

**OFFICE OF POLICY AND LEGAL ANALYSIS**

**Date:** April 16, 2021

**To:** Veterans and Legal Affairs Committee

**From:** Janet Stocco, Legislative Analyst

**LD 948** **An Act To Support Boys and Girls Clubs through Lottery Revenue** (*Rep. Collings*)

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**SUMMARY**

This bill requires the State Liquor and Lottery Commission to create a new “Boys and Girls Clubs lottery game,” the net proceeds of which must be deposited by the State Liquor and Lottery Commission in a separate account and distributed to Boys and Girls clubs across the State. The lottery ticket design must be changed periodically throughout the year.

**ISSUES RAISED AT PUBLIC HEARING**

**BABLO Concerns.** The Bureau of Alcoholic Beverages and Lottery Operations testified that, in its experience, “developing a new themed game would not generate significant new lottery participation and, in turn, new revenue for the dedicated cause.” At the current time, there is only one special lottery game, which benefits the Maine Outdoor Heritage Fund.

**ADDITIONAL INFORMATION**

**Lottery revenue under current law.** Pursuant to 8 M.R.S. § 386 & § 387, lottery agent license fees and proceeds from the sale of lottery tickets must be deposited in the State Lottery Fund and may only be used for the following purposes:

- For payment of prizes to holders of winning tickets (must be  $\geq$  45% of the total ticket sales);
- For lottery-operations expenses of the Bureau of Alcoholic Beverages and Lottery Operations;
- For payment to the General Fund; and
- For payment to the Maine Outdoor Heritage Fund. Pursuant to § 374(5) (*attached*), the net proceeds from the wildlife lottery game of the Maine State Lottery are paid to this fund.

According to the *State of Maine: Compendium of State Fiscal Information Through Fiscal Year Ending June 30, 2020*,<sup>1</sup> prepared by the Legislature’s Office of Fiscal and Program Review:

- Between 2011 and 2020, the lottery revenue deposited in the General Fund has ranged from a low of \$49.5 million in 2011 to a high of \$64.6 million in 2020. *See* Compendium pp. 64, 88.
- Between 2011 and 2020, the lottery revenue deposited in the Maine Outdoor Heritage Fund has ranged from a low of \$441K in 2017 to a high of \$722K in 2020. *See* Compendium p. 64.

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<sup>1</sup> See scanned excerpts are available on the VLA Committee page for LD 407: <http://legislature.maine.gov/vla-ld-407>.

## TECHNICAL AND DRAFTING ISSUES

1. **“Net Proceeds” and “Separate account.”** Line 7 of the bill requires that the “net proceeds of the game”—which is undefined—be provided “to the Treasurer of the State for deposit in a separate account”—presumably an account other than the State Lottery Fund established in [8 M.R.S. §386](#) (*attached*). The bill thus appears to conflict with [§386](#), which requires that “all revenue received from the sale of lottery tickets” be deposited in the State Lottery Fund. In addition, because the bill appears to contemplate that the Boys and Girls Club lottery game proceeds will not be deposited in the State Lottery Fund, the provision of [§387\(2\)](#), which requires that 45% of total ticket sales be disbursed as prizes to holders of winning tickets, likely would not apply to this special lottery game.

The Committee may wish to consider amending the bill to track more closely the language of the Wildlife Lottery Game in [§374\(5\)](#) & [§387\(1\)\(D\)](#) (*attached*)—through which the proceeds of the game are deposited in the State Lottery Fund but then transferred to a dedicated account after the payment of prizes to winning ticket holders (which must be  $\geq 45\%$  of the revenue) and the payment of BABLO’s administrative expenses in operating the lottery.

2. **Use of proceeds for Boys and Girls Clubs.** The bill does not specify how the Treasurer of State must distribute the money to various Boys and Girls Clubs across the State. Must equal payments be made to each Boys and Girls Club? Must per capita payments be made based on youth membership, population of the catchment area for each club, or other factors? Should a board be established, similar to the Maine Outdoor Heritage Fund Board, which will accept applications from Boys and Girls Clubs across the State for grants from the fund? What guidelines should be used to award grants? (*See attached statutes governing the Maine Outdoor Heritage Fund Board.*)
3. **Sales commission - comparison to Wildlife Lottery Game.** The statute establishing the Wildlife Lottery Game directs: “The sales commission paid to agents for the sale of wildlife lottery game tickets must be one percentage point higher than the sales commission paid to agents for the sale of other instant lottery game tickets.” [8 M.R.S. §374\(5\)](#) (*attached*). The committee may wish to consider whether a similar provision should be included in LD 948.

## FISCAL IMPACT

Not yet determined.

**TITLE 8 : AMUSEMENTS AND SPORTS****CHAPTER 14-A : LOTTERY****§374. Commission; powers and duties**

The commission shall meet with the director, not less than once each month, to adopt and amend rules, subject to the approval of the commissioner, relating to the lotteries; to make recommendations and set policy for state lotteries and to transact other business that may be properly brought before the commission. A lottery under this section may include, but is not limited to, a draw game in which the prize paid to a winning player is calculated as a share of the prize pool. A lottery may not include a draw game that has more than 5 daily drawings and that pays a player a set prize amount based on the wager made by the player and in which the operator keeps all losing wagers, as with the draw game commonly known as keno. Rules adopted by the commission must be adopted in a manner consistent with Title 5, chapter 375.

**1. Rules.** The rules promulgated by the commission shall include, but not be limited to:

- A. The types of lotteries to be conducted and which, if any, will be sold as part of the Tri-state Lotto Compact under chapter 16;
- B. The price of tickets or shares in the lotteries;
- C. The number and size of the prizes on the winning tickets or shares;
- D. The manner of selecting the winning tickets or shares;
- E. The manner of payment of prizes to the holders of winning tickets or shares;
- F. The frequency of the drawings or selections of winning tickets or shares;
- G. The number or types of locations at which tickets or shares may be sold;
- H. The method to be used in selling tickets or shares and the types of sales promotions that may be conducted utilizing tickets or shares as approved in advance by the commission or the director or the director's designee;
- I. The issuing of licenses to sell tickets or shares to qualified persons who are at least 18 years of age and the denial, suspension and revocation of those licenses;
- J. The license fee to be charged to persons applying for a license;
- K. The manner and amount of compensation to be paid to persons licensed to sell lottery tickets or shares necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the general public;
- L. The apportionment of the total annual revenue accruing from the sale of lottery tickets or shares and from all other sources for the payment of prizes to the holders of winning tickets or shares; for the payment of costs incurred in the operation and administration of the lotteries, including the expenses of the commission and the costs resulting from any contract or contracts entered into for promotional, advertising, consulting or operational services or for the purchase or lease of lottery equipment and materials; for the repayment of the money appropriated to the State Lottery Fund; and for transfer to the General Fund for distribution pursuant to section 387; and
- M. The imprinting on all lottery tickets sold in the State of the overall odds of winning a prize for each game.

**2. Meeting requirements.** No action of the commission is binding unless taken at a meeting at which at least 3 of the 5 members are present and vote in favor of the action. The minutes of every meeting of the commission, including any rules promulgated by the commission or any amendments, revisions, supplements or repeals, shall be immediately transmitted, by and under the certification of the secretary, to the commissioner and to the Governor.

**3. Limitation of authority.** The commission and the bureau shall have no authority to regulate, control or otherwise supervise the operation or conduct of the amusement commonly known as "beano" or "bingo," as defined in Title 17, section 311.

**5. Wildlife lottery game.** No later than January 30, 1996, the commission, in consultation with the Maine Outdoor Heritage Fund Board, shall develop and initiate a wildlife lottery game designed to raise funds for the Maine Outdoor Heritage Fund established pursuant to Title 12, chapter 903, subchapter 6. The sales commission paid to agents for the sale of wildlife lottery game tickets must be one percentage point higher than the sales commission paid to agents for the sale of other instant lottery game tickets. The commission shall provide the net proceeds of this wildlife lottery game to the Maine Outdoor Heritage Fund annually. The commission shall change the wildlife game ticket periodically throughout the year.

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**§386. State Lottery Fund; creation**

There is created and established a separate fund to be known as the "State Lottery Fund," to be deposited in such depositories as the Treasurer of State may select. These funds shall consist of all revenue received from the sale of lottery tickets or shares, agents' license fees and all other money credited or transferred to that fund from any other fund or source pursuant to law.

**§387. State Lottery Fund; appropriation of money**

**1. Appropriation.** The money in the State Lottery Fund may be appropriated only:

- A. For the payment of prizes to the holders of winning lottery tickets or shares;
- B. For the expense of the division in its operation of the lottery;
- C. For payment to the General Fund; and
- D. For payment to the Maine Outdoor Heritage Fund pursuant to Title 12, section 10302.

**2. Apportionment.** The money in the State Lottery Fund shall be apportioned so that not less than 45% of the total ticket sales received in the lottery will be disbursed as prizes to holders of winning tickets. All other money, less reasonable costs for the proper administration of the State Lottery, shall be the State's share.

**TITLE 12 : AMUSEMENTS AND SPORTS**

**CHAPTER 903: DEPARTMENT OF INLAND FISHERIES AND WILDLIFE**

**SUBCHAPTER 6: MAINE OUTDOOR HERITAGE FUND**

**§10302. Fund established**

There is established the Maine Outdoor Heritage Fund. The fund consists of revenues received pursuant to Title 8, section 387 and any funds received as contributions from private and public sources. The fund, to be accounted within the department, must be held separate and apart from all other money, funds and accounts. Eligible investment earnings credited to the assets of the fund become part of the

assets of the fund. Any balance remaining in the fund at the end of any fiscal year must be carried forward to the next fiscal year.

### §10303. Purpose of fund

The fund is for the sole purpose of maintaining, improving and expanding state and local natural resource conservation programs and associated compatible public uses in accordance with the strategic plan provided for by section 10308, subsection 5, paragraph A.

### §10304. Relation to other funding

The fund supplements sources and levels of funding appropriated and allocated by the Legislature to natural resources agencies. It is the intent of the Legislature that a grant received from the fund not be considered a substitute for funds previously appropriated or allocated to a natural resources agency.

### §10305. Fund availability

The fund must be available to natural resources agencies in accordance with section 10307. Natural resources agencies may contract with nongovernmental organizations and individuals for the purpose of carrying out projects funded by the fund.

### §10306. Fund administration

The Maine Outdoor Heritage Fund Board shall administer the fund.

### §10307. Expenditures from fund; distribution

The board shall make grants, applications for which must be reviewed in accordance with section 10309, to natural resources agencies for projects found consistent with the criteria and the strategic plan adopted by the board pursuant to section 10308, subsection 5, paragraph A. Except as otherwise provided in this subchapter, the board shall distribute annually available grant money as follows:

**1. Fisheries and wildlife; habitat conservation.** Thirty-five percent of the money in the fund for fisheries and wildlife and habitat conservation projects;

**2. Public lands and access; outdoor recreation sites and facilities.** Thirty-five percent of the money in the fund for acquisition and management of public lands, parks, wildlife conservation areas and public access and outdoor recreation sites and facilities;

**3. Endangered and threatened species.** Fifteen percent of the money in the fund for endangered and threatened species conservation projects; and

**4. Natural resources law enforcement.** Fifteen percent of the money in the fund for natural resources law enforcement.

The board is authorized to carry forward money in any of the percentage categories of this section into a successive year in the same category in the event that this carry-over better serves the strategic plan or that no grant applications in a particular year adhere to the strategic plan for a particular percentage category.

### §10308. Maine Outdoor Heritage Fund Board

The Maine Outdoor Heritage Fund Board is established within the department and shall carry out its duties in accordance with this section.

**1. Members.** The board consists of 7 members. The commissioner, the Commissioner of Agriculture, Conservation and Forestry and the Coordinator of the Natural Areas Program are permanent members and their designees may represent them at board meetings. The Governor shall appoint the

remaining 4 citizen members subject to the review of the joint standing committee of the Legislature having jurisdiction over natural resources matters and confirmation by the Senate. One of these members must be a representative of a state sportsmen's organization, one must be a representative of a state wildlife conservation organization and one must work in a field related to natural resources.

**2. Terms.** The Governor shall appoint citizen members to staggered 4-year terms. Appointed citizens may not serve more than 2 consecutive 4-year terms.

**3. Chair.** The Governor shall appoint a citizen member of the board to serve as chair. The chair may not serve more than 2 consecutive 4-year terms.

**4. Board meetings, rules and administration.** The board shall conduct its meetings as follows.

A. The board shall meet at least 3 times a year at the call of the chair.

B. The board, acting in accordance with the Maine Administrative Procedure Act, may adopt any rules necessary for the conduct of its business. The board shall adopt by rule a schedule for submission and action on grant proposals submitted pursuant to subsection 5, paragraph B.

C. Appointed citizen members are entitled to compensation equal to legislative per diem and travel expenses under Title 5, section 12004-G, subsection 29-B while engaged in board activities.

D. A quorum of the board for the transaction of business is 4 members.

E. Board members are governed by the conflict of interest provisions in Title 5, section 18.

**5. Board functions.** The board has the following functions.

A. The board, in accordance with the rule-making provisions of the Maine Administrative Procedure Act and in consultation with natural resources agencies, shall adopt a strategic plan for each of the funding categories listed in section 10307. The board may cooperate with other state or federal agencies in developing the plan or carrying out other functions under this subchapter. The strategic plan must identify the priority areas for funding for 6 years using the criteria listed in section 10309. The board may amend the strategic plan.

B. The board shall review and award annually funding requests for specific projects from natural resources agencies. The board may award grants only to proposals that conform to the strategic plan adopted pursuant to paragraph A. Grant proposals that establish a public-private partnership are encouraged. Grant proposals must include a stated purpose, a time line, potential outcomes, a budget and an explanation of need.

C. The board shall submit an annual report to the Governor and the joint standing committees of the Legislature having jurisdiction over natural resources matters and inland fisheries and wildlife matters. In the annual report, the board shall detail expenditures made from the fund and the board's progress in implementing the strategic plan.

D. Responsibility for administration of the board lies with the chair. The board shall hire an executive director. The executive director may hire an additional staff person, if the board determines it necessary. The executive director directs the daily operation of the board. Staff positions may be part-time. The executive director position is unclassified and the executive director serves at the pleasure of the board. The board shall prepare and adopt an annual budget to be included with the report required under paragraph C. The board may obtain the services of consultants as necessary to carry out its functions under this subchapter. The board may spend money to cover administrative costs. The board shall endeavor to keep the level of administrative expenses as low as practicable and include, in its annual report, discussion of efforts to minimize

administrative expenses. State natural resources agencies shall provide staff support and assistance as determined necessary by the board.

### §10309. Fund distribution criteria for strategic plan and grants

In developing the strategic plan provided for by section 10308, subsection 5, paragraph A and reviewing and awarding grant proposals submitted pursuant to section 10308, subsection 5, paragraph B, the board shall consider whether a project involves:

**1. Fisheries and wildlife and habitat conservation.** For the category of fisheries and wildlife and habitat conservation:

- A. A species or species group adversely affected due to lack of management or habitat loss;
- B. A species or species group that is adversely affected due to unusual vulnerability to man-made disturbances and requirements for a special or limited habitat type;
- C. Measurable benefits vital to the future welfare of a species or species group; and
- D. Available matching funds;

**2. Acquisition and management of public lands, parks, wildlife conservation areas, and public access and outdoor recreation sites and facilities.** For the category of acquisition and management of public lands, parks, wildlife conservation areas, and public access and outdoor recreation sites and facilities:

- A. Public recreation opportunities of statewide or regional significance;
- B. Fish or wildlife habitat of statewide or regional significance;
- C. Habitat of a threatened or endangered species listed under state or federal law;
- D. Rare or exemplary natural communities or ecosystems as determined by the State's Natural Areas Program database;
- E. Lands or areas providing for public recreation opportunities of statewide or regional significance;
- F. Rare or exemplary geological features;
- G. Areas with proximity to lands dedicated to conservation purposes or public recreation or with access to lands or waters with significant natural resources values; and
- H. Available matching funds;

**3. Conservation of endangered and threatened species and their habitats.** For the category of conservation of endangered and threatened species and their habitats:

- A. A species or species group listed as endangered or threatened under state or federal law;
- B. The habitat of one or more species or groups under paragraph A;
- C. A species or species group not listed as threatened or endangered but, based on the best available scientific information, potentially warranting listing in the near future;
- D. A species, group of species, natural community or ecosystem that has been documented as being in decline or recognized as being at risk of extirpation from the State;
- E. Any species, group of species, natural community or ecosystem thought in the best professional judgment of biologists to be in decline or in danger of extirpation from the State but whose status is undetermined; and

F. Available matching funds; and

**4. Natural resources law enforcement.** For the category of game wardens and other conservation law enforcement:

A. A species or species group adversely affected due to lack of management or habitat loss;

B. Public health or safety concerns of statewide or regional significance;

C. Environmental education for the public or law enforcement personnel;

D. Cross-training between natural resources state agencies; and

E. Available matching funds.

The criteria in this section are not listed in order of priority. A grant applicant must indicate in the proposal the subsection under which the board should evaluate the proposals.



**LOTTERY REVENUE – 8 M.R.S.A. c 14-A & c. 16**

Revenue from the sale of lottery tickets, net of the costs of administering the lottery and the set aside of funds for prizes, is transferred to the State as General Fund revenue. In addition to its own instant ticket games, the Maine Lottery participates with the New Hampshire and Vermont lotteries as a member of Tri-State Lottery Compact. The Maine Lottery is also a member of the Powerball Multistate Lottery. Pursuant to Title 12 M.R.S.A., Chapter 903, the Maine Lottery also administers a wildlife lottery game to raise funds for the Maine Outdoor Heritage Fund. Maine Law (Title 8 M.R.S.A., §387) requires that at least 45% of sales must be returned to the players in the form of prizes. The actual distribution of lottery revenue in fiscal year 2019 was as follows:

**Lottery Revenue**

Fiscal Year	General Fund	Maine outdoor Heritage	Total All Funds
		Other Special Revenue Funds	
2011	\$49,547,800	\$645,824	\$50,193,623
2012	\$53,785,567	\$530,622	\$54,316,189
2013	\$52,908,602	\$593,629	\$53,502,231
2014	\$51,845,477	\$574,142	\$52,419,619
2015	\$54,002,444	\$647,458	\$54,649,902
2016	\$56,972,851	\$603,833	\$57,576,684
2017	\$58,219,690	\$441,357	\$58,661,047
2018	\$62,307,123	\$722,863	\$63,029,985
2019	\$62,675,109	\$520,809	\$63,195,918
2020	\$34,589,742	\$651,148	\$65,240,891

*\$34,589,742 (see compendium p. 88)*

**Revenue Notes – Lottery Revenue**

Other Special Revenue Funds above are the amounts that accrued to the Outdoor Heritage Fund within the Department of Inland Fisheries and Wildlife.

**History – Lottery Revenue**

Approved at a public referendum in 1973. Amended in 1985 to allow Maine’s participation in the Tri-State Lotto Compact. Amended in 1990 to allow the Lottery to participate in an additional multi-state lottery, Lotto\*America. Maine stopped participating in Lotto\*America in April 1992. Amended in 1995 to require the Lottery to initiate a wildlife lottery game to raise funds for the Maine Outdoor Heritage Fund (PL 1995, c. 494). Amended in 2004 to allow participation in the Powerball multistate lottery beginning in fiscal year 2005 (PL 2005, c. 673). In accordance with PL 2009, c. 571, Part LLLL, the Department of Administrative and Financial Services, State Liquor and Lottery Commission entered into an agreement to offer the multijurisdictional lottery game known as Mega Millions effective May 2, 2010.

Compendium Page 64

*correct figure that should be on p.64*

Table GF-1 General Fund Revenue (continued)

REVENUE SOURCE	2016		2017		2018		2019		2020	
	\$	% of Total	\$	% of Total	\$	% of Total	\$	% of Total	\$	% of Total
Lottery Revenue	\$56,972,851	1.69%	\$58,219,690	1.69%	\$62,307,123	1.74%	\$62,675,109	1.63%	\$64,589,742	1.63%
From Federal Government	\$4,821,201	0.14%	\$4,431,890	0.13%	\$1,287,731	0.04%	\$438,945	0.01%	\$239,472	0.01%
From Local Governments	\$311,206	0.01%	\$254,149	0.01%	\$260,674	0.01%	\$357,641	0.01%	\$269,985	0.01%
From Private Sources	\$1,712,188	0.05%	\$1,619,463	0.05%	\$1,477,799	0.04%	\$1,584,080	0.04%	\$1,890,831	0.05%
Service Charges for Current Services	\$21,936,786	0.65%	\$22,366,677	0.65%	\$24,438,729	0.68%	\$25,046,849	0.65%	\$28,980,358	0.73%
Tax Relief Program Transfers	(\$64,744,050)	-1.92%	(\$63,961,530)	-1.85%	(\$65,413,185)	-1.82%	(\$68,087,807)	-1.77%	(\$74,637,969)	-1.88%
Transfers for Municipal Revenue Sharing	(\$67,355,586)	-2.00%	(\$65,228,793)	-1.89%	(\$69,338,529)	-1.93%	(\$74,095,532)	-1.93%	(\$113,613,360)	-2.86%
Contributions and Transfers from Other Funds	(\$30,135,145)	-0.90%	(\$33,572,866)	-0.97%	(\$40,041,051)	-1.12%	(\$31,745,404)	-0.82%	(\$31,071,836)	-0.78%
State Cost Allocation Program Transfers	\$18,161,858	0.54%	\$19,459,021	0.56%	\$17,229,423	0.48%	\$18,291,345	0.48%	\$24,911,989	0.63%
Sales and Compensation for Loss of Property	\$155,540	0.00%	\$328,614	0.01%	\$288,287	0.01%	\$155,640	0.00%	\$91,359	0.00%
Fines, Forfeits and Penalties	\$20,610,571	0.61%	\$19,589,175	0.57%	\$18,402,955	0.51%	\$15,485,118	0.40%	\$9,986,146	0.25%
Earnings on Investments	\$1,483,723	0.04%	\$3,592,268	0.10%	\$6,601,717	0.18%	\$12,474,570	0.32%	\$12,121,418	0.31%
<b>Total - General Fund Revenue</b>	<b>\$3,366,191,131</b>	<b>100.0%</b>	<b>\$3,454,903,862</b>	<b>100.0%</b>	<b>\$3,587,675,847</b>	<b>100.0%</b>	<b>\$3,848,511,092</b>	<b>100.0%</b>	<b>\$3,969,343,702</b>	<b>100.0%</b>