

HOUSE BILL NO. 1373

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(Patron Prior to Substitute--Delegate Taylor)

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.

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

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

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

36 "Director" means the Director of the Virginia Lottery.

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

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

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

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

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

50 "Individual" means a natural person.

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

52 "On-premises mobile casino gaming" means casino gaming offered by a casino gaming operator
53 at a casino gaming establishment using a computer network of both federal and nonfederal interoperable

54 packet-switched data networks through which the casino gaming operator may offer casino gaming to
55 individuals who have established an on-premises mobile casino gaming account with the casino gaming
56 operator and who are physically present on the premises of the casino gaming establishment, as authorized
57 by regulations promulgated by the Board.

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

59 "Person" means an individual, partnership, joint venture, association, limited liability company,
60 stock corporation, or nonstock corporation and includes any person that directly or indirectly controls or
61 is under common control with another person.

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

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

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

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

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

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

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

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

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

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

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

93 **§ 58.1-4107. Eligible host city; certification of preferred casino gaming operator.**

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

95 1. Any city (i) in which at least 40 percent of the assessed value of all real estate in such city is
96 exempt from local property taxation, according to the Virginia Department of Taxation Annual Report for
97 Fiscal Year 2018, and (ii) that experienced a population decrease of at least seven percent from 1990 to
98 2016, according to data provided by the U.S. Census Bureau;

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

103 3. Any city that (i) had an annual unemployment rate of at least 3.6 percent in 2018, according to
104 data provided by the U.S. Bureau of Labor Statistics; (ii) had an annual poverty rate of at least 20 percent
105 in 2017, according to data provided by the U.S. Census Bureau; (iii) experienced a population decrease of

106 at least four percent from 1990 to 2016, according to data provided by the U.S. Census Bureau; and (iv)
107 is located adjacent to a state that has adopted a Border Region Retail Tourism 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 24
110 percent of the assessed value of all real estate in such city is exempt from local property taxation, according
111 to the Virginia Department of Taxation Annual Report for Fiscal Year 2018; and (iii) that experienced a
112 population decrease of at least five percent from 1990 to 2016, according to data provided by the U.S.
113 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 24
116 percent of the assessed value of all real estate in such city is exempt from local property taxation, according
117 to the Virginia Department of Taxation Annual Report for Fiscal Year 2018; and (iii) that had a poverty
118 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 for
121 Fiscal Year 2016; (ii) that had a poverty rate of at least 21 percent in 2019, according to data provided by
122 the U.S. Census Bureau; and (iii) that had an annual unemployment rate of at least 13 percent in 2020,
123 according to data provided by the U.S. Bureau of Labor Statistics.

124 B. In selecting a preferred casino gaming operator, an eligible host city shall have considered and
125 given substantial weight to factors such as:

- 126 1. The potential benefit and prospective revenues of the proposed casino gaming establishment.
- 127 2. The total value of the proposed casino gaming establishment.
- 128 3. The proposed capital investment and the financial health of the proposer and any proposed
129 development partners.
- 130 4. The experience of the proposer and any development partners in the operation of a casino
131 gaming establishment.
- 132 5. Security plans for the proposed casino gaming establishment.

133 6. The economic development value of the proposed casino gaming establishment and the potential
134 for community reinvestment and redevelopment in an area in need of such.

135 7. Availability of city-owned assets and privately owned assets, such as real property, including
136 where there is only one location practicably available or land under a development agreement between a
137 potential operator and the city, incorporated in the proposal.

138 8. The best financial interest of the city.

139 9. The proposer's status as a minority-owned business as defined in § 2.2-1604 or the proposer's
140 commitment to solicit equity investment in the proposed casino gaming establishment from one or more
141 minority-owned businesses and the proposer's commitment to solicit contracts with minority-owned
142 businesses for the purchase of goods and services.

143 10. The proposer's commitment to paying its employees, contractors, and subcontractors at every
144 tier no less than the prevailing wage rate.

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

148 D. The eligible host city described in subdivision A 4 shall provide substantial and preferred
149 consideration to a proposer who is a Virginia Indian tribe recognized in House Joint Resolution No. 54
150 (1983) and acknowledged by the Assistant Secretary-Indian Affairs for the U.S. Department of the Interior
151 as an Indian tribe within the meaning of federal law that has the authority to conduct gaming activities as
152 a matter of claimed inherent authority or under the authority of the Indian Gaming Regulatory Act (25
153 U.S.C. § 2701 et seq.).

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

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

175 **§ 58.1-4110. Issuance of operator's license to preferred casino gaming operator; standards**
176 **for licensure; temporary casino gaming allowed under certain conditions.**

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

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

- 183 1. The applicant submits a plan for addressing responsible gaming issues, including the goals of
184 the plan, procedures, and deadlines for implementation of the plan;

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

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

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

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

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

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

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

203 9. The applicant pays its employees, contractors, and subcontractors at every tier no less than the
204 prevailing wage rate;

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

207 ~~10-11.~~ The applicant is qualified to do business in Virginia or is subject to the jurisdiction of the
208 courts of the Commonwealth; and

209 ~~11-12.~~ The applicant has not previously been denied a license pursuant to subsection C.

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

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

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

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

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

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

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

226 D. The Board shall make a determination regarding whether to issue the operator's license within
227 12 months of the receipt of a completed application.

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

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

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

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

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

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

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

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

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

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

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

257 **§ 58.1-4123. Local referendum required; limitation.**

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

261 B. The governing body of any city containing an eligible host city shall petition the court, by
262 resolution, asking that a referendum be held on the question of whether casino gaming shall be permitted

263 within the city. The court, by order entered of record in accordance with Article 5 (§ 24.2-681 et seq.) of
264 Chapter 6 of Title 24.2, shall require the regular election officials of the city to open the polls and take the
265 sense of the voters on the question as herein provided.

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

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

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

275 Yes

276 No"

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

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

287 F. When an eligible host city is located within 25 miles of another eligible host city, the governing
288 body of any such city that holds a local referendum pursuant to this section that subsequently fails shall
289 be prohibited from holding another local referendum on the same question until the other eligible host city

290 has had a reasonable opportunity to hold a local referendum pursuant to this section. For purposes of this
291 subsection, a "reasonable opportunity" shall not exceed the date of the 2023 regular general election unless
292 a court of competent jurisdiction sets an alternative date.

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

295 **2. That for the purposes of subsection F of § 58.1-4123 of the Code of Virginia, as amended by this**
296 **act, the local referendum held on November 2, 2021, by the eligible host city described in subdivision**
297 **A 5 a of § 58.1-4107 of the Code of Virginia, as amended by this act, shall be deemed the most recent**
298 **local referendum such that the governing body in such eligible host city shall be prohibited from**
299 **holding another local referendum on the same question until the governing body in the eligible host**
300 **city described in subdivision A 5 b of § 58.1-4107 of the Code of Virginia, as amended by this act,**
301 **has had a reasonable opportunity to hold a local referendum pursuant to the provisions of § 58.1-**
302 **4123 of the Code of Virginia, as amended by this act.**

303 **3. That the provisions of subdivision B 10 of § 58.1-4107 of the Code of Virginia, as amended by this**
304 **act, shall only apply to the selection of a preferred casino gaming operator by an eligible host city**
305 **that occurs on or after July 1, 2023.**

306 **4. That the Virginia Lottery Board shall amend the regulations promulgated in accordance with the**
307 **provisions of § 58.1-4111 of the Code of Virginia regarding the criteria and procedures for casino**
308 **gaming operator license renewal to require any casino gaming operator seeking licensure renewal**
309 **to be in compliance with the provisions of subdivision B 9 of § 58.1-4110 of the Code of Virginia, as**
310 **amended by this act, as a condition of renewal.**

311 **5. That the provisions of subdivision B 9 of § 58.1-4110 of the Code of Virginia, as amended by this**
312 **act, and any regulations promulgated pursuant to the fourth enactment of this act, shall only apply**
313 **to the issuance or renewal of a casino gaming operator license issued or renewed by the Virginia**
314 **Lottery Board on or after July 1, 2023.**

315 #