

**TO:** The Honorable Representative Tomei, Chair  
House Human Services and Housing Committee

**FROM:** Jeff Marotta, Ph.D.

**DATE:** February 15, 2013

**SUBJECT:** HB 2163 – Lottery responsible gambling policy

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**Intro: Jeff Marotta, Ph.D., NCGC II, CADC III**

Chair Tomei and members of the committee, I am Dr. Jeff Marotta, Owner and Senior Consultant of the consulting firm, Problem Gambling Solutions, Inc.. From 2000 to 2007, I was the Problem Gambling Services Manager working within the Oregon Department of Human Services (DHS) and during that time I collaborated with the Oregon State Lottery (OSL) on responsible gambling and problem gambling awareness projects. After my departure from civil service, I resumed a relationship with the OSL as a contracted problem gambling and responsible gambling consultant. The OSL is one of many agencies I have provided consulting and training services for on a national and international stage.

**What is Responsible Gambling?**

HB 2163 is a bill designed to strengthen the OSL's responsible gambling policies and practices. As such, it is important to have a shared definition of what responsible gambling means.

*Responsible gambling is the provision of gambling services in a way that seeks to minimize the harm to customers and the community associated with gambling.*

**Background Information**

In December 2011, the OSL formed an Advisory Group of experts in the fields of public health and problem gambling and invited me to Chair this group. The Advisory Group's objective was to examine responsible gambling efforts by the OSL to assess strengths and areas for improvement. The Advisory Group's primary focus was to review marketing strategies and recommend practices to minimize harm from the use of OSL products, including the proposed ORcade website. Secondly, the advisory group was invited to examine and make recommendations on other aspects of responsible gambling practices including employee and retailer training and product development.

The Advisory Group report was submitted to the OSL on February 22, 2012. The report documented a long list of OSL responsible gambling practices, areas for improvement, and corresponding recommendations. On April 18, 2012, OSL senior management provided a memo to the OSL Director and Deputy Director with a response to the report. This memo described several Advisory Group recommendations that the management team would implement immediately, some that would be further explored, and others that were judged not to be compatible with the OSL's responsibilities.

## **Why Oregon Needs This Bill**

### Need to Clarify Responsibilities

The OSL management team response to the Advisory Group's recommendations raised a critical question;

*What are the OSL's responsibilities toward mitigating harm related to their products and practices?*

The Lottery Director has requested a legal review of some of the major recommendations made in the report. The larger question regarding OSL's responsibilities is one that is not expected to be answered in a legal opinion and instead requires focused policy that deals with the lottery's need to be a careful regulator of its impact. House Bill 2163 seeks to clarify the OSL's responsible gambling policy so that decision makers, OSL partners, and the public share a common understanding of the OSL's high priority on protecting Oregonians from unintended negative consequences associated with practices and products of the OSL.

### Need to Create a Legacy

Without a well-defined responsible gambling policy, future OSL administrations may take a less active role in implementing responsible gambling practices. Over the 13 years that I have collaborated with the OSL, there has been four OSL Directors and varying levels of attention provided to responsible gambling programs. As administrations change, so may the OSL's responsible gambling practices. This bill is more about creating a legacy to protect the public's health than it is about redirecting current OSL trends to better address responsible gambling.

### Need to Strategically Position the OSL to Better Compete in Gaming Market

As technology advances so will the gaming industry and marketplace. As legalized gambling enters the internet and as new markets develop, it will be critical to have well developed responsible gambling policies and practices in place. Without strong responsible gambling programs to offset concerns about new gaming technologies and products, public and political

pressures will undermine efforts and create unnecessary setbacks and inefficiencies. While it is unknown if responsible gambling efforts can effectively keep problem gambling rates in check, we must take a strong proactive approach to justify a state monopoly on types or forms of legalized gambling.

### OSL Commission and Director Benefit from Legislative Direction

The OSL has a difficult mission in what some see as competing demands; to maximize revenue and to minimize public harm caused by OSL products. As the Commission and Director form policy that may negatively impact revenue, they need clear legislative language that justifies their decisions and actions to strengthen player and public protections.

### **Counter-Argument to the Opposition's Increased Litigation Claim**

Opponents of HB 2163 will warn that legislation to strengthen the public's protection from lottery products and marketing will lead to litigation. This was the same argument made in 2003 when the American Gaming Association released their responsible gambling Code of Conduct. Phil Satre, Chairman of Harrah's Entertainment Inc. and a former attorney stated at that time, "Litigation is always going to be present. The risk of inviting more litigation through such requirements isn't high enough to offset the benefit of corporate responsibility".

HB 2163 incorporates several of the 1999 Productivity Commission's regulatory governance recommendations for gambling in Australia. In the 10 years since this responsible gambling blueprint was released, there has been very little litigation in Australia in which the plaintiff was a problem gambler bringing action against a gambling venue or service.<sup>1</sup> When litigation is pursued, problem gamblers have generally been unsuccessful in litigation against gaming operators in the United States.<sup>2</sup> This information supports Phil Satre's belief that "the risk of inviting more litigation through such requirements isn't high enough to offset the benefit of corporate responsibility".

### **Proposed Amendments to HB 2163**

Many of the proposed amendments to HB 2163 relate to extending protections to all Oregonians, not just those who are addicted to lottery games or people who struggle with mental health and addiction issues. For example, in the original language on page 1, lines 11 and 12, the term "commensurate with the public good" is clarified with the statement; "*the Oregon State Lottery shall actively work to balance its mission to maximize revenues while minimizing the impact of*

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<sup>1</sup> Bailey, B. (2009). Ten Years On: submission to the Productivity Commission: Gambling Inquiry.

<sup>2</sup> Igelan, A. & Kelly, J. (2005). Status of Canadian compulsive gambling litigation. *Gaming Law Review*, 9(2): 116-121.

*addictive playing of lottery games in Oregon.*” However, in this passage, “*balance*” is too narrowly defined to “*minimizing the impact of addictive playing of lottery games*”. The proposed amendment broadens protections to all Oregonians, including youth. For example we need language that supports not marketing to kids, appropriate policies and practices to restrict sales to under aged persons, balancing game promotion with messages about responsible gambling, offsetting the effects of exposing kids to gambling promotional ads by providing educational materials to parents on how they can talk to kids about risks of gambling, etc. The proposed amendment replaces the narrowly defined definition to, “*the Oregon State Lottery shall actively work to generate revenues while placing high priority on protecting Oregonians from unintended negative consequences associated with practices and products of the Oregon State Lottery*”.

The proposed amendments also help to clarify that this bill is not about the Lottery taking on any treatment roles or mental health oversight roles. Rather, this bill is about supporting the corporate responsibility of the Lottery by promoting responsible gambling best practices which rely on public health and prevention principles. Oregon’s health, economy, and society stand to gain from improved protections against gambling-related harm.

### **Closing: We Need Better Policy, Not Better People**

I want to close by clarifying that I do not believe the administration and staff of the OSL should be vilified, rather, they should be honored as providing a public service and for their work dedication. This bill needs to be passed in order to support their efforts to more assertively implement responsible gambling programs and practices.

Thank you for devoting your time and energy into strengthening protections against gambling related harm in Oregon and for the opportunity to testify before you today. I would be happy to answer any questions, including providing a rationale to any specific proposed amendments to HB 2163.