

**2013 Legislative Session**  
**AGENCY FISCAL IMPACT STATEMENT FORM**  
*(See instructions for completing form)*

Please complete this form, and return one copy each to the Legislative Fiscal Office (LFO) and the Budget and Management Division (BAM).

Agency Name: Oregon State Lottery  
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Date Submitted: June 10, 2013

Measure #: HB 2163-A Version: A-Engrossed

- No fiscal impact** The absence of an expenditure or revenue (non-tax) impact.
- Minimal Impact** A fiscal impact that can be absorbed with existing agency resources.
- Fiscal Impact** A fiscal impact determined to be greater than a minimal fiscal impact.

The budgetary impact of this bill was reviewed and approved by the Interim Joint Committee on Ways and Means to be recommended to be included in the omnibus budget bill.

Yes \_\_\_\_\_ No   X  

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? If yes, please identify the Policy Option Package name and number in your written analysis.

Yes \_\_\_\_\_ No   X  

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under Section 15, Article XI of the Oregon Constitution?

Yes \_\_\_\_\_ No   X  

**AGENCY WRITTEN ANALYSIS:**

*Provide a high-level summary of the general requirements of the bill and what your agency will need to do to comply with the requirements. Identify any ambiguity or other issues related to the measure's language. Identify measure's effective date, and if applicable, operative dates. Summarize the methodology used to make fiscal calculations/determination. See instructions for other considerations.*

**Ways and Means Referral:** The effect of HB 2163A on expenditures (by Lottery and an alternative fund source), Lottery revenue transfers, and Lottery full-time positions is indeterminate, but potentially significant. As such, from Lottery's perspective, Ways and Means review is necessary and appropriate.

**Attorney General Opinion:** HB 2163A contain provisions that are in conflict with the recent Attorney General Opinion (OP 2013-2, dated March 18, 2013) which places limits on allowable uses of Lottery administrative funds.

To summarize that opinion, the Lottery is constitutionally prohibited from expending its administrative funds for programs that are not required, or are not reasonably necessary, for the internal implementation and management of the Lottery, even if those programs might otherwise be related to Lottery operations. Such programs include treatment programs that address or mitigate social harms associated with problem gambling, even if the problem gambling or social harm resulted from, or was made worse by, Lottery operations.

Legislation concerning the Lottery cannot conflict with the Lottery's constitutional duties to operate as a revenue-raising state agency; nor can it require the Lottery to spend more than 16% of its gross proceeds to operate the Lottery; and the Legislature cannot unduly burden or interfere with the duty and the power of the Lottery Commission to establish and operate the Lottery.

Lottery staff and resources can only be used for the internal implementation and management of the Lottery.

**Legislative Record:** The language in HB 2163A is broad in its coverage and new phrases are introduced. The bill revises the mission of the Oregon Lottery by requiring it to balance its mission to maximize revenue with a mission to serve the public good. Lottery is further required to implement a comprehensive policy for the implementation and operation of the Lottery, and the Lottery Commission is required to appoint a committee(s) to advise on the adoption of the comprehensive policy, and to report annually to the legislature, in cooperation with the Oregon Health Authority, certain data collected regarding usage of Lottery games and the efforts of the Commission to utilize that data to minimize the risks of harms for persons.

As such, it will be critical from Lottery's perspective that the Committee place more information into the legislative record on the meaning of certain new phrases (ex., mission to serve the public good) and be clear about what the Lottery is to do (that is new or enhanced) and the rationale. This will help with implementation, and if/when any subsequent review of the legislative record is necessary, there will be guidance.

The requirements of HB 2163A have not yet been discussed by the sponsor so there has not yet been any opportunity to confirm if the intent is for the Lottery to undertake new activities or increase activities and expenditures in any significant way. It is also not yet clear if the intent of the measure is to reduce the Lottery's ability to sell tickets and shares and continue to produce similar biennial net profit amounts.

**Possible Unintended Consequences:** Section 1 of the bill may have some serious consequences that the Lottery assumes are unintended, but which could impact Lottery's capacity to generate revenue and could prompt legal challenges.

Section 1 attempts to redefine Lottery's mission as maximizing revenue and serving the public good. It then narrowly defines the public good as only those things related to information about potential risks and encouraging responsible use. Instead of the focus being on the public as a whole, which was the intent of the voters in adopting the Lottery Act, the focus of the public good becomes limited strictly to informing users about potential harms and responsible use of Lottery products.

Obviously there are other considerations related to the public good that Lottery considers in its operations and the sale of its products. If this provision is constitutional, which is questionable, this would mean that Lottery might not be able to consider other things related to the public good, such as:

- Who the Lottery contracts with as retailers (cannot have associations with organized crime, criminal background, etc.);
- Where Lottery games are sold (i.e., concentrations impacting neighborhood livability, safe selling environments, the areas where Lottery products sold, etc.); and
- Policies related to Lottery's purchase of goods and services (paying more for environmentally friendly products or recycled materials).

By shifting the public good from considerations related to the public as a whole, this could have unintended consequences which could ultimately impact Lottery's primary responsibility to raise revenue for the public purposes described in the Constitution.

For example, if the duty is to maximize revenue commensurate with informing users about responsible play, the statute may be interpreted as requiring Lottery to sell its products only in those areas where it has determined there is a high volume (where it can make the most money), without consideration for how that impacts the surrounding neighborhood (i.e., Hayden Island) or whether Lottery games are available in rural areas, as long as there is messaging to Lottery players related to responsible use of Lottery games in those areas.

There are also concerns about the language that attempts to define Lottery's mission as maximizing revenue and serving the public good. This is where the constitutionality of the language is questionable. Lottery's mission as set forth in the Constitution is to be a self-supporting agency that raises revenue for the public purposes enumerated in the Constitution. While ORS 461.200 further directs the Lottery to maximize revenue to the extent that it has considered the public good, i.e., not at any cost but in a responsible manner, ORS 461.200 does not attempt to redirect Lottery's constitutional mission.

The amendments in Section 1 attempt to establish a new mission for the Lottery which is to "serve" the public good. Whether this is permissible is unclear. Certainly the use of Lottery administrative funds in furtherance of this new "mission" is still constrained by the Constitution as specified in Ecumenical Ministries and as outlined in the Attorney General Opinion 2013-2.

**Required Activities:** There are a few required Lottery activities in HB 2163A that appear to be permissible for the Lottery to do (or are already being done by the Lottery).

There are also several required Lottery activities that would still be problematic and would likely require an alternative fund source. Based on the recent DOJ advice, it is clear that the Lottery cannot use administrative funds for treatment and prevention activities (unrelated to implementation and operation of the Lottery), so references, such as section 3(1)(c), to such things as "strategies to minimize the risks of harms" may need to be reconsidered. The strategies could be used to implement programs that would cross into prevention-related activities.

The same would apply to section 3(3)(b) regarding Lottery's efforts "to utilize the usage data..... in policy and program decision-making to minimize the risks of harm...". The policy and decision-making could be used to implement programs that would cross into prevention-related activities. It also appears that section 3(3)(b) would best be made a requirement on Oregon Health Authority (versus the Lottery Commission) to "utilize the usage data in policy and program decision-making to minimize the risks of harms...".

**Alternative Fund Source:** To the extent that the requirements of HB 2163A are not allowable Lottery administrative expenses, an alternative fund source would need to be identified in order for those activities to be undertaken by the Lottery.

**Effect on Lottery Costs and Revenues:** To the extent that the activities required by the bill are allowable Lottery administrative expenses, any increased costs related to implementation would correspondingly reduce the amount of funds that would otherwise be transferred to the state for programs and services. Any reduction in the funds transferred would impact Lottery-backed bond capacity and the funds available for bond-related debt service.

To the extent that the intent of the bill is to reduce Lottery sales and profits, there would be a corresponding reduction in Lottery revenue. Any such reduction would also reduce the amount of funds that would be transferred to the state for programs, services, and Lottery-backed bond capacity and debt service payments. Every one percent decline in Lottery revenues amounts to approximately \$11 million.

**Legal Challenges:** Based on the wording of HB 2163A, the bill could also give rise to future costs associated with possible legal challenges. This amount is also indeterminate.

## AGENCY QUANTITATIVE ANALYSIS

Provide a detail description of the proposed legislation's effect on expenditures, revenues, and full time equivalent (FTE) positions. The table below is an embedded Excel worksheet. To fill out the form, place your mouse on the table; right click; select Worksheet Object and Open. If your analysis is number intensive, you may want to use just the Excel version of this template.

### Effect on Expenditure (by Fund and Category):

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2013-15 Biennium</b>							
Personal Services	Indeterminate	\$ -	\$ -	\$ -	\$ -	\$ -	Indeterminate
Services and Supplies	Indeterminate	\$ -	\$ -	\$ -	\$ -	\$ -	Indeterminate
Special Payments	Indeterminate	\$ -	\$ -	\$ -	\$ -	\$ -	Indeterminate
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>Indeterminate</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>Indeterminate</b>

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2015-17 Biennium</b>							
Personal Services	Indeterminate	\$ -	\$ -	\$ -	\$ -	\$ -	Indeterminate
Services and Supplies	Indeterminate	\$ -	\$ -	\$ -	\$ -	\$ -	Indeterminate
Special Payments	Indeterminate	\$ -	\$ -	\$ -	\$ -	\$ -	Indeterminate
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>Indeterminate</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>Indeterminate</b>

### Effect on Revenues (by Fund):

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2013-15 Biennium</b>	\$ -	Indeterminate	\$ -	\$ -	\$ -	\$ -	Indeterminate
<b>2015-17 Biennium</b>	\$ -	Indeterminate	\$ -	\$ -	\$ -	\$ -	Indeterminate

### Effect on Position(s) / FTE(s):

<b>Months of Impact</b>		<b>2013-15</b>	<b>2013-15</b>	<b>2015-17</b>	<b>2015-17</b>
<b>2013-15</b>	<b>2015-17</b>	<b>Position Count</b>	<b>FTE</b>	<b>Position Count</b>	<b>FTE</b>
Indeterminate	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Indeterminate