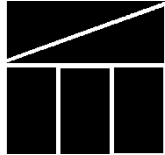


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes¹ Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

11 VAC 10-47 Historical Horse Racing [under development]
Virginia Racing Commission
Town Hall Action/Stage: 5154 / 8576
May 10, 2019 (revised on May 14, 2019)

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 811 of the 2018 Acts of Assembly² and Governor Northam's Executive Directive One,³ the Virginia Racing Commission (VRC) proposes to promulgate a permanent regulation to administer historical horse racing (HHR) in the Commonwealth. An emergency regulation is currently in effect that expires on April 4, 2020.⁴ The proposed regulation is identical to the emergency regulation.

Background

Statutory Requirements for Historical Horse Racing

Virginia Code § 59.1-365, as amended by Chapter 811, defines several key aspects of HHR. In particular, the statute defines HHR as:

a form of horse racing that creates pari-mutuel pools from wagers placed on previously conducted horse races and is hosted at (i) a racetrack owned or operated by a significant infrastructure limited licensee or (ii) a satellite facility that is owned or operated by (a) a significant infrastructure limited licensee or (b)

¹ 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.

² See <http://leg1.state.va.us/cgi-bin/legp504.exe?181+ful+CHAP0811>

³ See <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/ed-1-directing-the-virginia-racing-commission-regarding-regulations-related-to-historic-horse-racing-pursuant-to-house-bill-1609.pdf>

⁴ See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8420>

the nonprofit industry stakeholder organization recognized by the Commission and licensed to own or operate such satellite facility.

In practice, HHR is conducted on terminals that are similar to slot machines. Virginia Code § 59.1-365 also defines a "significant infrastructure limited licensee" as "a person who owns or operates a significant infrastructure facility and holds a limited license ..." That same Code section defines a "significant infrastructure facility" as:

a horse racing facility that has been approved by a local referendum pursuant to § [59.1-391](#) and has a minimum racing infrastructure consisting of (i) a one-mile dirt track for flat racing, (ii) a seven-eighths-mile turf course for flat or jump racing, (iii) covered seating for no fewer than 500 persons, and (iv) barns with no fewer than 400 permanent stalls.

Colonial Downs in New Kent County is the only current significant infrastructure facility in the Commonwealth.

Chapter 811 further amends Virginia Code § 59.1-365 by specifying certain percentage distributions of the dollars wagered on HHR: a) 0.75 percent to the Commonwealth as a license tax; b) if generated at a racetrack owned or operated by a significant infrastructure limited licensee, 0.5 percent go to the locality where the racetrack is located; and c) if generated at a satellite facility, 0.25 percent go to the locality in which the satellite facility is located and 0.25 percent go to the Virginia locality in which the racetrack is located.

Proposed Regulatory Requirements for HHR

The proposed regulation includes various requirements for providers of HHR. Some of these requirements are referenced later in this analysis:

- For any significant infrastructure limited licensee that offers pari-mutuel wagering on HHR, a minimum number of days of live horseracing (based on number of HHR terminals installed) must be requested.
- Licensee must implement a program to promote responsible gaming by its patrons, which includes:
 - Posting in a conspicuous place in every place where pari-mutuel wagering on historical horse racing is conducted a sign that bears a toll-free number approved by the Virginia Council on Problem Gambling or other organizations that provide assistance to problem gamblers,

- Routine auditing of patron activity to identify patrons who have suffered significant financial losses in repeated visits to the licensee's facilities and providing such patrons with information on organizations that provide assistance to problem gamblers
- Partnership with the Virginia Council on Problem Gambling, the National Council on Problem Gambling, or other similar organization to identify and promote best practices for preventing problem gambling
- Training for all employees who have contact with patrons as well as administrative and corporate staff members that shall include skills and procedures to respond to situations where a patron exhibits warning signs of a gambling problem or where a patron discloses they may have a gambling problem. Such employees and staff should be trained immediately upon their hiring and retrained and tested regularly
- And other requirements.

Other requirements of interest are:

- Wagering on a historical horse race shall only be conducted by:
 - A significant infrastructure limited licensee; or
 - A satellite facility licensee.
- Wagering on historical horse racing may only take place at a licensed significant infrastructure facility or a licensed satellite facility.
- Licensee shall provide guaranteed funding for all historical horse race pools offered by the licensee. This guarantee shall be in the form of a letter of credit, bond with surety, or other instrument of financial security in an amount and form approved by the commission sufficient to cover outstanding vouchers together with any indebtedness incurred by the licensee to the Commonwealth.
- Specifications for permitted terminal machines.
- Independent integrity check of all software that may affect the integrity of the game.
- Financial reports.
- Application fee of \$1,000 paid for each location where the applicant seeks to offer pari-mutuel wagering on historical horse racing.

Estimated Economic Impact

The proposed regulation with its associated creation of HHR gaming and enabling of live racing, affects employment, business revenues, and tax revenues. Virginians who at least part of the time prefer HHR and/or live horse racing with pari-mutuel betting to other forms of entertainment benefit from the introduction of the new options. Increased access to gambling does have the potential to put some individuals at risk of negative behavior.

Potential Employment and Business Revenue Impact

A firm now called Colonial Downs Group, LLC (CDG) purchased Colonial Downs, and thus owns the only significant infrastructure facility in Virginia. Through the emergency regulation in effect, it has become a significant infrastructure limited licensee. It has recently begun to offer HHR at Colonial Downs (April 23, 2019), and at its Town of Vinton satellite location (May 9, 2019). CDG plans to open satellite locations in the City of Richmond, City of Hampton, and City of Chesapeake as well. CDG calls its HHR business Rosie's Gaming Emporium. CDG has purchased (or in the case of Chesapeake, plans to purchase) land and in some cases existing buildings for all four satellite locations. Local contractors and architectural firms have been hired for building and remodeling structures for the four sites.⁵ These firms gain in revenue and work hours for their employees.

According to VRC, there are 330 permanent employees at the Colonial Downs location of Rosie's Gaming Emporium and another 150 permanent employees at the Vinton location. In addition, approximately 200 employees each are expected for the Richmond, Hampton, and Chesapeake locations. To the extent that some or many of these employees earn more in these positions than they had previously, they would be able to spend more than before. This would increase revenue for other firms, particularly in or near the above-mentioned localities.

VRC reports that the HHR terminals and associated equipment are all provided by one out-of-state vendor. Other supplies and services, such as food, advertising, and perhaps janitorial services, would likely be supplied by Virginia vendors, further benefiting the Virginia economy.

As mentioned above, the significant infrastructure limited licensee must offer live racing. Specifically, any significant infrastructure limited licensee that offers pari-mutuel wagering on

⁵ Source: VRC

HHR must request the following number of days of live horseracing, whichever is greater: a) 15 days of live racing, consisting of not less than six races per day; or b) one day of live racing, consisting of not less than six races per day, for every 100 historical racing terminals installed at such facility together with any satellite facility owned, operated, controlled, managed, or otherwise affiliated directly or indirectly with such licensee.

VRC projects that there will be 3,000 HHR terminals installed by the second year that HHR is in effect in the Commonwealth. Based on VRC's projection, for the third year of HHR CDG would have to provide 30 days⁶ of live racing at Colonial Downs.⁷ This would induce additional temporary employment for 30 plus days of the year, as work would need to be done to prepare the track and facilities ahead of time, as well as for providing race day services and products (selling tickets, collecting and paying out bets, providing and selling food, etc.). Increase in employment hours and increase in spending at local businesses would be particularly beneficial for New Kent County.

It should be noted that direct expenditures on HHR and live horse racing are dollars not being spent on other goods and services. The providers of these other goods and services are thus negatively affected with reduced revenue; employment for these entities may decline or have reduced growth as well.

Projected Amount Wagered on HHR and Resulting Distribution of Funds

As shown in the table below, VRC projects that in the second year of HHR wagering in Virginia approximately \$2.4 billion will be wagered on HHR at Colonial Downs and at the satellite sites. Since VRC projects that 92% of that amount will be returned to some customers as winnings, the projection indicates that in net about \$192 million (the remaining 8%)⁸ will actually be spent on HHR wagering for the year. In other words, the "cost" of HHR wagering for all customers in aggregate is about \$192 million for the year. In assessing the economic impact, it should be remembered that this \$192 million would have been spent on other goods or services, or saved (i.e., deferred spending), if not spent on HHR.

⁶ VRC may approve fewer than the requested number of live racing days if it believes it is in the best interest of the public.

⁷ $3,000 / 100 = 30$

⁸ $\$2,395,312,500 \times 0.08 = \$191,625,000$

The table also displays VRC's projections for how the \$192 million will be distributed in the second year that HHR is in effect. The largest amount, about \$147 million, will be retained by CDG. About \$18 million will be distributed to the state as a license tax, per Chapter 811; these dollars initially are nongeneral funds to pay for VRC's expenses. The remainder in excess of VRC's expenses, which is expected to be a large majority of the amount collected, will revert to the general fund. Approximately \$15 million will go to the Virginia Equine Alliance⁹ as a result of a revenue sharing agreement between the Alliance and CDG. Localities will receive about \$12 million, as required by Chapter 811. Chapter 811 directs how payments to localities are distributed. Accordingly, New Kent County (as the locality where the racetrack is located) would get well over half of the projected \$11,976,563 distribution to the localities. The Town of Vinton, and the Cities of Richmond, Hampton, and Chesapeake (as the localities in which the satellite facilities are located) would split the remainder.

Type of Distribution	Amount of Distribution	Percentage of Total Amount Wagered
Amount returned to customers as winnings	\$2,203,687,500	92.00% ¹⁰
Amount kept by CDG	\$146,832,656	6.13%
State	\$17,964,844	0.75% ¹¹
Virginia Equine Alliance	\$14,850,938	0.62% ¹²
Localities	\$11,976,563	0.50% ¹³
Subtotal: amount spent on HHR wagering	\$191,625,000	8.00%
Total Amount Wagered	\$2,395,312,500	100.00%

⁹ The Virginia Equine Alliance consists of the Virginia Harness Horse Association, the Virginia Horsemen's Benevolent & Protective Association, the Virginia Gold Cup Association, and the Virginia Thoroughbred Association.

¹⁰ According to VRC, CDG is currently paying back 93.5%, which is typical for a casino to do when it first opens up. VRC projects that the payout will be 92.00% in the second year.

¹¹ Chapter 811 specifies that 0.75% go to the Commonwealth as a license tax.

¹² The 0.62% is the result of a revenue sharing agreement between the Virginia Equine Alliance and CDG.

¹³ Chapter 811 specifies that 0.5% go to localities.

Potential Impact on State Revenues

Governor Northam's Executive Directive One directs the Department of Planning and Budget, in conducting its economic impact analysis, to consider the impact these regulations will have on potential future revenues to the Commonwealth from other sources. As discussed above, VRC projects that 92% of the amount wagered (about \$2.2 billion) will be returned to customers as winnings. As a result, the remaining 8% (about \$192 million) will be "spent" by customers because it is not returned to them. This \$192 million includes the state license tax.¹⁴ This license tax revenue of \$17,964,844 is collected as state nongeneral fund revenue, and equates to 9.4% of the \$192 million spent by customers on HHR.¹⁵

Expenditures on HHR wagering increase state revenues compared to revenues from state sales taxes (all funds). Had customers not engaged in HHR wagering, the \$192 million would have been spent on other goods or services, or saved (i.e., deferred spending). It is not known how customers may have spent this amount, but state revenues are increased to the extent that customers spend this amount on HHR instead of goods and services subject to the state sales tax. The general state sales tax rate is 5.3%. To compare revenues from the sales tax with revenues from HHR, where the \$192 million spent by customers includes the state license tax, the \$192 million spent on other goods and services also includes revenues from the sales tax.¹⁶ This sales tax revenue of \$9,644,943 is collected as state general fund revenue, and equates to 5.0% of the \$192 million spent by consumers on other goods and services. Accordingly, for each \$1 million spent on HHR rather than on goods and services subject to the 5.3% state sales tax, state revenues would be about \$44,000 higher.¹⁷ In addition, some goods and many services¹⁸ are exempt from the state sales tax, or subject to lower rates. As a result, expenditures on HHR rather than these goods and services would result in a greater increase in state revenue collected.

Expenditures on HHR wagering decrease state revenues compared to revenues from the Virginia Lottery. For Virginia Lottery sales, 61% goes back to customers as winnings. Of the

¹⁴ As required by Chapter 811, the 0.75% state license tax rate is applied to the total amount wagered, not the amount spent by customers.

¹⁵ As shown in the table above, the projected state tax revenue with the projected wagering is \$17,964,844. $\$17,964,844 / \$191,625,000 = 0.094$

¹⁶ $\$191,625,000 / 1.053 = \$181,980,057$; Sales tax paid = $\$191,625,000 - \$181,980,057 = \$9,644,943$.

¹⁷ $\$1,000,000 \times 0.094 - \$1,000,000 \times 0.050 = \$94,000 - \$50,000 = \$44,000$.

¹⁸ See <https://law.lis.virginia.gov/vacode/58.1-609.5/>

39% that is “spent” by customers, 33% is collected by the state (28% is passed through to local school divisions for public education, and 5% is retained by the Virginia Lottery for expenses).¹⁹ In other words, the amount collected by the state equates to 84.6% of the amount “spent” by customers.²⁰ Accordingly, for each \$1 million spent on HHR rather than on lottery tickets, state revenues would be about \$750,000 lower.²¹

Other Factors

Increased access to gambling, such as HHR, may negatively affect the lives of people who have compulsive gambling disorder. The Mayo Clinic defines compulsive gambling as “the uncontrollable urge to keep gambling despite the toll it takes on your life,” and further states that “Gambling can stimulate the brain's reward system much like drugs or alcohol can, leading to addiction. If you have a problem with compulsive gambling, you may continually chase bets that lead to losses, hide your behavior, deplete savings, accumulate debt, or even resort to theft or fraud to support your addiction.”²²

The proposal in the regulation to require that the licensee implement a program to promote responsible gaming by its patrons may help alleviate this problem. VRC reports that CDG has implemented such a program that meets all of the attributes designated in the proposed regulation, including forming a partnership with the Virginia Council on Problem Gambling, training all employees who have contact with patrons that include skills and procedures to respond to situations where a patron exhibits warning signs of a gambling problem, etc.

Conclusion

The proposed regulation with its associated creation of HHR gaming and re-introduction of live racing at Colonial Downs may be beneficial in that it may lead to some Virginians who are currently going out of state to gamble, to instead gamble and spend within the Commonwealth. Also, it may lead to visitors from out-of-state who otherwise would not have spent on goods and services in the Commonwealth to come and do so. Some localities, particularly New Kent County, will clearly benefit. Some businesses will benefit, while others

¹⁹ Source: Virginia Lottery. The remaining 6% is retained by retailers.

²⁰ $33 / 39 = 0.846$

²¹ $\$1,000,000 \times 0.094 - \$1,000,000 \times 0.846 = \$94,000 - \$846,000 = -\$752,000$

²² See <https://www.mayoclinic.org/diseases-conditions/compulsive-gambling/symptoms-causes/syc-20355178>

will have reduced revenue. Commensurately, employment will increase for some firms, and may decline for some others. For some Virginians, getting additional entertainment options that are not currently available, HHR and live racing with pari-mutuel betting, would be beneficial in that it would increase their personal enjoyment. Increased access to gambling could be problematic for some individuals, but requirements in the regulation for a program to promote responsible gaming may significantly ameliorate that risk.

Businesses and Entities Affected

The proposed regulation particularly affects firms associated with the horseracing and gaming industries, and suppliers to these industries.

Localities Particularly Affected

The proposed regulation particularly affects New Kent County, Town of Vinton, City of Richmond, City of Hampton, and City of Chesapeake.

Projected Impact on Employment

The net impact on employment statewide is unclear. The proposed regulation with its associated creation of HHR gaming and re-introduction of live racing at Colonial Downs would increase employment at Colonial Downs and at the satellite facilities. Some or many of these newly hired individuals would likely be earning more in these positions than they had previously. This would enable them to spend more elsewhere, helping other businesses, particularly in or near Colonial Downs and the satellite locations. These other businesses may hire additional employees to meet the increased demand for their goods and services, and so on. Suppliers of goods and services to CDG may also hire additional employees.

On the other hand, the projected \$192 million in expenditures on HHR (and additional spending on live racing at Colonial Downs) is \$192 million that would otherwise have been spent on other goods and services. In not receiving the \$192 million dollars, these other entities would likely not employ as many people as they otherwise would.

Effects on the Use and Value of Private Property

The proposed regulation with its associated creation of HHR gaming helps enable Colonial Downs to be once again used for live horse racing, increasing its value. The value of CDG and its suppliers of goods and services would increase. The value of firms that lose

business due to the estimated \$192 million being spent on HHR (and additional expenditures on live racing at Colonial Downs) would decrease.

Real Estate Development Costs

The proposed regulation does not appear to affect real estate development costs.

Small Businesses:

Definition

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.”

Costs and Other Effects

The proposed regulation with its associated creation of HHR gaming and re-introduction of live racing at Colonial Downs would increase the demand for the goods and services provided by some small businesses as described above, and would likely decrease the demand for the goods and services provided by some other small businesses, as consumer dollars are spent on HHR rather than their goods or services.

Alternative Method that Minimizes Adverse Impact

There is no apparent alternative method that would reduce the adverse impact while still meeting the intended policy goal.

Adverse Impacts:

Businesses:

The proposed regulation with its associated creation of HHR gaming and re-introduction of live racing at Colonial Downs would likely decrease the demand for the goods and services provided by some other businesses, to the extent that consumer dollars are spent on HHR rather than their goods or services.

Localities:

The proposed regulation does not directly adversely affect localities.

Other Entities:

The proposed regulation with its associated creation of HHR gaming and re-introduction of live racing at Colonial Downs may decrease the demand for the goods and

services provided by some non-businesses entities, such as the Virginia Lottery, as consumer dollars are spent on HHR rather than their goods or services.

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(C): 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.