

VIRGINIA LOTTERY
Board Meeting
October 26, 2022

The Virginia Lottery Board met on October 26, 2022, at 9:30 a.m. at Lottery Headquarters in Richmond, Va. A livestream link to the meeting was available on the Virginia Regulatory Town Hall website. A video recording of the meeting can be viewed here:
https://youtu.be/xG7_yOnJjIY

MEMBERS PRESENT: Ferhan Hamid, Chairman
Cynthia Lawrence, Vice Chairman
Vonda Collins
Orrin Gallop
Kimberley Martin
John Paul (JP) Powell
Scott Price

STAFF PRESENT: Kelly T. Gee, Executive Director
Amy Dilworth, General Counsel
Robert Fontaine, Deputy General Counsel for Gaming
Deborah Courtney, Deputy Executive Director of Finance and
Administration
Tony Russell, Deputy Executive Director of ITS and Operations
Gina Smith, Deputy Executive Director of Gaming Compliance
Rob Wesley, Deputy Executive Director of Lottery
Jo Murphy, Executive Assistant

Mr. Hamid, chairman, presided, and Jo Murphy was the recording secretary.

CALL TO ORDER

Mr. Hamid called the meeting to order and noted that a quorum was present.

MINUTES OF LAST MEETING

On motion duly made by Ms. Lawrence and seconded by Mr. Price, the minutes from the regular meeting held on July 20, 2022, were approved as distributed.

DIRECTOR'S REPORT

Ms. Gee said that there are currently 341 full-time Lottery employees. Of the 341, 62 are on the Gaming Compliance team and exclusively handle the oversight of casinos and sports betting. That number is expected to grow by about 80 additional employees over the next year or so as the remaining casinos move through the licensure process. Ms. Gee said that she anticipates that once we are fully staffed for both traditional lottery and gaming compliance the Lottery will have around 440 employees.

DIRECTOR'S REPORT (Continued)

Ms. Gee said that the team continues to raise the bar with its level of professionalism and dedication to the success of the Lottery. She said that two employees will reach 35 years of state service later this year - Deborah Courtney and Bobby Vaughan (ITS department). Mike Gerdes, Procurement Manager, won Manager of the Year from the Virginia Association of Governmental Purchasing in March 2022. The Lottery's Public Affairs and Community Relations team won nine Virginia Public Relations Awards in September 2022. Gina Smith was named Regulator of the Year in October 2022 by the International Masters of Gaming Law.

Ms. Gee provided an overview of the FY23 first quarter results. She said that total sales are up almost 8% over last year at this time. The increase has been driven in large part by the Mega Millions jackpot that exceeded \$1 billion in July 2022 and how well the iLottery instants are performing. While total sales are up, profits are slightly down compared to last year at this time. That is because the bulk of the sales growth is coming from the instants, which have a higher prize payout rate. Ms. Gee said that we have noticed a softening in our retail sales at the start of 2022, and it has been felt most in scratch sales. Anything that impacts the retail space where we sell our products impacts our sales. Inflation, gas prices, labor shortages that affect hours of operation, and gaming competition, especially competition in the same stores where we sell Lottery games, are all playing a part in that softening. Ms. Gee said that she presented to the Senate Finance Committee on October 18, 2022, and shared this same information, so the governor and legislators can have context as they begin their budget process.

Ms. Gee said that Sportsbook Illustrated (SI), a permitted sports betting operator in Virginia, has donated a total of \$175,000 to historically black colleges and universities (HBCUs) and three minority business chambers of commerce in 2022. Ms. Gee and Ms. Mullen attended the Virginia Union University check presentation in August 2022. She said that the legislature set goals in the statute that sportsbook operators who demonstrated good faith efforts to support HBCUs and minority businesses would receive preferred status for the issuance of a sports betting permit. SI is one of the most recent recipients of the limited number of permits the Lottery can award.

Ms. Gee and several other staff attended the groundbreaking ceremony of the Caesars Virginia casino in Danville in August 2022. Caesars is still undergoing the necessary background investigations before the Board will consider the Caesars license for approval, but the construction of the casino can move in tandem with that process.

Ms. Gee reminded the Board that the Joint Legislative Audit and Review Commission (JLARC) was tasked with conducting a study to assess the advantages and disadvantages of consolidating the administration of Virginia's gaming activities into a single agency. There are currently three gaming agencies: the Lottery, the Office of Charitable and Regulatory Programs, and the Virginia Racing Commission. The Lottery worked with JLARC throughout the year as it conducted research to better understand our staffing and financial resources, enforcement

DIRECTOR'S REPORT (Continued)

policies, regulatory and licensing requirements, and responsible gaming efforts. JLARC published its report and presented its findings and recommendations to its legislative oversight committee on October 17, 2022. JLARC recommends establishing a central state gaming agency to ensure effective and efficient regulation across all gaming formats and finds that the Lottery is best suited to take on that role. JLARC further recommends that regulatory oversight of charitable gaming and historical horse racing (HHR) be moved under the Lottery's purview. Live horse racing would remain under the Virginia Racing Commission. JLARC recommends that, if the Lottery is charged with regulating HHR and charitable gaming, the Lottery Board's membership should be modified to ensure that those interests are represented. The modification would create two new ex-officio seats on the Lottery Board - one each from the Virginia Racing Commission and Charitable Gaming Board. Lastly, JLARC recommends that HHR be held to the same rigorous licensing and compliance regulations as commercial casinos. Ms. Gee said that the report acknowledged that the Lottery has seamlessly transformed from an enterprise agency focused on operating a lottery to an agency with the additional core mission of regulating gaming. The JLARC report makes recommendations for the General Assembly but does not have the authority to make any changes. If changes to the Lottery's responsibilities occur, it will require statutory changes, and law changes are the result of legislation during a General Assembly session. Ms. Gee said that she will keep the Board updated on the status of bills that may affect the Lottery. The General Assembly session convenes on January 11, 2023.

BOARD ISSUES

Financial Update

Ms. Courtney provided preliminary results through the first quarter of FY23. Total sales were \$1,015.1 million, \$74.5 million (7.9%) more than last year at this time. Scratcher sales were \$298.9 million, \$60.3 million (16.8%) less than last year at this time. Instants (iLottery) sales were \$400.2 million, \$117.7 million (41.7%) more than last year at this time.

Ms. Courtney reviewed FY23 sales versus prior years. She also reviewed expense rates versus the prior year. Prize expense was 73.1%, which was 2.3% more than last year (70.8%). Retailer compensation was 5.8%, which was the same as last year. Operating expenses were 4.2%, which was 0.1% more than last year (4.1%).

Ms. Courtney said year-to-date profits are \$197,235,494 compared to \$199,769,611 last year at this time.

Ms. Courtney provided an update on taxes from sports betting. FY23 year-to-date total wagers were \$550,672,913. The bulk of that wagering activity goes back to the participants in the form of winnings. The wagers minus the winnings result in approximately 10% for the operators. She

BOARD ISSUES (Continued)

noted that the noncash winnings (eligible promotions) category represents promotions that are offered to attract players and to teach them how sports betting works. The adjusted gross revenue is about 10% of the total wagers. Total taxes to date are \$9,406,397.

Ms. Courtney said that when the General Assembly passed the budget in 2021 it included language that restricted a sports betting operator's ability to deduct promotional activity from its tax reporting. After 12 months, an operator can still offer promotions but cannot deduct them from the tax reporting. The promotional activity category was significantly lower in July 2022 because the largest operators have been operating for more than a year and could no longer deduct promotional wagering activity.

Ms. Courtney provided an update on taxes from casinos. She said that Hard Rock (HR) Bristol opened in July 2022. The statutory tax rate on casino gaming is a graduated rate with 18% on the first \$200 million of annual adjusted gaming revenue. Approximately one-third of the tax (6% of adjusted gaming revenue) goes to the host locality (Bristol Regional Improvement Commission), 0.8% of the tax goes to The Problem Gambling Treatment and Support Fund, and 0.2% of the tax goes to the Family and Children's Trust Fund. The remaining tax revenue goes to the Gaming Proceeds Fund to be appropriated for public school construction, renovations or upgrades.

Ms. Courtney said that the 2019 JLARC gaming study estimated \$130 million in annual net gaming revenues for the Bristol casino at maturity. In the first quarter, HR Bristol's taxable gaming revenues totaled \$40.3 million. HR Bristol is on pace to meet the JLARC estimate in sooner than five years if the current activity holds.

Ms. Courtney provided an update on the budget process. During the Closed Meeting portion of this meeting, the Board will review the updated lottery sales and revenue forecast. The forecast will be submitted to the governor's office, and he will submit amendments to the 2022-2024 biennium budget in December 2022. The General Assembly will consider it during its session. The governor will approve and sign the revised budget in the spring of 2023.

Gaming Compliance Update

Ms. Smith provided an update on sports betting. There are currently two operators in pending status. She said that they will be operational soon.

Ms. Smith provided the market share and promotions by operator. She also provided a breakdown of total wagers by sport.

Ms. Smith provided an update on the voluntary exclusion program. As of October 19, 2022, there are 401 individuals currently enrolled in the program. The majority selected the five-year exclusion. Five people have selected the lifetime exclusion. She also provided a monthly

BOARD ISSUES (Continued)

breakdown of enrollment. Ms. Smith said that people have come into the HR Bristol facility and asked to be excluded. The staff has recently reached out to members of the exclusion program and asked for the member's photo. Most have been receptive to the request. HR Bristol has facial recognition at the entrance to its facility.

Ms. Smith provided an update on casinos. The following casino-related permits have been issued as of October 20, 2022:

Service Permits:

Gaming and non-gaming	1,233
Vendors	244

Supplier Permits:

Key Manager (Principal)	33
Manufacturers	19

Ms. Smith provided an update on Rivers Casino Portsmouth. The Lottery's temporary on-site workspace will be available in early November 2022. Lottery staff will begin working out of the Portsmouth space at that time and remain there until the casino opens. There were 147 graduates from the first dealer school. Community involvement has already begun. The Rivers team recently supported the Wesley Community Center, which is one of the oldest nonprofit organizations in the City of Portsmouth.

Ms. Smith provided an update on the Pamunkey casino. Monthly meetings are held to discuss overall progress. They anticipate opening a temporary casino in the future.

Ms. Smith provided an update on Caesars Danville. Monthly meetings are held to discuss overall progress and plans.

Ms. Smith provided a 2022 third quarter overview for HR Bristol. She discussed new-member acquisition, database by county, recruiting and retention, and charity and community involvement.

Waiver Request of Regulations Concerning Software for Slot Machines

Mr. Fontaine said that 11VAC5-90-30 allows the Board to authorize a request for a waiver of a regulation. SG Gaming, Inc. d/b/a Light and Wonder and International Game Technology PLC (IGT) have separately asked the Board to permit waiver of 11VAC5-90-150.U.1. The regulation states: "If a manufacturer ships a slot machine with software already installed, prior to transporting it to the manufacturer they shall seal the slot machine with a prenumbered seal."

BOARD ISSUES (Continued)

On motion duly made by Mr. Price and seconded by Mrs. Martin, pursuant to 11VAC5-30, the Board approved the requests of SG Gaming, Inc. d/b/a Light and Wonder and International Game Technology PLC (IGT) to waive Lottery regulation 11VAC5-90-150.U, which concerns the installation of software in slot machines, specifically authorizing the requestors to ship such products preloaded with software, without the need for each machine to be individually sealed with a prenumbered seal prior to transport.

On motion duly made by Mr. Price and seconded by Mrs. Martin, the Board delegated to Lottery staff the authority to approve such a request from any other slot machine manufacturer who holds a supplier permit in the Commonwealth, with staff to report any approvals to the Board at its next scheduled meeting.

Appointment of Nominating Committee

Lottery regulations require the Board to elect a Chairman and Vice Chairman at the first meeting of the year. Mr. Hamid appointed Mr. Powell and Ms. Collins to serve as the Nominating Committee. They will develop a slate of officers and committee members to be presented to the Board at the January 2023 meeting.

PUBLIC COMMENT

None.

OTHER BUSINESS

The next Lottery Board meeting is scheduled to take place on November 16, 2022.

BOARD MEMBERS' OPEN DISCUSSION

Mrs. Martin said it has been an honor and a pleasure to serve on the Lottery Board. Her last day as a Board member is November 30, 2022.

CLOSED MEETING

Ms. Collins made the following motion, which was seconded by Ms. Lawrence.

In accordance with the provisions of Section 2.2-3712 of the Code of Virginia, I move that the Board convene a closed meeting for the purpose of discussion, consideration or review of:

CLOSED MEETING (Continued)

Pursuant to subdivision A 17 of Section 2.2-3711, matters relating to specific lottery game design, prize structure and odds of winning; and matters related to proprietary lottery game information excluded from disclosure under subdivision 11 of Section 2.2-3705.7.

Discussion of records protected under subdivision 2 of 2.2-3705.7, prepared for the Office of the Governor for deliberative use.

RECONVENED MEETING

Following its closed meeting, the Board reconvened in open session. Mrs. Martin read the following certification for the closed meeting:

WHEREAS, the Virginia Lottery Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law and the motion by which the closed meeting was convened;

NOW, THEREFORE, BE IT RESOLVED that the Virginia Lottery Board certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the Board. By roll call, all members in the room voted in the affirmative that the certification was accurate as read.

On motion duly made by Ms. Lawrence and seconded by Mr. Price, the Board approved the prize structure for Pick 5 with Fireball as presented in the closed meeting.

On motion duly made by Ms. Lawrence and seconded by Mr. Price, the Board approved the prize structure for Cash 5 as presented in the closed meeting.

On motion duly made by Ms. Lawrence and seconded by Mr. Price, the Board accepts, as presented in the closed meeting, the proposed updates for the revenue projections and transfers to the Lottery Proceeds Fund for each year of the 2022-2024 biennium (fiscal years 2023 and 2024). The projections will be forwarded to the governor.

RECESS FOR LUNCH

INTRODUCTION TO GAMING COMPLIANCE FOR BOARD MEMBERS

Mr. Fontaine described the three required elements of gambling - prize, chance and consideration. Prizes are convertible into money. Chance is not skill nor strictly skill. Consideration is money that must be paid.

Mr. Fontaine said that federal law is generally less impactful than state law except for Indian gaming or for fighting organized crime and money laundering. He said that gambling is a heavily regulated industry at the state level, and each state has different rules. There are always enforcement issues with illegal gambling. Gambling debts were not historically enforceable, but an exception was created in 2020 with respect to “any bet, wager, or casino gaming permitted by [the Casino Gaming Law] or to any contract, conduct, or transaction arising from conduct lawful thereunder.”

Mr. Fontaine said that the inconsistent use of the terms licensing and permit can be confusing. He elaborated on the differences related to lottery and sports betting. Lottery is more Director-focused. The Director issues, suspends, revokes or refuses to renew Lottery licenses and sports betting permits. In sports betting, the Director can impose monetary penalties and waive grounds for denial or renewal of a permit. Mr. Fontaine said that the Board hears and decides administrative appeals of Lottery licensing and revocation, and sports betting denials, penalties, suspensions and revocations.

Mr. Fontaine said that, regarding casino law, the Board is involved at the front end of licensing and issues all licenses. For practical reasons, this has been delegated, after initial licensure of the operator and principals, to the Lottery. The Lottery supervises all the licensed casino gaming operations and reports back to the Board.

Mr. Fontaine said that there are certain affirmative findings provided to the Board to assist with its decision-making as well as required denials for operator licenses. In the case of a casino receiving approval, the Director has the right to suspend, revoke, assess monetary penalties and to refuse to renew licenses and permits. The Board must waive any regulation.

Mr. Fontaine explained the process for noncompliance for Lottery, sports betting or casinos. He further explained the Board’s role in administrative hearings and appeals.

Mr. Fontaine said that there are options in place for problems or noncompliance that arise in either sports betting or casinos. Once the problem is identified, a corrective-action plan can be put into place. Settlements and fines also are an option. Any resolutions will be reported to the Board and posted on the Lottery’s website. This is a responsible, innovative and transparent solution for situations where there are problems that can be resolved without a hearing.

CLOSED MEETING

Ms. Lawrence made the following motion, which was seconded by Mr. Price.

In accordance with the provisions of Section 2.2-3705 of the Code of Virginia, I move that the Board convene a closed meeting for the purpose of discussion, consideration or review of:

§ 2.2-3705.1(6): Vendor proprietary information software that may be in the public records of a public body

§ 2.2-3705.1(7): Computer software developed by or for a state agency

§ 2.2-3705.2(2): Information that describes the design, function, operation, or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

§ 2.2-3705.3(1): Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Lottery.

RECONVENED MEETING

Following its closed meeting, the Board reconvened in open session. Ms. Lawrence read the following certification for the closed meeting:

WHEREAS, the Virginia Lottery Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law and the motion by which the closed meeting was convened;

NOW, THEREFORE, BE IT RESOLVED that the Virginia Lottery Board certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the Board.

By roll call, all members in the room voted in the affirmative that the certification was accurate as read.

ADJOURNMENT

There being no further business to come before the Board, the chairman declared the meeting adjourned.

Kelly T. Gee, Secretary

Ferhan Hamid, Chairman