

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 927
Ways and Means

(Calvert County Delegation)

Budget and Taxation

Calvert County - Electronic Bingo

This bill extends until June 30, 2016, the authority for existing qualified organizations and licensed commercial bingo licensees in Calvert County to operate electronic instant bingo machines that would otherwise be illegal under State law after July 1, 2012. The bill also alters the distribution of State admissions and amusement (A&A) tax revenues and sets a maximum local A&A tax rate of 2.5% on net proceeds from the machines in Calvert County and municipalities. The State Lottery Commission must establish procedures to authenticate the software used in the machines; verify the identity, quantity, and location of the machines; and audit the accounts and records relating to the machines. The commission must adopt regulations to carry out tasks assigned to the commission.

The bill takes effect July 1, 2012, and terminates June 30, 2016.

Fiscal Summary

State Effect: General fund revenues will increase by an estimated \$5.5 million annually from FY 2013 through 2016 as a result of continued collection of the State A&A tax on machines currently in operation in Calvert County. General fund revenues will decrease by an indeterminate amount from FY 2013 through 2016 to the extent that these machines compete with State lottery sales. Special fund revenues and expenditures increase by \$2.7 million from FY 2013 through 2016 due to continued collection of the State A&A tax 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 Agency and Comptroller's Office expenditures increase minimally.

Local Effect: Increase in local A&A tax revenues, and \$2.7 million from State A&A tax revenues for Calvert County 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 Calvert County that are licensed to operate electronic instant bingo machines.

Analysis

Bill Summary: An entity in Calvert County licensed to offer electronic or instant bingo under a commercial bingo license on December 31, 2008, or by a qualified nonprofit organization may continue to operate a game of electronic or instant bingo in the same manner using electronic machines, provided that:

- the machines were in operation for a one-year period ending December 31, 2008, or under a commercial bingo license on December 31, 2009;
- the entity does not operate more than the number of machines in operation on December 31, 2009; and
- the conduct of the gaming and operation of the machines are consistent with all other provisions of the Criminal Law Article.

The total State A&A tax rate imposed on electronic bingo and electronic tip jars in Calvert County remains at 30%. The bill clarifies that a machine, apparatus, or device that displays facsimiles of bingo cards that users mark and monitor according to numbers called on the premises by an individual where the user is operating the machine is subject to the State A&A tax. Of this amount, revenues attributable to a rate of 20% are distributed to the State general fund, to a rate of 6% are distributed to Calvert County, to a rate of 2% are distributed to the Town of Chesapeake Beach, and to a rate of 2% are distributed to the Town of North Beach.

Current Law/Background: 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 (GCEI)), public school construction funding, and public higher education construction, including community colleges.

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.

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. 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: This estimate assumes that all existing businesses affected by the bill are authorized to continue operations under the bill. The Comptroller's Office data indicates that State A&A tax revenues from electronic bingo machines in Calvert County averaged \$8.2 million in fiscal 2010 and 2011. Most existing machines subject to the State A&A tax would be prohibited under current law. Extending the sunset on these machines in Calvert County results in revenue increases of approximately \$8.2 million annually from fiscal 2013 through 2016, including \$5.5 million in general fund revenues and \$2.7 million in special fund revenues. From the \$2.7 million in special fund revenues, \$1.6 million is distributed to Calvert County, and the Town of North Beach and the Town of Chesapeake Beach each receive approximately \$0.5 million from fiscal 2013 through 2016.

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, through fiscal 2016. 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 from fiscal 2013 to 2016, to the extent that affected machines compete with VLTs, particularly in Anne Arundel County. However, 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 minimally to perform an audit of a limited number of establishments in Calvert County, to authenticate machine software, and to verify the identity, quantity, and location of the machines affected by the bill. Existing staff positions should be sufficient.

Local Fiscal Effect: Local A&A tax revenues will increase in Calvert County by extending the July 1, 2012 sunset date. For fiscal 2010 and 2011, local A&A tax revenues from commercial electronic bingo averaged \$700,000 in Calvert County. Nearly all of the revenue received in Calvert County is received by the Town of Chesapeake Beach. The bill sets a maximum local A&A tax rate of 2.5% on *proceeds from the machines*, which will yield approximately the same annual revenue as the current 0.5% maximum tax rate for Chesapeake Beach on *gross profits*. Overall, the bill

will allow approximately the same county and municipal amount of commercial electronic bingo-related A&A tax revenues to continue in Calvert County from fiscal 2013 to 2016. However, VLT local impact grants to Anne Arundel County, decrease from fiscal 2013 through 2016 to the extent that affected machines compete with VLTs.

From State A&A tax revenues, \$1,649,100 is distributed to Calvert County, and the Town of North Beach and the Town of Chesapeake Beach each receive \$549,700, from fiscal 2013 through 2016.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 16, 2012
ncs/rhh Revised - House Third Reader - March 27, 2012

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