

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 896

(Senator Conway)

Budget and Taxation

Baltimore City - Gaming - Electronic Bingo

This bill authorizes organizations qualified to conduct gaming events in Baltimore City to operate an electronic bingo machine, an electronic tip jar, or a paper pull tab machine. The Baltimore City Police Commissioner may issue licenses to qualified organizations. The bill subjects the machines to the State admissions and amusements (A&A) tax rate and to payment of the Baltimore City A&A tax. The Baltimore City Police Commissioner must adopt regulations to carry out provisions of the bill.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: General fund revenues will increase by an indeterminate amount beginning in FY 2013 as a result of collection of the State A&A tax imposed upon authorized machines operated in Baltimore City. General fund revenues will decrease by an indeterminate amount to the extent that these machines compete with State lottery sales. 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 Baltimore City and Anne Arundel County. State Lottery Agency and Comptroller's Office expenditures increase minimally.

Local Effect: Potential significant increase in Baltimore City expenditures for administrative and enforcement activities. Indeterminate increase in Baltimore City licensing fee revenues and A&A revenues.

Small Business Effect: Small businesses that sell or lease machines authorized by the bill, and related items, will benefit. Any establishment that will rent the use of authorized machines to eligible nonprofit organizations will benefit as well.

Analysis

Bill Summary: Regulations adopted by the Baltimore City Police Commissioner must specify:

- the number and term of licenses to be issued;
- the number and location of the three types of machines in Baltimore City;
- qualifications for applicants for licenses;
- grounds for license revocation or suspension; and
- license fees.

Current Law/Background:

Gaming in Baltimore City

In Baltimore City, qualified organizations that may conduct gaming events (*i.e.*, a carnival, bazaar, or raffle) for the benefit of the organization include a religious, fraternal, civic, or charitable organization; a veteran's hospital; or an amateur youth athletic organization. An organization conducting a gaming event must be located in Baltimore City and spend a majority of the organization's funds in Baltimore City for specified purposes (*e.g.*, fraternal or charitable purposes.) There is no limit on the amount of merchandise or prize money that may be awarded at a gaming event. A permit holder may conduct no more than 12 raffles per year.

An individual or group of individuals may not benefit financially from the event and the event must be personally managed by the members of the organization. An organization must obtain a permit from the Baltimore City Police Department before operating a gaming event. In Baltimore City, bingo and the awarding of prizes at political fundraisers are also authorized under specified conditions.

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.

Video Lottery Terminal Program

Two VLT gambling bills passed during the 2007 special session – House Bill 4 (Chapter 5) and Senate Bill 3 (Chapter 4). Chapter 5 was a constitutional amendment

approved by Maryland voters at the November 2008 general election authorizing 15,000 VLTs at five locations in the State. Chapter 4, which was contingent on ratification of Chapter 5, established the operational and regulatory framework for the authorized VLT program.

Under Chapter 4, VLT facility operation licenses are awarded by the Video Lottery Facility Location Commission (Location Commission). The State Lottery Commission oversees VLT operations and owns/leases VLTs and the central monitor and control system. A maximum of 15,000 VLTs are allowed, 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 1,000 VLTs in Allegany County. In addition, geographic parameters for each jurisdiction within which a VLT facility may be located are provided.

Under current law, except for the Allegany County location, gross VLT proceeds are distributed as follows:

- Business Investment – 1.5% to a small, minority, and woman-owned business investment account;
- Lottery Operations – 2% to the State lottery for administrative costs, with other costs provided for in the State budget;
- Local 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 \$1 million annually to Prince George’s County for the community surrounding Rosecroft;
- Purse Dedication Account – 7% 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 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 ETF (48.5%-51.0%).

Revenues accruing to the Education Trust Fund are to be used for the Bridge to Excellence in Public Schools Act funding (including the Geographic Cost of Education Index), public school construction funding, and public higher education construction, including community colleges.

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. The Location Commission plans to make final decisions on the remaining proposals for Allegany County and Baltimore City 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

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 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.

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.

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.

At the 2007 special session, the General Assembly approved legislation (Chapter 6) that imposed a 20% State admissions and amusement 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 admissions and amusement 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.

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%. In fiscal 2012, the Baltimore City admissions and amusement tax rate is 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. 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. 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). However, as noted above, the State A&A tax applies to machines that are not authorized to operate after July 1, 2012.

State Fiscal Effect: The number of machines that will operate annually under the bill is not known. The Attorney General's Office advises that though only specified nonprofits are allowed to operate the machines authorized by the bill, there is no requirement in the bill that a machine be located or operated on the premises of a qualified nonprofit. Baltimore City was unable to provide an estimate of the limits that would be placed on the number or location of machines authorized by the bill, except that zoning restrictions will likely limit the number of machines per location to at most 10, in certain zones. According to its *Nonprofits by the Numbers* report, Maryland Nonprofits finds that the number of 501(c)(3) nonprofits in Baltimore City is approximately 3,700. However, Baltimore City indicates that according to recent data an average of about 15 organizations receive permits in a given month. Most of these are for traditional bingo at religious institutions, which often receive multiple permits per month.

State special fund revenues increase beginning in fiscal 2013 due to imposition of a State A&A tax rate of 25% (maximum 35% rate minus 10% city rate) on the net receipts from machines authorized in Baltimore City. Although the bill takes effect June 1, 2012, it is assumed that it takes at least one month for the city to set up the regulatory process. As shown in Exhibit 2, a substantial portion of State Lottery sales occur in Baltimore City. To the extent that these machines compete with lottery sales, general fund revenues from lottery sales decrease beginning in fiscal 2013. Special fund revenues will decrease beginning in fiscal 2013 to the extent that affected machines compete with VLTs, particularly future VLTs in Anne Arundel County and Baltimore City. Consequently, general fund expenditures increase to offset decreased Education Trust Fund support of education in the State and general fund expenditures increase minimally to cover the loss of special funds supporting State Lottery administrative costs related to the VLT program. Costs increase minimally in fiscal 2013 for the Comptroller's Office to update tax form instructions and notify A&A tax account holders.

Local Fiscal Effect: Baltimore City advises that a fee structure similar to that for simulated slot machines will likely be applied to machines authorized by the bill. Machines authorized by the bill will be subject to the Baltimore City A&A tax rate of 10%. Increased tax and fee revenues may be largely offset by minimal increases in administrative expenditures and potentially significant increases in law enforcement expenditures to ensure that authorized machines are operated in compliance with State and local law.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 20, 2012
ncs/rhh

Analysis by: Scott P. Gates

Direct Inquiries to:
(410) 946-5510
(301) 970-5510