

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 1077
Ways and Means

(Delegate F. Turner, *et al.*)

Gaming - Video Lottery Terminals

This bill makes a number of 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 takes effect June 1, 2010.

Fiscal Summary

State Effect: The changes may not substantially affect State finances. However, 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, if viable applications for Allegany County are not submitted.

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.

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 (not a 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 operating 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 upon operation of a VLT facility in temporary or permanent facilities.

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 term for operation licenses remains at one year. The bill repeals the February 1, 2009 date for submitting operation license proposals.

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 a VLT facility that the individual or business entity does not own.

Allegany County VLT Facility

The bill allows for VLTs to be temporarily located within the Rocky Gap Lodge and 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 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 an operation license is issued.

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 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 certification of a petition to require local voter approval of the law at the November 2010 election. 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 (following resolution of the appeal) 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 (erring on the conservative side); and legal action related to the location of the Anne Arundel County location at Arundel Mills, among other factors. Should the change to Anne Arundel County zoning law be the subject of a referendum, the start date for the county's location would 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

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.

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: SB 882 (Senators Edwards and Miller) - Budget and Taxation.

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

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ncs/rhh

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