

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 11

(Senator Peters, *et al.*)

Budget and Taxation

Ways and Means

State Lottery - Licenses - Veterans' Organizations

This bill authorizes the Maryland State Lottery Agency to issue a license for up to five pull tab machines to an eligible veterans' organization, excluding organizations located in Eastern Shore counties. A licensed veterans' organization must locate and operate its pull tab machines at its principal meeting hall in the county.

After deduction of any commission and validation prize payout, the licensed veterans' organization must credit remaining receipts to the State Lottery Fund. After June 30, 2013, 10% of remaining money in the State Lottery Fund from proceeds of pull tab sales by licensed veterans' organizations is paid monthly by the Comptroller into the Maryland Veterans Trust Fund (MVTF). A licensed veterans' organization must purchase or lease the pull tab machines from the State Lottery Agency, but may not use receipts from the sale of pull tabs that would otherwise be credited to the State Lottery Fund to purchase or lease the machines.

The bill also requires the State Lottery Agency to ensure that the conduct of gaming and the operation of the pull tab machines authorized by the bill are consistent with the holding in the case of *Chesapeake Amusements Inc. v. Riddle*, 363 Md. 16 (2001).

Fiscal Summary

State Effect: General fund revenues increase due to distribution of proceeds from pull tab machines authorized by the bill beginning in FY 2013. Potential decrease in special fund revenues and expenditures from the Video Lottery Terminal (VLT) Program beginning in FY 2013. MVTF special fund revenues increase beginning in FY 2014. The net impact on general and special fund revenues and expenditures will depend on the number and location of war veterans' organizations that operate pull tab machines and the actual payout rates that are offered.

Local Effect: Several counties could experience decreased revenue from paper gaming due to competition from pull tab gambling at war veterans' organizations. County expenditures are not affected.

Small Business Effect: Potential meaningful. Licensed State lottery agents in the vicinity of a veterans' organization licensed for lottery ticket terminals may be adversely affected by decreased sales and commissions. Small businesses that sell and distribute pull tabs and pull tab machines benefit.

Analysis

Current Law/Background:

Lottery Ticket Sales and the State Lottery Fund

State criminal law prohibits all lotteries except the State lottery or multijurisdictional lotteries authorized under the State Government Article. The State Lottery Agency must issue licenses to persons and governmental units that will best serve the public convenience and promote the sale of State lottery tickets or shares.

An agent licensed by the State Lottery Agency receives a commission of 5% of gross receipts from the agent's lottery ticket sales; the commission increases to 5.5% beginning in fiscal 2013. (A provision of Senate Bill 152/HB 87 – the Budget Reconciliation and Financing Act of 2012 – maintains the commission rate at 5% for fiscal 2013 and subsequent years.) A licensed agent may also receive a cashing fee not to exceed 3% of valid prizes paid for services rendered in cashing winning tickets.

Each month, after payments to lottery winners and to the State Lottery for operating expenses, the Comptroller must make payments from the State Lottery Fund to:

- the Maryland Stadium Facilities Fund, from revenues generated by sports lotteries conducted on behalf of the Maryland Stadium Authority; and
- the State's general fund.

Maryland Veterans Trust Fund

Chapter 742 of 2009 established MVTF, which consists of gifts and grants received by the Maryland Department of Veterans Affairs (MDVA) and is administered by the Secretary of Veterans Affairs. Money in the fund may be used to make grants and loans to veterans and their families, support public and private programs that serve veterans in the State, or support the Charlotte Hall Veterans Home. Money in the fund may also be

used to invest in general obligations of the State or other securities, pay for the cost of administering the fund, or support any other programs that the Secretary considers appropriate. Money expended from the fund is supplemental to and is not intended to take the place of funding otherwise appropriated to MDVA. The proposed fiscal 2013 State budget for MDVA includes \$100,000 for MVTF.

VLT Program

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 and Chapter 240 of 2011 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. 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). Chapter 240 of 2011 reduced the maximum number of VLTs that may be awarded to Allegany County to 1,000 while changing other provisions of the law regarding a VLT site in Allegany County.

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, and has since expanded to 800 VLTs. Power Plant Entertainment Casino Resorts, LLC plans to open a VLT facility adjacent to Arundel Mills Mall in Anne Arundel County in June 2012. The licenses for Baltimore City and Allegany County have yet to be awarded.

Local Gaming

Each county is responsible for regulating gaming activities conducted by civic and charitable organizations. There is no statewide reporting of gaming activities by civic and charitable organizations, except for the slot machines operated on the Eastern Shore. 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, slot machine operators must use at least one-half of the proceeds from slot machines to benefit a charity.

Generally, it is a misdemeanor crime to possess or operate a slot machine in Maryland. However, certain nonprofit organizations are authorized to operate slot machines in nine Eastern Shore counties: Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester. A nonprofit organization must be located in the county for at least five years prior to the application for a license and be a fraternal, religious, or war veterans' organization, or must have been affiliated with a national fraternal organization for less than 5 years and been located within an eligible county for at least 50 years before applying for a license. The Comptroller's Office must regulate the specified slot machines and charge a license fee to cover the costs of regulating the machines.

Paper gaming is a game of chance in which prizes are awarded, and the devices used to play the game are constructed of paper. The most common forms of paper gaming are punchboards, instant bingo, and tip jars. A punchboard is a square piece of wood or cardboard with dozens or hundreds of holes punched in it, each filled with a piece of paper with numbers or symbols printed on it. The holes are covered with foil or paper, and players pay for the right to punch one or more holes. If the numbers or symbols on their slips of paper match a winning combination, they receive a prize, either cash or another item. Tip jars dispense instant winning game tickets similar to scratch-off lottery games. Pull tab games are played by revealing symbols located under perforated tabs contained on laminated cardboard tickets. Winning is determined by matching the symbols revealed to a predetermined set of prizes identified on the ticket. Price points on pull tab games typically range from 25 cents to \$2.00. Information from other states indicate a payout rate of approximately 66% on pull tabs, meaning that two thirds of the amount bet is returned to gamblers (considerably lower than the average payout of about 88% for Eastern Shore slot machines.)

Paper gaming provides two sources of revenues to counties: the sale of paper gaming licenses and tickets to operators, and taxes on paper gaming sales. The State Lottery Agency advises that paper gaming occurs in at least 15 Maryland counties and is most prevalent in Allegany, Frederick, Garrett, and Washington counties. Basic electronic pull tab dispensers are currently available within a range from about \$2,500 to \$5,000 each and manual lock and key dispensers are available for as low as \$150.

Prohibited Gaming

In *Chesapeake Amusements Inc. v. Riddle*, the Maryland Court of Appeals took up the issue of “whether a dispensing machine with a video screen that displays the contents of the tickets that it dispenses and emits a musical tone that signals when a winning ticket is being dispensed is a ‘slot machine,’” as defined by Maryland law. The Court of Appeals found that the machine in question was not a slot machine. In response to this decision, Chapter 474 of 2008 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.

Chapter 474 of 2008 also 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. 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 machines that dispense lottery tickets and VLTs are also excluded.

The State Lottery Agency advises that it deploys instant ticket vending machines (ITVM) that dispense instant games and player activated terminals (PAT) that in addition to dispensing instant games allow online game play. Currently the Lottery has 31 online terminals (*e.g.*, Keno) at American Legion and Veterans of Foreign Wars posts in 10 local jurisdictions, but these are not ITVMs or PATs. The Lottery removed ITVMs from these veterans’ organizations several years ago due to low sales.

State Fiscal Effect: In fiscal 2013, the general fund receives proceeds from pull tab machines authorized by the bill, after deducting specified payments to licensed agents and Lottery Agency administrative expenses. Beginning in fiscal 2014, 10% of proceeds are distributed to MVTF, leaving 90% for the general fund.

The impact on general fund and special fund revenues and expenditures will depend on the number of war veterans' organizations that operate authorized pull tab machines, their location with respect to VLT facility locations, the actual payout rates on pull tabs that are offered, and the degree to which pull tab machines authorized by the bill constitute a substitute for VLT gambling in the State.

Additional Information

Prior Introductions: SB 423 of 2011 passed with amendment in the Senate but no action was taken on the bill by the House. Its cross file, HB 952, received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: HB 330 (Delegate Proctor, *et al.*) – Ways and Means.

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

Fiscal Note History: First Reader - February 7, 2012
mm/rhh Revised - Senate Third Reader - March 26, 2012

Analysis by: Scott P. Gates

Direct Inquiries to:
(410) 946-5510
(301) 970-5510