

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 526 (Delegates Buckel and Wilkins)  
Ways and Means

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Sports Wagering - Licenses and Application of Minority Business Enterprise  
Program Requirements

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This bill requires the Sports Wagering Application Review Commission (SWARC) to accept and consider a sports wagering license application that is submitted before January 1, 2026, subject to specified limitations under current law. Additionally, the bill extends the termination date for one year, to July 1, 2025, for specified sports wagering provisions and regulations to comply with the State’s Minority Business Enterprise (MBE) Program. **The bill takes effect July 1, 2024.**

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Fiscal Summary

**State Effect:** Blueprint for Maryland’s Future Fund (BMFF) and State Lottery and Gaming Control Agency (SLGCA) revenues may increase in FY 2025 and 2026 from sports wagering license applicant fees (and related fees), and BMFF revenues may minimally increase further once any new license holders are operational. BMFF expenditures may increase minimally beginning in FY 2027, and general fund expenditures may decrease by corresponding amounts. General fund expenditures for the Department of Legislative Services (DLS) and SLGCA may increase in FY 2025 and 2026, with potential ongoing costs for SLGCA. Other gaming revenues are not materially affected.

**Local Effect:** It is assumed that sports wagering does not materially affect video lottery terminal and table game revenues in the State; thus, local impact grants are not substantially affected from any additional Class B or mobile sports wagering licenses issued.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Current Law:** Sports wagering licenses are awarded by SWARC, the members of which were appointed by the Governor, the President of the Senate, and the Speaker of the House. SWARC must review applications for sports wagering facility and mobile sports wagering licensure, and the State Lottery and Gaming Control Commission (SLGCC) and DLS must staff SWARC. DLS must contract with an independent consultant to assist SWARC in the review and analysis of license applications. SWARC terminates on January 1, 2028, but the Governor may reconstitute SWARC under specified circumstances.

Specified Class A and Class B sports wagering facility licensees designated under the law (casinos, professional sports stadiums, horse racing tracks, off-track facilities, and specified bingo halls) are eligible to receive licenses under a noncompetitive process.

SWARC may also conduct a competitive process to award an additional 30 Class B-1 or B-2 facility licenses and 60 mobile sports wagering licenses. Qualifying applicants with fewer than 25 full-time equivalent employees or less than \$3.0 million in annual gross receipts are awarded B-2 licenses, while qualifying applicants exceeding either of those thresholds are awarded B-1 licenses. If SWARC does not award the maximum number of licenses, SWARC may (but is not required to) create additional application windows for any portion of the remaining mobile licenses or Class B facility licenses. The establishment of any additional application windows requires approval of a majority of SWARC members.

An applicant must pay to SLGCC a nonrefundable application fee of \$2.0 million for a Class A-1 license, \$1.0 million for a Class A-2 license, \$250,000 for a Class B-1 license, \$50,000 for a Class B-2 license, and \$500,000 for a mobile sports wagering license. The applicant must reimburse SLGCC for background investigation expenses. The term of a sports wagering license is five years.

SWARC must actively seek to achieve racial, ethnic, and gender diversity when awarding Class B facility and mobile licenses and encourage small, minority, and women-owned businesses to apply. SWARC may not award a license for a location within a specified radius of another facility. On award of a license by SWARC, SLGCC must issue a license to an applicant that meets the requirements for licensure.

Licensees retain 85% of sports wagering proceeds, with the remainder distributed to BMFF. Revenues accruing to BMFF are to be used to provide a world-class education for early childhood and K-12 students so that they are prepared for college and a career in the global economy.

From the application and license renewal fees collected for sports wagering, the Comptroller must pay an amount to SLGCA necessary to reimburse SLGCA for expenses related to the issuance and renewal of sports wagering licenses, 5% collected for Class A-1 and A-2 licenses to the Small, Minority-Owned, and Women-Owned Business Sports Wagering Assistance Fund, and the remainder to BMFF.

For additional information on sports wagering, see the **Appendix – Maryland Gaming**.

#### *Sports Wagering and the State's Minority Business Enterprise Program*

To the extent practicable and authorized by the U.S. Constitution, a sports wagering licensee must comply with the State's MBE program. Within six months after the issuance of a sports wagering license, the Governor's Office of Small, Minority, and Women Business Affairs, in consultation with the Office of the Attorney General and the sports wagering licensee, must establish a clear plan for setting reasonable and appropriate MBE participation goals and procedures for the procurement of goods and services related to sports wagering. To the extent practicable, these goals and procedures must be based on the MBE program. These MBE requirements as they relate to sports wagering terminate on July 1, 2024.

For an overview of the MBE program, please see the **Appendix – Minority Business Enterprise Program**.

**State Fiscal Effect:** SWARC is authorized to conduct a competitive process to award up to 60 mobile licenses and up to 30 Class B facility licenses. A 45-day application period ended on October 21, 2022, during which SWARC received 21 mobile applications (1 applicant withdrew) and 6 Class B facility applications. Though SWARC has the discretion to open another application window at any time before SWARC terminates, it currently has no plans to do so. Thus, the bill requires SWARC to reopen the application window through December 31, 2025. Accordingly, SWARC may award up to an additional 40 mobile licenses and up to 24 additional Class B licenses by January 1, 2026. However, it is unknown how many sports wagering license applicants, if any, will apply.

To the extent that any applicants apply for a Class B or mobile sports wagering license, BMFF special fund revenues increase in fiscal 2025 and 2026 by \$250,000 for each Class B-1 license applicant, \$50,000 for each Class B-2 license applicant, and \$500,000 for each mobile sports wagering license applicant, and increase further for other license fees associated with a new sports wagering license (*i.e.*, \$25,000 for an online sports wagering operator license). Additionally, SLGCA revenues increase from applicants reimbursing SLGCA for background investigations.

Once operational, any additional sports wagering licenses may increase sports wagering revenues minimally, thereby increasing BMFF revenues further, but SLGCA does not anticipate additional licenses having a material impact on overall gaming revenues.

BMFF revenues are projected to be sufficient to cover mandated annual increases in expenditures for the Blueprint for Maryland's Future through fiscal 2026. However, current projections indicate that, under current law, revenues in BMFF, including prior-year fund balances, will be less than the required increases to annual expenditures under the Blueprint for Maryland's Future beginning in fiscal 2027. Thus, beginning in fiscal 2027, general fund expenditures for education decrease to the same extent that any BMFF revenues and expenditures increase under the bill.

SLGCA advises that if fewer than three mobile license applicants and fewer than three Class B license applicants apply, SLGCA can manage the licensing and regulatory process using existing resources. However, if a higher number of applications is submitted, SLGCA general fund expenditures may increase to hire additional staff.

DLS is required to contract with an independent consultant to assist SWARC in reviewing and analyzing license applications. Thus, general fund expenditures for DLS may increase in fiscal 2025 and 2026 for consulting costs related to additional applications. The actual expense will likely depend on the number of applications, if any, SWARC receives.

**Small Business Effect:** Some small businesses, including minority and women-owned businesses, may benefit from receiving a Class B or mobile sports wagering license. However, existing small businesses with sports wagering licenses will face more competition from any increase in licenses issued.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Governor's Office of Small, Minority, and Women Business Affairs; Office of the Attorney General; Maryland Department of Transportation; Maryland State Lottery and Gaming Control Agency; Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2024  
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Analysis by: Heather N. MacDonagh

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

## Appendix – Maryland Gaming

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The State of Maryland has authorized and awarded six video lottery operation licenses in Baltimore City and Allegany, Anne Arundel, Cecil, Prince George’s, and Worcester counties with a maximum number of 16,500 video lottery terminals (VLTs) allotted in the State. The opening date and the number of VLTs and table games in operation for each facility as of December 2023 are shown in **Exhibit 1**.

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**Exhibit 1**  
**Number of VLTs and Table Games in Maryland**

<u>Casino</u>	<u>County</u>	<u>Opening Date</u>	<u>VLTs</u>	<u>Table Games</u>
Hollywood Casino	Cecil	September 2010	709	22
Ocean Downs	Worcester	January 2011	845	19
Maryland Live!	Anne Arundel	June 2012	3,849	179
Rocky Gap Casino	Allegany	May 2013	616	16
Horseshoe Casino	Baltimore City	August 2014	1,401	122
MGM National Harbor	Prince George’s	December 2016	2,266	207

VLT: video lottery terminal

Source: State Lottery and Gaming Control Agency; Department of Legislative Services

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### *Video Lottery Terminals and Table Game Revenues*

The estimated revenues from VLTs and table games in fiscal 2025 through 2029 are shown in **Exhibit 2**. A total of \$2.0 billion in gross gaming revenues is projected in fiscal 2025, including \$596.7 million to be distributed to the Education Trust Fund.

**Exhibit 2**  
**Distribution of Estimated VLT and Table Game Revenues in Maryland**  
**Current Law**  
**(\$ in Millions)**

	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
<b>VLTs Distribution</b>					
Education Trust Fund	\$500.9	\$506.7	\$514.3	\$521.0	\$533.3
Lottery Operations	13.3	13.4	13.6	13.8	13.9
Purse Dedication Account	79.6	80.6	81.5	82.6	83.7
Racetrack Renewal Account	13.3	13.4	12.0	12.1	6.9
Local Impact Grants	73.0	73.8	74.7	75.7	76.7
Business Investment	19.9	20.1	20.4	20.6	20.9
Licensees	627.2	634.5	641.9	650.4	658.9
<b>Total VLTs</b>	<b>\$1,327.2</b>	<b>\$1,342.6</b>	<b>\$1,358.3</b>	<b>\$1,376.2</b>	<b>\$1,394.3</b>
<b>Table Games Distribution</b>					
Education Trust Fund	\$95.8	\$97.0	\$98.2	\$99.5	\$100.9
Local Impact Grants	31.9	32.3	32.7	33.2	33.6
Licensees	510.8	517.2	523.7	530.8	538.0
<b>Total Table Games</b>	<b>\$638.5</b>	<b>\$646.5</b>	<b>\$654.6</b>	<b>\$663.5</b>	<b>\$672.6</b>
<b>Total VLTs and Table Games</b>	<b>\$1,965.7</b>	<b>\$1,989.1</b>	<b>\$2,012.9</b>	<b>\$2,039.7</b>	<b>\$2,066.8</b>
<b>Total Education Trust Fund</b>	<b>\$596.7</b>	<b>\$603.7</b>	<b>\$612.5</b>	<b>\$620.6</b>	<b>\$634.2</b>

VLT: video lottery terminal

Note: Numbers may not sum to total due to rounding.

Source: Board of Revenue Estimates; Department of Budget and Management; Department of Legislative Services

Chapter 492 of 2020, a constitutional amendment approved by the voters at the November 2020 general election, authorized sports and event wagering, contingent upon implementation legislation passed by the General Assembly. Chapter 356 of 2021 implemented sports wagering in the State and provides for regulation of sports wagering and fantasy gaming competitions. Licensees receive 85% of proceeds from sports wagering and fantasy gaming and the State receives 15%, as well as license fee revenues. State revenues from sports wagering and fantasy gaming and their distributions are shown in **Exhibit 3**.

**Exhibit 3**  
**Distribution of Estimated State Sports Wagering and**  
**Fantasy Competition Revenues**  
**Current Law**  
**(\$ in Millions)**

	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
<b>State Revenues</b>					
Sports Wagering – Retail	\$2.1	\$2.1	\$2.1	\$2.2	\$2.2
Sports Wagering – Mobile	47.2	47.9	48.6	49.4	50.1
Sports Wagering License Fees	0.0	0.0	0.0	0.1	1.8
Fantasy Competition	1.0	1.0	1.0	1.1	1.1
<b>Total</b>	<b>\$50.3</b>	<b>\$51.0</b>	<b>\$51.8</b>	<b>\$52.7</b>	<b>\$55.2</b>
<b>Distribution</b>					
Blueprint for Maryland’s Future Fund <sup>1</sup>	\$50.3	\$51.0	\$51.8	\$52.8	\$55.2
SMWOBSWA Fund <sup>2</sup>	0.0	0.0	0.0	0.0	0.0
Problem Gambling Fund <sup>3</sup>	1.3	1.3	1.3	1.4	1.4

SMWOBSWA: Small, Minority-Owned, and Women-Owned Business Sports Wagering Assistance

<sup>1</sup> The Blueprint for Maryland’s Future Fund is intended to assist in providing adequate funding for early childhood education and primary and secondary education to provide a world-class education to students in Maryland.

<sup>2</sup> Five percent of the class A-1 license fees (\$2.0 million each) and of the class A-2 license fees (\$1.0 million each) are paid into the SMWOBSWA Fund. Five percent of renewal fees are transferred to the SMWOBSWA Fund.

<sup>3</sup> Player winnings not claimed within 182 days are distributed to the Problem Gambling Fund.

Note: Numbers may not sum to total due to rounding.

Source: Board of Revenue Estimates; Department of Legislative Services

## Appendix – Minority Business Enterprise Program

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The State’s Minority Business Enterprise (MBE) program requires that a statewide goal for MBE contract participation be established biennially through the regulatory process under the Administrative Procedure Act. The biennial statewide MBE goal is established by the Special Secretary for the Governor’s Office of Small, Minority, and Women Business Affairs (GOSBA), in consultation with the Secretary of Transportation and the Office of the Attorney General (OAG). In a year in which there is a delay in establishing the overall goal, the previous year’s goal applies. The Special Secretary is also required to establish biennial guidelines for State procurement units to consider in deciding whether to establish subgoals for different minority groups recognized in statute. In a year in which there is a delay in issuing the guidelines, the previous year’s guidelines apply. The Maryland Department of Transportation is the State’s MBE certification agency.

In August 2013, GOSBA announced a new statewide goal of 29% MBE participation that applied to fiscal 2014 and 2015; as no new goal has been established, the 29% goal remains in effect for fiscal 2024. GOSBA issued subgoal guidelines in July 2011 and then updated them effective August 2020, as summarized in **Exhibit 1**. The guidelines state that subgoals may be used only when the overall MBE goal for a contract is greater than or equal to the sum of all recommended subgoals for the appropriate industry, plus two. MBE prime contractors may count their own work for up to 50% of a contract’s MBE goal and up to 100% of any contract subgoal. Their full participation counts toward the State’s 29% goal.

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### Exhibit 1 Subgoal Guidelines for Minority Business Enterprise Participation

	<u>Construction</u>	<u>Architectural/ Engineering</u>	<u>Maintenance</u>	<u>Information Technology</u>	<u>Services</u>	<u>Supplies/ Equipment</u>
African American	8%	7%	9%	10%	-	6%
Hispanic	-	-	3%	-	2%	2%
Asian	-	-	2%	-	3%	-
Women	11%	10%	-	10%	10%	8%
<b>Total</b>	<b>19%</b>	<b>17%</b>	<b>14%</b>	<b>20%</b>	<b>15%</b>	<b>16%</b>
<b>Total +2</b>	<b>21%</b>	<b>19%</b>	<b>16%</b>	<b>22%</b>	<b>17%</b>	<b>18%</b>

Source: Governor’s Office of Small, Minority, and Women Business Affairs

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There are no penalties for agencies that fail to reach the statewide target. However, Chapters 155 and 156 of 2022 require GOSBA to refer prime contractors that persistently fail to meet MBE participation goals on their contracts to OAG for debarment for up to three years.

### *History and Rationale of the Minority Business Enterprise Program*

In 1989, the U.S. Supreme Court held in the *City of Richmond v. J.A. Croson Co.* that state or local MBE programs using race-based classifications are subject to strict scrutiny under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. In addition, the ruling held that an MBE program must demonstrate clear evidence that the program is narrowly tailored to address actual disparities in the marketplace for the jurisdiction that operates the program. As a result, prior to each reauthorization of the State's MBE program, the State conducts a disparity study to determine whether there is continued evidence that MBEs are underutilized in State contracting.

The disparity study completed in 2017 serves as the basis for the most recent reauthorization of the MBE program. It found continued and ongoing disparities in the overall annual wages, business earnings, and rates of business formation between nonminority males and minorities and women in Maryland. For instance, average annual wages for African Americans (both men and women) were 37% lower than for comparable nonminority males; average annual wages for nonminority women were 33% lower than for comparable nonminority males. It also found continued disparities in the use of MBEs by the State compared to their availability in the marketplace to perform work in designated categories of work. For instance, African American-owned construction businesses were paid 5.1% of State construction contract dollars, but they made up 10.3% of the construction sector in the relevant State marketplace. Nonminority women-owned construction businesses were paid 7.5% of State construction contract dollars but made up 13.7% of the construction sector. According to the analysis, these differences were large and statistically significant.

The MBE program is scheduled to terminate July 1, 2025; Chapters 137 and 138 of 2023, which reauthorized the program for the tenth time since its inception, also extended the due date for the new disparity study to September 2024 to inform the subsequent reauthorization process. **Exhibit 2** provides MBE participation rates for major Executive Branch agencies based on contract awards made during fiscal 2022 and 2023.

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**Exhibit 2**  
**Minority Business Enterprise Participation Rates, by Agency**  
**Fiscal 2022 and 2023**

<u>Cabinet Agency</u>	<u>% MBE Participation</u>	
	<u>FY 2022</u>	<u>FY 2023</u>
Aging	4.2%	1.2%
Agriculture	4.4%	3.2%
Budget and Management	7.4%	32.9%
Commerce	1.8%	53.8%
Education	23.0%	11.5%
Environment	18.9%	37.9%
Executive Department	6.6%	4.6%
General Services	20.1%	19.5%
Health	5.5%	8.4%
Higher Education Commission	2.1%	3.0%
Housing and Community Development	36.7%	48.5%
Human Services	15.0%	10.5%
Information Technology	1.6%	14.4%
Juvenile Services	6.0%	6.5%
Labor	1.4%	18.6%
Military	0.7%	22.3%
Natural Resources	0.6%	10.2%
Planning	0.3%	0.0%
State Police	13.3%	20.9%
Public Safety and Correctional Services	41.0%	6.2%
Transportation – Aviation Administration	22.6%	22.1%
Transportation – Motor Vehicle Administration	61.8%	20.2%
Transportation – Office of the Secretary	26.9%	48.5%
Transportation – Port Administration	9.7%	13.1%
Transportation – State Highway Administration	20.9%	21.7%
Transportation – Transit Administration	24.8%	12.0%
Transportation – Transportation Authority	18.8%	19.4%
<b>Statewide Total<sup>1</sup></b>	<b>17.3%</b>	<b>17.9%</b>

<sup>1</sup> Includes the University System of Maryland, Morgan State University, St. Mary’s College of Maryland, and non-Cabinet agencies.

Source: Governor’s Office of Small, Minority, and Women Business Affairs

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## *Requirements for Minority Business Enterprise Certification*

An MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and
- managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

A socially and economically disadvantaged individual is defined as a citizen or legal U.S. resident who is African American, Native American, Asian, Hispanic, physically or mentally disabled, a woman, or otherwise found by the State's MBE certification agency to be socially and economically disadvantaged. An MBE owned by a woman who is also a member of an ethnic or racial minority group may be certified as being owned by both a woman and by a member of a racial or ethnic minority, but for the purpose of participating on a contract as an MBE, it can only be counted as one or the other.

A socially disadvantaged individual is someone who has been subject to racial or ethnic prejudice or cultural bias within American society because of his or her membership in a group and without regard to individual qualities. An economically disadvantaged individual is someone who is socially disadvantaged whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities compared with those who are not socially disadvantaged. An individual with a personal net worth in excess of \$1.5 million, adjusted annually for inflation, is not considered economically disadvantaged. The inflation-adjusted limit for calendar 2024 is \$2,073,412.