

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 882

(Senators Edwards and Miller)

Budget and Taxation

Ways and Means

Gaming - Video Lottery Terminals

This bill makes clarifying and technical changes regarding the implementation of video lottery terminals (VLTs) in the State. The bill also changes provisions regarding a VLT facility in Allegany County. The bill includes provisions that would alter the distribution of VLT proceeds to an Allegany County video lottery operation licensee for five years and repeal the authority of the Maryland Racing Commission to issue a license to a mile track in Allegany County that are contingent upon the purchase of the Rocky Gap Lodge and Golf Resort by the video lottery licensee for Allegany County. If the contingency is not satisfied, these provisions of the bill are null and void.

The bill takes effect June 1, 2010, except for the contingency described above.

Fiscal Summary

State Effect: Provisions related to the siting of a VLT facility in Allegany County may enhance the number, quality, and timeliness of applications for an operation license in the county, at such time as the location is rebid. This may in turn mitigate potential special fund revenue and expenditure losses, relative to current projections, that would otherwise have resulted from a lack of viable bids. If the video lottery operation licensee for the Allegany County VLT facility purchases the Rocky Gap Lodge and Golf Resort, the distribution of special funds will be altered for five years. Based on current revenue projections and the estimated opening date for the Allegany County VLT facility, Racetrack Facility Renewal Account (RFRA) special fund revenues and expenditures will decrease by approximately \$450,000 in FY 2014 and \$490,000 in FY 2015; special fund revenues distributed to the Allegany County video lottery operation licensee will increase by the same amount in each year and for three more years under the bill.

Local Effect: None. The bill clarifies that local jurisdictions may not collect admissions and amusement tax on VLT proceeds.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Two 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. The amendment also specifies that the General Assembly may only authorize expanded forms of gambling subject to certain restrictions. 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 a Video Lottery Facility Location Commission (Location Commission). The State Lottery Commission will oversee VLT operations and will own/lease the VLTs and a central monitor and control system. Chapter 4 allows for a maximum of 15,000 machines, 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. In addition, geographic parameters for each jurisdiction within which a VLT facility may be located are provided.

Under current law (Chapter 4 of the 2007 special session) gross VLT proceeds are distributed as follows from the proceeds of VLTs at each facility:

- Business Investment – 1.5% to a small, minority, and woman-owned business investment account;
- Lottery (Administration) – 2% to the State lottery for administrative costs, with other costs provided for in the State budget;
- Local Government 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 to Prince George's County for the community surrounding Rosecroft (\$1 million annually);
- Purse Dedication Account – 7% to a purse dedication account 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%).

Lottery Commission Operations

The bill removes the requirement that the State Lottery Commission conduct a hearing on the qualifications of any person who is required to be qualified as a condition of the license. Under the bill, the Lottery Commission must only hold a qualification hearing for a VLT facility employee if revoking or suspending a license. Qualification hearings would still be required for all VLT operation license applicants.

The bill also removes “any other reason” established by the State Lottery Commission from the list of reasons for which the State Lottery Commission must disqualify a video lottery operation license applicant.

The bill alters the definition of “own” so that it refers to a 5% or more (instead of 10% or more) beneficial or proprietary interest in the property or business of an applicant or licensee. The proposed change aligns the law with federal Securities and Exchange Commission (SEC) filing requirements and will allow more thorough background checks to be performed by the State Lottery Commission. The bill also allows the State Lottery Commission to waive the requirement to provide specified information if the business entity applying for an operation license is an “institutional investor,” a term defined by the bill, and also consistent with SEC filing requirements.

Current law requires all proceeds from the operation of video lottery terminals to be electronically transferred daily in the State Lottery Fund. The bill specifies that this requirement does not apply on a day when State government is closed.

Video Lottery Operation Licenses and Other Licenses

The bill clarifies, where appropriate, that the Location Commission awards video lottery operation licenses and that the Lottery Commission issues the licenses, and clarifies that the Location Commission will notify the State Lottery Commission when it awards a license.

The bill generally replaces the word “bid” with the word “application” with regard to applying for a video lottery operation license, whereas current law makes use of both words; the change also applies to other forms of the respective words (*e.g.*, “bidders” is changed to “applicants”). The bill also defines the term “video lottery operator” as a person licensed to operate a video lottery facility.

The bill provides that the law does not prohibit a video lottery operation licensee, regardless of whether operations are at a racetrack location, from beginning video lottery terminal operations in a temporary facility that meets minimum standards. The bill also clarifies that the initial 15-year term for a video lottery operation license begins on the date the license is issued.

The bill extends the term of various licenses (*e.g.*, employee and manufacturer licenses) issued by the State Lottery Commission from one to three years. The bill also repeals the obsolete February 1, 2009 date for initially submitting operation license proposals.

Allegany County VLT Facility

Under the bill, contingent upon the purchase of the Rocky Gap Lodge and Golf Resort by the video lottery operation licensee, for the first five years of operations the 2.5% of VLT proceeds from the Allegany County facility that would otherwise be distributed to the RFRA will instead be distributed to the licensee for the Allegany County facility. This is in addition to the 33% of proceeds allotted to all VLT facility operators. After five years of operations the distribution to RFRA would be restored to 2.5% of proceeds from the facility.

Also contingent upon the purchase of the Rocky Gap Lodge and Golf Resort by the Allegany County video lottery operation licensee, the bill repeals the authority of the State Racing Commission to issue a license for, and award racing days to, a racing association for a track located in Allegany County.

The bill allows for VLTs to be temporarily located within the Rocky Gap Lodge and Golf Resort until a permanent facility is constructed, if approved by the State Lottery Commission and the Location Commission. Current law does not permit VLTs in the lodge and resort either temporarily or permanently. It also repeals the requirement that the permanent VLT facility in Allegany County be physically separate from the Rocky Gap Lodge and Golf Resort, instead requiring the facility to be in a separate building that may be adjacent or connected to the lodge and resort. Under current law, which still applies, a permanent facility must be operational no later than 30 months after the award of an operation license.

The bill also allows, subject to approval by the State Lottery Commission and the Location Commission, an individual or business entity to enter into a management agreement to operate the Allegany County VLT facility that the individual or business entity does not own.

Admissions and Amusement Tax

The bill clarifies that the admissions and amusement tax may not be imposed by local jurisdictions on any proceeds from the operation of video lottery terminals.

Background: In a February 2010 letter to the Governor, President of the Senate, and Speaker of the House, the Location Commission made numerous recommendations for the General Assembly to consider, including changes to encourage proposals for the Allegany County location, to address VLT implementation issues, and to make other technical and corrective changes. This bill contains most of the recommendations.

VLT Program Implementation

The Location Commission has awarded three video lottery operation licenses to date. PPE Casino Resorts Maryland, LLC (PPE Casino Resorts) was awarded a license to operate a 4,750 VLT facility in Hanover in Anne Arundel County, contingent upon local zoning approval. Anne Arundel County Council approved favorable zoning legislation on December 21, 2009, which the county executive signed into law on December 22, 2009. The law has not gone into effect pending the outcome of a local referendum on the law at the November 2010 election. (The resolution of litigation challenging the Anne Arundel County Board of Elections' certification of the petition requiring local voter approval of the law is also pending.) PPE Casino Resorts expects to open a permanent facility adjacent to Arundel Mills Mall with 4,750 VLTs in December 2011.

Penn Cecil Maryland, Inc. (Penn Cecil) was awarded a license to operate a facility with 1,500 VLTs in Perryville in Cecil County. Penn Cecil is currently on schedule to open a permanent facility with 1,500 VLTs in October 2010.

Ocean Enterprise 589 LLC (OE 589) was awarded a license to operate a facility with 800 VLTs at Ocean Downs Racetrack in Worcester County. The facility is currently scheduled to open in fall 2010 with 600 VLTs, with the full complement of 800 VLTs in place by April 2011.

In February 2009, the Location Commission rejected a proposal for Allegany County that failed to meet the minimum requirements, including failing to pay the required license fee. In December 2009, the commission rejected the proposal for Baltimore City, finding that the proposal was not in the best interest of the State for a number of reasons. A protest of the commission's decision is pending before the Board of Contract Appeals. The Location Commission plans to rebid the Allegany County and Baltimore City locations in 2010.

VLT Revenue Estimates

Exhibit 1 shows the Department of Legislative Services (DLS) estimate of revenues generated by gaming at each of the State's five facilities for fiscal 2011 to 2015. These estimates reflect projected start dates of October 2010 for Worcester County; November 2010 for Cecil County; April 2012 for Anne Arundel County; December 2012 for Baltimore City; and July 2013 for Allegany County. These projected start dates account for the need to initiate a second RFP process for Baltimore City and Allegany County locations; anticipated duration of construction for the various facilities (errring on the conservative side); and legal action related to the location of the Anne Arundel County facility at Arundel Mills, among other factors. With the Anne Arundel County zoning law subject to local referendum, the start date for the county's location will be delayed further.

Exhibit 1
Estimated Revenues Generated by Facility
Fiscal 2011-2015
(\$ in Millions)

	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Anne Arundel	\$0.0	\$85.1	\$351.0	\$394.2	\$437.4
Baltimore City	0.0	0.0	173.2	318.6	356.9
Cecil	77.1	130.4	148.3	160.0	167.8
Worcester	46.7	83.4	95.4	97.1	97.1
Rocky Gap	0.0	0.0	0.0	17.9	19.5
Total*	\$123.8	\$298.8	\$767.8	\$987.8	\$1,078.8

* Figures may not sum due to rounding.

Source: Department of Legislative Services, December 2009

Compared to DLS' VLT revenue forecast from the 2009 session, these gross revenue estimates are \$97 million higher in fiscal 2011 but significantly lower in fiscal 2012 and 2013 (\$455 million and \$498 million, respectively) as the two largest facilities in Anne Arundel County and Baltimore City are not expected to open until late fiscal 2012 and the middle of fiscal 2013, respectively. These new revenue estimates are consistent with those used by the Location Commission in evaluating the proposals submitted in 2009.

Rocky Gap Lodge and Golf Resort

The Rocky Gap Lodge and Golf Resort opened in 1998 and consists of a 220-room lakeside lodge and conference center and an 18-hole golf course situated on about 260 acres within Rocky Gap State Park. The State and Allegany County jointly entered into the Rocky Gap project, with the State providing \$10.9 million and the county providing \$4.5 million for construction of the project. In total, the State has provided over \$16.0 million and Allegany County expenses total approximately \$8.0 million. Chapter 245 (SB 343) of 2009 allows Allegany County to use local impact grants from the Rocky Gap VLT facility for, among other things, paying down the debt incurred by the county in the construction and related costs for the golf course, lodge, and other improvements in Rocky Gap State Park.

From its inception the Rocky Gap project has experienced operating difficulties that resulted in its inability to meet required debt service payments. Rocky Gap experienced net operating losses of \$2.9 million in fiscal 2009 and the project has an accumulated deficit of \$42.0 million as of the end of fiscal 2009. The Maryland Economic Development Corporation (MEDCO), which issued bonds to finance the economic development project, reports that Rocky Gap is now able to fund its operations from its own revenue stream due to recent debt restructuring and other MEDCO initiatives. However, the facility does not generate enough revenue to cover debt payments to investors.

State Fiscal Effect: The number, quality, and timeliness of applications for the Allegany County VLT facility may be enhanced by the bill, which may mitigate any loss of State VLT program revenues and expenditures that would otherwise have resulted from a lack of viable bids.

Special fund revenues from VLT proceeds will be redistributed from RFRA to the Allegany County licensee for the first five years of the facility's operations if the Allegany County video lottery operation licensee purchases the Rocky Gap Lodge and Golf Resort. The maximum percentage of VLT proceeds generated at the Allegany County facility that are to be distributed to the licensee increases from 33.0% to 35.5% of the total for five years. Likewise, the distribution of 2.5% of proceeds from the Allegany County facility to RFRA will be discontinued for the first five years of operations if the licensee purchases the lodge and resort. Based upon revenue estimates for a Rocky Gap facility noted above in Exhibit 1, RFRA revenues decrease by approximately \$450,000 in fiscal 2014 and \$490,000 in fiscal 2015. Distribution of special funds to the licensee increases by the same amount for the respective years and the redistribution of special funds continues for three more years under the bill.

The Allegany Racing Association holds a mile-thoroughbred track license that was issued in 2001 for a track in Allegany County; however, a track has yet to be built. The Maryland Racing Commission advises that repealing the authority to issue a license for a mile-thoroughbred track in Allegany County would not cause a fiscal impact, on the assumption that it is unlikely that another entity would pursue a license in the county.

Additional Information

Prior Introductions: None. However, HB 531 of 2009 contained a number of similar and identical provisions. HB 531 received a hearing before the House Ways and Means Committee, but no further action was taken.

Cross File: HB 1077 (Delegate F. Turner, *et al.*) - Ways and Means. Though not listed as a cross file, HB 1077 is identical to SB 882, as it was introduced.

Information Source(s): Allegany County, Maryland State Lottery Agency, Department of Legislative Services

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