

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1002
Ways and Means

(Delegate Luedtke)

Gaming - Electronic Sweepstakes - Prohibition

This bill alters the definition of “slot machine” to include a machine or electronic terminal used in conjunction with an electronic sweepstakes, thereby clarifying that they are illegal in the State. A violator is guilty of a misdemeanor and subject to a maximum fine of \$1,000, a maximum prison term of one year, or both for each violation.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: General fund revenues will increase by an indeterminate amount beginning in FY 2012 to the extent that these machines compete with State lottery sales. Special fund revenues and expenditures will increase by an equal indeterminate amount beginning in FY 2012 to the extent that these machines compete with video lottery terminals (VLTs), particularly future VLTs in Anne Arundel County and Baltimore City. Consequently, general fund expenditures for education programs decrease due to relief from the Education Trust Fund.

Local Effect: To the extent that machines and devices operated in conjunction with an electronic sweepstakes are taxed or subject to license and permit fees, local revenues will decrease. However, those who would otherwise participate in sweepstakes covered by the bill may find substitute gaming activities that are also subject to local taxes and license and permit fees. Counties where VLT facilities are located may realize an increase local VLT grant funding due to decreased competition from sweepstakes machines.

Small Business Effect: Small businesses that sell, lease, or operate sweepstakes machines and devices as a component of their business will be negatively impacted.

Analysis

Current Law:

Slot Machines and Video Lottery Terminals

Generally, it is a misdemeanor crime to possess or operate a slot machine in Maryland. However, certain nonprofit organizations are authorized to operate slot machines in the following nine Eastern Shore counties: Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester. Nonprofit organizations must be located in the county for at least five years prior to the application for a license and be a fraternal, religious, or war veterans' organization, or be 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. The Comptroller's Office must regulate the specified slot machines and charge a license fee to cover the costs of regulating the machines.

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 and Chapter 240 of 2011 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). Chapter 240 of 2011 reduced the maximum allocation at Rocky Gap State Park to 1,000 VLTs.

Prohibited Gaming

Except when specifically authorized, a gaming device is prohibited in the State if it is a gaming table, except a billiard table, at which a game of chance is played for money or any other thing or consideration of value; or a game or device at which money or any other thing or consideration of value is bet, wagered, or gambled.

In *Chesapeake Amusements Inc. v. Riddle*, the Maryland Court of Appeals took up the issue of “whether a dispensing machine with a video screen that displays the contents of the tickets that it dispenses and emits a musical tone that signals when a winning ticket is being dispensed is a ‘slot machine,’” as defined by Maryland law. The Court of Appeals found that the machine in question was not a slot machine. In response to this decision, Chapter 474 of 2008 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.

Chapter 474 also prohibited certain gaming machines licensed by local jurisdictions, primarily electronic bingo and tip jar machines, from operating after July 1, 2009. Chapter 661 of 2009 extended this termination date to July 1, 2012.

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, except for the slot machines operated on the Eastern Shore. 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 at least one-half of the proceeds from slot machines to benefit a charity.

Background: The Attorney General’s Office advises that the electronic sweepstakes machines, which are not specifically authorized, are likely illegal under current law.

The *Baltimore Sun* recently reported that at least three establishments in Baltimore City and one in Baltimore County have “sweepstakes” game rooms, and that the machines operated in these game rooms mimic, at least in appearance, slot machines. *The Baltimore Sun* further reported that at least one of these establishments operates over 100 such devices. The Comptroller’s Office indicates there may be similar operations in Prince George’s County.

Under Baltimore City law, a person who owns, controls, or possesses more than five simulated slot machines must obtain a license and pay an annual fee of \$5,000. In addition, an annual registration tax is due on each machine as follows: \$2,250 for the

first five machines, \$1,750 per additional devices up to 20, and \$1,250 for each machine in excess of 20 machines. Thus, an establishment operating simulated slot machines would owe \$80,000 annually if the total number of machines present is 50 and \$142,500 if the total number of machines present is 100.

Other Local Gaming

Facilities operating electronic bingo are located primarily in Anne Arundel and Calvert counties. Tip jar gaming, predominantly paper based, is conducted in several Western Maryland counties including Allegany, Garrett, and Washington. A 2006 Abell Foundation report on underground video gambling found between \$6.4 million and \$15.3 million in lost local admissions and amusement (A&A) 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, 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.

VLT Program Implementation

The 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 2011 and currently is operating 800 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. Phase one of that facility is currently scheduled to open with approximately 3,000 VLTs in June 2012, with the full complement of 4,750 VLTs in operation by October 2012.

After licenses for the proposed VLT facilities in Allegany County and Baltimore City were not awarded in previous rounds of bidding, the Location Commission issued new Requests for Proposals (RFP) for those licenses in 2011. On September 23, 2011, the Location Commission received three proposals for Allegany County and two proposals for Baltimore City. However, one proposal for Baltimore City and two proposals for Allegany County were subsequently rejected by the Location Commission for failing to meet requirements contained in RFPs. The Location Commission plans to make final decisions on the remaining proposals sometime in spring 2012.

Through January 2012, Maryland VLT facilities have generated a total of \$196.2 million in revenues. Of this amount, \$95.1 million has been distributed to the Education Trust Fund. **Exhibit 1** shows the estimated distribution of VLT revenues through fiscal 2017. These estimates assume the Baltimore City and Allegany County facilities open in fiscal 2014.

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

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
Education Trust Fund (48.5%)	\$78.1	\$254.4	\$386.2	\$483.4	\$513.3	\$523.6
Licensees (33%)	53.1	173.1	265.0	333.5	353.9	361.0
Local Impact Grants (5.5%)	8.9	28.9	43.6	54.4	57.8	58.9
Business Investment (1.5%)	2.4	7.9	11.9	14.8	15.8	16.1
Purse Dedication Account (7%) ¹	11.3	36.7	55.4	69.0	73.3	74.8
Racetrack Renewal (2.5%) ²	4.0	13.1	19.7	24.5	26.0	26.5
Lottery Operations (2%)	3.2	10.5	16.0	20.0	21.2	21.7
Total (100%)	\$161.0	\$524.6	\$797.8	\$999.6	\$1,061.3	\$1,082.6

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 and Chapter 240 of 2011 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 operator will receive for the first 10 years of operations 50% of proceeds, distributions to other funds are decreased correspondingly. For more detail please see the fiscal and policy note for SB 512 of 2011.

Source: Department of Legislative Services

In fiscal 2011, the State Lottery generated \$1.7 billion from ticket sales. Payments to lottery winners were \$1.0 billion, while operating costs and payments to agents totaled \$166.0 million. Approximately \$499.4 million was deposited in the general fund after payments were made to the Maryland Stadium Facilities Fund (\$20.0 million). **Exhibit 2** shows lottery sales by jurisdiction in fiscal 2011.

Exhibit 2
State Lottery Sales by County
Fiscal 2011

County	Total Sales	Percent of Sales
Allegany	\$11,240,905	0.66%
Anne Arundel	176,010,692	10.27%
Baltimore City	292,271,222	17.05%
Baltimore	278,196,840	16.23%
Calvert	24,328,024	1.42%
Caroline	6,761,520	0.39%
Carroll	34,465,435	2.01%
Cecil	19,786,084	1.15%
Charles	57,571,067	3.36%
Dorchester	8,649,659	0.50%
Frederick	36,423,372	2.12%
Garrett	3,426,916	0.20%
Harford	58,365,876	3.40%
Howard	47,761,493	2.79%
Kent	4,245,306	0.25%
Montgomery	169,445,933	9.88%
Prince George's	352,964,544	20.59%
Queen Anne's	11,636,346	0.68%
St. Mary's	35,318,712	2.06%
Somerset	5,906,556	0.34%
Talbot	8,269,194	0.48%
Washington	25,900,199	1.51%
Wicomico	21,971,165	1.28%
Worcester	23,485,566	1.37%
Total	\$1,714,402,620	100.00%

Note: Numbers do not sum to the total due to rounding.

Source: Maryland State Lottery Agency

State Fiscal Effect: The bill may prevent additional establishments from operating sweepstakes machines and may result in significant decreases in the current operations of such machines in the State, although they may already be illegal under current law. The number of sweepstakes machines in the State, or that would be introduced under current

law is not known. To the extent that these machines compete with lottery sales, general fund revenues from lottery sales increase beginning in fiscal 2012.

Special fund revenues will increase beginning in fiscal 2012 to the extent that affected machines compete with VLTs, particularly future VLTs in Anne Arundel County and Baltimore City. Consequently, the general fund is relieved by increased Education Trust Fund support of education funding by nearly half the amount of the increase in special funds.

The criminal penalty provisions of the bill do not have a material impact on State finances or operations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): *Baltimore Sun*, Comptroller's Office, Office of the Attorney General, Maryland State Lottery Agency, Department of Legislative Services

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mc/jrb

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