

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 330
Ways and Means

(Delegate Proctor, *et al.*)

State Lottery - Licenses - Veterans' Organizations

This bill authorizes the Maryland State Lottery Agency to issue a license for up to five instant ticket lottery machines to an eligible veterans' organization, excluding Eastern Shore counties. A licensed veterans' organization must locate and operate its instant ticket lottery machines at its principal meeting hall in the county.

After deduction of any commission and validation prize payout, the licensed veterans' organization must credit remaining receipts to the State Lottery Fund. After June 30, 2013, 10% of remaining money in the State Lottery Fund from proceeds of ticket sales by licensed veterans' organizations is paid monthly by the Comptroller into the Maryland Veterans Trust Fund (MVTF). A licensed veterans' organization must purchase or lease the instant lottery ticket terminals from the State Lottery Agency, but may not use receipts from the sale of lottery tickets that would otherwise be credited to the State Lottery Fund to purchase or lease the terminals.

The bill also requires the State Lottery Agency to ensure that the conduct of gaming and the operation of the instant lottery ticket terminals authorized by the bill are consistent with the holding in the case of *Chesapeake Amusements Inc. v. Riddle*, 363 Md. 16 (2001).

Fiscal Summary

State Effect: General fund revenues decrease to the extent lottery ticket sales at veterans' organizations displace sales made by licensed lottery agents. MVTF and State Lottery Fund special fund revenues increase to the extent lottery ticket sales are increased under the bill. Special fund expenditures increase to cover State Lottery Agency costs associated with monitoring the operation of lottery ticket terminals at licensed veterans' organizations.

Local Effect: None.

Small Business Effect: Potential meaningful. Licensed State lottery agents in the vicinity of a veterans' organization licensed for lottery ticket terminals may be adversely affected by decreased sales and commissions.

Analysis

Current Law/Background:

Lottery Ticket Sales and the State Lottery Fund

State criminal law prohibits all lotteries except the State lottery or multijurisdictional lotteries authorized under the State Government Article. The State Lottery Agency must issue licenses to persons and governmental units that will best serve the public convenience and promote the sale of State lottery tickets or shares.

An agent licensed by the State Lottery Agency receives a commission of 5% of gross receipts from the agent's lottery ticket sales; the commission increases to 5.5% beginning in fiscal 2013. (A provision of Senate Bill 152/HB 87 – the Budget Reconciliation and Financing Act of 2012 – maintains the commission rate at 5% for fiscal 2013 and subsequent years.) A licensed agent may also receive a cashing fee not to exceed 3% of valid prizes paid for services rendered in cashing winning tickets.

Each month, after payments to lottery winners and to the State Lottery for operating expenses, the Comptroller must make payments from the State Lottery Fund to:

- the Maryland Stadium Facilities Fund, from revenues generated by sports lotteries conducted on behalf of the Maryland Stadium Authority; and
- the State's general fund.

In general, two types of games are offered by the Maryland State Lottery Agency: instant games and online games. Instant games are played by scratching a latex covering off a play area to reveal preprinted combinations. If a winning combination is revealed, the customer is an instant winner. Instant games generally have price points between \$1 and \$20. Online games allow players to pick their numbers or use automatic computer-generated plays. Customers receive a ticket and then wait for the drawing to determine if they have won. Online games include monitor games (*e.g.*, Keno), numbers games (*e.g.*, Pick 4), matrix games (*e.g.*, Mega Millions), and occasionally raffles (*e.g.*, Countdown to Millions).

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 1** shows lottery sales by jurisdiction in fiscal 2011.

Maryland Veterans Trust Fund

Chapter 742 of 2009 established MVTF, which consists of gifts and grants received by the Maryland Department of Veterans Affairs (MDVA) and is administered by the Secretary of Veterans Affairs. Money in the fund may be used to make grants and loans to veterans and their families, support public and private programs that serve veterans in the State, or support the Charlotte Hall Veterans Home. Money in the fund may also be used to invest in general obligations of the State or other securities, pay for the cost of administering the fund, or support any other programs that the Secretary considers appropriate. Money expended from the fund is supplemental to and is not intended to take the place of funding otherwise appropriated to MDVA. The proposed fiscal 2013 State budget for MDVA includes \$100,000 for MVTF.

Video Lottery Terminal (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.

Exhibit 1
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

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. 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 number of VLTs that may be awarded to Allegany County to 1,000 while changing other provisions of the law regarding a VLT site in Allegany County.

The Video Lottery Facility Location Commission has awarded video lottery operation licenses for VLT facility locations in Anne Arundel, Cecil, and Worcester counties. The Cecil County VLT facility opened on September 27, 2010, with 1,500 VLTs and the Worcester County VLT facility opened on January 4, 2011, with 750 VLTs, and has since expanded to 800 VLTs. Power Plant Entertainment Casino Resorts, LLC plans to open a VLT facility adjacent to Arundel Mills Mall in Anne Arundel County in June 2012. The licenses for Baltimore City and Allegany County have yet to be awarded.

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, legislation was enacted in 1987 and 2007 authorizing certain nonprofit organizations to operate slot machines in the following eight Eastern Shore counties: Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, and Wicomico. The 1987 legislation required a nonprofit organization to be located in the county for at least five years prior to the application for a license and to be a fraternal, religious, or war veterans' organization. Chapter 645 of 2007 expanded the list of eligible organizations that may be licensed to operate slot machines to include those that have been 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.

Chapter 315 of 2011 added Worcester County (except a specified area within Ocean City) to the list of counties in which eligible nonprofit fraternal, religious, and war veterans' organizations may own and operate up to five slot machines at its principal meeting hall. Pursuant to Chapter 315, the Comptroller's Office must regulate the specified slot machines and charge a license fee to cover the costs of regulating the machines.

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 of 2008 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 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. 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 requires, for fiscal 2012 only, that \$500,000 derived from the admissions and amusement 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 prescribes, 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.

The State Lottery Agency advises that it deploys instant ticket vending machines (ITVM) that dispense instant games and player activated terminals (PAT) that in addition to dispensing instant games allow online game play. Currently the Lottery has 31 online terminals (*e.g.*, Keno) at American Legion and Veterans of Foreign Wars posts in 10 local jurisdictions, but these are not ITVMs or PATs. The Lottery removed ITVMs from these veterans' organizations several years ago due to low sales.

State Fiscal Effect: State Lottery Fund and MVTF revenues increase to the extent that lottery tickets are sold by veterans' organizations. The amount of the increase will depend upon the number of licenses awarded, the number of terminals authorized under each license, and the strength of sales of lottery tickets by each licensed veterans' organization. State Lottery Agency revenues increase to the extent that license fees are assessed to, and lottery ticket terminals are purchased or leased by, veterans' organizations from the State Lottery Agency. However, this special fund revenue increase may be more than offset by State Lottery Agency expenditures associated with the cost of acquiring machines to be leased or sold to veterans' organizations and increased administrative and monitoring responsibilities under the bill.

Any sale of lottery tickets from lottery ticket terminals located at licensed veterans' organizations may also reduce State lottery ticket sales elsewhere. The impact of these lottery ticket terminals on VLT revenues and existing lottery sales and revenue is difficult to quantify. The magnitude of the impact will depend on the number of lottery ticket terminals sold or leased to eligible veterans' organizations and the amount of sales made by these organizations. *For illustrative purposes only*, the Department of Legislative Services (DLS) assumes a 10% permanent reduction in lottery revenues due to the VLT program.

DLS advises that the bill does not define "instant ticket lottery machines." This estimate assumes they are ITVMs. However, the State Lottery Agency interprets the bill to allow

either slot machines or pull tab machines that mimic slot machines. If the bill authorizes additional slot machines instead of ITVMs, State special fund revenues and expenditures may be reduced, depending on the degree to which eligible veterans' organizations are licensed to operate lottery ticket terminals. These machines may serve as a substitute for gambling at VLT facilities in the State, particularly in counties where VLT facilities are located.

Additional Information

Prior Introductions: SB 423 of 2011 passed with amendment in the Senate but no action was taken on the bill by the House. Its cross file, HB 952, received a hearing in the House Ways and Means Committee, but no further action was taken.

Cross File: SB 11 (Senator Peters, *et al.*) - Budget and Taxation.

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

Fiscal Note History: First Reader - February 7, 2012
ncs/rhh

Analysis by: Scott P. Gates

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