HB 1039

Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1039 (The Speaker)(By Request - Administration)
Ways and Means Budget and Taxation and Finance

Horse Racing - Distribution of Video Lottery Revenues

This Administration bill alters the distributions and uses of the Purse Dedication Account (PDA) and the Racetrack Facility Renewal Account (RFRA), which receive revenues from the State's video lottery terminal (VLT) program, for the purpose of providing operating assistance to the State's thoroughbred and standardbred racetracks, subject to specified requirements. Applications for operating assistance must be submitted to and approved by the Secretary of Labor, Licensing, and Regulation. It also establishes a Thoroughbred Racing Sustainability Task Force and requires specified reports.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: No overall impact on State finances. The bill authorizes the distribution of up to $1.2 million each to Ocean Downs and to Rosecroft Raceway for calendar 2012 from the PDA for operating assistance and up to $6.0 million from RFRA to Laurel Park and Pimlico Race Course for operating assistance in each of calendar 2012 and 2013. The bill does not alter the overall amount of VLT revenue distributed to the funds. Staffing costs for the task force are assumed to be minimal.

Local Effect: None.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary:

Bowie Training Center

The bill specifies that when the Bowie Training Center is no longer required by the State to be operated as a thoroughbred training facility, the State shall have the right of first refusal as grantee for any conveyance of the facility. The City of Bowie shall have the second right of refusal as grantee for any conveyance. A grantee may not be required to operate the Bowie Training Center as a training facility.

Ocean Downs and Rosecroft Raceway

The bill specifies that up to $1.2 million from the PDA may be provided to Ocean Downs Race Course for operating assistance to support a minimum of 40 live racing days for calendar 2012 only unless the racing licensee is prevented by weather, acts of God, or other circumstances beyond the racing licensee's control.

An additional $1.2 million from the PDA may be provided to Rosecroft Raceway to provide operating assistance to support a minimum of 40 live racing days for calendar 2012 only unless the racing licensee is prevented by weather, acts of God, or other circumstances beyond the racing licensee's control.

In order to obtain operating assistance, Rosecroft Raceway must (1) agree to hire back workers employed at the facility prior to the end of live racing on June 27, 2008; and (2) recognize collective bargaining agreements that were in place as of June 1, 2008.

Upon completion of review by a certified public accountant, the Department of Labor, Licensing, and Regulation (DLLR) may authorize the reimbursement of expenditures by the racing licensee that are necessary to conduct the live racing schedule. All costs associated with the racing licensee's application must be paid by the racing licensee. In support of the racing licensee's application and request for reimbursement, the racing licensee must provide monthly financial information and an annual audited financial statement to DLLR.

Expenditures eligible for reimbursement must include the ordinary and reasonable costs of conducting the race meetings, pari-mutuel wagering, and stabling activities of the racing licensee, net of ordinary income and receipts. The reimbursement calculation may not include: (1) extraordinary income and expense-related items, including extraordinary litigation expenses; (2) lobbying fees; (3) capital investments, including predevelopment costs; or (4) prior year adjustments and claims.

Racing licensees may not receive assistance while the racing licensee is a party to a proceeding challenging the issuance or denial of a video lottery operation license.

Laurel Park, Pimlico, and Timonium

The bill specifies that up to $6.0 million in funds from the RFRA may be used by Laurel Park and Pimlico Race Course for operating assistance to support a minimum of 146 annual live racing days in calendar 2012 and 2013, unless the racing licensee is prevented by weather, acts of God, or other circumstances beyond the racing licensee's control.

For fiscal 2012, the amount of funds made available from the RFRA must be allocated as follows:

- 80% to Pimlico Race Course, Laurel Park, and the Racecourse at Timonium, minus 20% of the amount credited to the account in fiscal 2011 and minus the amount necessary to repay funds to MEDCO in accordance with HB 72 of 2011 (the Budget Reconciliation and Financing Act (BRFA)); and
- 20% to Rosecroft Raceway and Ocean Downs Race Course, plus 20% of the amount credited to the account in fiscal 2011.

The bill specifies that, of the amount provided from the RFRA, the following amount must be provided to Timonium for racetrack facility capital construction and improvements:

- $1.125 million for fiscal 2012 and 2014;
- $1.25 million for fiscal 2013; and
- $1.0 million for fiscal 2015 and 2016.

Timonium may use up to $350,000 annually from these funds to support a minimum of seven live racing days, subject to approval by DLLR under the same process and conditions applicable to other racing licensees applying for reimbursement of expenditures.

In order to obtain operating assistance, a holder of a racing license to race at Laurel Park or Pimlico may apply to DLLR for the reimbursement of expenditures made by the racing licensee to conduct the live racing schedule.

A racing licensee's application for reimbursement of expenditures must include (1) a 12-month business plan, subject to review by a certified public accountant, that sets forth the income- and expense-related items that are necessary to conduct a live racing schedule of at least the number of live racing days that was stated in the application; and (2) a five-year business plan that describes the challenges impacting the economics of operating the racing facility and strategies for addressing those challenges. Upon completion of review by a certified public accountant, DLLR may authorize the reimbursement of expenditures by the racing licensee that are necessary to conduct the live racing schedule. All costs associated with the racing licensee's application must be paid by the racing licensee. In support of the racing licensee's application and request for reimbursement, the racing licensee must provide monthly financial information and an annual audited financial statement to DLLR.

Expenditures eligible for reimbursement must include the ordinary and reasonable costs of conducting the race meetings, pari-mutuel wagering, and stabling activities of the racing licensee, net of ordinary income and receipts. The reimbursement calculation may not include: (1) extraordinary income and expense-related items, including extraordinary litigation expenses; (2) lobbying fees; (3) capital investments, including predevelopment costs; or (4) prior year adjustments and claims.

Racing licensees may not receive assistance while the racing licensee is a party to a proceeding challenging the issuance or denial of a video lottery operation license.

Other Conditions for Operating Assistance

The bill specifies that except as otherwise provided, as a condition of eligibility for funding, an agreement must be reached on or by July 1, 2011, between the various tracks and other stakeholders through at least December 31, 2013, as applicable, regarding the sharing of revenues derived from wagering on simulcast races as such issues relate to (1) the Interstate Horseracing Act of 1978, 15 U.S.C. §§ 3001 through 3007; (2) pari-mutuel betting on out-of-state races; and (3) intertrack betting.

If an agreement is not reached by July 1, 2011, a potential party to an agreement is eligible for funding if the party indicates to the Secretary of Labor, Licensing, and Regulation, in writing, its consent to participate in a mediation and arbitration process. The Secretary of Labor, Licensing, and Regulation must conduct a mediation between the parties to reach a fair and equitable simulcasting agreement. If by October 1, 2011, the parties have not reached an agreement through the mediation process, the parties must consent to *de novo* binding arbitration before (1) the American Arbitration Association; or (2) an independent arbitrator, selected by the Secretary with the consent of the parties, conducted in a manner consistent with the American Arbitration Association's commercial dispute resolution rules and procedures.

If an entity owns 100% of a track that would be a party to an agreement, and at least 49% but not more than 51% of another track that would be a party to an agreement, a mediation or an arbitration may not be required until (1) that entity fully recuses itself, to the satisfaction of the Secretary of Labor, Licensing, and Regulation or the arbitrator, as appropriate, from participation in the negotiation of an agreement on behalf of the track in which it holds an ownership interest of at least 49% but not more than 51%; or (2) the entity no longer owns at least 49% but not more than 51% of that track.

Thoroughbred Racing Sustainability Task Force

The bill establishes a Thoroughbred Racing Sustainability Task Force appointed by the Governor. The task force must develop a plan by December 1, 2011, that includes (1) a plan for the long-term viability of thoroughbred racing in Maryland that does not include locating VLTs at a thoroughbred racetrack; (2) a minimum of 146 live racing days in a calendar year; and (3) a strategy for implementing the plan that includes specific benchmarks and timelines. The task force must submit the plan to the Governor and the Legislative Policy Committee for review. The Legislative Policy Committee may provide comments on the plan to the Governor. The Comptroller may not pay out the assistance provided for Laurel and Pimlico for the 2013 racing season until the Governor approves the plan.

Current Law: Two video lottery terminal (VLT) gambling bills passed during the 2007 special session – House Bill 4 (Chapter 5) and Senate Bill 3 (Chapter 4). Chapter 5 is a constitutional amendment that was approved by Maryland voters at the November 2008 general election authorizing 15,000 VLTs at five locations in the State. Chapter 4, which was contingent on ratification of Chapter 5, establishes the operational and regulatory framework for the authorized VLT program.

Under Chapter 4, VLT facility operation licenses are awarded by the Video Lottery Facility Location Commission (Location Commission). The State Lottery Commission oversees VLT operations and owns/leases the VLTs and the central monitor and control system. A maximum of 15,000 VLTs are allowed, 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 1,000 VLTs in Allegany County. In addition, geographic parameters for each jurisdiction within which a VLT facility may be located are provided.

Under current law, except for the Allegany County location, gross VLT proceeds are distributed as follows:

- 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 $1 million annually to Prince George's County for the community surrounding Rosecroft;
- 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, 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%).

Maryland Economic Development Corporation

MEDCO is a body corporate and politic and a public instrumentality of the State. MEDCO was created in 1984 for the purpose of attracting new business and expanding existing businesses in Maryland through the development, expansion, and/or modernization of facilities. In fulfilling this purpose, MEDCO owns and leases certain properties and makes loans to organizations that require financing to acquire or develop properties. MEDCO also serves as a consultant or development manager on certain projects. MEDCO transactions are structured with no recourse to MEDCO or the State from either bondholders or lenders.

MEDCO may pledge or assign any of its revenues or rights to receive revenues, monies, to secure bonds. MEDCO is authorized to acquire, improve, develop, manage, market, maintain, lease as a lessor or as lessee, and operate a development project in the State. MEDCO can make loans to finance all or part of the acquisition or improvement of a project and may enter into financing agreements, mortgages, and other instruments that it determines are necessary or desirable to evidence or secure the loan. The lease for a project may require or authorize the lessee or another person to purchase or otherwise acquire the property in an amount that MEDCO establishes once the principal and interest of bonds are paid off.

Background: As noted, Chapters 4 and 5 of the 2007 special session authorized up to 15,000 VLTs in five locations across the State, contingent on passage of a voter referendum at the November 2008 general election. The referendum was approved by the voters, and the Location Commission has awarded three video lottery operation licenses to date. VLT facilities in Cecil County and Worcester County are currently operating, and a facility in Anne Arundel County is under construction. Licenses for VLT facilities in Baltimore City and Allegany County have yet to be awarded.

Chapter 4 created the RFRA and required that 2.5% of VLT revenues be deposited in the account (up to $40 million annually) for fiscal 2011 through 2018 to be used for matching capital improvement grants at horse racing tracks. Of the total, 80% is allocated to Pimlico Race Course, Laurel Park, and the Racecourse at Timonium and 20% to Rosecroft Raceway and Ocean Downs Race Course. Timonium's share of the 80% is specified as $5 million over five years with no matching requirement.

Chapter 4 also created the PDA and required that 7% of VLT revenues be deposited in the account to enhance horse racing purses and funds for the horse breeding industry, not to exceed $100 million annually. Of the amount in the fund, 80% is distributed to the thoroughbred industry and 20% is distributed to the standardbred industry. Of the amount distributed to the thoroughbred industry, 11% is dedicated to the Maryland-Bred Race Fund, and 11% of the amount distributed to the standardbred industry is dedicated to the Maryland Standardbred Race Fund.

Recent Industry Developments

In February 2009, the Location Commission rejected a proposal from the Laurel Racing Association (LRA) for a VLT facility at Laurel Park in Anne Arundel County due to a failure to pay the required initial license fee. The Location Commission eventually awarded the Anne Arundel County video lottery operation license for a proposed VLT facility adjacent to the Arundel Mills Mall in December 2009. After a local referendum on the proposed Arundel Mills VLT facility passed in November 2010, thus allowing construction on that facility to go forward, Maryland Racing Inc., which encompasses Laurel Park, Pimlico Race Course, and other horse racing interests in the State, submitted a significantly reduced calendar 2011 racing schedule to the Maryland Racing Commission. The racetrack owners claimed that ongoing operating deficits at the tracks made it impossible to maintain the same level of live racing days at Laurel Park and Pimlico Race Course as in past years, and therefore asked the Racing Commission to approve a 2011 schedule of 77 total live racing days at the two tracks, down from 146 days in 2010.

In December 2010, the Racing Commission rejected the proposal to significantly reduce the number of scheduled racing days in 2011. As a result, the racetrack owners announced that hundreds of employees might be laid off and that the closure of Laurel Park and the Bowie Training Center were on the table. In order to prevent the closure of Laurel Park and Bowie Training Center, an agreement was reached between the O'Malley Administration, the racetrack owners, the Maryland Horse Breeders' Association, and the Maryland Thoroughbred Horsemen's Association. As part of this agreement to subsidize racetrack operations for 2011, MEDCO will provide $3.6 million and the breeders/horsemen associations will contribute $1.7 million for operating expenses. The BRFA of 2011 requires that up to $3.6 million in fiscal 2011 VLT proceeds from the RFRA are be used to repay the advance from MEDCO (plus $400,000 in fiscal 2012 to cover MEDCO expenses).

The agreement described above will allow the racetracks to operate a 2011 live racing schedule similar to the 2010 racing schedule, including a 146 day live racing schedule that includes the 136th running of the Preakness Stakes at Pimlico. The agreement also provides for the continued year-round operation of the Bowie Training Center in 2011.

LRA appealed the Location Commission's rejection of its application for a video lottery operation license to the State Board of Contract Appeals in December 2009. LRA also filed a petition for judicial review with the Anne Arundel County Circuit Court. On February 25, 2011, the Location Commission, the State Lottery Commission, and LRA entered into a settlement agreement under which LRA agreed to dismiss all pending appeals.

State Fiscal Effect: The bill has no overall effect on State finances. The bill authorizes the distribution of up to $1.2 million for calendar 2012 from the PDA to each of Ocean Downs and Rosecroft Raceway for operating assistance and up to $6.0 million from the RFRA to Laurel Park and Pimlico Race Course in each of calendar 2012 and 2013 for operating assistance, provided that certain conditions are met. However, the bill does not alter the overall amount of revenue distributed to each of the funds.

The RFRA is projected to receive $2.7 million in fiscal 2011 and $4.4 million in fiscal 2012, while the PDA is projected to receive $7.5 million in fiscal 2011 and $12.3 million in fiscal 2012.

Exhibit 1 shows the distribution of RFRA funds pursuant to the bill in fiscal 2012. As previously noted, the BRFA transfers $3.6 million from the RFRA to MEDCO in fiscal 2011. To the extent that the total amount of funds required for this transfer are not yet accrued in the account in fiscal 2011, the remainder must be transferred in fiscal 2012. An additional amount of up to $400,000 must also be transferred in fiscal 2012 for MEDCO fees. As such, the distribution of funds shown in Exhibit 1 assumes $1.3 million in repayment to MEDCO from the thoroughbred portion of RFRA, which represents the difference of the $2.7 million in estimated fiscal 2011 revenue for RFRA and the $3.6 million grant in fiscal 2011 that is required to be paid back to MEDCO, plus the $400,000 to cover MEDCO's fees.

Exhibit 1
Distribution of RFRA Funds
Fiscal 2012

	Thoroughbred	Standardbred
Distribution Percentage	80.0%	20.0%
Funds Available – FY 2012	$3,520,000	$880,000
20% Credit for FY 2011	(540,000)	540,000
MEDCO Repayment for FY 2011	(1,300,000)	0
Net Available Funds – FY 2012	**$1,680,000**	**$1,420,000**

As a result, it is estimated that there will be approximately $0.6 million ($1.7 million minus $1.125 million for Timonium) available to Pimlico and Laurel for operating assistance and capital improvements and $1.4 million available to Ocean Downs and Rosecroft for capital improvements in fiscal 2012. The bill limits the amount that may be used for operating assistance to $6.0 million annually in calendar 2012 and 2013 for Pimlico and Laurel. An estimated $10.0 million will be available for operating assistance and capital improvements to Pimlico and Laurel in fiscal 2013. From fiscal 2012 through 2016, Timonium may receive a total of $5.5 million for capital improvements, of which $350,000 annually may be used to support a minimum of seven live racing days.

Additional Information

Prior Introductions: None.

Cross File: SB 848 (The President) (By Request - Administration) - Budget and Taxation and Finance.

Information Source(s): Department of Business and Economic Development; Comptroller's Office; Maryland State Lottery Agency; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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