

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB212

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

2. Patron: Rouse

3. Committee: Finance and Appropriations

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, which will be managed by the Virginia Alcoholic Beverage Control Authority (ABC). The bill defines certain terms associated with the Act and sets out the powers and duties of the ABC and its board of directors (the Board), including promulgating regulations governing the ownership, placement, use, and operation of skill game machines and any associated equipment.

The bill establishes registration provisions and application fees 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 Board to designate three nationally recognized and accredited laboratories to conduct the requisite skill game machine equipment and software evaluation and requires that software used in skill game machines be tested and formally recognized by the Board. The bill sets limits on the number of skill game machines at five in any ABC retail licensee and at ten at any truck stop and prohibits anyone younger than 21 from operating a skill game machine.

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 directs the Department of Taxation to collect a monthly tax equal to 15 percent of the gross revenue for each skill game machine that such distributor provided for play during the previous month and allocates the distribution of the revenue as set out in the bill.

The bill allows a law-enforcement agency or ABC to seize 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.

Enactment clauses a) require ABC to adopt regulations to implement the provisions of the bill and prescribe the forms for registration of distributors, operators, and establishments, accept payment of the required registration fees, and designate three nationally recognized laboratories as being authorized to conduct the requisite skill game machine equipment and software evaluation, b) establish that the Board's initial adoption of regulations necessary to implement the provisions of this act are exempt from the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia, except that the Board must provide an opportunity for public comment on the regulations prior to adoption, and c) allow ABC to issue provisional registrations to any entity that is duly licensed or registered to engage in the distribution, operation, or hosting of any skill game in another state on July 1, 2024.

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:** Preliminary. See Item 8 below.
8. **Fiscal Implications:**

Expenditures

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 (nongeneral fund) in FY 2025 and \$6,217,400 (nongeneral fund) each year thereafter. These costs include salary and benefits for 23 additional FTE required to perform oversight across the Commonwealth, as well as a large number of temporary workers and funding for overtime until workload demands can be determined. First year estimated costs include one-time implementation costs to hire, train, and outfit the new employees, in addition to costs to implement a system to register skill game distributors, operators, and establishments.

The bill requires that skill game machines receive certification from one of three laboratories chosen by ABC's Board of Directors and requires ABC to issue decals bearing the Commonwealth seal that include the words "Certified Skill Game Machine" and bear the effective dates of registration. Such decals must be affixed by the operator on each skill game machine provided to each establishment for play. According to ABC, the estimated cost associated with 10,000 machines is \$132,400 and 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.

According to the Department of Taxation, this bill would require computer systems updates and one additional full-time position to administer the new tax. The Department of Taxation estimates these costs at \$381,150 general fund in FY 2025 and \$443,208 general fund in FY 2026, which would cover systems updates and the additional FTE and \$82,158 general fund each year ongoing (includes salary and benefits for the additional FTE). 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.

Registration Fee

The bill requires that skill game machines in the Commonwealth be registered with ABC and 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. If the intention of the proposal is for ABC to retain these fees, the potential for nearly \$2 million in annual revenue may be available to help offset costs associated with the nongeneral fund positions referenced above.

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 \$506,653,490 in FY 2021. The 15 percent tax proposed by this bill applied to \$506.7 million of net gaming revenues would generate tax revenues of \$76 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 generated by the bill could be in excess of \$100 million per year.

The bill requires distributors to remit to the Department of Taxation a monthly tax equal to 15 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 Authority (ABC) for the purposes of implementing this chapter (note: this funding would be available to support the costs to ABC identified earlier in this document);
- Fifteen percent to the localities in which the skill game machines are located;
- Two percent to the Department of State Police to be used by the Office of the Gaming Enforcement Coordinator, established pursuant to § 52-54;
- Ten percent to the School Construction Fund established, pursuant to § 22.1-140.1;
- Ten percent appropriated to provide additional basic aid funding for public schools, which must be apportioned to local school boards pursuant to Article 1 (§ 22.1-88 et seq.) of Chapter 8 of Title 22.1; and
- Fifty-five percent to the general fund.

Other Agency Impact

K-12 Education

This bill requires ten percent of revenue to be deposited into the School Construction Fund. Any funds deposited into the School Construction Fund would be appropriated to be awarded to local school divisions. Any actual impact is indeterminate and would depend on the actual revenue collected.

The bill requires ten percent of revenue to be appropriated to provide additional basic aid funding for public schools, which would be apportioned to local school boards. It is unclear how this would be applied, and additional language is needed to execute this provision.

Basic aid is a calculated amount based on the Standards of Quality. After the total cost of basic aid is calculated, the education sales tax that is distributed based on school age population reduces the total cost of basic aid before the balance is apportioned between the state and the local school divisions based on local composite index.

If the intention is that these funds are to be used to support the total cost of basic aid, and that the Department of Education (DOE) would calculate state and local shares of basic aid payments after accounting for this revenue, similar to the education sales tax that is distributed based on school age population, then additional language would be needed in Item 125. Language would be needed to appropriate these revenues, to direct DOE to calculate the state and local shares after accounting for these revenues, and to clarify if these funds would be subjected to required local effort.

If the intention is that this funding will be used to support the state's share of basic aid payments, then additional clarifying language would be needed to direct this calculation, and the funds would need to be appropriated in Item 125.

If the intention is that this funding will be used to support the local share of basic aid payments, then additional clarifying language would be needed to direct how the funding will

be apportioned to local school divisions, and the funds would need 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 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