

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 868
Ways and Means

(Delegate Hixson, *et al.*)

Budget and Taxation

Video Lottery Operation Licensees - Noninterference

This emergency bill prohibits a video lottery operation licensee from directly or indirectly interfering with, hindering, obstructing, impeding, or taking any action to delay the implementation or establishment of a video lottery facility by any other licensee or applicant. The State Lottery Commission is required to adopt regulations to implement the bill that include sanctions and penalties for a licensee that knowingly violates the law.

The provisions of the bill apply only prospectively and may not be applied or interpreted to apply, to any action taken before the effective date of the bill.

Fiscal Summary

State Effect: To the extent the bill prevents a delay in the opening or operations of a video lottery facility, special fund revenues and expenditures from video lottery terminal (VLT) proceeds increase. Any VLT revenue increase reduces the need for general funds to replace special funds that are used to support mandated expenses. Special fund revenues due to penalty revenues may also increase. The State Lottery Commission can implement the bill with existing resources. Any revenues from the bill's penalty provisions are expected to be minimal.

Local Effect: To the extent the bill prevents a delay in the opening or operations of a video lottery facility in a county that receives VLT local impact aid, local government revenues increase.

Small Business Effect: None.

Analysis

Bill Summary: This bill prohibits a video lottery operation licensee from directly or indirectly interfering with, hindering, obstructing, impeding, or taking any action to delay the implementation or establishment of a video lottery facility by any other licensee or applicant. The State Lottery Commission is required to adopt regulations, to the fullest extent allowed by the First Amendment of the Constitution of the United States, to implement the bill. The regulations must include provisions that expressly prohibit (1) taking any of the actions previously described related to required State or local government approvals for the establishment of a video lottery facility or providing funds or material support to any of these actions; and (2) as unlawful indirect conduct, activity by an entity in which the licensee, or an affiliate of the licensee, owns a beneficial or proprietary interest.

Current Law: 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. Chapter 624 of 2010 made several changes to the VLT program implemented by Chapter 4.

Under Chapter 4, VLT facility operation licenses are awarded by the Video Lottery Facility Location Commission. The State Lottery Commission oversees VLT operations, and owns/leases VLTs and a central monitor and control system. Except for provisions related to the offering of food and beverages at facilities, the commission is required to ensure VLT licensees comply with the regulatory framework of the VLT program.

The State Lottery Commission has broad authority under the VLT law (Subtitle 9-1A of the State Government Article) to regulate the conduct of licensees, contractors, and others in the implementation of the VLT program, including the power to deny or revoke a video lottery operation license for a violation of the VLT law, regulations adopted under the VLT law, or a condition set by the commission. The Lottery may impose a penalty of up to \$5,000 per day for each violation of the law. The commission has adopted regulations that implement the VLT law, which include a requirement that a licensee has

a continuing obligation to comply with the terms of the request for proposals (RFP) issued by the Video Lottery Facility Location Commission.

Chapter 4 allows for a maximum of 15,000 VLTs, distributed as follows: 4,750 VLTs in Anne Arundel County; 3,750 VLTs in Baltimore City; 2,500 VLTs in Worcester County; 2,500 VLTs in Cecil County; and 1,500 VLTs in Allegany County (Rocky Gap State Park).

Exhibit 1 shows the distribution of estimated VLT revenues through fiscal 2016.

Exhibit 1
Distribution of Estimated VLT Revenues
(\$ in Millions)

	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Education Trust Fund (48.5%-51.0%)	64.1	192.3	286.6	471.3	512.3	549.4
Licensees (33%)	43.6	130.8	195.0	320.7	348.6	373.9
Local Impact Grants (5.5%)	7.3	21.8	32.5	53.4	58.1	62.3
Business Investment (1.5%)	2.0	5.9	8.9	14.6	15.8	17.0
Purse Dedication Account (7%) ¹	9.2	27.8	41.4	68.0	73.9	79.3
Racetrack Renewal (2.5%) ²	3.3	9.9	14.8	24.3	26.4	28.3
Lottery Operations (2%)	2.6	7.9	11.8	19.4	21.1	22.7
Total (100%)	132.1	396.5	590.9	971.8	1,056.4	1,132.9

¹Up to \$100 million annually.

²Up to \$40 million annually for eight years, after which the monies accrue to the Education Trust Fund. Chapter 624 of 2010 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.

Source: Department of Legislative Services, December 2010 Revenue Estimate

Background: The Video Lottery Facility Location Commission has awarded video lottery operation licenses for VLT facility locations in Anne Arundel, Cecil, and Worcester counties. Penn Cecil in Cecil County opened in late September 2010 with 1,500 VLTs and Ocean Downs in Worcester County opened in January 2011 with 750 (increasing to 800 in the near future) VLTs. Power Plant Entertainment (PPE) Casino Resorts, LLC was awarded a license in December 2009 to operate a 4,750 VLT facility adjacent to Arundel Mills Mall in Anne Arundel County, contingent upon local zoning approval. County officials subsequently approved zoning legislation, but the legislation was petitioned to a local voter referendum at the November 2010 election.

Anne Arundel County voters approved the legislation, allowing the VLT facility to go forward. PPE plans to open a 2,000 VLT temporary facility by the end of 2011 with a permanent facility scheduled to open by the end of 2012. The licenses for Baltimore City and Rocky Gap State Park are yet to be awarded.

The Video Lottery Facility Location Commission issued an RFP (2009-0101) in December 2008 following ratification of the constitutional amendment authorizing VLTs at the November 2008 election. The RFP included numerous provisions concerning implementation of the VLT program that were necessary until the Lottery Commission could promulgate regulations to administer the program. Several provisions of the RFP are relevant to this bill. The RFP stated that all terms and requirements of the RFP apply to an applicant for a video lottery operation license and will be incorporated in a license, to be issued by the Lottery Commission. Among the RFP's terms and conditions are two key provisions that require licensees to: (1) ensure that there is no real or perceived conflict of interest at any time (conflict of interest); and (2) cooperate with any subsequent licensee or contractor to accomplish the Lottery Commission's objectives (duty to cooperate).

Penn National Gaming, Inc. (Penn National) is the parent company of Penn Cecil, which was awarded the video lottery operation license in Cecil County. Penn National is part of the joint venture that owns Maryland Racing Inc., which encompasses Laurel Racing Association, Inc. (LRA) and other horse racing interests. LRA's application for a video lottery operation license in Anne Arundel County was rejected by the Location Commission in February 2009 for failure to pay the required initial license fee.

In September 2010, PPE asked the Lottery Commission to order Penn National to cease funding the opponents of the November 2010 county referendum on the Anne Arundel County zoning ordinance (meaning the opponents wanted the zoning law voided). PPE claimed that Penn National was violating the conflict of interest and duty to cooperate provisions of the RFP, arguing that Penn National's interest in Penn Cecil and Charles Town in West Virginia conflict with the State's interest in establishing a VLT facility in Anne Arundel County, and that Penn National was not cooperating with another licensee (PPE). The Lottery Commission requested advice from the Attorney General's Office on whether the commission has the authority to order a licensee, Penn Cecil and Penn National, to cease funding the referendum.

The Attorney General concluded that while the Lottery Commission has the authority to enforce the RFP's provisions, the Lottery Commission could not order Penn National to cease funding opposition to the referendum because neither the RFP nor the VLT law prohibit such funding. The Attorney General's advice dated October 5, 2010, found that the conflict of interest and duty to cooperate provisions of the RFP have narrow

application to the licensee's actions related to the VLT facility for which the license was granted. The Attorney General further concluded that even if the RFP or the law authorized the commission to regulate VLT licensees' campaign contributions, a court would likely find it unconstitutional.

State Fiscal Effect: In the absence of the bill, if special fund revenues are reduced from the estimates shown in Exhibit 1 due to an activity prohibited by the bill, the loss of revenues to the Education Trust Fund and State lottery for administration of the VLT program would be required to be replaced by general funds to cover mandated expenses for State education aid formulas and VLT lease costs. To the extent the bill prevents these revenue losses, special fund revenues and expenditures increase. In addition, general funds would not be required to supplant the special funds.

Additional Information

Prior Introductions: None.

Cross File: SB 373 (Senators Kasemeyer and DeGrange) - Budget and Taxation.

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

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