

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 488
Ways and Means

(Delegate Bromwell, *et al.*)

Video Lottery Terminals - Baltimore-Washington International Thurgood Marshall Airport

This bill authorizes a video lottery operation license to be awarded for a maximum of 2,500 video lottery terminals (VLTs) at the terminal building and surrounding area within the security perimeter of Baltimore-Washington International Thurgood Marshall Airport (BWI). The bill provides that for VLT proceeds from the BWI facility alone, the portion remaining after other distributions will be distributed to the Transportation Trust Fund (TTF) rather than to the Education Trust Fund (ETF).

The bill is contingent on the passage of Senate Bill 707/House Bill 495, a constitutional amendment authorizing VLT gaming at BWI, and its ratification by voters in November 2012.

Fiscal Summary

State Effect: Special fund revenues increase in FY 2013 due to one-time license fees and beginning in FY 2015 due to VLT revenues from up to 1,000 VLTs. General fund expenditures increase in FY 2015 and beyond due to Lottery Agency expenditures. TTF revenues increase beginning in FY 2015. Special fund revenues and expenditures increase for the purposes specified by the VLT program beginning in FY 2015. Special fund expenditures for education occur in FY 2013 offsetting general fund expenditures by a corresponding amount.

(\$ in millions)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
SF Revenue	\$0	\$6.0	\$0	\$5.4	\$37.1
GF Expenditure	\$0	(\$6.0)	\$0	\$.4	\$2.8
SF Expenditure	\$0	\$6.0	\$0	\$2.8	\$19.1
Net Effect	\$0	\$6.0	\$0	\$2.2	\$15.2

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

Local Effect: Revenues for Anne Arundel County increase by approximately \$244,000 in FY 2015, increasing to \$2.0 million in FY 2016. Anne Arundel County infrastructure costs may increase depending upon specific plans for the site.

Small Business Effect: Small businesses will benefit from increased funds to the business investment account and to horse industry investments. Additional benefits from any construction and operation of VLT facilities will be partially offset by the substitution of VLT wagering for other expenditures.

Analysis

Bill Summary: The bill excludes a license at BWI from the prohibition against awarding more than one video lottery operation license in a single county or Baltimore City. The bill increases the limit on the number of VLTs in the State from 15,000 to 17,500, limits the number of VLTs that may be awarded for operation at BWI to 2,500, and increases the statewide limit on the number of VLT facilities from five to six. The bill requires that an application for a video lottery operation license at BWI be submitted by April 15, 2013, and include the required initial license fee (\$3 million) and capital investment (\$25 million) for each 500 VLTs proposed in an application.

Current Law: 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 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. Except for provisions related to the offering of food and beverages at facilities, the commission is required to ensure VLT licensees comply with the regulatory framework of the VLT program.

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).

Exhibit 1 shows the distribution of estimated VLT revenues through fiscal 2016.

Exhibit 1
Distribution of Estimated VLT Revenues
(\$ in Millions)

	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Education Trust Fund (48.5%-51.0%)	64.1	192.3	286.6	471.3	512.3	549.4
Licensees (33%)	43.6	130.8	195.0	320.7	348.6	373.9
Local Impact Grants (5.5%)	7.3	21.8	32.5	53.4	58.1	62.3
Business Investment (1.5%)	2.0	5.9	8.9	14.6	15.8	17.0
Purse Dedication Account (7%) ¹	9.2	27.8	41.4	68.0	73.9	79.3
Racetrack Renewal (2.5%) ²	3.3	9.9	14.8	24.3	26.4	28.3
Lottery Operations (2%)	2.6	7.9	11.8	19.4	21.1	22.7
Total (100%)	132.1	396.5	590.9	971.8	1,056.4	1,132.9

¹Up to \$100 million annually.

²Up to \$40 million annually for eight years, after which the monies accrue to the Education Trust Fund. Chapter 624 of 2010 altered provisions regarding the authorized VLT facility in Allegany County. Contingent upon the purchase of the Rocky Gap Lodge and Golf Resort by the licensee, the 2.5% of VLT proceeds from the Allegany County facility for the first five years of operations that would otherwise be distributed to the Racetrack Facility Renewal Account would instead be distributed to the Allegany County facility licensee.

Source: Department of Legislative Services, December 2010 Revenue Estimate

Video Lottery Operation Licensing and Licensees

An individual or business entity may not own an interest in more than one video lottery facility. An initial license fee of at least \$3 million for every 500 VLTs is required, which accrues to ETF. The initial term of a video lottery operation license (of which up to five may be awarded through a competitive bidding process) is 15 years; a licensee may subsequently reapply for an additional 10-year term.

License applicants must meet State minority business enterprise (MBE) requirements for construction/procurement contracts and to the extent possible meet county MBE requirements if they exceed the State requirement. These requirements terminate on July 1, 2011. License applicants must also invest \$25 million in construction and related costs for every 500 VLTs proposed in a bid. VLT licensees must begin operations in a permanent facility within 18 months after the license is issued, which may be extended 12 months by the State Lottery Commission. VLT licensees must pay an annual fee of

\$425 per VLT for a Problem Gambling Fund administered by the Department of Health and Mental Hygiene (DHMH). DHMH is required to conduct a problem and pathological gambling prevalence study to measure the rate of problem and pathological gambling in the State.

Other Provisions of Current Law

VLTs must have an average payout percentage of at least 87%. Free food and alcoholic beverages are generally prohibited at VLT facilities. By regulation, the State Lottery Commission must establish a list of individuals who are mandatorily excluded from VLT facilities. VLT facilities must develop procedures that permit self-exclusion from facilities for individuals with gambling problems. Regulations are also required for the protection of consumers, including a prohibition on cashing of paychecks at VLT facilities. A VLT facility may offer any State lottery game.

Transportation Trust Fund

TTF is a nonlapsing special fund that provides funding for transportation. It consists of tax and fee revenues, operating revenues (*e.g.*, transit fares, port fees, airport fees), bond proceeds, and fund transfers. The Maryland Department of Transportation (MDOT) issues bonds backed by TTF revenues and invests the TTF fund balance to generate investment income. The tax and fee revenues include motor fuel taxes, rental car sales taxes, titling taxes, vehicle registration fees, a portion of the corporate income and sales taxes, and other miscellaneous motor vehicle fees.

Background: The Video Lottery Facility Location Commission has awarded video lottery operation licenses for VLT facility locations in Anne Arundel, Cecil, and Worcester counties. Penn Cecil in Cecil County opened in late September 2010 with 1,500 VLTs and Ocean Downs in Worcester County opened in January 2010 with 750 (increasing to 800 in the near future) VLTs. Power Plant Entertainment (PPE) Casino Resorts, LLC was awarded a license in December 2009 to operate a 4,750 VLT facility adjacent to Arundel Mills Mall in Anne Arundel County, contingent upon local zoning approval. County officials subsequently approved zoning legislation, but the legislation was petitioned to a local voter referendum at the November 2010 election. Anne Arundel County voters approved the legislation, allowing the VLT facility to go forward. PPE plans to open a 2,000 VLT temporary facility by the end of 2011 with a permanent facility scheduled to open by the end of 2012. The licenses for Baltimore City and Rocky Gap State Park are yet to be awarded.

BWI serves approximately 20 million commercial passengers annually. An estimated 72% (or 14.4 million) are age 21 or over. A Metropolitan Washington Council of Governments passenger survey indicates that more than half of passengers departing

from Washington, DC-Baltimore regional airports are not residents of the region. The Maryland Aviation Authority (MAA) assumes that the space within the security perimeter is the area past screening in the terminal building, beyond which only ticketed passengers and employees are allowed access.

Legislative Services is aware of two airports in the United States with VLTs, both in Nevada. McCarran International Airport contains about 1,240 slot machines and Reno-Tahoe International Airport has about 250 machines.

State Revenues: MAA advises that it currently has little space for VLTs within the security perimeter of the terminal building at BWI. Legislative Services assumes, based on the number of machines at the two airports in Nevada, that BWI could accommodate a maximum of 1,000 VLTs at peak capacity with some renovations or additional space. An initial license fee of \$3 million for every 500 VLTs is to be submitted by April 15, 2013. Assuming that license applicants opt to participate and pay the license fee for 1,000 VLTs by the required deadline, ETF revenues will increase by \$6 million in fiscal 2013. It is estimated that a VLT facility at BWI will not have a significant negative effect upon VLT revenues at other Maryland VLT facilities due to the location inside the security perimeter and the proportion of out-of-state residents who travel through BWI. TTF revenues increase by \$2.7 million in fiscal 2015 and by \$18.0 million in fiscal 2016.

MAA advises that federal law requires the airport to charge rent for terminal space and that a minimum percentage of operator proceeds would have to be paid to the airport. Federal law also places restrictions on the use of revenue generated by the use of airport space that may conflict with the revenue distribution provisions of the VLT program. MAA advises that revenue distribution under the bill could jeopardize \$43 million in annual grant revenue and passenger facility charges related to the federal Airport Improvement Program, as well as an addition \$15 million in federal grant funds.

According to McCarran International's fiscal 2009 financial report, all airport gaming revenue is deposited into the Airport System Capital Fund. Legislative Services' fiscal analysis assumes that there will be an opportunity to distribute the amount of net revenues generated by a BWI facility while complying with federal law.

VLT Revenues

After payouts to winning players, but **before** any other distributions are made, total revenues generated could total approximately \$5.4 million in fiscal 2015 and \$37.1 million in fiscal 2016.

These estimates assume that (1) the facility will initially operate at 50% capacity in April 2015 (two years after bid submission) and reach full capacity one year later;

(2) 1,000 VLTs are awarded and can be accommodated at BWI by fiscal 2016. Revenues will be potentially higher (lower) than estimated to the extent that operations begin earlier (later) than estimated and may be higher (lower) than estimated depending on the number of VLTs that BWI can accommodate.

A win per day (WPD) estimate of \$125 at peak capacity for the VLT facility is based on the location, its proximity to the Arundel Mills VLT facility and a likely facility in Baltimore City, 1,000 VLTs, an average WPD of \$80 at McCarran International in fiscal 2007 through 2009, the relative scarcity of machines in Maryland as compared to Nevada, and the assumption that the average airport passenger is less likely to gamble than the average visitor to a casino. Legislative Services advises that the gross VLT revenue estimate will be higher or lower than estimated depending on the economic and market conditions that develop as the bill is implemented, including expansion of gaming in the surrounding states. Other assumptions used in estimating VLT revenues are:

- VLTs will operate 365 days a year, once operational;
- Virginia and Washington, DC do not authorize VLT gambling; and
- West Virginia and Delaware do not expand their number of VLT facilities.

Exhibit 2 details the revenue distribution resulting from 1,000 VLTs at a BWI facility for fiscal 2013 through 2016.

Exhibit 2
Gross VLT Revenue Projections for BWI

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Education Trust Fund (0%)	\$6,000,000*			
Transportation Trust Fund (48.5-51.0%)			\$2,627,715	\$17,979,102
Licensee (no more than 33%)			1,787,930	12,233,203
Local Government (5.5%)			297,988	2,038,867
Minority Business (1.5%)			81,270	556,055
Purse Dedication Account (7%)			379,258	2,594,922
Racetrack Renewal Account (2.5%)			135,449	926,758
Lottery Operations (2%)			108,359	741,406
Total Annual Gross	\$6,000,000	\$0	\$5,417,969	\$37,070,313

*Assumes initial license fee payment for 1,000 additionally authorized VLTs.

Source: Department of Legislative Services

Problem Gambling Fund

Approximately \$425,000 annually beginning in fiscal 2016, based on \$425 per VLT at full implementation of 1,000 VLTs, will be credited to the Problem Gambling Fund administered by DHMH. Approximately \$30,600 will be credited in fiscal 2015 and \$345,300 will be credited in fiscal 2016. The fund must be used to establish a 24-hour hotline, provide counseling for problem gamblers, and establish problem gambling prevention programs and other support services.

State Expenditures:

Maryland State Lottery Agency

The Maryland State Lottery Agency will need to procure additional VLTs to be placed in a BWI video lottery facility at an estimated cost of \$511,000 in fiscal 2015 and \$3.3 million in fiscal 2016. Expenditures for the central computer system required for the overall VLT program may increase as well, but the State lottery is unable to estimate the effect at this time. The Maryland State Lottery Agency advises it will need additional employees, including nine security investigators, 2 licensing employees, one accountant, and one auditor; Legislative Services estimates that two additional security investigators and one accountant/auditor will be sufficient at a cost of approximately \$200,000 in fiscal 2014, increasing to \$207,000 in fiscal 2015.

From the VLT proceeds generated at BWI, \$108,400 will be distributed to the Lottery Agency in fiscal 2015 and \$741,400 in fiscal 2016 and will be insufficient to pay for increased Lottery expenditures. Accordingly, general fund expenditures will increase by \$200,000 in fiscal 2014, \$609,600 in fiscal 2015, and by \$2.8 million in fiscal 2016.

Effect on Lottery Sales

Legislative Services assumes that 1,000 additional VLTs at BWI will not permanently reduce lottery revenues beyond the 10% reduction already estimated for the authorized VLT program.

Education Trust Fund and Other VLT Fund Expenditures

In light of the substantial structural deficit currently forecasted through 2016, it is assumed that all of the available ETF proceeds received in fiscal 2013 are used to support operating programs and, therefore, offset general fund expenditures.

Special fund expenditures will increase by \$2.7 million in fiscal 2015 and by \$18.4 million in fiscal 2016, which reflects the distribution of VLT proceeds to the

licensee of the facility; to local governments; purse dedication and racetrack renewal accounts; and small, minority, and woman-owned businesses.

Infrastructure Costs

The State could incur significant costs associated with infrastructure and transportation upgrades near BWI. The actual impact will depend upon specific plans for any future video lottery facility at BWI. To the extent that only ticketed passengers and BWI employees can access the areas with VLTs, costs would be minimal.

Indirect State Expenditures

In addition to the 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, Legislative Services estimates that these costs are likely to be greater than the funds dedicated to the Problem Gambling Fund under this bill. For a more in-depth discussion about the possible social costs as a result of authorizing VLTs, consult the *Legislator's Guide to Video Lottery Terminal Gambling*.

Local Fiscal Effect: Local revenues for Anne Arundel County will increase by \$298,000 in fiscal 2015 increasing to \$2.0 million in fiscal 2016. Anne Arundel County infrastructure costs may increase due to the BWI facility. The extent of any increased infrastructure expenditures will depend upon specific plans for a video lottery facility and the degree to which needed infrastructure improvements are not covered by State expenditures.

Small Business Effect: To the extent that the VLT facility purchases goods from local businesses that are small businesses, these small businesses will benefit. Small business horse industry breeders and owners in the thoroughbred and standardbred racing industry would benefit. Some small businesses, especially those located in the BWI terminal building, may be harmed as a result of travelers substituting VLT wagering for other expenditures. Expenditures from the Small, Minority, and Woman-owned Business Investment Account will benefit small businesses.

Other small businesses will be harmed by the substantial substitution of consumer spending away from other consumption to gambling. Small businesses in the entertainment and retail food service near VLTs could be particularly harmed.

Additional Comments: Legislative Services notes that the bill may limit the travel options of individuals on either the voluntary or mandatory problem gambling exclusion

list and may somewhat diminish the incentive for individuals to join the voluntary exclusion list.

Additional Information

Prior Introductions: HB 512 of 2010 received an unfavorable report from the House Ways and Means Committee. HB 777 of 2009, a similar bill, received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: SB 706 (Senator Klausmeier, *et al.*) - Budget and Taxation.

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

Fiscal Note History: First Reader - March 14, 2011
ncs/rhh

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