

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 818
Ways and Means

(Delegate C. Davis)

Public Education Bridge to Excellence - Funding - Video Lottery Terminals

This bill authorizes up to 11,500 video lottery terminals (VLTs) at up to four horse racing tracks in the State, provides for one-time application fees, creates the Education Trust Fund (ETF) and other special funds, and continues the current prohibition on additional forms of commercial gaming. Awarding of a VLT license is subject to specified local approval requirements.

The bill takes effect June 1, 2004.

Fiscal Summary

State Effect: If none of the VLT licensees meet the specified local approval provisions, the fiscal effect of the bill is limited to the cost of paying for local special elections if required. To the extent that local approval provisions are met, significant increase in general fund revenues due to one-time application fees, somewhat offset by a decrease in lottery sales. Special fund revenues and expenditures would increase for lottery agency administrative expenses, local aid, purse dedication, bred funds, gambling addiction treatment expenditures, and education. The amount of additional net revenue depends on how many VLT licensees meet the specified local approval provisions and cannot be reliably estimated at this time.

Local Effect: Revenues for localities that grant approval to VLT facilities would increase significantly. Local expenditures would increase significantly for local governments with VLT facilities.

Small Business Effect: Meaningful.

Analysis

Bill Summary: ETF proceeds may be used to: (1) fund the Bridge to Excellence in Public Schools Act of 2002 (Chapter 288); (2) fund the College Readiness for Disadvantaged and Capable Students Act of 2002 (Chapters 315 and 429); and (3) support public libraries. The distribution of ETF funds in each year is subject to the appropriations process. The bill provides that VLTs can be located in temporary facilities for two years. The major provisions of the bill are as follows:

Video Lottery Terminals and Locations

The bill authorizes a total of 11,500 VLTs in the State – 3,500 VLTs each at Pimlico Race Course, Laurel Park, and Rosecroft Raceway, and 1,000 at a race track built in Allegany County. An eligible race track must have a mile thoroughbred or harness racing license issued by the State Racing Commission. The bill provides that a licensee can operate VLTs in a temporary facility that meets requirements adopted by the commission. The permanent VLT facility of a licensee, however, must be fully operational as defined by regulations adopted by the commission within two years of the license issuance.

The bill reiterates the current prohibition on additional forms of gaming, other than those currently authorized under State law (lottery, horse racing, and charitable gaming).

Lottery Commission Authority and Duties

The State Lottery Commission will provide regulation and oversight of the VLT program. VLTs will be owned or leased by the State Lottery Commission and under the control of the commission at all times.

The membership of the State Lottery Commission increases from five to nine members. One member will serve as a liaison to the State Racing Commission and one member of the State Racing Commission will serve as a liaison to the lottery commission.

The commission has authority to issue subpoenas and conduct investigations and hearings and require a bond for faithful performance of the requirements of the bill. Commission employees must be present at VLT facilities during all hours of VLT operation for the purpose of certifying revenue from the VLTs and receiving complaints from the public.

Video Lottery Terminal Licenses

Licenses must be obtained by VLT operators, VLT manufacturers, VLT employees, and anyone hired by a VLT operator to manage a VLT facility. In addition, the commission may require others to be licensed.

All applicants for VLT-related licenses are subject to an application process that involves a State and national criminal history records check. All applicants for VLT-related licenses must establish their qualifications including: financial stability and background of the applicant and all individuals and business entities associated with the applicant; integrity of financial backers and investors; good character and honesty; and sufficient business ability and experience.

A VLT operation license applicant must provide information that includes: the financial structure of the entity and names, personal history, and criminal history of all officers, partners, and principal employees; the names of all holding companies, subsidiaries, or other business entities of the applicant; and the names of all persons who own or control the business entity as well as a description of all bonus and profit-sharing agreements.

An applicant for a VLT operation license must submit an application and a \$5 million application fee by October 1, 2004. No applications or application fees may be accepted by the commission after that time, unless submitted by the race track in Allegany County, which has until October 1, 2005 to apply and pay the application fee.

An applicant for a VLT operation license must also: invest at least \$150 million in construction and related costs; provide at least 500 full-time jobs (the Allegany track is required to invest \$43 million and provide at least 150 jobs); offer at least 15% of equity investment to minority businesses if the licensee holds one license and 10% if the licensee holds two or more licenses; meet the State's minority business participation requirements for facility construction and procurement; and meet the county's minority business participation requirements, to the extent practicable, if they are higher than the State's.

A VLT-related license will be denied on the basis of specified criteria, including: failure to provide proof that the applicant meets the qualifications required in the bill; conviction or current prosecution of the applicant or any person required to be qualified under the act of a criminal offense involving moral turpitude or gambling; and identification of the applicant or a person required to be qualified under the bill as a career offender or a member of a career offender cartel as defined in the bill. The term of manufacturer and employee licenses are one year.

The term of a VLT operation license is 15 years. At the end of the 15-year term, the licensee may reapply for a license. The bill provides that a VLT-related license is a revocable privilege and that it is the intent of the bill to prohibit the creation of a property right in a license granted under the bill.

Any VLT license issued under the bill may not be transferred, sold, or pledged as collateral. A licensee may not sell or transfer more than 5% of the legal or beneficial ownership in the licensee without the approval of the commission.

Local Approval Provisions

The bill provides that the granting of a VLT license is subject to local approval. This local approval can be achieved in two ways:

- The local governing body adopts a resolution in support of the establishment and location of the VLT facility. The local governing body must conduct a public hearing prior to adopting the resolution of support. A notice of the public hearing must be published once a week for two consecutive weeks before the hearing. If, within 30 days of the county resolution supporting the VLT facility, 3% of local voters have not petitioned to have the resolution subject to referendum, the commission may consider the application of a VLT license.
- If within 30 days of the supporting local resolution, 3% of local voters petition to have the resolution subject to referendum and the petition is certified under Title 6 Subtitle 2 of the Election Law Article, a special election must be held within 30 days of the petition certification. The cost of the election is to be paid for by the State. If a majority of voters are opposed to the establishment and location of the VLT facility, the commission may not grant a VLT license.

Assistance for the Horse Racing Industry

As a condition of licensure, a VLT operation licensee must maintain the following number of live racing days:

- 220 days for the combined licenses at Laurel and Pimlico;
- 180 days for the Rosecroft license; and
- 21 days for the Allegany County license.

If the Preakness Stakes is transferred from the Pimlico Race Course or out of the State, the VLT operation license may be revoked.

As a condition of licensure, each VLT operation licensee must develop a racing improvement plan to improve the quality and marketing of horse racing at the track. The plan must include \$4 million of annual capital maintenance and improvements of the horse racing facilities (the Allegany track is required to make \$1.15 million in improvements annually).

Other Regulation of Video Lottery Operations and Consumer Protections

The bill prohibits a VLT operation licensee from offering food and beverages, including alcoholic beverages, for free or for a price that is lower than the prices in the county where the VLT facility is located.

The commission must adopt regulations to reduce or mitigate the effects of problem gaming, including provisions that provide for: mandatory exclusion of career offenders from VLT facilities; procedures that permit self-exclusion from VLT facilities for individuals with gambling problems; limits on the dollar amount that VLT machines will accept; payouts of winnings above a certain amount by check; limits on the number, location, and maximum withdrawal amounts for ATMs; conspicuous disclosures related to VLT payouts and odds; and consumers to be given a record of spending levels to the extent that marketing measures that track customer spending are used.

Distribution of VLT Proceeds

The Comptroller is required to distribute the proceeds of the VLT operations, which must be transferred electronically on a daily basis to the State Lottery Fund.

From the gross proceeds of VLTs, after pay out to players, proceeds are distributed as follows:

- 46% to the ETF established under the bill;
- 5% to the State Lottery Agency for administrative costs (after the first year, the distribution is 4.3%);
- 39% to VLT operation licensees;
- 4.75% to the local governments in which video lottery facilities are operating; and
- 5.25% to the Purse Dedication Account to enhance horse racing purses and to provide funds for the horse breeding industry (after the first year, the distribution increases to 5.95%).

Purse Dedication Account

The bill creates a Purse Dedication Account to which 5.25% of gross proceeds will be distributed in the first year and 5.95% in the following years. Funds from the account are to be distributed as follows:

- from the proceeds at Laurel and Pimlico: 89% to mile thoroughbred purses; 11% to the Maryland-bred Race Fund;
- from the proceeds at Rosecroft: 89% to standardbred purses; 11% to the Standardbred Race Fund; and
- from the proceeds at Allegany County, an amount to the thoroughbred industry and the standardbred industry prorated by the number of days of each type of racing at the track.

Education Trust Fund

The bill creates an ETF as a special, nonlapsing fund that will receive 46% of gross VLT revenues. Money in the ETF is to be used to: (1) fund the Bridge to Excellence in Public Schools Act of 2002 (Chapter 288); (2) fund the College Readiness for Disadvantaged and Capable Students Act of 2002 (Chapters 315 and 429); and (3) support public libraries. The distribution of ETF funds in each year is subject to the appropriations process.

Local Development Councils and Transportation

From the local development grants provided to the areas where VLT facilities are located, the proceeds should be used for infrastructure improvements, public safety, and other needs in the communities in the immediate proximity to where the facility is located.

A Local Development Council will be created in each area where a VLT facility is located to advise, comment, and make recommendations on a plan developed by the county providing for the use of the Local Development Grant funds.

The bill also provides that the State may pay for the reasonable transportation costs necessary to mitigate the impact on the communities in immediate proximity to the VLT facilities and to make VLT facilities accessible to the public.

Compulsive Gambling Fund

The bill assesses a \$390 fee per VLT to be paid by VLT operation licensees that will be placed into a Compulsive Gambling Fund administered by the Department of Health and

Mental Hygiene (DHMH). The fund must be used to establish a 24-hour hotline, provide counseling and other support services for compulsive gamblers, and establish problem gambling prevention programs.

Current Law: Specified types of gambling are allowed in Maryland. This includes the State lottery and wagering on horse racing. Bingo, bazaars, and gaming nights are allowed for some nonprofit organizations on a county-by-county basis. Several counties permit for-profit bingo. In addition, some nonprofit organizations in Eastern Shore counties are allowed to operate up to five slot machines, provided that at least 50% of the proceeds go to charity. VLTs are not authorized for operation in the State. For more information on gambling and horse racing in Maryland, consult the *Legislators' Guide to Video Lottery Terminal Gambling*.

Background: Over the past several legislative sessions, various proposals have been introduced to authorize VLTs at the State's horse racing tracks or other tourist destinations in the State. Numerous states have authorized VLT gambling. For more information on prior year introductions and other state VLT regimes, consult the *Legislators' Guide to Video Lottery Terminal Gaming*.

State Revenues: Special fund revenues and expenditures could increase significantly to the extent that the local approval provisions of the bill are met. Legislative Services advises, however, that it is likely that local voters will successfully petition to have approval of VLT facilities subject to local referendum. The outcome of any such referendum cannot be reliably predicted.

Exhibit 1 lists the estimated revenues generated by the bill assuming that local approval provisions are met for each licensee. The estimates assume that facilities will operate in permanent facilities and average a win per day (WPD) of \$285. To the extent that licensees receive local and commission approval to operate in temporary facilities, revenues will be greater in fiscal 2005 and 2006. It is assumed that each facility begins operating in May 2006 (January 2006 for the Allegany track) at 50% of capacity and will reach full capacity one year later.

Exhibit 1
Distribution of VLT Revenues
(\$ in millions)

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Annual Gross	\$120.3	\$936.2	\$1,196.3	\$1,214.2
ETF	53.76	418.49	534.74	542.8
Licensees	43.30	337.04	430.66	437.1
PDA	11.19	88.71	119.63	121.4
Local	6.01	46.81	59.81	60.7
Lottery Operations	6.01	45.17	51.44	52.2

Assuming that all the tracks opt to participate and pay their license fees by the required deadlines, general fund revenues would increase by up to \$15 million in fiscal 2005 and by \$1.5 million in fiscal 2006. In addition, general fund revenues would decrease significantly in fiscal 2006 and beyond due to decreased lottery sales.

State Expenditures: The following agencies' and programs' expenditures would be affected:

State Lottery Agency

The State Lottery agency is to receive 5% of VLT revenues in the first year and 4.3% thereafter.

Department of State Police

The Department of State Police would incur additional costs in fiscal 2005 and beyond due to performing background checks. These costs would total \$391, 335 in fiscal 2005.

Education Expenditures

State VLT revenues after operating costs are dedicated to the ETF to be used for public education programs associated with the Bridge to Excellence in Public Schools Act of 2002 (Chapter 288) and the College Readiness for Disadvantaged and Capable Students Act of 2002 (Chapters 315 and 429) and to support public libraries. The bill does not specify how ETF proceeds are to be distributed amongst these three programs.

Under the Bridge to Excellence in Public Schools Act of 2002 there are significant increases in education aid beginning with fiscal 2005. It is assumed that the availability of the ETF revenues to fund these increases will result in an equivalent decrease in general fund expenditures beginning in fiscal 2005.

Compulsive Gambling Fund

The bill assesses a \$390 fee per VLT to be paid by VLT operation licensees that will be placed into a Compulsive Gambling Fund administered by DHMH. The fund must be used to establish a 24-hour hotline, provide counseling and other support services for compulsive gamblers, and establish problem gambling prevention programs.

Indirect Expenditures

In addition to positive indirect effects to the economy, negative impacts could be expected as well. These effects could include increased levels of crime, unemployment, and personal bankruptcies which could result in a need to significantly increase the State and local spending directed toward these effects. Although these costs cannot be reliably estimated, the Department of Legislative Services estimates that these costs are likely to be greater than the funds dedicated to the Compulsive Gambling Fund under this bill.

Local Fiscal Effect: Revenues for localities that grant approval to VLT facilities would increase significantly. Local expenditures increase significantly for local governments with VLT facilities. Howard, Prince George's, and Baltimore City indicate that they would incur substantial infrastructure costs should a VLT facility be located within their respective jurisdictions.

Small Business Effect: To the extent that VLT facilities purchase goods from local businesses that are small businesses, these small businesses would benefit. Other small businesses could be harmed by the substitution of consumer spending away from other consumption to gambling. Small businesses in the entertainment and retail food service near VLT facilities could be particularly harmed.

Additional Information

Prior Introductions: SB 322 of 2003, a similar bill, passed the Senate but received an unfavorable report from the House Ways and Means Committee. HB 78 of 2003, another similar bill, was not reported from the House Ways and Means Committee.

Cross File: None.

Information Source(s): Allegany County, Prince George's County, Howard County, Governor's Office, Department of State Police, Anne Arundel County, Department of Health and Mental Hygiene, Maryland Department of Transportation, Baltimore City, Department of Legislative Services

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mh/mdr

Analysis by: Robert J. Rehrmann

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