



**WRITTEN TESTIMONY**

**Date:** February 20, 2013

**To:** The Honorable Tobias Read, Chair  
The Honorable Cliff Bentz, Vice Chair  
The Honorable Chris Gorsek, Vice Chair  
House Committee on Transportation & Economic Development

**From:** Larry Niswender, Director  
Oregon State Lottery

**Re:** **HB 2167** – Amends ORS 461.200 and changes the mission of the agency FROM producing the maximum amount of revenue to benefit the public purpose, commensurate with the public good TO operate with the intention to produce net proceeds each biennium in an amount equal to the amount produced during the 2011-13 biennium. It also transfers any funds above that amount into a new rainy day lottery fund.

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 highlight relevant current law provisions, to share policy considerations, and address any questions you may have for the Lottery.

**Proposed Amendments:**

**Note:** Lottery expresses no opinion on the constitutionality of this bill or any of its provisions.

While the Lottery is not taking a position on the bill, the bill still raises policy, fiscal, and revenue concerns. Since the bill raises fiscal and revenue concerns, I am encouraged to see that it already has a subsequent referral to Ways and Means. This referral will allow time and opportunity to determine the actual impacts it may have on the Governor's Balanced Budget, the Co-Chairs Budget Plan that is in development, and Lottery-backed bond capacity, which has been and continues to be relied upon for a variety of economic development and jobs creation activities.

## **Historical Perspective – Mission and Statutory Mandate**

### **Current Law**

**ORS 461.200 Operation of lottery.** Within 105 days after the confirmation by the Senate of the Director of the Oregon State Lottery and at least three commissioners, the director shall begin public sales of tickets or shares. The Oregon State Lottery shall be initiated and shall continue to be operated so as to produce the maximum amount of net revenues to benefit the public purpose described in section 4, Article XV of the Constitution of the State of Oregon, commensurate with the public good. Other state government departments, boards, commissions, agencies and their officers shall cooperate with the lottery commission so as to aid the lottery commission in fulfilling these objectives. [1985 c.2 §4(1); 1985 c.302 §4(1); 1985 c.458 §1(1); 1985 c.520 §1(1)]

As reflected in the above ORS citation and history, the Lottery's statutory mandate and mission statement has not been modified since the Lottery was created (through a citizen initiative in November 1984) when voters approved an amendment to the Oregon Constitution (Article XV).

In simple terms, the mission has been to "produce the maximum amount of net revenues to benefit the public purpose, commensurate with the public good".

### **Maximum Amount of Net Revenues**

The chart attached to the back of my testimony is page 15 of the Oregon Economic and Revenue Forecast Summary report, released last week on February 15, 2013. As you can see, Lottery resources and distributions have shown strong growth, with a major reset occurring in the 2009-11 biennium due to what the economists refer to as "the Great Recession and the enactment of the smoking ban". In the forecast summary, it states, "Overall declines in video lottery sales totaled approximately 23 percent from pre-recession highs to the depths of this recession". The graph confirms this as it shows \$1.4 billion in Lottery revenues were generated in the 2007-09 biennium compared to \$1.1 billion in 2009-11 and 2011-13.

Based on the Economic and Revenue Forecast projections for the next four biennia, you can see that establishing a cap on the net Lottery proceeds that can be spent (without approval of a supermajority vote of both chambers of the legislative assembly) at the 2011-13 biennial amount, will set aside a considerable amount of funds into a rainy day fund. The reason this would occur is that the economists are predicting that

the economy will recover over the next four biennia and that Lottery proceeds will also increase in a manner comparable to projected gains in overall personal income.

If the intent of the change is to require the Lottery to modify its practices in such a manner that it will not produce any additional revenue above the amount produced during the 2001-13 biennium, the Lottery would probably need to take a variety of actions. It appears that the Lottery may need to reduce the number of games, the number of retailers, and/or the number of video terminals to successfully meet the proposed mission --- which states, "The Oregon State Lottery shall be initiated and shall continue to be operated with the intent to produce net proceeds in each biennium..... in an amount equal to the amount of net proceeds produced in the biennium beginning July 1, 2011.

The Economic Revenue Forecast shows that if the Lottery continues to offer the same products (as it currently does), without doing anything new or different, it will produce significantly more than the amount produced in 2011-13.

### **Intention to Produce the Same Amount of Revenue**

With the costs of Lottery funded programs and services increasing over time due to inflation, wage and benefit adjustments, demand for additional funds to address various infrastructure replacement/improvement projects (Connect Oregon 1 through 5 projects for example), and caseload growth projected in such areas as State School Fund, having only the same amount of revenue available for use will not necessarily meet public funding needs going forward.

To the extent that the cap on available Lottery revenues may affect Lottery-backed bond capacity, it could limit use of this revenue leveraging tool for economic development and jobs creation. According to the 2013 State Debt Commission Advisory Report, a 10% reduction in unobligated net Lottery revenues would reduce the available debt capacity by approximately \$233 million over the next eight years.

To the extent that the proposed change to the Lottery mission could reduce Lottery management's ability to be responsive to market challenges and to continue to use industry best practices for product management, it could adversely impact the ratings

for Lottery bonds. Reduced bond ratings would increase the costs of borrowing.

### **Commensurate with the Public Good**

The Lottery's current mission and statutory mandate requires it to operate the Lottery to produce the maximum amount of net revenues to benefit the public purpose commensurate with the public good. The Lottery is concerned with a change to the Lottery's mission that would eliminate the need to apply this guiding principle. While this phrase "commensurate with the public good" is not defined, it can be interpreted based on its plain, natural, and ordinary meanings. Essentially, it could be interpreted to mean that the Lottery is to give proportionate attention to advancement of the interests of and/or the welfare of the people. To eliminate this phrase seems counter to the interests of those concerned with efforts to promote responsible gambling.

In operating commensurate with the public good, the Lottery strives to promote responsible gambling in its:

- Advertising of Lottery products and public information ads targeted to responsible gaming, problem gambling recognition and treatment resources;
- Website that prominently displays a link to Lottery's responsible gambling guidelines and links to information and treatment sites;
- Retailer contract by forbidding the sale of Lottery products to underage or intoxicated persons;
- Responsible gaming messaging at Video Lottery<sup>SM</sup> game terminals and retailer locations where Lottery products are sold.

Lottery also operates commensurate with the public good by:

- Regularly utilizing temporarily formed and specifically focused administrative rules advisory committees and advisory work groups (for rules, policies, and marketing strategies);

- Actively soliciting public input (through research and rules hearings) on its operations, game features, advertising, and public information campaigns;
- Providing public input/comment time at monthly Lottery Commission meetings;
- Coordinating efforts with other agencies (including the Oregon Health Authority, the Problem Gambling Council, the Oregon Liquor Control Commission, and the Child Support Division);
- Enforcing retailer contract provisions for all Lottery retailers; and
- Minimizing its administrative costs and transferring approximately \$1.1 billion per biennium to be used for public education, economic development, parks, and salmon restoration.

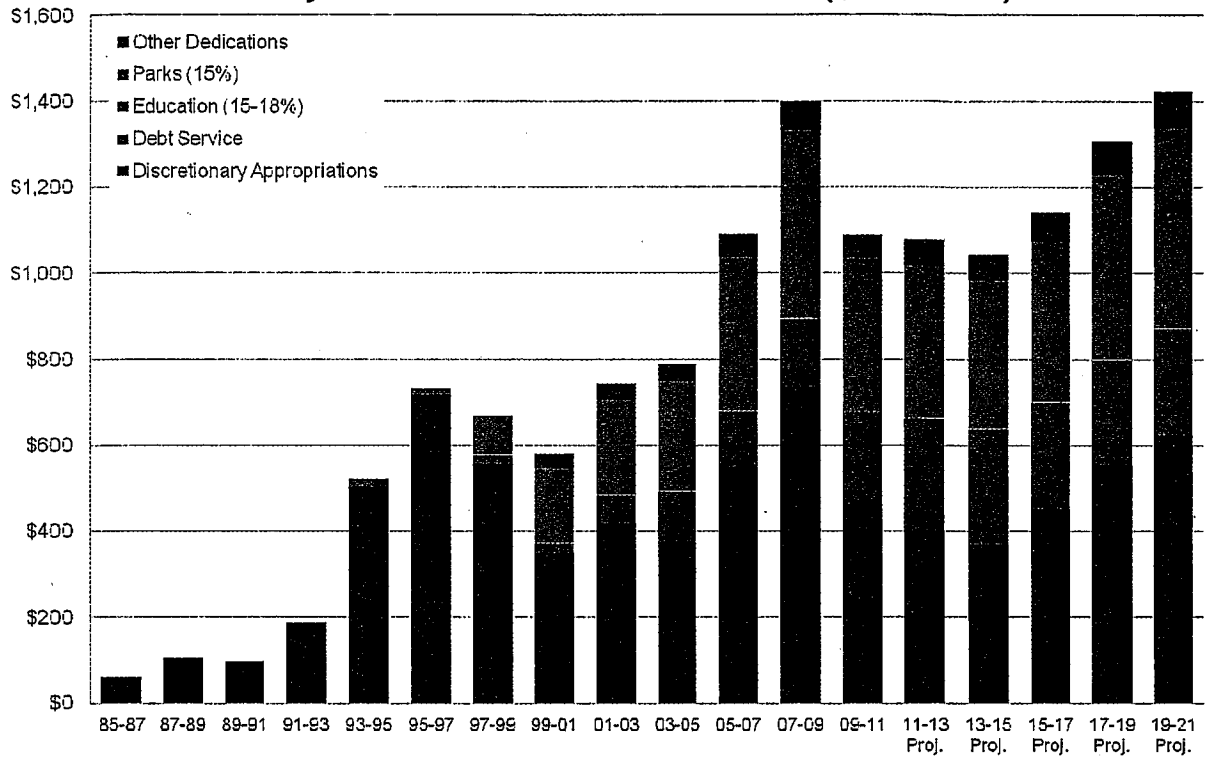
The Lottery believes that, through these activities, it is making a good faith effort to conduct itself in ways that are commensurate with the public good.

Thankfully , most adults who choose to gamble do so responsibly, and research (from both the National Council on Problem Gambling and the Association of Problem Gambling Service Administrators) indicates that about one to three per cent of U.S. adults meet the criteria of problem gamblers. To address the needs of problem gamblers, Oregon has what is considered to be one of the best, if not the best dedicated funded problem gambling treatment program in the United States. The state operates a problem gambling help line 24 hours a day, 7 days per week. Treatment is confidential, effective, and free.

If the policy choice is made by the Legislature to amend the Lottery's mission statement, then the Lottery will want to make sure that the policy, fiscal, and revenue concerns are fully addressed through the assigned policy committee and by subsequent 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.

### Lottery Resources and Distributions (\$ millions)



### Gambling and the Great Recession Losses Since Peak, SA

