

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 193
 Ways and Means

(Delegates Love and Kullen)

Budget and Taxation

Gaming - Bingo

This bill extends from July 1, 2009 to July 1, 2012, the termination date before which existing qualified organizations and licensed commercial entities may operate electronic instant bingo machines that would otherwise be illegal under the law. The bill also increases the State admissions and amusement tax rate from 20% to 30% and dedicates the increase to the special fund. The bill does not apply to slot machines authorized for use on the Eastern Shore by eligible organizations.

The bill takes effect June 1, 2009.

Fiscal Summary

State Effect: General fund revenues will increase by an estimated \$7 million annually in FY 2010 through 2012 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 in FY 2010 through 2012 to the extent that affected machines compete with State lottery sales. Special funds increase by an estimated \$2.9 million annually in FY 2010 through 2012. The bill will have little operational effect on the Comptroller or State Lottery Agency. Expenditures are not affected.

(\$ in millions)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	\$7.0	\$7.0	\$7.0	\$0	\$0
SF Revenue	\$2.9	\$2.9	\$2.9	\$0	\$0
Expenditure	0	0	0	0	0
Net Effect	\$9.9	\$9.9	\$9.9	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Increase in local admissions and amusement tax revenues for Anne Arundel and Calvert counties and other license and permit fee revenues in FY 2010 through 2012.

Small Business Effect: Overall minimal; however, to the extent that machines allowed under the bill provide revenues to a local establishment, revenues will increase in FY 2010 through 2012.

Analysis

Bill Summary: The bill prohibits an increase in county and municipality admission and amusement rates on net proceeds from electronic bingo and electronic tip jars as of January 1, 2009, and prohibits counties from imposing any new fee or tax on or before July 1, 2012. The Special Fund for Preservation of Cultural Arts in Maryland is a special, nonlapsing fund in the Department of Business and Economic Development that consists of State admissions and amusement tax revenue and any other money accepted for the benefit of the fund. The fund is to be used to provide emergency grants and it may be used only for preventing the closure or termination of cultural arts organizations, including museums, or similar entities in the State. Money expended from the fund is supplemental to and is not intended to take the place of funding that otherwise would be appropriated for the entities.

The State admissions and amusement tax rate on net proceeds from electronic bingo and electronic tip jar machines increases 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 the special fund. (The first 20% continues to be distributed to the general fund.) Appropriations from the special fund must be included in the State budget or transferred by a budget amendment approved by the Legislative Policy Committee.

Notwithstanding any other law, an action for declaratory, injunctive, or other relief to challenge the legality of the bill's provisions:

- may be brought only in the circuit court for Anne Arundel County; and
- does not stay enforcement and implementation pending the disposition of the action.

The bill also minimally expands the number of qualifying organizations in Calvert County.

Current Law/Background: 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. The revenues accrue to the general fund. This provision took effect January 3, 2008.

Chapter 474 (SB 959) of 2008 prohibited certain gaming machines licensed by local jurisdictions, primarily electronic bingo and tip jar machines, from operating after July 1, 2009. The law 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, 2009, 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. 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, slot machine operators must use half of the proceeds from

slot machines to benefit a charity. State gaming law requirements currently apply to 15 counties.

Facilities operating electronic bingo are located primarily in Allegany, Anne Arundel, and Calvert counties. Tip jar gaming, predominantly paper based, is conducted in several Western Maryland counties including Allegany, Garrett, and Washington. There are approximately 987 electronic bingo, tip jar, and other machines in Allegany, Anne Arundel, Calvert, St. Mary's, and Washington counties.

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 has 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.

In order to operate a slot machine, an organization must obtain a license from the sheriff's office and pay a fee of \$50 per machine annually to the applicable county. An organization may not own more than five slot machines and must own each slot machine in operation. The slot machines must be located at the principal meeting hall of the organization and cannot be operated at a private commercial facility. The slot machine must be equipped with a tamperproof meter or counter that accurately records gross receipts.

At least one-half of the proceeds generated from slot machines must go to charity. The remainder of the proceeds must go to the organization. An individual cannot benefit financially from the proceeds. The organization must keep accurate records of gross receipts and payouts from slot machines and must report annually under affidavit to the Comptroller's Office the disposition of these proceeds. The Comptroller's Office, however, does not have authority to audit these reports.

Admissions and Amusement Tax

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%.

Each unit of local government is authorized to classify different types of activities, and the rate of tax need not be the same for each type. An admissions and amusement tax may not be imposed in a municipality by a county if the municipality already imposes a similar tax or specifically exempts any gross receipts from the admissions and amusement tax. However, if a municipality does not levy a tax, the county tax, if any, applies within the municipality. The local admissions and amusement tax is further limited by the State sales and use tax.

The maximum tax rate on the gross receipts subject to admissions and amusement tax may not exceed 10%, except if the 6% State sales and use tax also applies to these receipts. In these cases, the total tax rate may not exceed 11%, thus the local admissions and amusement tax may not exceed 5%. This limitation on the local tax arises primarily on performances accompanied by some type of food service (dinner theaters, *etc.*).

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 20% State admissions and amusement tax, which is levied on net proceeds (*i.e.*, after cash and prizes are paid out). In general, the admissions and amusement tax applied by the 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 parlors to be subtracted out.

On January 18, 2008, the Comptroller promulgated updated regulations to address concerns regarding the terms “electronic bingo” and “electronic tip jars.” 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.

State Revenues: The Comptroller’s Office reports that State admissions and amusement tax revenues from electronic bingo machines totaled \$2.8 million in the latter half of fiscal 2008 and \$3.6 million in the first half of fiscal 2009. General fund revenues, therefore, could increase by an estimated \$7.0 million on an annual basis beginning in fiscal 2010, when most existing machines would be prohibited under current law. However, general fund revenues may decrease by an indeterminate amount due to decreased lottery sales. General fund revenues will also increase by an indeterminate amount due to any investment earnings of the new special fund; these earnings are to be credited to the general fund.

Special funds increase by an estimated \$2.9 million annually in fiscal 2010 through 2012. These increases are attributed to the increase in the State admissions and amusement (A&A) tax rate from 20% to 30% as tempered by a maximum combined rate of 35% for the State and local admissions and amusement tax. This assumes that in Anne Arundel County the State rate is capped at 25% due to the 10% local A&A tax on bingo proceeds. In Calvert County, the State rate increases to 30% since Calvert County’s A&A rates, which vary by location, are 1.5% or less.

Local Fiscal Effect: Increase in local admissions and amusement tax revenues. **Exhibit 1** shows local fiscal 2008 admissions and amusement tax revenues for Anne Arundel and Calvert counties from bingo, an undetermined portion of which is from electronic bingo. The State Lottery Agency conducted a study of local gaming in Maryland required by Chapter 474 of 2008. The report indicates that less than half of gross receipts from commercial bingo derive from traditional bingo, but a more precise figure is not available.

Exhibit 1
Bingo-related County Admissions and Amusement Tax Revenues
Fiscal 2008 Actuals

<u>County</u>	<u>Revenues</u>
Anne Arundel	\$1,589,523
Calvert	683,276

Source: Comptroller’s Office

The bill would allow approximately the same amount of bingo-related admissions and amusement tax revenues to continue for fiscal 2010 through 2012, increasing local revenues by an undetermined amount in these years.

Small Business Effect: Overall minimal; however, to the extent small businesses operate gaming machines, as defined and allowed under the bill, revenues will increase.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 24, 2009
ncs/rhh Revised - House Third Reader - March 30, 2009
Revised - Enrolled Bill - May 20, 2009

Analysis by: Scott P. Gates

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