

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 864

(Senator DeGrange)

Budget and Taxation

Ways and Means

Gaming - Electronic Machines - Regulation

This bill makes permanent the authority for existing qualified organizations and licensed commercial bingo licensees to operate electronic instant bingo machines that would otherwise be illegal under State law after July 1, 2012. The bill alters the State admissions and amusement (A&A) tax rate imposed on electronic bingo and electronic tip jar machines in Calvert County and alters distributions of related tax revenues. The bill also requires the State Lottery Commission (commission) to certify and regulate the operation, ownership, and manufacture of certain electronic gaming devices. The bill gives the commission final determination as to whether a gaming device being operated in the State is a legal gaming device and if a device is being operated in a lawful manner. An electronic gaming device that is not licensed or otherwise compliant with requirements as of January 1, 2013, is an illegal gaming device that may not legally operate in the State. The bill also alters provisions of current law specifying what is, and is not, considered a “slot machine.”

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: General fund revenues will increase by an estimated \$9.5 million annually beginning in FY 2013 as a result of continued collection of the State A&A tax on electronic bingo machines currently in operation. General fund revenues will decrease by an indeterminate amount beginning in FY 2013 to the extent that these machines compete with State lottery sales. Special fund revenues and expenditures increase by \$4.6 million annually due to continued collection of the State A&A tax and an increase in the rate of this tax on proceeds generated in Calvert County. Special fund revenues will decrease by an indeterminate amount beginning in FY 2013 to the extent that these machines compete with video lottery terminals (VLTs), particularly in Anne Arundel County. State Lottery special fund licensing fee revenues and expenditure increase in offsetting amounts.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
GF Revenue	\$9,529,200	\$9,529,200	\$9,529,200	\$9,529,200	\$9,529,200
SF Revenue	\$4,581,100	\$4,581,100	\$4,581,100	\$4,581,100	\$4,581,100
SF Expenditure	\$4,581,100	\$4,581,100	\$4,581,100	\$4,581,100	\$4,581,100
Net Effect	\$9,529,200	\$9,529,200	\$9,529,200	\$9,529,200	\$9,529,200

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

Local Effect: Increase in local A&A tax revenues, and funding from State A&A tax revenues, for Anne Arundel and Calvert counties along with other license and permit fee revenues (and local regulatory expenditures) beginning in FY 2013. Decrease in VLT local impact grants to Anne Arundel County, to the extent that affected machines compete with VLTs.

Small Business Effect: Significant for a limited number of establishments in Anne Arundel and Calvert counties that are licensed to operate electronic instant bingo machines.

Analysis

Bill Summary: An entity licensed to offer instant bingo under a commercial bingo license on July 1, 2007, or by a qualified nonprofit organization may continue to operate a game of instant bingo in the same manner using electronic machines, provided that:

- the machines were in operation for a one-year period ending December 31, 2007, or under a commercial bingo license on December 31, 2007;
- the entity does not operate more than the number of machines in operation on February 28, 2008; and
- the conduct of the gaming and operation of the machines are consistent with all other provisions of the Criminal Law Article.

Authorized machines may be repaired or replaced. Regulations adopted by the commission may include provisions that regulate the repair and replacement of authorized electronic bingo machines.

A nonprofit organization qualified to hold a gaming event for the organization's benefit that offered instant bingo for a one-year period as of December 31, 2007, and then was required by local regulation to obtain a commercial license, may operate up to 10 electronic instant bingo machines as long as the organization complies with provisions of the bill and pays applicable license taxes.

The purpose of the Special Fund for Preservation of Cultural Arts in Maryland is altered such that it provides supplemental (not emergency) grants to cultural arts organizations in the State that qualify for general operating support grants from the Maryland State Arts Council. Supplemental grants may not supplant other funding that the organization qualifies to receive.

The Calvert County Youth Recreational Opportunities Fund (YROF) is established by the bill. The fund is a special, nonlapsing fund administered by the Secretary of Natural Resources for the purpose of increasing youth recreational opportunities in Calvert County. The fund may be used only for projects that are approved by the Secretary of Natural Resources and that receive contributions from the county; expenditures from the fund may be made only in accordance with the State budget and must supplement, not supplant, funding appropriated for youth recreational opportunities in Calvert County.

Revenues attributable to a State A&A tax rate of 20% imposed on electronic bingo and electronic tip jars are distributed to the general fund; and a rate of 5% are distributed to the Special Fund for the Preservation of Cultural Arts in Maryland. In Calvert County, the total State A&A rate on specified machines is raised to 33% from a maximum of 30%. For fiscal 2013 only, revenues attributable to a State A&A tax rate of 8% in Calvert County are distributed to the Boys and Girls Club of the Town of North Beach in the amount of \$100,000, and the remainder to YROF.

In fiscal 2014 through 2016, revenues attributable to a State A&A tax rate in Calvert County of:

- 1.5% are distributed to the Boys and Girls Club of the Town of North Beach in the amount of \$100,000 and the remainder to the Town of North Beach;
- 2.5% are distributed to the Town of Chesapeake Beach; and
- 4.0% are distributed to YROF.

Beginning in fiscal 2017, distributions are unaltered except that the revenues attributable to a State A&A rate of 4.0% no longer go to YROF, but instead are distributed to the Calvert County Board of Education for school renovation and renewal projects and may not be used to supplant county funds for school construction.

The commission, the Office of the Attorney General, the Department of State Police, local law enforcement units, and the court must construe liberally Title 12 of the Criminal Law Article relating to gambling and betting to prevent prohibited activities. The commission makes final determination as to whether a gaming device being operated in the State is a legal gaming device and if a device is being operated in a lawful manner, in accordance with the Criminal Law Article. If a local law enforcement unit fails to promptly enforce a final determination regarding the legality of a gaming device or its

use by the commission, the commission must refer the matter to the Department of State Police for enforcement.

Language related to a bingo machine, apparatus, or device that is not a “slot machine” (and therefore is allowable) is narrowed to specify that it:

- is a handheld device that displays only facsimiles of bingo cards that an individual uses to mark and monitor contemporaneously to a live call of bingo numbers;
- does not permit a user to play more than 54 bingo cards at the same time;
- does not randomly generate any numbers; and
- is not part of an integrated system.

The bill clarifies that a machine that fits the definition of “slot machine” is considered a slot machine, regardless of whether it delivers a game through the Internet or offers Internet or other services. A skills-based amusement device that awards prizes of a minimal value, as approved by State Lottery Commission regulation, is not a slot machine.

The commission must certify and regulate the operation, ownership, and manufacture of an electronic gaming device authorized under Title 12 of the Criminal Law Article, excluding authorized paper tip jar gaming and authorized Eastern Shore slot machines that are subject to regulation by the Comptroller’s Office. The commission must adopt regulations that:

- define lawful and unlawful electronic and mechanical equipment used in connections with gaming devices that are consistent with Title 12 of the Criminal Law Article;
- provide for the legal operation of amusement games licensed by Baltimore City and Baltimore County;
- approve and license electronic gaming devices authorized under State law;
- approve and license owners, operators, and manufacturers of electronic gaming devices authorized under State law;
- establish procedures for the license application and renewal processes; and
- establish license fees that are sufficient to cover the direct and indirect costs of licensure.

However, the commission may determine that a county’s licensing and regulatory process for electronic gaming devices is equivalent to the State process and that a county license for owning, operating, or manufacturing an electronic gaming device in that county is equivalent to a State license. Regulations pertaining to the operation of electronic bingo machines must be at least as stringent as specified Anne Arundel County code. Also, the

commission must establish license fees that are sufficient to cover the direct and indirect costs of licensure.

The bill clarifies that the State and local A&A taxes applicable to electronic instant bingo *must* be determined on a tax-included or separately stated basis, while other State and local A&A taxes applicable to gaming *may* be determined on a tax-included or separately stated basis.

Current Law/Background: 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.

Prohibited Gaming and Admissions and Amusement Tax

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. 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 machines that dispense lottery tickets and VLTs are also excluded.

At the 2007 special session, the General Assembly approved legislation (Chapter 6) that imposed a 20% State A&A tax on the net receipts generated from the operation of electronic bingo and electronic tip jars operated for commercial purposes, with revenues accruing to the general fund.

Chapter 661 of 2009 increased the State A&A tax rate on net proceeds from electronic bingo and electronic tip jar machines 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; county and municipal rates on these machines may not increase after January 1, 2009. Chapter 661 required that the revenue attributable to the tax rate of 20% be distributed to the general fund, while the revenue attributable to the rate increase be distributed to the Special Fund for the Preservation of Cultural Arts in Maryland. Chapter 484 of 2010 altered the distribution of the tax revenues to provide greater support for the general fund in fiscal 2010 and 2011. In addition, \$500,000 was placed in a special fund to provide impact aid to local jurisdictions where electronic bingo machines or tip jar machines are located, leaving \$500,000 for the preservation of the cultural arts in fiscal 2011.

Chapter 397 of 2011 required, for fiscal 2012 only, that \$500,000 derived from the A&A tax imposed on electronic bingo and tip jar machines be distributed to the Special Fund for the Preservation of Cultural Arts in Maryland and the balance be distributed to the general fund. Chapter 397 also prescribed, for fiscal 2012 only, the use of the fund as follows: (1) \$150,000 as an appropriation to the State Archives to be used only for the operating costs associated with the development and implementation of the State House Master Plan; (2) \$50,000 as a grant to be paid by the Comptroller to the Maryland Humanities Council; and (3) \$150,000 each in impact grants to Anne Arundel County and Calvert County, for specified purposes.

Admissions and Amusement Tax

All counties (with the exception of Caroline County), Baltimore City, and most municipalities impose a local A&A 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%.

The Comptroller collects the local (*i.e.*, county or municipal) A&A tax and remits payment back to the local jurisdictions on a quarterly basis. The Comptroller also collects the State A&A tax on electronic gaming machines, which is levied on net proceeds (*i.e.*, after cash

and prizes are paid out). In general, the A&A tax applied by 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 machines to be subtracted out before the tax is imposed.

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.

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 5 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.

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 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.

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 and are offered for use to those who purchase Internet time. *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.

VLT Program

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.

State Fiscal Effect: This estimate assumes that all existing businesses affected by the bill are authorized to continue under the bill. To the extent that relevant operations are discontinued by the bill, revenue increases are diminished. The Comptroller's Office data indicates that State A&A tax revenues from electronic bingo machines averaged \$13.3 million in fiscal 2010 and 2011. Most existing machines subject to the State A&A tax would be prohibited under current law. Repealing the sunset on these machines and increasing to 33% the State A&A tax rate on machines in Calvert County results in revenue increases of approximately \$14.1 million annually, including \$9.5 million in general fund revenues and \$4.6 million in special fund revenues. The Special Fund for the Preservation of Cultural Arts in Maryland receives \$2.4 million of the \$4.6 million in special funds. Generally, \$2.2 million in annual revenues benefit Calvert County.

To the extent that the July 1, 2012 sunset on the operation of electronic instant bingo machines would increase lottery sales, this increase in general funds is prevented by the bill. Special fund revenues will decrease, and general fund expenditures will increase to fund mandated education aid otherwise paid for by VLT revenues to the Education Trust Fund, by an indeterminate amount beginning in fiscal 2013 to the extent that affected machines compete with VLTs, particularly in Anne Arundel County. Because the commercially operated electronic instant bingo machines in Calvert County are more than 40 miles from the nearest authorized VLT site (in Anne Arundel County), these machines are not expected to have a considerable impact on VLT program revenues.

Costs increase minimally in fiscal 2013 for the Comptroller's Office to update tax form instructions and notify A&A tax account holders. Lottery Agency costs increase to fulfill licensing and approval responsibilities under the bill, however fees are required to cover the direct and indirect costs of licensure.

Local Fiscal Effect: Local A&A tax revenues will increase in Anne Arundel and Calvert counties. For fiscal 2010 and 2011, local A&A tax revenues from commercial electronic bingo averaged \$2.9 million in Anne Arundel County and \$700,000 in Calvert County. Virtually all of this revenue in Anne Arundel County is received by the county; nearly all of the revenue received in Calvert County is received by the Town of Chesapeake Beach. The bill would allow approximately the same county and municipal amount of commercial electronic bingo-related A&A tax revenues, as well as related license and permit fee revenues, to continue in Anne Arundel and Calvert counties beginning in fiscal 2013. However, VLT local impact grants to Anne Arundel County decrease beginning in fiscal 2013 to the extent that affected machines compete with VLTs.

From State A&A tax revenues, the Boys and Girls Club of the Town of North Beach receives \$100,000 annually beginning in fiscal 2013. YROF receives approximately \$2.1 million in fiscal 2013 and \$1.1 million annually in fiscal 2014 through 2016. Beginning in fiscal 2014, the Town of North Beach and the Town of Chesapeake Beach, respectively, receive approximately \$312,300 and \$687,100 annually. Beginning in fiscal 2017, Calvert County Board of Education revenues and expenditures increase by \$1.1 million annually, for school renovation and renewal projects.

Also, to the extent that any "gray" machines are located, approved, licensed, and continue to operate, particularly in Baltimore City and Baltimore County, local A&A revenues increase beginning in fiscal 2013, depending on the local A&A tax rate. However, it is difficult to estimate how many of these machines may be determined to be legal and lawfully operated by the commission. Conversely, to the extent that electronic sweepstakes and other machines, including amusement devices in Baltimore City and Baltimore County, are currently generating local revenues, but are determined to be unlawful and are removed from operation, local revenues from these machines decrease (though local revenues from lawful substitutes for these machines may increase).

Additional Comments: The bill requires the commission to adopt regulations related to the legal operation of amusement games licensed by Baltimore City and Baltimore County, but it does not specify whether these games are subject to the State A&A tax. Therefore, this estimate does not include any additional State A&A revenues attributable to amusement games.

Additional Information

Prior Introductions: None.

Cross File: HB 1166 (Delegate Love) - Ways and Means.

Information Source(s): Calvert County, Department of Business and Economic Development, Comptroller's Office, Judiciary (Administrative Office of the Courts), Office of the Attorney General, Maryland State Lottery Agency, Department of State Police, Maryland Stadium Authority, Department of Legislative Services

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