

Oregon State Lottery



WRITTEN TESTIMONY

Date: February 15, 2013

To: The Honorable Carolyn Tomei, Chair
The Honorable David Gomberg, Vice Chair
The Honorable Andy Olson, Vice Chair
House Committee on Human Services and Housing

From: Larry Niswender, Director
Oregon State Lottery

Re: **HB 2163** – Amends ORS 461.200 and requires the Director of the Lottery to employ an individual to advise the Director and Commission on mental health and addiction issues and requires the Commission to adopt a policy to minimize risks and mitigate harms associated with lottery games.

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:

HB 2163 would appear to amend the mission of the Oregon State Lottery to require the Lottery to "...actively work to balance its mission to maximize revenues while minimizing the impact of addictive playing of lottery games in Oregon." (Section 1, page 1, lines 10-11)

While the Lottery is not taking a position on the bill, the bill still raises policy, legal, fiscal, and funding source concerns. **Note:** Lottery expresses no opinion on the constitutionality of this bill or any of its provisions. The Lottery has asked for and hopes to receive soon DOJ legal advice that will provide guidance on what Lottery operating budgets can be used for to address requirements of this bill related specifically to "responsible gambling" and "problem gambling", versus the implementation and operation of the lottery.

Since the bill requires new activities that would have a fiscal impact, 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 which, if any, of the new activities can be funded through Lottery resources and which would require another funding source, such as the General Fund.

New Statutory Directive

The bill introduces a new statutory directive for the Lottery and the implications of this term are not clearly understood. These words direct that the **Director of the Oregon State Lottery and the Lottery Commission shall:**

- Adopt a comprehensive policy to minimize the risks and mitigate the harms associated with lottery games, marketing practices, and retail regulations (Section 2, page 1, lines 22-23).

More information is needed to fully understand what this phrase means and what more the proponents of this legislation want the Lottery to be required to do and what is the desired outcome.

Potentially significant unintended consequence:

Based on the new wording, if the Lottery is supposed to actively work to minimize the impact of addictive playing of lottery games, the Lottery is concerned that this could be viewed as establishing a statutory duty of care, which could have legal implications

Terms Still Not Clearly Understood:

The bill introduces new statutory terms that build in (codify) new directives for the Lottery and the implications of these terms are not yet clearly understood (Section 3, page 2 and 3). These words direct that the Lottery adopt a policy that includes:

- a code of conduct for marketing and promoting the Oregon State Lottery and the playing of lottery games;
- strategies to enhance the personal responsibility of persons playing lottery games;

- strategies to minimize the risks and mitigate the harms to persons who struggle with mental health and addiction issues caused or affected by the Oregon State Lottery or the marketing and promotion of lottery games;
- institutional structures to protect persons who struggle with mental health and addiction issues as a negative consequence associate with playing lottery games;
- research on harm mitigation practices and outcomes; and
- methods to implement the above described strategies, including changes to retail regulations.

Once again, more information is needed to fully understand what these policy terms and new requirements mean; what more the proponents of this legislation want the lottery to be required to do; and the desired outcome.

Joint Reporting with the Oregon Health Authority

The bill requires the Lottery Commission to report annually to an appropriate committee specified data and analysis on the implications of usage of devices that deliver lottery games and efforts made to minimize the risks and mitigate the harms associated with the Oregon Lottery and the marketing and promotions of lottery games. (Section 3, page 2, lines 16-25).

More information is needed to better understand the intent and desired outcome of this new language. It is possible that participation in the above described new activities will require the Lottery Commission to have access to an alternative funding source.

Employment to Evaluate Effects of Lottery Operation

The bill requires the Director to employ an individual with the appropriate education and experience to evaluate the effects of Lottery operations on persons who struggle with mental health or addiction issues associated with the lottery or the marketing of lottery games.

It is not clear what the proposers of this law change would like to have this individual do with the results of their "evaluation". Further discussion is needed to confirm the desired outcome. For example, is it the intent that the "evaluation" result in such things as changes to game play features, game selections, the speed of game play, disruption of game play, and/or the manner in which game play bets are placed? If so, the results could impact lottery's ability to compete with other authorized and available game play options (Tribal casinos) and the stability of the state program revenue source. It is also possible that the activities assigned to this position (or a portion of it) could require an alternative fund source.

Intent Still Not Yet Clear:

If the intent is to modify the policy direction set in place by the Oregon Constitution, existing laws, and the Lottery Commission's current policies, there are significant policy implications.

If the effect of the bill is to require the Lottery to seek ways to reduce consumer play of Lottery games, then less play can only have one result and that would be to reduce Lottery revenues and the amount available for transfer for public purposes. Every 1% decline in Lottery revenues amounts to approximately \$11 million.

There is also a potential issue relative to Lottery's bonding capacity and the impact of any perceptions of the bond market resulting from the mission change contained in the bill.

To the extent that the measure requires the Oregon Lottery[®] to do something new or different from what it is currently constitutionally or statutorily required to do would have costs. Any cost amount is indeterminate at this time.

To the extent that additional Lottery operational costs would need to be incurred, it would correspondingly reduce the amount of Lottery Funds transferred for public purposes. Any revenue reduction amount is indeterminate at this time.

If the measure requires new activities that are not directly related to the operation or administration of the Lottery, the activities would need to be supported by an alternative fund source, such as the General Fund. This is supported by the Oregon Constitution, laws, court decisions, and DOJ opinions. Any amount is indeterminate at this time.

If the nature of these activities is more appropriately carried out by DHS or the Oregon Health Authority, a contract treatment provider, or a consultant, perhaps as a policy matter, a different agency may need to be directed to fulfill the measure's requirements.

Commensurate with the Public Good

The Lottery's current statutory mandate requires it to operate the Lottery to produce the maximum amount of net revenues for the people of Oregon commensurate with the public good. 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 LotterySM 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.

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 legal, practical, and funding source concerns are fully addressed through the assigned policy committee 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.