



Debbs Potts Oregon State Lottery Commission Building  
500 Airport Road SE  
Salem, OR 97301

## OREGON STATE LOTTERY COMMISSION MEETING AUGUST 28, 2009

**Lottery Commission** Commissioner Steven Ungar, Chair  
Commissioner Bill Ihle, Vice Chair  
Commissioner Pamela Fogg  
Commissioner Amy Lowery  
Commissioner LeRon Howland

**Lottery Executive Team** Dale Penn, Lottery Director  
Larry Niswender, Assistant Director for Support Services  
Tim Eaton, Assistant Director for Retail Operations  
Carole Hardy, Assistant Director for Marketing  
Major Craig Durbin, Assistant Director for Lottery Security

**Lottery Staff Present** Cornell Balagot, Product Development Manager  
Sarah Castner, Assistant Attorney General, Department of Justice  
Linda DeBlasio, Senior Executive Assistant to the Commission  
Jami Egland, General Accounting Manager  
Jean Gabriel, Finance Reporting & Analysis Manager  
Mark Hohlt, Rules and Policies Manager  
Brandi Hurtado, Executive Assistant for Marketing  
Jason Levine, Law Clerk Intern, Rules & Policies  
Mary Loftin, Public Affairs Manager  
Marianne Manning, Retail Sales Support Manager  
Kathy Ortega, Chief Financial Officer  
Jolene Richards, Executive Assistant for Retail Operations  
Nancy Rivera, Executive Assistant for Support Services  
Keri Stocks, Materials Manager  
Larry Trott, Senior Public Affairs Specialist

**Others Present** Mike Chamberlain, Elmer's Restaurants  
Bob Klingman, GTECH  
John Powell, Lobbyist, GTECH  
Bill Perry, Oregon Restaurant Association (ORA)

### COMMISSION MEETING

The August 28, 2009, Oregon Lottery Commission Meeting was called to order by Chair Ungar. Chair Ungar stated for the record that Commissioner Lowery was previously excused from today's meeting and that a quorum was present. Commission members present for the roll call: Commissioner Howland, Commissioner Fogg, Vice Chair Ihle, and Chair Ungar.

#### **A. MINUTES OF THE PREVIOUS MEETING**

Presenter: Chair Ungar

The draft minutes of the previous meeting were sent to the Commission for review prior to today's meeting (*Exhibit #1*). Chair Ungar requested comments, if any; no comments or changes were made to the record.

Commissioner Fogg moved that the minutes of the Oregon State Lottery Commission Meeting held on July 24, 2009, be approved as final as presented today. Vice Chair Ihle seconded the motion. The motion passed by a quorum vote, 4-0.

## **B. GOVERNANCE MATTERS and DIRECTOR'S REPORT**

Presenter: Director Penn

### **DIRECTOR'S REPORT**

#### **Identification Badges**

Director Penn requested Commission approval for the purchase of identification badges for the Commission and the Director. The Commission received a memo of explanation prior to the meeting for review (*Exhibit #2*). Chair Ungar stated that it is important for the Commission and the Director to be able to present identification in their regulatory capacity in public and business settings. Commissioner Howland stated his agreement.

Commissioner Howland moved that the purchase of identification badges and case holders, in the total amount of \$576.00, be approved for each of the positions of the Lottery Commission and for the Lottery Director. Vice Chair Ihle seconded the motion. The motion passed by a quorum vote, 4-0.

#### **Economic Forecast**

Director Penn stated that as of June 30, 2009, Lottery revenue was greater than the State's economic forecast, however, revenue fell below forecast in both July and August. If the decline were to continue, the economic formula indicates Lottery would be \$40 million below forecast in the 2009-2011 biennium. The economic forecast also shows the General Fund is down by \$139 million, although news articles state that there are signs of recovery. Director Penn was contacted by *Associated Press* (AP) after the economic forecast was released.

In his interview with AP, Director Penn emphasized that, while the retail environment as a whole has been challenged by the current economy, the Lottery is unique from a gaming perspective in that its sales are impacted by the economic slump and the smoking ban simultaneously.

Director Penn further stated that there are 22 months left in the biennium and the Lottery is engaged in a variety of business operations to meet the \$1.1 billion biennium forecast. Business initiatives currently in progress are as follows:

- 400 new Spielo terminals have been installed with 2,000 more to be deployed. The terminal offers 12 new games to appeal to current players as well as new players.
- The Lottery is actively researching other new and modified games.
- Ticket sales for the Thanksgiving Raffle<sup>SM</sup> game begin October 4.
- An increase to the maximum \$600 prize payment for Video Lottery<sup>SM</sup>.
- The first Lottery kiosk will be opening at the Portland International Airport.

Chair Ungar essentially stated not to lose sight of the fact that, in spite of the economy, the Lottery transferred over \$1 billion to the state this biennium and that just four or five years ago the transfer was 50-60 percent of that. Lottery sales have increased substantially for a number of reasons, not the least of which was the foresight to prepare for the smoking ban. It is

important, for morale as well, that the Lottery continue to move in that direction, to the extent it is possible, to keep on an upward curve.

### **Lottery Prize Winners**

Director Penn shared stories of two top prize winners in the last two weeks. A couple from Nevada won the \$12 million Megabucks<sup>SM</sup> jackpot. The couple bought their winning ticket in Gold Beach, where they vacation each year. The town they are from in Nevada actually spans the state line into Oregon.

A week later a 21-year-old from Salem won Win for Life<sup>SM</sup> which pays \$1,000 a week for life.

### **Spielo Contract**

As a member of the Gaming Standards Association (GSA), the Lottery is continually looking at gaming standards and working with manufacturers on where they see their products going in the near future. By doing so, the Lottery has positioned itself to better decide how to proceed with its video gaming system contract with Spielo, which is due to expire in one year.

In light of the fact that the Lottery is launching a new integrated financial system as well as fine-tuning the Traditional gaming system that was replaced, and considering that the video gaming system is working well, the Lottery has decided to exercise its option to extend the Spielo contract for two years with an additional option to extend.

### **Public Hearing on Video Lottery<sup>SM</sup> Compensation Rates**

An administrative rule hearing on Video Lottery<sup>SM</sup> compensation rates was held at the Salem Armory on August 18, 2009. Four members of the Commission attended.

Director Penn updated the Commission on public comments received since the hearing. To date, there have been 24 comments by email and 23 comments by mail or other avenues. Of the comments received, 22 of them encourage the Commission to either raise compensation rates or maintain the same rates, 15 encourage lowering the rates and 10 were comments concerning other issues, including several wanting the Lottery to "bring back Sports Action<sup>SM</sup>." The written comment period ends October 16, 2009.

Director Penn drew comparisons between this month's public hearing and the public hearing held in 2005 when Video Lottery<sup>SM</sup> compensation rates were adjusted due to the addition of line games. At that time, the Lottery received literally thousands of written comments and hundreds of people attended a very contentious hearing. This time around, fewer than 100 people attended the hearing and public testimony and reaction to the testimony was respectful.

Director Penn and the Commission thanked Rules & Policies, Public Affairs, Lottery Security/OSP and other individuals for their key planning and coordination of the hearing.

### **Video Lottery<sup>SM</sup> Compensation Rates Reference Book - Inserts**

Director Penn reviewed two informational items to be added into the Commission's reference binders on the Video Lottery<sup>SM</sup> Compensation Rates process.

Item #1 - Minutes of the Lottery Commission Meeting held March 30, 2005. Recently, a Lottery Retailer, Roger Nyquist, provided the Commission with an excerpt from the March 30, 2005 Commission Meeting. In 2005, the Commission was involved in adjusting Video Lottery<sup>SM</sup>

compensation rates because of the addition of line games. There was invited testimony at the March 2005 meeting and the excerpt was of Mr. Nyquist's own testimony regarding commission rates for line games in Alberta, Canada.

Director Penn recommended the Commission read the entire minutes of the March 30, 2005 Commission Meeting (39 pages) as they are illustrative of the process and are good background information.

Item #2 - History of Lottery funds for education. Information listing the funds provided to education from Lottery revenue. To recap, basically two-thirds of the Lottery's transfer to the state goes to education. In the FY03-05 biennium, education received \$537 million in Lottery funds. In the FY07-09 biennium, \$967 million in Lottery funds went to education, a substantial increase.

### **Compensation Rate Questions - Responses**

Director Penn gave information on two particular topics that arose at the public hearing.

Item #1 - It was suggested that the Lottery consider a different commission rate based on a retailer's proximity to a casino to help offset the loss of sales due to the smoking ban. Director Penn noted that such a scenario would be both difficult and probably constitute an unlawful retailer subsidy. Tribal gaming casinos are a matter of national law concerning agreements the US Government has with the sovereign Indian nations. The Governor has authority to enter into compacts with these nations but the Lottery has no jurisdiction or authority for the legal process and relationships between the sovereign nations and the Federal and State governments.

Chair Ungar added that there are quite a number of retailers that for one reason or another experience a negative impact to Lottery sales because of their location, i.e., construction projects and zoning changes.

Chair Ungar emphasized for the record that the Lottery does not decide where the transfers to the state go or how the money is used. Revenues generated by the Lottery are distributed in accordance with the Oregon Constitution and state statutes. Chair Ungar encouraged input from the citizens of Oregon in that statutory process.

Item #2 - Testimony concerning "mini casinos" or "deli operations." Director Penn stated that there are clearly people who disagree with this business model, however, he stressed that it is a legal business model and generates \$200 to \$250 million for the state each biennium. It does not violate the Casino Prohibition clause in the constitution as interpreted by the Oregon Supreme Court. Director Penn reviewed the Lottery's progression through dominant use-dominant purpose and other rule changes relative to this retailer base and provided information on this business model from an historical perspective to help clarify. Director Penn also pointed out that this issue is separate from the retailer contract and compensation rates.

The Lottery will continue to update the Commission on public comments and the administrative process.

*[End of Governance Matters and Director's Report Section.]*

## **C. RULES AND POLICIES**

Presenters: Director Penn; and Mark Hohlt, Rules and Policies Manager

## **Rulemaking Update**

Mr. Hohlt updated the Commission on three pending rulemaking items.

**Item #1** - A public hearing was held on Video Lottery<sup>SM</sup> Compensation Rates on August 18, 2009. The written comment period ends October 16, 2009. The Commission encouraged public comment regarding the rate of compensation for Video Lottery<sup>SM</sup> retailers for the purpose of developing a compensation system that maximizes net revenue to the state commensurate with the public good while providing a reasonable rate of return to retailers, in accordance with constitutional and statutory mandates.

**Item #2** - A public hearing is scheduled September 16, 2009, on the amendment of rules to allow the payment of Lottery prizes at a kiosk located in the Portland International Airport. The rule amendments will be brought to the Commission for approval at the September meeting.

**Item #3** - A public hearing is scheduled September 21, 2009, on amendments in 15 separate rule divisions to change all reference to the term "On-Line" [game] to "Draw Game." The purpose of the revision is to avoid confusion in our rules with games that are played on the internet. These games are not played on the internet. Proposed rule changes also include the repeal of the Breakopen rules and the Minimum Sales rule, and new language regarding alternative compensation agreements for retailers who may be offered a different sales style or new business model for the sale of new types of Lottery games. The rule amendments will be brought to the Commission for approval at the September meeting.

## **Division 69, Raffle Game Rules**

The Commission received the proposed revision to the Raffle<sup>SM</sup> Game rule prior to the meeting for review (*Exhibit #3*). The proposed change specifies when the winning raffle ticket numbers become official and final. A public hearing was held on July 17, 2009. The amendments were reviewed by the Attorney General and are recommended for adoption by the Director, effective September 1, 2009, to be retroactive to March 1, 2009.

Chair Ungar moved that the Lottery Raffle Rules in Division 69, as listed on the agenda and in the materials presented today, be amended as proposed, to be effective September 1, 2009. Commissioner Fogg seconded the motion. The motion passed by a quorum vote, 4-0.

## **Salary Freeze Policy - Internal Operating Policy**

The Commission received the proposed extension to the existing Salary Freeze Policy prior to the meeting for review (*Exhibit #4*). The purpose of extending the end date one month is to permit time for the State to complete its process regarding furlough days and salary freezes. The State's resolution is expected by mid-September, at which time the Director will recommend to the Commission how the Lottery might align itself with the State's direction regarding salary freezes and furlough days during the next biennium. There was some discussion by the Commission concerning this action. Chair Ungar called for a motion.

Vice Chair Ihle moved that the Oregon Lottery's Salary Freeze Policy presented today, and recommended by the Director, be amended by the Oregon State Lottery Commission, to be effective July 1, 2009 through September 30, 2009. Chair Ungar seconded the motion. The motion passed by a quorum vote, 3-1, with Commissioner Howland voting no.

[End of the Rules and Policies Section.]

#### **D. SUPPORT SERVICES**

Presenters: Larry Niswender, Assistant Director for Support Services; Kathy Ortega, Chief Financial Officer

Ms. Ortega presented the monthly and year-end Financial Statement ended June 30, 2009 for approval by the Commission. Ms. Ortega also presented the July 2009 Financial Statement for Commission approval.

#### **Financial Statement for June 2009 and FY2008-2009 Year End**

The Commission received the June 2009 Financial Statement for review prior to the meeting (*Exhibit #5*).

For month ended June 30, 2009, net revenue of \$65,369,484 on a budget of \$66,833,356 resulted in \$1,463,872 under budget. Net profit of \$38,633,708 on a budget of \$42,051,046 resulted in \$3,417,338 under budget.

Year-to-date, net revenue of \$895,175,864 on a budget of \$894,667,165 resulted in \$508,699 over budget. Ms. Ortega noted that the budget overage, in Direct Expenses, is the difference between what the retailer commissions are *projected* to be and the *actual* paid in retailer commissions. It is a calculation variance, not a spending variance. Net profit of \$566,819,783 on a budget of \$560,268,018 resulted in \$6,551,765 over budget.

For June 2009, actual services and supplies of \$1,687,084, on a budget of \$1,068,040 resulted in \$619,044 over budget.

Year-to-date, actual services and supplies of \$10,223,144 on a budget of \$12,900,250 resulted in \$2,677,106 under budget. All categories of spending in FY09 came in under budget.

Ms. Ortega highlighted key accounting and variance information. Ms. Ortega reviewed the balance sheet and FY09 year end Capital Outlay Status Report with the Commission. There were no questions or comments from the Commission.

Vice Chair Ihle moved that the Oregon State Lottery Financial Statement for month ending June 30, 2009, be approved for the record as presented today.

Vice Chair Ihle further moved that the Oregon State Lottery Financial Statement for Fiscal Year 2008-2009, ending June 30, 2009, be approved for the record as presented today. Commissioner Fogg seconded the motion. The motion passed unanimously by a quorum vote, 4-0.

#### **Financial Statement for the Month of July 2009**

The Commission received the Financial Statement for month ended July 31, 2009, for review prior to the meeting (*Exhibit #6*). Ms. Ortega presented the July 2009 Financial Statement for approval by the Commission. July is the first month of the fiscal year so monthly and year-to-date information is the same; monthly information only is reported.

For month ended July 31, 2009, net revenue of \$65,796,915 on a budget of \$71,499,618 resulted in \$5,702,703 under budget. Net profit of \$40,940,230 on a budget of \$44,583,796 resulted in \$3,643,566 under budget.

For the month of July 2009, actual services and supplies of \$653,653, on a budget of \$1,039,916 resulted in \$386,264 under budget. The overage in intergovernmental charges is typical this time of year during the year-end audit by the Secretary of State.

Ms. Ortega highlighted key accounting and variance information and reviewed the balance sheet with the Commission. There were no questions or comments from the Commission.

Commissioner Fogg moved that the Oregon State Lottery Financial Statement for month ended July 31, 2009, be approved for the record as presented today. Vice Chair Ihle seconded the motion. The motion passed unanimously by a quorum vote, 4-0.

### **Procurement Activity Report**

The Commission received a copy of the Procurement Activity Report for review prior to the meeting (*Exhibit #7*). AD Niswender reported that 26 items are on the report. Nine contracts were executed this month, all within budget, for an approximate total of \$950,000.

### **FY10 Business Plan**

Approval of the FY10 Business Plan (*Exhibit #8*) was deferred to the next Commission Meeting in order to receive statistical information from the Department of Human Services.

*[End of the Support Services Section.]*

## **E. RETAIL OPERATIONS and MARKETING**

Presenters: Carole Hardy, Assistant Director for Marketing; and, Marianne Manning, Retail Sales Support Manager

### **Business Year Comparisons Report**

The Commission received the Business Year Comparisons Report prior to the meeting for review (*Exhibit #9*). Ms. Manning reported on sales for week ended August 22, 2009, compared to sales in the same week the previous year.

- Scratch-it<sup>SM</sup> sales of \$15,308,002 are 12.03 percent below last year.
  - Scratch-it<sup>SM</sup> Tickets for September 2009
  - "Cowboy Crossword" is a \$2.00 ticket with a top prize of \$15,000
  - "Colossal Crossword" is a \$3.00 ticket with a top prize of \$25,000
  - "Trump Card" is a \$5.00 with a top prize of \$50,000
  - "Monster Money" is a \$1.00 ticket with a top prize of \$3,100
- Megabucks<sup>SM</sup> sales of \$8,078,037 are 62.46 percent above last year.
- Powerball® sales of \$10,010,159 are 62.37 percent above last year.
- Pick 4 sales of \$194,995 are 10.73 percent below last year.
- Keno sales of \$14,221,449 are 7.89 percent below last year.

- Win for Life sales of \$1,022,000 are 1.25 percent above last year.
- Lucky Lines<sup>SM</sup> sales of \$360,632 are 29.12 percent above last year.
- Total Traditional Product sales of \$49,195,274 are 8.16 percent above last year.
- Total Video Lottery<sup>SM</sup> sales of \$102,847,114 are 22.98 percent below last year.
- Total Lottery sales of \$152,042,388 are 15.07 percent below last year.

**Marketing Update** (AD Hardy)

- There are 12 new games on the Spielo prodiGi terminal. Four of the games are in the top 10 producing games and eight are in the top 20 producing games - out of 54.
- The first prize payout of over \$600 on a Video Lottery<sup>SM</sup> game is being developed.
- A new Keno promotion is planned for this fall.
- Thanksgiving Raffle<sup>SM</sup> Game tickets start selling October 4th.
- The next Oregon Wins campaign highlights restoration work in Hood River to protect and revitalize the endangered fish habitat.
- Three new Powerball® ads are set to air over the next several months.
- Marketing Research is working diligently with other jurisdictions and vendors on viable game options for the Oregon market.
- Diagrams of the Lottery kiosk at the Portland International Airport were shown. AD Hardy described where Lottery advertising at the airport will be located.

**Retailer Forums**

Ms. Manning reported on a Retailer Forum held earlier this month in the Portland area, and provided the logistics of the next Retailer Forum in Redmond, Oregon.

**Executive Summary - Keno Promotion**

The Commission received the Executive Summary for the Keno Recruitment Incentive promotion prior to the meeting for review (*Exhibit #10*). Ms. Manning reviewed the promotion's success in increasing Keno at retailer locations.

*[End of the Retail Operations and Marketing Section.]*

**F. OTHER BUSINESS**

No other business was brought before the Commission. Chair Ungar adjourned the August 28, 2009, Lottery Commission Meeting. The next meeting is scheduled on September 25, 2009, at the Debbs Potts Oregon State Lottery Commission Building.

Respectfully submitted,

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Linda DeBlasio  
Senior Executive Assistant to the Commission

Lottery Director's Office

Approved by:

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Commissioner Steven Ungar, Chair  
Oregon State Lottery Commission

***Lottery Commission Meeting exhibits are available by calling Public Affairs in Salem at 503.540.1016, or on-line at the following sites:***

- [info.oregonlottery.org](http://info.oregonlottery.org): Agenda, Meeting Minutes, Financial Statement, and B.Y. Comparison Sales Report
- [lottery.webcenter@state.or.us](mailto:lottery.webcenter@state.or.us): Oregon Administrative Rules and Internal Operating Procedures