

Department of Legislative Services  
2010 Session

FISCAL AND POLICY NOTE

House Bill 380 (Delegate Simmons)  
Ways and Means

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**Election Law - Campaign Contributions by Persons Engaged in Gaming Activity  
in the State**

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This bill prohibits the State from issuing a license or other permit to conduct specified gaming activity in the State to a person who directly or indirectly makes a contribution to the campaign finance entity of a candidate for public office in the State or a political party, or to any other campaign finance entity organized in support of a candidate or political party, for a period of three years from the date the contribution was made. If a person that holds a license or other permit to conduct gaming activity in the State makes such a contribution, the person's license or other permit is suspended for three years from the date of the contribution.

The bill takes effect July 1, 2010.

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**Fiscal Summary**

**State Effect:** To the extent the bill limits the number of video lottery operation licenses issued by the State or results in the suspension of an issued license, State special fund revenues may decrease significantly in FY 2011 and future years. Other State revenue and expenditure impacts associated with video lottery terminal (VLT) operations may also be affected. Implementation of the bill is expected to be handled with existing resources assuming the bill's prohibition will only generally apply to video lottery operators and related key employees and companies.

**Local Effect:** Local government revenues from impact grants similarly may decrease significantly in FY 2011 and future years. Other local government revenue and expenditure impacts associated with VLT operations may also be affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** The bill applies to the following individuals and entities:

- an applicant for a license to engage in gaming activity in the State;
- a licensee or other person authorized to engage in gaming activity in the State;
- a key employee; a holding company, intermediary company, or a subsidiary company; or a person or agent acting on behalf of an applicant for a license to engage in gaming activity or a licensee or other person authorized to engage in gaming activity in the State; and
- a person who owns an interest in the operation of video lottery or in other gaming activity.

“Gaming activity” is defined as a VLT or a casino authorized by the State. “Key employee” is defined as an individual who, acting as an agent or video lottery employee of a person or licensee, supervises more than two agents or employees of the person or licensee authorized to engage in gaming activity in the State.

“Licensee,” “own,” “video lottery,” and “video lottery terminal” have the meanings stated under State law provisions enacted by Chapter 4 of the 2007 special session, which establishes the operational and regulatory framework for the VLT program authorized under the constitutional amendment proposed by Chapter 5 of the 2007 special session and approved by Maryland voters at the November 2008 election.

The bill exempts gaming activity that an eligible organization is authorized to conduct under the Criminal Law Article.

**Current Law:** State law prohibits anonymous campaign contributions; pass-through contributions (made in a name other than the contributor’s name); contributions by State-funded entities; and the receipt of contributions by the Governor, Lieutenant Governor, Attorney General, Comptroller, or General Assembly members during a regular session of the General Assembly, unless solely in relation to the official’s candidacy for an elective federal or local office or public campaign financing of a gubernatorial ticket.

As mentioned above, Chapter 5 of the 2007 special session, a constitutional amendment authorizing 15,000 VLTs at five locations in the State was approved by Maryland voters at the November 2008 general election. The amendment also specifies that the General Assembly may only authorize expanded forms of gambling subject to certain restrictions. Chapter 4 of the 2007 special session establishes the operational and regulatory framework for the authorized VLT program. The initial term of a video lottery operation

license (of which up to five may be awarded through a competitive bidding process) is 15 years. A licensee may subsequently reapply for an additional 10-year term. A Video Lottery Facility Location Commission established under Chapter 4 awards the video lottery operation licenses.

Chapter 4 of the 2007 special session, as amended by Chapter 620 of 2008, also established specified campaign finance reporting requirements for ballot issue committees formed to promote the success or defeat of the constitutional amendment proposed by Chapter 5 of the 2007 special session and persons making cumulative expenditures totaling more than \$10,000 to promote the success or defeat of the amendment.

## **Background:**

### *VLT Program Implementation*

The Video Lottery Facility Location Commission has awarded three video lottery operation licenses to date. PPE Casino Resorts Maryland, LLC (PPE Casino Resorts) was awarded a license to operate a 4,750 VLT facility in Hanover in Anne Arundel County, contingent upon local zoning approval (Anne Arundel County Council approved favorable zoning legislation on December 21, 2009, which the county executive signed into law on December 22, 2009). PPE Casino Resorts expects to open a permanent facility adjacent to Arundel Mills Mall with 4,750 VLTs in December 2011.

Penn Cecil Maryland, Inc. (Penn Cecil) was awarded a license to operate a facility with 1,500 VLTs in Perryville in Cecil County. Penn Cecil is currently on schedule to open a permanent facility with 1,500 VLTs in October 2010.

Ocean Enterprise 589 LLC (OE 589) was awarded a license to operate a facility with 800 VLTs at Ocean Downs Racetrack in Worcester County. The facility is scheduled to open in fall 2010 with 600 VLTs, with the full complement of 800 VLTs in place by April 2011.

### *Laws in Other States*

A small number of states have state law provisions prohibiting political contributions by gaming-related persons. The New Jersey Casino Control Act, for example, prohibits political contributions, made directly or indirectly, by an applicant for or holder of a casino license, or any holding, intermediary, or subsidiary company. The prohibition extends to any officer, director, or casino key employee or principal employee of those individuals or entities, and any person or agent acting on behalf of any such applicant,

holder, company, or person. The Michigan Gaming Control and Revenue Act also prohibits political contributions by specified persons involved in gaming activity.

A law in Pennsylvania that prohibits political contributions by specified persons or entities involved in gaming was held to be in violation of the Pennsylvania Constitution by the Supreme Court of Pennsylvania in April 2009 and enjoined from enforcement. (See *Depaul v. Commonwealth*, 600 Pa. 573, 969 A.2d 536 (2009).)

### **State and Local Fiscal Effect:**

#### *VLT Revenue/Expenditure Impacts*

To the extent the bill may preclude the State from awarding or issuing video lottery operation licenses to bidders for the licenses and, as a result, limit the number of licenses awarded and issued by the State, State special fund revenues from VLT proceeds may decrease significantly in fiscal 2011 and future years. Local revenues from impact grants may also decrease significantly beginning in fiscal 2011. State and local revenues also may significantly decrease to the extent an awarded or issued license is suspended because a licensee makes a contribution to a campaign finance entity. Projected revenues from the VLT operations are shown in **Exhibit 1**. Gross VLT revenue is distributed as follows, pursuant to Chapter 4 of the 2007 special session:

- Business Investment – 1.5% to a small, minority, and woman-owned business investment account;
- Lottery (Administration) – 2% to the State lottery for administrative costs, with other costs provided for in the State budget;
- Local Government 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 to Prince George’s County for the community surrounding Rosecroft (\$1 million annually);
- Horse Racing Industry – 7% to a purse dedication account to enhance horse racing purses and funds for the horse breeding industry, not to exceed \$100 million annually; 2.5% for an eight-year period to a Racetrack Renewal Fund, not to exceed \$40 million annually;
- Licensee (Operator) – no more than 33% to video lottery operation licensees; and
- Education Trust Fund – remainder to Education Trust Fund (48.5% -51.0%).

Other State and local revenue and expenditure impacts associated with VLT operations presumably may also be affected by the bill, to the extent it limits the number of licenses issued or results in the suspension of an issued license.

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**Exhibit 1**  
**Gross VLT Revenue Projections**  
**(\$ in Millions)**

	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Education Trust Fund	\$60.0	\$144.9	\$372.4	\$479.1	\$523.2
Licensees	40.8	98.6	253.4	326.0	356.0
Local Government	6.8	16.4	42.2	54.3	59.3
Small, Minority, Woman-owned Businesses	1.9	4.5	11.5	14.8	16.2
Purse Dedication Account	8.7	20.9	53.7	69.1	75.5
Racetrack Renewal Account	3.1	7.5	19.2	24.7	27.0
Lottery Operations	<u>2.5</u>	<u>6.0</u>	<u>15.4</u>	<u>19.8</u>	<u>21.6</u>
<b>Total Annual Gross</b>	<b>\$123.8</b>	<b>\$298.8</b>	<b>\$767.8</b>	<b>\$987.8</b>	<b>\$1,078.8</b>

Source: Department of Legislative Services

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*State Lottery Agency Implementation Costs*

Implementation of the bill is expected to be handled within existing resources of the State Lottery Agency (SLA), assuming the bill's prohibition will generally apply only to video lottery operators and related key employees and companies, and not all persons or entities required to be licensed under the State video lottery terminal law (enacted under Chapter 4 of the 2007 special session), which would include video lottery employees. To the extent the bill will apply more broadly to all persons or entities licensed under the State video lottery terminal law, general fund expenditures are expected to increase by a minimum of approximately \$45,000 in fiscal 2011. This estimate accounts for the cost of an additional full-time SLA employee to cross-reference campaign contribution information with gaming licensee information, and further investigate potential campaign contributions warranting the denial or suspension of a license, in order to enforce the bill's provisions. Ongoing costs would be incurred in future years.

SLA also advises that there may be some programming costs to be able to perform initial cross-references of SLA licensee information and State Board of Elections campaign contributor information after campaign finance reporting deadlines, the results of which would then need to be further investigated. The extent of any programming needed, and any associated increased costs, is uncertain. It is assumed any programming costs under the scenario described above with limited application of the bill's prohibition would be minimal and absorbable within existing resources.

**Small Business Effect:** To the extent the bill limits the number of licenses issued or results in the suspension of an issued license, small businesses may be indirectly affected. Small businesses are expected to benefit from the establishment of VLT operations (such as those from which VLT facilities may purchase goods, horse industry breeders and owners, those that would benefit from additional tourists, and those that would benefit from funding from the Small, Minority, and Women-Owned Business Account) and also potentially harmed (in the event consumer spending is substituted away from other consumption to gambling). To the extent the bill will limit the number of VLT facilities in operation, these effects presumably will be lessened.

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### **Additional Information**

**Prior Introductions:** HB 1170 of 2009 and HB 576 of 2006 both received a hearing in the House Ways and Means Committee, but no further action was taken on either bill. In addition, similar bills were introduced in the 2003 through 2005 sessions.

**Cross File:** None.

**Information Source(s):** State Board of Elections; State Ethics Commission; Comptroller's Office; Maryland State Lottery Agency; *DePaul v. Commonwealth*, 600 Pa. 573, 969 A.2d 536 (2009); Department of Legislative Services

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