



Virginia Department of Planning and Budget **Economic Impact Analysis**

11 VAC 5-90 Casino Gaming
Virginia Lottery
Town Hall Action/Stage: 5686 / 9343
September 24, 2021

Summary of the Proposed Amendments to Regulation

Chapters 1197 and 1248 of the 2020 Acts of Assembly¹ authorized casino gaming in the Commonwealth, to be regulated by the Virginia Lottery Board (Board). Pursuant to the third enactment clause, an emergency regulation became effective on March 11, 2021. The emergency regulation will expire on September 10, 2022.

Chapter 7 of the 2021 Special Session 1 Acts of Assembly amended the statutes related to casino gaming to state that: 1) the casino may have sports betting, and 2) an applicant for a casino facility operator license shall include in the application a minority investment plan, a plan for the participation of minority individuals or minority-owned businesses in the applicant's purchase of goods and services related to the casino gaming establishment, and the applicant's financing plan for the casino gaming establishment.

Chapter 15 of the 2021 Special Session 1 Acts of Assembly amended the statutory requirements for the casino facility operator license to include that the applicant has established a policy requiring all license and permit holders who interact directly with the public in the casino gaming establishment to complete a training course acceptable to the Virginia Lottery Department (Lottery or Department) in how to recognize and report suspected human trafficking.

The Board now proposes to replace the emergency regulation with a permanent regulation. The proposed permanent regulation differs from the emergency regulation in that it takes into account the requirements of Chapters 7 and 15, and subsequent public comment.

¹ Chapters 1197 and 1248 of the 2020 Acts of Assembly are identical.

Background

The requirements and other elements of the legislation² include the following 67 specific items:

Regulatory Activity Required by the Legislation

- Requiring the Director of the Lottery to supervise and administer the regulation of casino gaming.
- Requiring the Board to adopt regulations regarding the conditions under which casino gaming shall be conducted in the Commonwealth.
- Requiring the Board to adopt regulations to establish and implement a voluntary exclusion program.³ The name of a person participating in the program shall be included on a list of excluded persons. The list of persons entering the voluntary exclusion program and the personal information of the participants shall be confidential, with dissemination limited to lottery sales agents, owners and operators of casino gaming establishments, and any other parties the Lottery deems necessary for purposes of enforcement. Lottery sales agents and owners and operators of casino gaming establishments shall make all reasonable attempts as determined by the Board to cease all direct marketing efforts to a person participating in the program.

Host Cities

- Limiting the conduct of casino gaming to the Cities of Bristol, Danville, Norfolk, Portsmouth, and Richmond.
 - The legislation required that each eligible host city hold a referendum on the question of whether casino gaming shall be permitted in such city if approved by the voters of such city. The voters of Bristol, Danville, Norfolk, and Portsmouth have all already approved casino gaming via referendum. Richmond will hold their referendum on November 2, 2021.

² This includes Chapters 1197 and 1248 of the 2020 Acts of Assembly, and Chapters 7 and 15 of the 2021 Special Session 1 Acts of Assembly.

³ "Voluntary exclusion program" is defined as a program established by the Board that allows individuals to place their names on a voluntary exclusion list and voluntarily exclude themselves from: (i) playing any account-based lottery game, (ii) participating in sports betting, (iii) engaging in any form of casino gaming, (iv) participating in charitable gaming, (v) participating in fantasy contests, or (vi) wagering on horse racing.

- Requiring that the host cities submit their preferred casino gaming operator to the Lottery for review.

Operator's License

- Establishing that no person shall operate a casino gaming establishment unless he has obtained an operator's license issued by the Lottery.
- Establishing that if a preferred casino gaming operator, as certified by the applicable eligible host city, submits an application that meets the standards for licensure, 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.
- Establishing that in order to obtain an operator's license, the applicant shall (i) make a capital investment of at least \$300 million in a casino gaming establishment, including the value of the real property upon which such establishment is located and all furnishings, fixtures, and other improvements, and (ii) possess an equity interest equal to at least 20 percent of the casino gaming establishment.
- Establishing that any required local infrastructure or site improvements, including necessary sewerage, water, drainage facilities, or traffic flow, be paid exclusively by the operator license applicant without state or local financial assistance.
- Requiring that a nonrefundable fee of \$15 million be paid by the applicant upon the issuance of a license and upon any subsequent transfer of a license to operate a casino gaming establishment.
- Requiring that a nonrefundable application fee of \$50,000 be paid for each principal at the time of filing to defray the costs associated with the background investigation conducted for the Lottery. If the reasonable costs of the investigation exceed the application fee, the applicant shall pay the additional amount. The Board may establish regulations calculating the reasonable costs to the Lottery in performing its functions under this chapter and allocating such costs to the applicants for licensure at the time of filing.

- Establishing that the Lottery shall require a bond with surety acceptable to it, and in an amount determined by it, to be sufficient to cover any indebtedness incurred by the licensee to the Commonwealth.
- Requiring that the license application include: (a) the applicant's financing plan for the casino gaming establishment; and (b) evidence of compliance by the applicant with the economic development and land use plans and design review criteria of the local governing body of the city in which the casino gaming establishment is proposed to be located, including certification that the project complies with all applicable land use ordinances.
- Requiring, in addition to the license application, that the applicant submit: (i) a minority investment plan disclosing any equity interest owned by a minority individual or minority-owned business or the applicant's efforts to seek equity investment from minority individuals or minority-owned businesses and (ii) a plan for the participation of minority individuals or minority-owned businesses in the applicant's purchase of goods and services related to the casino gaming establishment.
- Requiring that the operator license applicant establish a policy requiring all license and permit holders who interact directly with the public in the casino gaming establishment to complete a training course acceptable to the Lottery in how to recognize and report suspected human trafficking.
- Requiring that the Board make a determination regarding whether to issue the operator's license within 12 months of the receipt of a completed application.
- Establishing that the Lottery may authorize casino gaming to occur on a temporary basis for a period of one year under specified conditions.
- Establishing that the casino gaming operator license shall be valid for a period of 10 years from its date of issuance, but shall be reviewed no less frequently than annually to determine compliance with statutes and regulations.
- Requiring that every five years the licensed operator submit for review and approval a reinvestment projection related to the casino gaming establishment to cover the succeeding five-year period of operations.
- Requiring that the Board establish by regulation the criteria and procedures for license renewal and for amending licenses to conform to changes in a licensee's gaming

operations. Such regulations shall require the operator to submit to the Board any updates or revisions to the capital investment plan provided with the initial license application.

- Requiring that a licensed operator keep his books and records so as to clearly indicate the total amount of gross receipts and adjusted gross receipts.
- Requiring that the licensed operator furnish to the Lottery reports and information as the Department may require with respect to its activities.
- Requiring that each casino game that operates electronically be connected to a central monitoring and audit system established and operated by the Lottery. Such system shall provide the ability to audit and account for terminal revenues and distributions in real time.
- Requiring that within 90 days after the end of each fiscal year, the licensed operator transmit to the Lottery a third-party, independent audit of the financial transactions and condition of the licensee's total operations.
- Establishing that an operator issued a license 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.

Supplier's Permit

- Establishing that any person that supplies any casino gaming equipment, devices, or supplies to a licensed gaming operation or manages any operation, including a computerized network, of a casino gaming establishment must first obtain a supplier's permit.
- Establishing that the Board may issue a supplier's permit upon application and payment of a nonrefundable application fee set by the Board, a determination by the Board that the applicant is eligible for a supplier's permit, and payment of a \$5,000 initial permit fee. A supplier's permit shall be renewed annually at a fee to be determined by the Lottery, not to exceed \$5,000 per year of licensure. The Board shall prescribe by regulation the criteria for the issuance, duration, and renewal of supplier's permits.

- Requiring that a supplier keep books and records for the furnishing of casino gaming equipment, devices, and supplies to gaming operations separate and distinct from any other business that the supplier might operate. A supplier shall file a quarterly return with the Lottery listing all sales and leases for which a permit is required.
- Establishing that the Lottery Director may suspend, revoke, and refuse to renew, or assess a civil penalty against the holder of a license or permit in a sum not to exceed \$100,000, after notice and a hearing.
- The Lottery believes that the legislative requirement that a nonrefundable application fee of \$50,000 be paid for each principal, to defray the costs associated with the background investigation, also applies to supplier permittees. This is based upon the Lottery's interpretation of § 58.1-4109, which they state applies to all principals as that term is defined in § 58.1-4100, and thus also includes "a person who manages a gaming operation on behalf of a licensee."

Service Permits

- Establishing that no person shall participate in (i) any gaming operation as a casino gaming employee or concessionaire or employee of either or in (ii) any other occupation that the Board has determined necessary to regulate in order to ensure the integrity of casino gaming in the Commonwealth, unless such person possesses a service permit to perform such occupation issued by the Board. The Board shall prescribe by regulation the criteria for the issuance, duration, and renewal of service permits.
- Requiring that the service permit application be accompanied by a fee prescribed by the Lottery; in the proposed regulation, the Lottery has set this fee at \$500.
- The Lottery believes that the legislative requirement that a nonrefundable application fee of \$50,000 be paid for each principal, to defray the costs associated with the background investigation, also applies to service permittees. This is based upon the Lottery's interpretation of § 58.1-4109, which they state applies to all principals as that term is defined in § 58.1-4100, and thus also includes "a person who manages a gaming operation on behalf of a licensee."

Background Checks

- Requiring the Board, in conjunction with an accredited law-enforcement agency, to conduct a background investigation, including a criminal history records check and fingerprinting, of the following individuals: (i) every individual applying for a license or permit pursuant to this chapter; (ii) every individual who is an officer, director, or principal of a licensee or applicant for a license and every employee of the licensee who conducts gaming operations; (iii) all security personnel of any licensee; and (iv) all permit holders and officers, directors, principals, and employees of permit holders whose duties relate to gaming operations in Virginia. Each such individual shall submit his fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation for a national criminal records search and to the Department of State Police for a Virginia criminal history records check.
 - The fee for the Virginia criminal history information and the FBI national search is \$35.72.⁴

Conduct of Casino Gaming

- Establishing that agents of the Lottery, the Department of State Police, and the local law-enforcement and fire departments may enter any casino gaming establishment and inspect such facility at any time for the purpose of determining compliance with this chapter and other applicable fire prevention and safety laws.
- Establishing that no person under age 21 shall be permitted to make a wager under this chapter or be present where casino gaming is being conducted.
- Requiring that casino gaming wagers shall be conducted only with tokens, chips, or electronic cards purchased from a licensed casino gaming operator. This does not apply to sports betting, which may be conducted using cash.

New Funds

- Creating in the state treasury a special non-reverting fund to be known as the Gaming Proceeds Fund.

⁴ Source: Virginia Lottery

- Creating in the state treasury a special non-reverting fund to be known as the Virginia Indigenous People's Trust Fund. After payment of the costs of administration, moneys in the Virginia Indigenous People's Trust Fund shall be used to make disbursements on a quarterly basis in equal amounts to each of the six federally recognized Virginia Indian tribes.
- Creating in the state treasury a special non-reverting fund to be known as the Problem Gambling Treatment and Support Fund. Moneys in the Fund shall be used solely for the purposes of (i) providing counseling and other support services for compulsive and problem gamblers, (ii) developing and implementing compulsive and problem gambling treatment and prevention programs, and (iii) providing grants to support organizations that provide assistance to compulsive and problem gamblers.
- Requiring the Commissioner of the Department of Behavioral Health and Developmental Services to establish a comprehensive program for the prevention and treatment of problem gambling in the Commonwealth and administer the Problem Gambling Treatment and Support Fund.

Taxation

- Establishing that a tax on the adjusted gross receipts⁵ of each licensed operator received from games shall be imposed as follows:⁶
 - On the first \$200 million of adjusted gross receipts of an operator each calendar year, a rate of 18 percent.
 - On the adjusted gross receipts of an operator that exceed \$200 million but do not exceed \$400 million each calendar year, a rate of 23 percent.
 - On the adjusted gross receipts of an operator that exceed \$400 million each calendar year, a rate of 30 percent.
- Establishing that all such tax revenues shall accrue to the Gaming Proceeds Fund.
- Establishing that revenues from the Gaming Proceeds Fund shall be appropriated by the General Assembly as follows:

⁵ Adjusted gross receipts are gross receipts less winnings paid to wagerers. See <https://www.lawinsider.com/dictionary/adjusted-gross-receipts>

⁶ Sports betting receipts are not included. Instead, such receipts shall be taxable under [§ 58.1-4037](#).

- The following amounts shall be appropriated to the city in which they were collected:⁷
 - a. An amount equal to a six percent tax on the first \$200 million of adjusted gross receipts;
 - b. An amount equal to a seven percent tax on the adjusted gross receipts that exceed \$200 million but do not exceed \$400 million; and
 - c. An amount equal to an eight percent tax on the adjusted gross receipts that exceed \$400 million.
- For any casino gaming establishment operated by a Virginia Indian tribe recognized in House Joint Resolution No. 54 (1983) and acknowledged by the Assistant Secretary-Indian Affairs of 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. 3 2701 et seq.), an amount equal to a tax of one percent on the adjusted gross receipts of such establishment shall be deposited in the Virginia Indigenous People's Trust Fund.
- Eight-tenths of one percent of the Fund shall be appropriated to the Problem Gambling Treatment and Support Fund.
- Two-tenths of one percent of the Fund shall be appropriated to the Family and Children's Trust Fund.⁸
- Any remaining revenues shall remain in the Gaming Proceeds Fund until appropriated by the General Assembly for programs established to address public school construction, renovations, or upgrades.

⁷ Pursuant to enactment clause 5 of the legislation, for Bristol revenue goes to the Regional Improvement Commission on behalf of its constituent localities. The localities within the Regional Improvement Commission are the counties of Bland, Buchanan, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe, and the cities of Bristol and Norton.

⁸ The Family and Children's Trust Fund existed prior to the legislation, and is used for the support and development of services for the prevention and treatment of child abuse and neglect and violence within families (see <https://law.lis.virginia.gov/vacode/title63.2/chapter21/section63.2-2100/>).

On-premises Mobile Casino Gaming

- Requiring that a casino gaming operator's primary on-premises mobile casino gaming⁹ operation, including facilities, equipment, and personnel who are directly engaged in the conduct of on-premises mobile casino gaming, be located within a restricted area on the premises of the casino gaming establishment.
- Requiring that all amounts remaining in on-premises mobile casino gaming accounts inactive or dormant for such period and under such conditions as established by regulation by the Board shall be closed. Any funds remaining in the account at such time shall be paid 50 percent to the casino gaming operator and 50 percent to the general fund. Before closing an account pursuant to this section, the casino gaming operator shall attempt to contact the account holder by mail, phone, and electronic mail.
- Establishing that any gross receipts from on-premises mobile casino gaming shall be included in a casino gaming operator's adjusted gross receipts and subject to taxation.

Assistance to people with gambling problem

- In order to assist those persons who may have a gambling problem, requiring that a casino gaming operator:
 - Cause the words "If you or someone you know has a gambling problem and wants help, call 1-800-GAMBLER," or some comparable language approved by the Lottery, which language shall include the words "gambling problem" and "call 1-800 GAMBLER," to be displayed prominently at log-on and log-off times to any person visiting or logged onto on-premises mobile casino gaming; and
 - Provide a mechanism by which an account holder may establish the following controls on wagering activity through the wagering account:
 - A limit on the amount of money deposited within a specified period of time and the length of time the account holder will be unable to participate in gaming if the holder reaches the established deposit limit; and

⁹ "On-premises mobile casino gaming" is defined as 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.

- A temporary suspension of gaming through the account for any number of hours or days.

Requirements for Contracts

- Establishing that a contract between an eligible host city and its preferred casino gaming operator shall require the operator to agree that any contractor hired for construction on the site of the casino gaming establishment be required to:
 - (i) pay the local prevailing wage rate as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. 3 276 et seq., as amended, to each laborer, workman, and mechanic the contractor employs on the site;
 - (ii) participate in apprenticeship programs that have been certified by the Department of Labor and Industry or the U.S. Department of Labor;
 - (iii) establish preferences for hiring residents of the eligible host city and adjacent localities, veterans, women, and minorities for work performed on the site;
 - (iv) provide health insurance and retirement benefits for all full-time employees performing work on the site; and
 - v) require that the provisions of clauses (i) through (iv) be included in every subcontract so that the provisions will be binding upon each subcontractor.
- Establishing that the contract between an eligible host city and its preferred casino gaming operator shall also require that the operator agree to:
 - (a) pay any of its full-time employees performing work on the site an hourly wage or a salary, including tips, that equates to an hourly rate no less than 125 percent of the federal minimum wage;
 - (b) establish preferences for hiring residents of the eligible host city and adjacent localities, veterans, women, and minorities for work performed on the site in compliance with any applicable federal law;
 - c) provide access to health insurance and retirement savings benefit opportunities for all full-time employees of the operator performing work on the site; and
 - d) require that any contract for services performed on the site, other than construction, with projected annual services fees exceeding \$500,000, meet the

requirements of clauses (a), (b), and (c) with regard to full-time personnel of the subcontractor who will be performing services under the contract between the operator and the subcontractor.

Estimated Benefits and Costs

The legislation sets specific tax rates, which combined with general economic conditions and decisions of the owners and operators of the casinos will largely determine the revenues generated for state and local governments and other entities. Most benefits resulting from job creation, and any cost impacts resulting from an increase in crime or bankruptcies, would again largely be due to the legislation. Specific aspects of the proposed regulation would also have some impact, largely in the way of: 1) ensuring fairness and protection for casino patrons, taxpayers, and casino employees, 2) ensuring the accurate accounting of casino revenues, and 3) additional costs imposed for operators and suppliers.

Some of the requirements for regulated entities are directly delineated in the legislation. For many of the requirements, greater detail is specified in the proposed regulation. The following are various proposed fees and charges in the regulation where either the amounts or other details are not specified in the legislation:

- Section 40 I.8.a: \$40 for the cost of a replacement identification card.
- Section 40 I.8.b: \$20 for the cost of a temporary identification card.
- Section 50 F.3: Lottery will charge to be reimbursed for the administrative costs of background investigations beyond the set fees.
- Section 60 I.5: Facility operator license renewal fee of \$15 million (every ten years).
- Section 70 J: Every five years, suppliers are to pay any fees associated with the supplier permit renewal application and background investigation as directed by the Lottery.
- Section 80 E.1: \$500 application fee for the service permit applicant, plus any applicable fingerprinting fees.

- Section 80 J: Every five years, service permittees are to pay any fees associated with the service permit renewal application and background investigation as required by the director of the Lottery.

Below are other requirements that involve costs, but are not detailed in the legislation.¹⁰ The primary benefits of these requirements include ensuring fairness and protection for patrons, taxpayers, and employees, and ensuring the accurate accounting of casino revenues. Some may also include job creation. The latter will be discussed later in the Projected Impact on Employment section of this report.

The Department of Planning and Budget contacted regulators for casino gaming from Connecticut, Maryland, Massachusetts, Michigan, Nevada, New Jersey, and Pennsylvania, as well as the Virginia Lottery and a consultant used by the Joint Legislative Audit and Review Commission, to help estimate the costs for: bonds; audits, reports and opinion letters by independent certified public accountants; testing and certification of slot machines, mechanical casino games, electronic table game systems, and software by independent certified testing laboratories; and system integrity and security assessments of casino gaming operations by independent certified testing laboratories. The following estimates reflect the information that could be obtained within the statutory timeframes provided for this analysis.

- Section 40 E: The legislation establishes that for the operator's license the Lottery shall require a bond with surety acceptable to it, and in an amount determined by it, to be sufficient to cover any indebtedness incurred by the licensee to the Commonwealth. The proposed regulation further specifies that: 1) the bond shall be issued only by a company that is financially rated "A" or better by a nationally recognized rating agency and that is permitted to transact business in the Commonwealth of Virginia, and 2) the amount of the bond may not exceed \$50 million.
 - Surety bonds can help protect Virginia taxpayers. The larger the amount of the surety bond, the greater the cost to the operator. Depending on the perceived credit worthiness of the entity acquiring the surety bond, the annual cost can range

¹⁰ Some items that would likely have been done without being specifically required are not included. In addition, some items that would likely have been done without being specifically required, but that may not necessarily meet specified design requirements, are mentioned.

from one percent to fifteen percent of the amount of the bond.¹¹ Thus, the annual cost for a \$50 million bond could range from \$500,000 to \$7.5 million.

- Section 40 E: The legislation does not directly address bonds for permit holders. The proposed regulation specifies that: 1) the Lottery may require an applicant for or holder of a permit to obtain a bond, 2) the bond shall be issued only by a company that is financially rated “A” or better by a nationally recognized rating agency and that is permitted to transact business in the Commonwealth of Virginia, 3) the amount of the bond shall be in an amount determined by the director to be sufficient to cover any loss or indebtedness to the Commonwealth incurred by the permit holder, and 4) for a supplier permit holder the amount of the bond may not exceed \$50 million, while for a service permit holder the amount of the bond may not exceed \$100,000.
 - Surety bonds can help protect Virginia taxpayers. The larger the amount of the surety bond, the greater the cost to the operator. Depending on the perceived credit worthiness of the entity acquiring the surety bond, the annual cost can range from one percent to fifteen percent of the amount of the bond.¹² Thus, the annual cost for a \$50 million bond could range from \$500,000 to \$7.5 million, while the annual cost for a \$100,000 bond could range from \$1,000 to \$15,000.
 - According to the Lottery, whether or not a bond would be required for a permit holder would depend on the level of risk to the Commonwealth, based on the type of product or service provision.
- Section 60 I.2: The criteria and procedures for license renewal shall be the same for successive renewal terms as for the initial term of licensure, including the application fees for background and other investigations, unless the facility operator's operational and capital investment plans have been approved for amendment by the Lottery.
 - It is beneficial to have this information specified in the regulation.
- Section 100 J.5.a: A facility shall establish a responsible gaming plan that sets forth the facility's plan for addressing problem gambling at the facility.

¹¹ Source: staff from a state currently regulating active casinos

¹² Ibid

- The requirement may help individuals with potential gambling problems. There would be operator staff time costs in developing and implementing the plan.
- Section 110 D.2.c: An opinion letter by an independent certified public accountant expressing an opinion as to: (1) The effectiveness of the design of the submitted system of internal controls over financial reporting; (2) Whether the submitted system of internal controls conforms to the requirements of the casino gaming law, this chapter, and any Department policy or directives; and (3) If applicable, whether a deviation from the requirements of the casino gaming law, this chapter, or any Department policy or directive identified by the independent certified public accountant in the course of its review of the submitted system of internal controls is material.
 - This helps ensure the accuracy of the reporting of revenue and other information. There would be cost in hiring the independent certified public accountant. Combined, the proposed requirements for certified public accountant services are expected to cost between \$50,000 and \$200,000 annually.¹³
- Section 110 E.1: The Lottery may require a facility operator to submit daily, weekly, monthly, quarterly, and annual reports of financial and statistical data.
 - This could be beneficial in helping monitor the financial condition of the operator, which may help ensure protection for taxpayers. This may require substantial staff time for operators.
- Section 110 F.1: A facility operator shall cause its annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant.
 - This helps ensure the accuracy of the reporting of revenue and other information. There would be cost in hiring the independent certified public accountant.
 - Combined, the proposed requirements for certified public accountant services are expected to cost between \$50,000 and \$200,000 annually.¹⁴

¹³ Ibid

¹⁴ Ibid

- Section 110 F.6: A facility operator shall require the independent certified public accountant auditing its financial statements or other qualified entity approved by the Department to render the following additional reports: a. A report identifying: (1) Material weaknesses or significant deficiencies in the facility operator's Department-approved internal controls noted in the course of the examination of the financial statements; and (2) Recommendations as to how to eliminate each material weakness or significant deficiency identified; and b. A report assessing the adequacy and effectiveness of the facility operator's information technology security controls and system configurations with recommendations as to how to eliminate each material weakness or significant deficiency identified.
 - This helps ensure the accuracy of the reporting of revenue and other information. There would be cost in hiring the independent certified public accountant.
 - Combined, the proposed requirements for certified public accountant services are expected to cost between \$50,000 and \$200,000 annually.¹⁵
- Section 110 I: A facility operator shall install in its facility a surveillance system that complies with the requirements of this subsection and is reviewed and approved by the Lottery.
 - Operators would likely install a surveillance system whether or not it is required, but specific required design features may add to cost. The design specifications are intended to help ensure fairness and safety for patrons.
- Section 110 K: Surveillance department minimum staffing. 1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit its surveillance department minimum staffing plan to the Lottery for review and written approval. 2. A facility operator may not commence operations until its surveillance department minimum staffing plan is approved in writing by the Lottery. 3. A surveillance department minimum staffing plan shall assess, on a per-shift basis, the minimum number of on duty surveillance department employees necessary to: a. Provide adequate and effective surveillance of all activities in and outside the facility; b. Ensure

¹⁵ Ibid

the physical safety of employees of invitees to the facility; c. Comply with all applicable laws, regulations, and directives of the Lottery and director, including Department-approved internal controls and operating procedures.

- According to the Department, ensuring sufficient staffing levels for surveillance is for the safety and security of players and non-playing guests and to maintain the integrity of a multi-billion dollar gaming program by limiting potential staff misbehavior or player misconduct such as "cupping" chips and other types of cheating. If the minimum staffing level is set higher than the number of employees the operator would have otherwise chosen, this requirement would add cost.
- Section 110 L: Security department operating procedures. 1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit to the Lottery for review and written approval its security department operating procedures.
 - This may help ensure the safety of casino patrons and employees. It would require operator staff time.
- Section 110 M: Security department minimum staffing. 1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit its security department minimum staffing plan to the Lottery for review and written approval. 2. A facility operator may not commence operations until its security department minimum staffing plan is approved in writing by the Lottery. 3. A security department minimum staffing plan shall assess, on a per-shift basis, the minimum number of necessary on-duty security department employees.
 - According to the Department, ensuring sufficient staffing levels for security is for the safety and security of players and non-playing guests and to maintain the integrity of a multi-billion dollar gaming program by limiting potential staff misbehavior or player misconduct such as "cupping" chips and other types of cheating. If the minimum staffing level is set higher than the number of employees the operator would have otherwise chosen, this requirement would add cost.

- Section 110 N: Internal audit department standards. 1. At least 60 days before casino gaming operations are set to commence, a facility operator shall submit to the Lottery for review and approval internal audit department operating standards and procedures that: a. Meet the requirements of the casino gaming law, this chapter, and any Department policies or directives; b. Conform to this section; and c. Direct that an internal audit be conducted in accordance with generally accepted auditing standards in the United States. 2. A facility operator's internal audit department operating procedures and standards shall, at a minimum, require the internal audit department to: ... h. Prepare an audit report for each audit conducted; ... 3. The audit department shall audit at least semiannually the functions and operations of the facility's: a. Cashiers' cage; b. Main bank; c. Collection of cash storage boxes; d. Cash count; e. Revenue audit; f. Operations department; g. Key control; and h. Table game operations. 4. The audit department shall audit at least annually: a. Responsible gaming program; b. Security department; c. Currency transaction reporting; d. Suspicious activity reporting; e. Information technology controls; f. Accounts payable; g. Purchasing; h. Player tracking system; and i. Surveillance department.
 - These requirements may help ensure the accuracy of revenue reporting and the overall integrity of the gaming programs. The requirements would require substantial staff time.
- Section 110 P: Specifications on cashiers' cage.
 - Operators would likely have cashiers' cages whether or not it is required, but specific required design features may add to cost. The design specifications are intended to help ensure safety.
- Section 110 Q: Accounting controls for a cashiers' cage. 4. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures that address the segregation of the cashiers' cage and the general conduct of cashiers' cage transactions.
 - This requirement may help ensure the accuracy of revenue reporting. It would require staff time.

- Section 110 U: Player Accounts. 5. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures addressing the acceptance of player account transactions.
 - This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 Z: Gaming ticket. 1. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures addressing the issuance and redemption of a gaming ticket.
 - This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 AA: Promotional play. 6. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures addressing the requirements of this subsection and: ... 8. A facility operator shall submit to the Lottery in a form and in accordance with a timeframe specified by the Department a quarterly report summarizing: a. Promotional play awarded for the period, including: (1) Total amount in promotional play awarded in non-cashable credits; and (2) Other forms of promotional play; and b. Promotional play redeemed by players for the period, including: (1) Total amount in promotional play redeemed in non-cashable credits; and (2) Other forms of promotional play redeemed.
 - This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 BB: Ticket redemption unit. 3. A facility operator shall develop and include in the internal controls submitted and approved by the Lottery procedures addressing a ticket redemption unit.
 - This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 CC: Jackpot payout. 4. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures addressing the

payment of a jackpot or credit meter payout not totally and automatically paid by a casino gaming machine.

- This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 DD: Annuity jackpot. 3. A facility operator submitting a request for approval of an annuity jackpot to the Lottery shall submit details pertaining to the annuity jackpot.
 - This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 EE: Merchandise jackpot. 1. A facility operator may not offer a merchandise jackpot without the prior written approval of the Lottery. 2. A facility operator submitting a request for approval of a merchandise jackpot to the Department shall submit details pertaining to the merchandise jackpot.
 - This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 FF: Automated jackpot payout machine. 4. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures addressing the payment of a jackpot or credit meter payout utilizing an automated jackpot payout machine.
 - This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 II: Count room design standards.
 - Operators would likely have a count room whether or not it is required, but specific required design features may add to cost. The design specifications are intended to help ensure safety.
- Section 120 B.1: A facility operator shall, at its own expense, construct its facility in accordance with specifications established by the director, including: ... f. At least 1,000 square feet of office space for use by Lottery staff that is located immediately adjacent to the gaming floor and is equipped with: ... i. An area for the detention of individuals taken

into custody by any law-enforcement agency that has jurisdiction over the facility; ... j. Adequate space for use by the Department in connection with conducting background investigations of applicants or licensees;

- Having space onsite for Lottery staff is beneficial in that it would greatly ease the Department's monitoring of operations, which helps ensure fairness and accurate revenue reporting. Having an area for the detention of individuals taken into custody by any law-enforcement agency that has jurisdiction over the facility would be beneficial in that it would aid law enforcement, may help ensure security, and may help reduce disruption within the casino. The requirements would substantially add to the cost of constructing the casinos.
- Section 120 B.2: a. A facility operator shall provide at least two locations in the facility for the sale of Virginia Lottery games that are offered by or through the Department. b. Virginia Lottery game sales locations shall be situated as near as practicable to a cashiers' cage.
 - This would aid in the sale of Virginia Lottery games. It would produce a small cost for operators in that the space dedicated for the sale of Virginia Lottery games may have been used in a different manner that would have been more useful for the operator.
- Section 120 D: Gaming floor plan. 1. At least 60 days before gaming operations are to commence, a facility operator shall submit a floor plan depicting its gaming floor and all restricted areas to the Lottery for review and written approval.
 - This may aid the Department in helping ensure fairness and safety. It would require some operator staff time.
- Section 130 F: Before a facility operator begins its mobile gaming operations, all equipment and software used in conjunction with its operation shall be submitted to an independent testing laboratory approved by the director; ... A mobile casino gaming platform submitted to an approved independent testing laboratory shall contain: a. A complete, comprehensive, technically accurate description and explanation of the mobile casino gaming platform; b. Detailed operating procedures of the mobile casino gaming

platform; c. A description of the risk management framework, including: (1) User access controls for all facility operator personnel; (2) Information regarding segregation of duties; (3) Information regarding automated risk-management procedures; (4) Information regarding identifying and reporting fraud and suspicious activity; (5) Controls for ensuring regulatory compliance; (6) A description of anti-money laundering (AML) compliance standards; (7) A description of all software applications that comprise the system; (8) A description of all types of wagers available to be offered by the system; and (9) A description of all types of third-party systems proposed for utilization;

- This helps ensure the fairness of the mobile gaming. Hiring the independent certified testing laboratory would produce cost for the operator.¹⁶
- Section 130 K: At least 60 days before on-premises mobile casino gaming operations are to commence, a facility operator shall submit its internal controls for those operations to the Lottery for review and written approval. The internal controls shall be integrated into the internal controls required by 11VAC5-90-110.
 - This helps ensure fairness and accurate revenue reporting. It would require staff time.
- Section 140 G: Request for authorization. 1. A facility operator shall obtain prior written authorization from the Lottery before taking any of the following actions with respect to a slot machine, mechanical casino gaming machine, or table game equipment in its facility:
 - a. Placing the slot machine, mechanical casino gaming machine, or table game into operation;
 - b. Relocating the slot machine, mechanical casino gaming machine, or table game within the facility;
 - c. Converting a game theme or table layout;
 - d. Converting a play denomination on a slot machine or mechanical casino gaming device;
 - e. Changing percentage payout;
 - f. Changing an erasable programmable read only memory chip;
 - g. Changing a jackpot lockup amount;
 - h. Changing a configuration;
 - i. Performing a substantial replacement of parts;
 - j. Implementing any variation, composite, or new feature

¹⁶ None of the regulators from the eight states contacted, nor the consultant, had an estimate for this cost.

of a table game; or k. Performing any other action that materially alters or interrupts the operation of a slot machine, mechanical casino gaming machine, or table game.

- This helps ensure fairness and accurate revenue reporting. This may be costly to operators in that it would slow down the implementation of desired actions or changes.
- Section 150 (Slot Machines) B: 1. A manufacturer may not offer the equipment, systems, or software enumerated in subdivision 5 of this subsection, or a modification to a Department-approved version of that equipment, system or software, for sale, lease, distribution, or use in a facility without it having been: a. Tested and certified by an independent certified testing laboratory; and b. Approved in writing by the Lottery. 2. A facility operator may not purchase, lease, or otherwise acquire the right to install, utilize, or make available for use the equipment, systems, or software enumerated in subdivision 5 c of this subsection, or a modification to a Department-approved version of that equipment, system, or software, without it having been: a. Tested and certified by an independent certified testing laboratory; and b. Approved in writing by the Lottery.
 - This helps ensure the fairness of the slot machines. The manufacturer probably would have already done this for standard machines, but would likely have to do it again for modifications. Hiring the independent certified testing laboratory would produce cost for the manufacturer.¹⁷
- Section 150 (Slot Machines) K.2: A slot machine shall have a theoretical payout percentage that is between 84% and 100%.
 - Having a minimum payout helps in fairness to patrons. This requirement is arguably costly for an operator who would prefer a lower theoretical payout percentage. For operators who would have had payouts at least as high as the minimum, this requirement would have no impact. Since tax rates are based on adjusted gross revenue, and adjusted gross revenue is gross receipts less winnings paid to wagerers, setting what the payout to wagerers can be can affect tax revenues.

¹⁷ Ibid

- Section 150 (Slot Machines) FF.1: A manufacturer may not utilize a location outside of a facility to store or repair equipment, systems, software, or related parts and inventory for use in a facility without the storage facility being: a. Inspected by the Lottery; and b. Approved in writing by the Department.
 - This helps ensure fairness of slot machines. Assuming the inspector is prompt and reasonable, this should not be particularly costly for the manufacturer.
- Section 160 (Mechanical casino games) B: 1. A manufacturer may not offer a mechanical casino game for sale, lease, distribution, or use in a facility, or a modification to a Department-approved version of such a game, without it having been: a. Tested and certified by an independent certified testing laboratory; and b. Approved in writing by the Lottery. 2. A facility operator may not purchase, lease, develop, or otherwise acquire the right to install, utilize, or make available for use a mechanical casino game, or a modification to a Department-approved version of such a game or equipment, without it having been: a. Tested and certified by an independent certified testing laboratory; and b. Approved in writing by the Lottery.
 - This helps ensure the fairness of mechanical casino games. The manufacturer probably would have already done this for standard games, but would likely have to do it again for modifications. Hiring the independent certified testing laboratory would produce cost for the manufacturer.¹⁸
- Section 160 (Mechanical casino games) J.1: A manufacturer may not utilize a location outside of a facility to store or repair a mechanical casino game or equipment, or related parts and inventory for use in a facility without the storage facility being: a. Inspected by the Lottery; and b. Approved in writing by the Department.
 - This helps ensure fairness of mechanical casino games. Assuming the inspector is prompt and reasonable, this should not be particularly costly for the manufacturer.
- Section 170 (Table games definitions and equipment) T.3: All aspects of an electronic table game system, including the computer and any related hardware, software, or related

¹⁸ Ibid

devices, shall be tested by an independent certified testing laboratory and approved by the Lottery prior to use by a facility operator.

- This helps ensure fairness of electronic table game systems. For those game systems that had not already been tested by an independent certified testing laboratory, hiring the laboratory would produce cost.
- Section 180 (Table games procedures) B.2: A facility operator shall maintain the following minimum levels of staffing when table games are being operated: a. Excluding craps or baccarat, one dealer for a table game; b. Two dealers for a big baccarat table; c. Two dealers for a craps table, one of whom shall act as the stickperson; and d. One box person or floor person for a craps table.
 - According to the Department, ensuring sufficient staffing levels for on-floor gaming is for the safety and security of players and non-playing guests and to maintain the integrity of a multi-billion dollar gaming program by limiting potential staff misbehavior or player misconduct such as "cupping" chips and other types of cheating. If the minimum staffing level is set higher than the number of employees the operator would have otherwise chosen, this requirement would add cost.
- Section 180 (Table games procedures) J: Table inventory counts. 1. In addition to other requirements in this section for opening a table game, conducting a drop during an open game, and closing a table game, a facility operator may establish procedures for the use of a three-compartment drop box. 2. The use of a three-compartment drop box requires the preparation of a Table Inventory Slip for each shift that the table was open at least once each gaming day. 3. A facility operator shall submit to the Lottery for approval the procedures developed under subdivision 1 of this subsection as part of the facility operator's internal controls.
 - This requirement may help ensure security. It would require some staff time.
- Section 180 (Table games procedures) K: Match play coupons and direct bet coupons. 1. A facility operator may use match play coupons and direct bet coupons. 2. A coupon may not be issued by a facility operator or used in a facility until: a. The design specifications

of the proposed coupon are submitted to and approved by the Lottery; and b. A system of internal procedures and administrative and accounting controls governing the inventory, distribution, and redemption of the coupon is submitted to and approved by the Department as part of the facility operator's internal controls.

- This may be beneficial in helping to accurately determine adjusted gross revenue. It would require some staff time.
- Section 180 (Table games procedures) P: Employee training by facility operators. A facility operator shall develop a training program for its dealers that, at a minimum, includes training in: ... 7. Recognizing problem and compulsive gamblers at table games and procedures for informing supervisory personnel.
 - This may be beneficial for patrons who may have problems with compulsive gambling. It would require staff time.
- Section 180 (Table games procedures) R: 1. Before offering a table game authorized under the standard rules, a facility operator shall submit to the Lottery a rules submission that specifies which options the facility operator will use in the conduct of the table game. 2. A facility operator may implement the provisions in a rules submission only after receipt of written notice of approval from the Department.
 - This may help ensure fairness for patrons. It would require some staff time.
- Section 180 (Table games procedures) S.1: A facility operator that desires to offer a table game or feature that is not already in the standard rules, or to offer a new wager, pay table, or other feature as part of table game that has been approved by the Lottery, shall submit a written request to the Department.
 - This may help ensure fairness for patrons. It would require some staff time.
- Section 180 (Table games procedures) U: 1. A facility operator shall maintain, at its security podium or other location approved in advance by the Lottery, a printed copy of the complete text of the standard rules of all authorized games that shall be available to the public for inspection upon request. 2. A facility operator shall make available to players upon request a gaming guide that contains, in a printed format, an abridged edition of the complete text of the standard rules of all authorized games. 3. The gaming

guide required may not be issued, displayed, or distributed by a facility operator until a sample of the gaming guide has been submitted to and approved by the Department. 4. A facility operator may display an approved gaming guide at any location in its licensed facility. 5. Each facility operator shall make the approved gaming guide available on its website.

- This may help ensure fairness for patrons. The operator may have chosen to provide such written rules without the requirement. If not, there would be some printing costs.
- Section 200 (Information security system): A facility operator shall implement, maintain, regularly review and revise, and comply with a comprehensive information security system, the purpose of which shall be to take reasonable steps to protect the confidentiality, integrity, and availability of personal information of individuals who place a wager with the facility operator, and shall contain administrative, technical, and physical safeguards appropriate to the size, complexity, nature, and scope of the operations and the sensitivity of the personal information owned, licensed, maintained, handled, or otherwise in the possession of the facility operator.
 - This helps ensure security. It would require staff time.
- Section 210 (System integrity and security assessment): A. Within 90 days after beginning operations and annually thereafter, a facility operator shall engage an independent certified testing laboratory to perform a system integrity and security assessment of its casino gaming operations, including any sports betting operations not already reviewed in compliance with 11VAC5-70-200. ... C. The independent certified testing laboratory shall issue a report on its assessment and submit it to the director of the Lottery. The report shall include, at a minimum the: 1. Scope of review; 2. Name and company affiliation of any individual who conducted the assessment; 3. Date of assessment; 4. Findings; 5. Recommended corrective action, if any; and 6. Facility operator's response to the findings and recommended corrective action.
 - This helps ensure the fairness of the casino gaming. Engaging an independent certified testing laboratory to perform a system integrity and security assessment would produce cost for the operator. Depending on the complexity of the systems

and operations, this could cost from \$30,000 to hundreds of thousands of dollars.¹⁹

Businesses and Other Entities Affected

The proposed regulation affects the four firms and one Indian tribe that would be operating casinos, the firms that would be providing casino equipment supplies, the companies and individuals who would be providing services for the casinos, construction firms who would be building the casinos, sellers of surety bonds, certified public accountants, independent certified testing laboratories, the Virginia Lottery, employees of the casinos, patrons and taxpayers. The receivers of the tax revenue from the adjusted gross receipts of the casino operators are likely indirectly affected, particularly in regard to requirements that help ensure the accuracy of revenue reporting. The receivers of this tax revenue include the localities described below, the Virginia Department of Behavioral Health through oversight of the Problem Gambling Treatment Fund, the Virginia Department of Social Services through guiding the board of trustees administering the Family and Children's Trust Fund, and the six federally recognized Virginia Indian tribes.

For purposes described above, many of the proposed requirements produce costs for casino facility operators. The Code of Virginia requires the Department of Planning and Budget to assess whether an adverse impact may result from the proposed regulation.²⁰ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Thus, an adverse impact is indicated for operators.

¹⁹ Source: staff from a state currently regulating active casino.

²⁰ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact" nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

Small Businesses²¹ Affected:Types and Estimated Number of Small Businesses Affected

The four firms that would be operating the casinos do not likely qualify as small businesses, as that term is defined in § 2.2-4007.04, because the firms operate in several states and have more than 1,000 employees. However, no data are available to indicate the current or potential employment associated with the Indian tribe. In addition, some of the firms that would be providing supplies or services may qualify as small businesses, but no data are available on how many small business would be providing supplies or services to the casinos.

Costs and Other Effects

Proposed fees, bonds requirements, and other requirements for manufacturers may produce costs for some small providers of supplies or services.

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities²² Affected²³

The cities of Bristol, Danville, Norfolk, Portsmouth, and Richmond, are particularly affected in that they are permitted to establish casinos. Since the fifth enactment clause of the 2020 legislation specifies that revenues garnered from the casino located in Bristol go to the Regional Improvement Commission on behalf of its constituent localities, those localities are also particularly affected. The localities within the Regional Improvement Commission are the counties of Bland, Buchanan, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe, and the cities of Bristol and Norton.

The proposed requirements in the regulation do not appear to directly introduce costs for local governments.

²¹ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

²² “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

²³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Projected Impact on Employment

As mentioned above, most of the likely impact on employment is due to the legislation. In addition, proposed requirements in the regulation that may also affect employment include: bonds for permit holders; design specifications for the construction of casinos; audits, reports and opinion letters by independent certified public accountants; testing and certification of slot machines, mechanical casino games, electronic table game systems, and other equipment and software by independent certified testing laboratories; and system integrity and security assessments of casino gaming operations, including any sports betting operations, by independent certified testing laboratories. These proposed requirements may result in some increase in employment for: sellers of surety bonds, building contractors, certified public accountants, and independent certified testing laboratories. Also, the numerous proposed reporting requirements from operators to the Lottery and the proposed required staffing minimums may result in the casino operators themselves hiring more employees than they otherwise would.

To date, the Lottery has hired 37 employees to support its gaming regulatory activities. The Lottery continues to assess its needs as the program grows and anticipates hiring at least 100 staff in total.²⁴ Most of the Lottery's hiring is due to the legislation. The proposed regulation may have some impact in that if there was less proposed oversight in the regulation, there might not be a need for some of the staff.

Effects on the Use and Value of Private Property

Proposed requirements would likely increase demand for the products or services of sellers of surety bonds, building contractors, certified public accounting firms, and independent certified testing laboratories. This may increase the value of some of these firms.

The proposed regulation includes design specifications for the construction of the casino facilities that would not likely otherwise been included if not required, including at least 1,000 square feet of office space for use by Lottery staff. This adds to real estate development costs.

²⁴ Source: Virginia Lottery

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.