

Oregon State Lottery



WRITTEN TESTIMONY

Date: July 7, 2013

To: The Honorable Ginny Burdick, Chair
The Honorable Larry George, Vice Chair
Senate Committee on Finance and Revenue

From: Larry Niswender, Director
Oregon State Lottery

Re: **SB 856** – Directs DAS to sell Timms Hamby Computer Archive Center to Harney County for consideration of \$1.

Good afternoon. For the record, my name is Larry Niswender. I am the Director for the Oregon Lottery. The Oregon Lottery is not taking a position on this bill as of today. We are here to provide factual and historically relevant information to inform the Committee, to share policy considerations and address any questions you may have for the Lottery.

Proposed Law:

While the Lottery is not taking a position on the bill, the bill still raises legal, financial and operational concerns for the Lottery that should be noted for the record.

Note: Lottery expresses no opinion on the constitutionality of this bill or any of its provisions. However, since Lottery revenues and funds are constitutionally dedicated (and Lottery funds were spent to build and outfit the Timms Hamby facility), when this site is sold, those revenues may need to be recovered and returned to the fund. The proposed transfer of this site for sum of \$1 may violate those constitutional requirements. Those requirements may require that this site be sold for a reasonable fair market value, not for \$1. It is recommended that an opinion of the Attorney General or Legislative Counsel be sought on this question.

Background

The Timms Hamby Computer Archive Center is a jointly owned building by both DAS and Lottery. It is approximately 6,000 square feet one-story building that contains two computer rooms, an office area, conference room, restroom, loading dock area, fire sprinkler room, generator room, and electrical equipment room. At this time, the Lottery has one full-time staff person working at the Burns Facility. In recent years, DAS had leased space in their portion of the facility to the Secretary of State. There may be additional leases at this time.

In 2006, there was extensive work done by Lottery and DAS to look into what it would take to dispose of the facility as the Burns Paiute Tribe (Wa-Da Corporation) had interest in obtaining it.

During these discussions and negotiations, it was determined that, based on review of constitutional and statutory framework, the Lottery needed to make a good faith effort to obtain fair market value for its investment in the facility and that DAS would want/need, at a minimum, to obtain enough proceeds from the sale of the facility to retire the outstanding debt, something it would need to do before it could dispose of the property as I recall.

In 2006, the appraised value was approximately \$2.3 million (Completed by Integra Realty Resources). The appraisal was required by ORS and OAR for disposal of surplus real property in the State of Oregon according to DAS Facilities Management.

It is my understanding that Lottery invested (paid cash) approximately \$690,000 for its half of the facility construction and that DAS financed its portion (approximately half of total) with COPs, with a total initial State of Oregon investment of \$1.4 million. As of 2006, my notes reflect that DAS still owed approximately \$400,000 on those COPs. I do not know the current amount outstanding.

While the Lottery is no longer statutorily required to have its back-up center at this Burns facility (as that law was changed in the 2007 legislative session by repeal of ORS

461.055), it still is the Lottery's back-up data center for the video gaming system and lottery business operating systems. To this date, Lottery has not located a less expensive place for these operations to exist.

If this bill passes in its current form with only a \$1 payment, I expect it may need to be legally challenged as the Lottery would probably need to take steps to legally pursue a reasonable return on its investment since constitutionally dedicated funds have been used. Additionally, the Lottery will probably need a considerable amount of time to identify, pay for, and re-locate all of its back-up operations.

From a Fiscal Standpoint

If the Timms Hamby facility was sold for \$1, and it was no longer practical or feasible for the Lottery to remain at the facility, the Lottery would need to purchase or lease, and equip a new back-up facility without the benefit of having any sales proceeds. The costs to do this are indeterminate at this time, but expected to be substantial. DAS may still have issues with property disposal if it still has outstanding COP debt. Lastly, it is my understanding that there are some legal steps necessary

If the policy choice is made by the Legislature to sell the Timms Hamby Computer Archive Center to Harney County for consideration of \$1, then the Lottery will want to make sure a few legal, financial and operational concerns are fully addressed through this committee's and Ways and Means Committee critical review.

This concludes my prepared testimony on this bill. If you have any questions, I would be happy to address them.