

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 975
Ways and Means

(Delegate Love, *et al.*)

Budget and Taxation

Gaming - Instant Bingo - Electronic Machines

This bill makes permanent the authority for existing qualified organizations and licensed commercial bingo licensees to operate electronic instant bingo machines that would otherwise be illegal under State law. The authority to operate these machines currently expires on July 1, 2012.

The bill takes effect June 1, 2011.

Fiscal Summary

State Effect: General fund revenues will increase by an estimated \$8.9 million annually beginning in FY 2013 as a result of continued collection of the State admissions and amusement tax on electronic bingo machines currently in operation. General fund revenues will decrease by an indeterminate amount beginning in FY 2013 to the extent that these machines compete with State lottery sales. Special (cultural arts) fund revenues increase by an estimated \$3.6 million annually beginning in FY 2013. Special fund revenues will decrease by an indeterminate amount beginning in FY 2013 to the extent that these machines compete with video lottery terminals (VLTs), particularly in Anne Arundel County. The bill will have little operational effect on the Comptroller or the State Lottery Agency. Expenditures are not affected.

Local Effect: Increase in local admissions and amusement tax revenues for Anne Arundel and Calvert counties and other license and permit fee revenues beginning in FY 2013. Decrease in VLT local impact grants to Anne Arundel County, to the extent that these machines compete with VLTs.

Small Business Effect: Minimal.

Analysis

Current Law/Background: Chapter 474 of 2008 prohibited certain gaming machines licensed by local jurisdictions, primarily electronic bingo and tip jar machines, from operating after July 1, 2009. Chapter 661 of 2009 extended this termination date to July 1, 2012. Chapter 474 altered the definition of “slot machine” to include a machine that reads a game of chance and a machine that delivers a game of chance. The law also provides for exceptions for certain machines that are not considered slot machines:

- machines that award the user additional free games;
- machines that are arcade-type games that provide noncash prizes of minimal value; and
- paper pull tab tip jars and paper pull tab instant bingo tickets that must be opened manually as long as the machine does not electronically read the ticket, does not alert the user to winnings, or does not tabulate the winnings.

Personal electronic bingo machines are also excluded as long as the machine does not allow a person to play more than 54 cards at one time. State Lottery Commission machines that dispense lottery tickets and video lottery terminals (VLTs) are also excluded.

To remain in operation until July 1, 2012, the electronic instant bingo machines must have been in operation for a one-year period ending December 31, 2007. In addition, no more than the number of electronic machines operated as of February 28, 2008, may be in operation by the qualified organization or commercial bingo licensee. A county may not issue a commercial bingo license to an entity that was not licensed to conduct commercial bingo on or before June 30, 2008.

Local Gaming

Each county is responsible for regulating gaming activities conducted by civic and charitable organizations, and there is no statewide reporting of gaming activities by civic and charitable organizations. Gaming licensees may use the proceeds of gaming activities for the benefit of their own organizations, but do not need to share them with other organizations. However, nonprofit organizations on the Eastern Shore with slot machines must use half of the proceeds from slot machines to benefit a charity.

Facilities operating electronic bingo are located primarily in Anne Arundel and Calvert counties. Tip jar gaming, predominantly paper based, is conducted in several Western Maryland counties including Allegany, Garrett, and Washington. A 2006 Abell Foundation report on underground video gambling found between \$6.4 to \$15.3 million in lost local admissions and amusement tax revenue for fiscal 2005, due to underreporting of

income from nearly 3,500 amusement devices in bars and other businesses in Baltimore City and Baltimore County, many of which had not been licensed by the jurisdiction. A subsequent report by the foundation notes that the Comptroller's Office, in coordination with Baltimore City, located over 100 machine owners who had not been paying the tax. An unknown number of these "gray" machines are in operation throughout the State, primarily in Baltimore City and Baltimore County.

Legislation was enacted in 1987 and 2007 authorizing certain nonprofit organizations to operate slot machines in the following eight Eastern Shore counties: Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, and Wicomico. The 1987 legislation required a nonprofit organization to be located in the county for at least five years prior to the application for a license and to be a fraternal, religious, or war veterans' organization. Legislation enacted in 2007 expanded the list of eligible organizations that may be licensed to operate slot machines to include those that have been affiliated with a national fraternal organization for less than 5 years, but have been located within an eligible county for at least 50 years before applying for a license.

Admissions and Amusement Tax

At the 2007 special session, the General Assembly approved legislation (Chapter 6) that imposed a 20% State admissions and amusement tax on the net receipts generated from the operation of electronic bingo and electronic tip jars operated for commercial purposes, with revenues accruing to the general fund.

Chapter 661 of 2009 increased the State admissions and amusement tax rate on net proceeds from electronic bingo and electronic tip jar machines from 20% to 30%. However, the rate of the State tax may not exceed, when combined with the rate of any municipal or county tax rate, a rate of 35% on the net proceeds. The revenue attributable to a State admissions and amusement tax rate *above* 20% is distributed to a special fund for the preservation of cultural arts. (The first 20% continues to be distributed to the general fund.) In fiscal 2011 only, a grant of \$450,000 to the Baltimore Symphony Orchestra and a grant of \$50,000 to the National Philharmonic are to be provided from the cultural arts fund. In fiscal 2011 only, \$500,000 from the fund must also be paid to local jurisdictions where electronic bingo and tip jar machines are located, to be used for one-time capital expenditures.

All counties (with the exception of Caroline County), Baltimore City, and most municipalities impose a local admissions and amusement tax. Each unit of local government sets its own single tax rate or range of rates. This rate is expressed as a percentage of gross receipts, up to a maximum rate of 10%.

The Comptroller collects the local (*i.e.*, county or municipal) admissions and amusement tax and remits payment back to the local jurisdictions on a quarterly basis. The Comptroller also collects the State admissions and amusement tax on electronic gaming machines, which is levied on net proceeds (*i.e.*, after cash and prizes are paid out). In general, the admissions and amusement tax applied by local jurisdictions is a gross receipts tax. The notable exception is Anne Arundel County, which allows for the prizes and cash awards from the electronic bingo machines to be subtracted out before the tax is imposed.

Pursuant to State regulations, an electronic bingo or electronic tip jar is a game played in an electronic or electro-mechanical device that contains predetermined winning and losing games and signals the issuance of a winning play. Examples include (but are not limited to):

- electronic devices utilizing paper bingo or tip jar tickets; and
- electronic devices utilizing computer chips that simulate paper bingo or tip jar tickets that, when played by a customer, determine the outcome of winning or losing that is not random or subject to change, but is based on a predetermined set of winning or losing numbers.

Video Lottery Terminals

During the 2007 special session, the General Assembly adopted two pieces of legislation pertaining to VLT gambling – Chapter 4 (Senate Bill 3) and Chapter 5 (House Bill 4). Chapter 5 was a constitutional amendment approved by the voters at the November 2008 general election that authorized the expansion of gambling subject to specified restrictions. The constitutional amendment provided that (1) a maximum of five VLT facility licenses may be awarded within specified areas of the State; (2) no more than one facility license may be awarded in any county or Baltimore City; (3) a maximum of 15,000 VLTs may be authorized; and (4) VLT facilities must comply with any applicable planning and zoning laws of a local jurisdiction. Chapter 4, which was contingent on ratification of Chapter 5, established the operational and regulatory framework for the VLT program. Under Chapter 4, gross VLT proceeds are distributed as follows from the proceeds of VLTs at each facility:

- Business Investment – 1.5% to a small, minority, and woman-owned business investment account;
- Lottery – 2% to the State lottery for administrative costs, with other costs provided for in the State budget;
- Local Impact Grants – 5.5% to local governments in which a video lottery facility is operating, 18% of which would go for 15 years (starting in fiscal 2012 and ending in fiscal 2027) to Baltimore City through the Pimlico Community

Development Authority and to Prince George's County for the community surrounding Rosecroft (\$1 million annually);

- Purse Dedication Account – 7% to enhance horse racing purses and funds for the horse breeding industry, not to exceed \$100 million annually;
- Racetrack Facility Renewal Account – 2.5% for an eight-year period to the RFRA for racetrack capital construction and renovations, not to exceed \$40 million annually;
- Licensee (Operator) – no more than 33% to video lottery operation licensees; and
- Education Trust Fund (ETF) – remainder to Education Trust Fund (48.5%-51.0%).

Chapter 624 of 2010 made a variety of clarifying and technical changes to the VLT law and also altered provisions regarding the authorized VLT facility in Allegany County. Contingent upon the purchase of the Rocky Gap Lodge and Golf Resort by the licensee, the 2.5% of VLT proceeds from the Allegany County facility for the first five years of operations that would otherwise be distributed to the Racetrack Facility Renewal Account would instead be distributed to the Allegany County facility licensee.

The Video Lottery Facility Location Commission has awarded video lottery operation licenses for VLT facility locations in Anne Arundel, Cecil, and Worcester counties. The Cecil County VLT facility opened on September 27, 2010, with 1,500 VLTs and the Worcester County VLT facility opened on January 4, 2011, with 750 VLTs. Power Plant Entertainment Casino Resorts, LLC plans to open a temporary facility with 2,000 VLTs adjacent to Arundel Mills Mall in Anne Arundel County in the fourth quarter of 2011, with a permanent facility with 4,750 VLTs scheduled to open in the fourth quarter of 2012. The licenses for Baltimore City and Allegany County have yet to be awarded.

State Revenues: The Comptroller's Office reports that State admissions and amusement tax revenues from electronic bingo machines totaled \$12.5 million in fiscal 2010, including \$8.9 million to the general fund and \$3.6 million in special (cultural arts) funds. General and special fund revenues will therefore increase by similar amounts beginning in fiscal 2013, when most existing machines would be prohibited under current law. However, general fund revenues will decrease by an indeterminate amount due to decreased lottery sales. Special fund revenues will decrease by an indeterminate amount beginning in fiscal 2013 to the extent that affected machines compete with VLTs, particularly in Anne Arundel County.

Local Fiscal Effect: Local admissions and amusement tax revenues will increase in Anne Arundel and Calvert counties. **Exhibit 1** shows local fiscal 2010 admissions and amusement tax revenues for Anne Arundel and Calvert counties from commercial electronic bingo. The bill would allow approximately the same amount of commercial electronic bingo-related admissions and amusement tax revenues to continue beginning in

fiscal 2013. However, VLT local impact grants to Anne Arundel County, decrease beginning in fiscal 2013 to the extent that affected machines compete with VLTs.

Exhibit 1
Electronic Bingo-related County Admissions and Amusement Tax Revenues
Fiscal 2010

<u>County</u>	<u>Revenues</u>
Anne Arundel	\$1,827,000
Calvert	264,000

Source: Comptroller's Office

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Maryland State Lottery Agency, Department of Legislative Services

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