treatment and Support Fund, established pursuant to § 37.2-314.2;
- Six percent to the Department of Taxation to cover the costs incurred in administering the provisions of this section and, of the amounts remaining after such allocation to the Department, to the Lottery Board for the purposes of implementing this chapter;
- Fifteen percent to the Department for distribution to localities in which the skill game machines are located;
- One percent to the law-enforcement agencies that have primary law-enforcement responsibilities in any locality in which skill game machines are located;
- One percent to the Department of State Police to be used by the Office of the Gaming Enforcement Coordinator, established pursuant to § 52-54; and
- Seventy-five percent to the PreK-12 Priority Fund established pursuant to § 58.1-4207

Other Agency Impact

K-12 Education

This bill requires 75 percent of revenue to be deposited into the PreK-12 Priority Fund to be used solely for educational purposes as established by the bill. Such funds would have to be appropriated in Item 125.

Although the bill allocates revenue to agencies and localities as described previously, any expenditure impact this bill may have on these entities is not known at this time. If additional information becomes available, this impact statement will be revised.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Lottery, Virginia Alcoholic Beverage Control Authority, Department of Taxation, Direct Aid to Public Education, Department of Education, Virginia State Police, Department of Behavioral Health and Developmental Services, localities

10. Technical Amendment Necessary: No

11. Other Comments: None