

PUBLIC HEARING
HB 2237,2585,2671,2691

HJR 30

TAPES 117-118 A-B, 119 A

HOUSE REVENUE COMMITTEE

APRIL 18, 2005 1:00 PM STATE CAPITOL BUILDING

Members Present: Tom Butler, Chair
 Rep. Vicki Berger, Vice-Chair
 Rep. Brian Boquist
 Rep. Sal Esquivel
 Rep. Larry Galizio
 Rep. Betty Komp
 Rep. Andy Olson
 Rep. Chuck Riley

Member Excused: Rep. Mark Hass

Witnesses Present: Dale Penn, Director, Oregon Lottery
 Mark Nelson, Oregon Restaurant Assn. (ORA)
 Larry Campbell, Magna Entertainment
 Dave Benson, OR Horseman's Benevolent & Protective Assn.

Dave Nelson, Portland Meadows Race Track

Jack Root, Oregon Thoroughbred Owners and Breeders

Jeff Marotta, Problem Gambling Mgr., Dept. of Human Services

Rep. Steve March, District 46

John Feuerstein, Eastport Liquor

John Stubenvoll, Oregon Liquor Control Commission

Phillip Kennedy-Wong, Ecumenical Ministries of Oregon

Staff Present:

Paul Warner, Legislative Revenue Officer

Mazen Malik, Economist

Kristi Bowman, Committee Assistant

TAPE 117, SIDE A

002 Chair Butler Calls meeting to order at 1:02 p.m.

OPENS PUBLIC HEARING FOR HOUSE BILL 2237

007 Mazen Malik Gives background of HB 2237 (Exhibit 1). The bill requires the Oregon State Lottery Commission to adopt an alternate dispute resolution process for contract disputes with Lottery game retailers. There is a dispute process in place currently, but it is not a law.

050 Chair Butler Clarifies with Malik the existing statute for dispute resolutions as outlined in Oregon Revised Statute (ORS) 183.502.

- 060 Dale Penn Testifies on HB 2237 (neutral position). Discusses current dispute process. Comments that very few complaints have gone the full length of the process. Many of the disputes have been settled after reconsideration of the Lottery Director. Expresses concern that this is an extra layer and there is no need for a statute to mandate this process.
- 098 Chair Butler Discusses the current resolution process with Penn.
- 102 Penn Comments that a fiscal impact statement was submitted to Legislative Fiscal, but no dollar amount was included because it is unknown how many retailers would be impacted by this new procedure.
- 112 Rep. Olson Asks how many complaints reach Mr. Penn.
- 120 Penn Responds that in his six months as director, only one complaint has reached his desk. The complaint was not against a Lottery policy but involved an issue regarding discretion by the Lottery Commission because of a statute limitation. There is a Senate bill going through the legislative process now that will give the Lottery discretion on a particular issue. Adds that he does not see a need for HB 2237.
- 130 Rep. Boquist Asks about the Oregon State Police (OSP) involvement with the dispute resolution process.

137 Penn Responds that OSP is sometimes needed for a criminal investigation of a retailer.

145 Rep. Boquist Clarifies the intent of HB 2237 with Penn.

CLOSES PUBLIC HEARING FOR HOUSE BILL 2237

OPENS PUBLIC HEARING FOR HOUSE BILL 2585

160 Malik Gives summary of HB 2585 (Exhibit 2). The bill limits the placement of video Lottery game terminals to establishments that maintain at least 50 percent of annual income from non-Lottery sources. Refers to the revenue impact statement (Exhibit 3).

217 Penn Testifies in opposition to HB 2585. Comments on the concept of “dominant use--dominant purpose.” No retailer is able to sell video Lottery products until they establish 6 months of successful retail sales before they can apply for video Lottery. Only 33 out of 2297 retailers have been found out of compliance, and they have either modified their sales, changed their business operation, or they were dropped from the video Lottery program. If HB 2585 becomes law, there are two issues: 1) the Governor asked the Lottery to increase their revenues 22% this biennium just to meet the base budget in the next biennium. Any reduction in the capability to increase sales reduces the Lottery’s capability to generate the additional 22%; 2) the courts have provided good guidance and discretion to the Lottery, and there could be an impact to the budget in the next biennium.

294 Rep. Riley Comments about the reason for bringing the bill forward out of the Trade & Economic Development Committee. It is Chair Lim’s

position that it is important that the retailer has Lottery as a secondary part of the business, not as the primary revenue source.

317 Penn Adds that “dominant use” in the context of the court decision does not mean primary business. The term encompasses how a business operates, how much square footage is devoted to Lottery games, and the number of machines.

337 Rep. Galizio Asks for clarification of the term “casino.”

342 Penn Responds that the Court did not define the term “casino.” The Court stated that if the business location had a dominant use and dominant purpose of gambling, then it *could* violate the definition of casino gambling. The Court did say that the retailer network limit of five machines does not violate the casino prohibition.

368 Mark Nelson Testifies in opposition to HB 2585 because of the reduction of the percentage of lottery income a business can have from the current level of 60% to 50%. Refers to handout (Exhibit 4) regarding the Court’s definition of “dominant use and dominant purpose.” The Lottery Commission has effectively applied the court decision and has “thoughtfully” laid out how retailers must stay in compliance. Comments that the top 10% of retailers impacted by HB 2585 make about 30% of Lottery income and generate about \$1 M per year.

TAPE 118, SIDE A

020 Nelson Refers to handout (Exhibit 5), and reads verbatim from the second paragraph.

CLOSES PUBLIC HEARING FOR HOUSE BILL 2585

OPENS PUBLIC HEARING FOR HOUSE BILL 2671

- 056 Malik Gives overview of HB 2671. (Exhibit 6). The bill increases the number of video lottery game terminals that may be placed on the premises of certain race meet licensees to 50. Current law allows six terminals to be placed at a race meet facility. Adds that there could be revenue increases of \$2 M per year (Exhibit 7).
- 103 Rep. Steve March (Testified for HB 2691 during the public hearing for HB 2671. See tape log, p. 6, for testimony on House Bill 2691).
- 165 Larry Campbell Testifies in support of HB 2671. Discusses the impact of Indian casinos and video line games on horse race betting. Reads from written testimony (Exhibit 8). Comments on the economic impact of the horse racing industry. Adds that with the limit of 50 machines there will not be a conflict with the casino prohibition law of 75 machines. Refers to proposed amendment (Exhibit 9). This bill only applies to the lottery license at Portland Meadows. Submits handout (Exhibit 10).
- 269 David Benson Testifies in support of HB 2671. Reads verbatim from written testimony (Exhibit 11).
- 339 Rep. Galizio

Asks if Magna has horse racing and lottery gaming in other states. How would the number of terminals proposed [50] compare to other states.

353 Campbell Responds that Magna has more success in states with race tracks with gambling in them. The difficulty in Oregon is the limitation on the number of video terminals.

372 Rep. Berger Asks how many county fairs have horse racing. Also asks how the seasonal operations at Portland Meadows affect revenues.

378 Campbell Responds there are five Oregon fairs with horse racing. Most horses that race at Portland Meadows also race in county fairs. Regarding the seasonal operations at Portland Meadows, Campbell does not see a significant impact. The additional terminals would provide an additional \$500,000: \$250,000 for the purses and \$250,000 for the operation of the track.

TAPE 117, SIDE B

003 Chair Butler Asks about the economic impact of the Environmental Protection Agency (EPA) closure of Portland Meadows in 2002.

013 Campbell Responds that the revenue drop in 2002 is due to the EPA closure, and there is a continued decline in revenues because of competition from other gambling activity in the state.

- 025 Rep. Komp Asks for more information about the EPA situation at Meadows.
- 028 Campbell Responds that Magna has corrected the EPA citations.
- 035 Dave Nelson Testifies in support of HB 2671 and reads from written testimony (Exhibit 12).
- 104 Jack Root Testifies in support of HB 2671 and submits written testimony (Exhibit 13). Oregon's horse racing industry has been severely impacted by competition from other gambling venues. Over 1000 people are employed by the horse racing industry, mostly unskilled labor that learns job responsibility and horse care. Discusses indirect impacts on other businesses. Discusses the benefits of adding lottery machines at Portland Meadows.
- 257 Rep. Riley Asks about the proposed amendment that sets a specific percentage for retailer compensation.
- 271 Nelson Responds that the proposed amendment is from Magna and adds that there needs to be further discussion for a final amendment.
- 297 Jeff Marotta Discusses issues pertaining to HB 2671. Reads verbatim from written testimony (Exhibit 14).

- 320 Rep. Boquist Asks if the Dept. of Human Services (DHS) and the Governor are opposed to this issue.
- 322 Marotta DHS is taking a neutral position on this bill. However, he wants to bring issues of concern to the attention of the committee. He is not aware of the Governor's position. HB 2671 could "create a bridge to a policy" that would allow other establishments to have up to 50 terminals, and they would not qualify as a casino. Expresses concern about other establishments requesting more terminals.
- 365 Rep. Boquist Asks whether Marotta knows if Magna has a treatment program for problem gambling.
- 370 Marotta Responds that the Oregon Lottery contributes 1% of its revenues into a gambling treatment fund, and those revenues are used to support an extensive service of prevention and treatment. Adds that the funds his department oversees is exclusive of the 1% Lottery money. He is not aware of specific programs that Magna or other casinos may have for problem gambling.
- 394 Rep. Olson Asks if Marotta knows what the Governor is recommending on the Cascade Locks tribal casino.
- 400 Marotta Responds that the DHS has taken a neutral position on that project and cannot speak for the Governor's office.
- 407 Rep. Galizio Asks for Marotta's opinion about the number of terminals that would constitute a casino.

TAPE 118, SIDE B

- 003 Marotta Expresses concerns about future attempts to increase the number of lottery machines to 50 in other businesses.
- 020 Chair Butler Asks why other businesses would feel they were entitled to 50 terminals.
- 030 Marotta Responds that he is not aware of applications from other businesses to increase their number of terminals. Expresses concern that HB 2671 would reduce the barrier for establishments to build up the number of its terminals.
- 041 Mark Nelson The ORA is neutral on the bill. Expresses concern about the amendment. The ORA believes that it is the Lottery Commission's responsibility to set the percentage rate, not the legislature's.

CLOSES PUBLIC HEARING FOR HOUSE BILL 2671

OPENS PUBLIC HEARING FOR HOUSE BILL 2691

- 077 Malik Gives overview of HB 2691 (Exhibit 15). The bill authorizes placement of up to three video lottery terminals in liquor stores established by the Oregon Liquor Control Commission. The bill gives

the impression that this is a pilot program because of the sunset date of 01/02/08. Suggests that the pilot program needs further definition before putting specific revenue projections in the revenue impact statement (Exhibit 16).

- *** Rep. Steve March (***)Use Tape 118, Side A, tape counter 103 for full text) Testifies in support of HB 2691 and comments that it is a revenue producing bill. It provides a “convenience factor” for customers to play lottery games in a smoke-free environment. By allowing video terminals in liquor stores it will provide additional revenue for state-owned liquor stores and the Oregon Lottery.
- 121 Penn Comments that the Lottery is neutral on this bill. Submits written testimony (Exhibit 17). Expresses concerns about the sunset clause. Liquor stores have a unique environment—it is difficult to determine an amount that will be generated because a liquor store customer generally is in and out quickly, not staying a long time to play the line games. Adds that the square footage in many stores is small and may not allow three machines in the store. Another concern is that 717 new machines would need to be purchased if each store wanted three machines for a cost of \$6.5 M. The Lottery needs time to recoup the investment costs.
- 155 Chair Butler Questions and discussion with Penn about lottery machines and the replacement costs of the original machines in the field now.
- 184 Rep. Boquist Asks Malik about the location of the sunset date in bill
- 200 Malik Explains how legislative counsel crafts the bill’s language to insert the sunset date.

- 235 John Feuerstein Testifies in support of HB 2691. Reads verbatim from written testimony (Exhibit 18). If this were a successful program, he would consider opening his store on holidays and providing more benefits for his employees.
- 257 Rep. Berger Discussion with Feuerstein about the implementation of terminals in liquor stores and the possibility of a pilot program for one store instead of for all stores.
- 301 Rep. Riley How much inventory would have to be reduced in order to provide space for video terminals.
- 303 Feuerstein Responds none. Adds that only about 50 square feet is needed for three terminals.
- 312 Mark Nelson Testifies in opposition to HB 2691. Comments that it is a very “slippery slope”. Allowing off-premise gambling opens the door to all other off-premise establishments. There are several grocery outlets interested in having terminals.
- 353 Chair Butler Asks about minors entering liquor stores.
- 355 Nelson Minors are not allowed in state liquor stores that sell liquor exclusively. State liquor stores located in other businesses will allow minors. Minors can enter with a parent or adult with a legal relationship or if married to a person over 21.

390 John Stubenvoll Agrees with Nelson's comments about minors.

TAPE 119, SIDE A

400 Phillip Kennedy Wong Testifies in opposition to HB 2961 because "there are plenty of opportunities" to gamble without increasing the venues. Liquor stores are not a viable option because they are primarily a retail operation and not like bars or taverns. Comments about Marotta's testimony on HB 2671 about the definition of a casino.

CLOSES PUBLIC HEARING FOR HOUSE BILL 2691

OPENS PUBLIC HEARING FOR HOUSE JOINT RESOLUTION 30

035 Malik Gives overview of HJR 30 (Exhibit 19). The bill proposes an amendment to the state Constitution to distribute a portion of net proceeds of State Lottery funds for natural disaster relief in Oregon. The bill will take away revenues from other legislative Lottery funds for economic development. Refers to the revenue impact statement (Exhibit 20).

074 Rep. Boquist Asks about the general fund dollars impacted.

076 Chair Butler Responds with an explanation of the non-dedicated Lottery funds and the impact of an additional 1% diversion to the Disaster Relief Fund (DRF). Asks Malik about the mechanics of the account.

091 Malik Responds that this bill proposes an amendment and adds that the details about how the DRF fund will follow after adoption of the amendment.

CLOSES PUBLIC HEARING FOR HOUSE JOINT RESOLUTION 30

093 Chair Butler Adjourns meeting at 2:59 p.m.

Tape Log Submitted by:

Reviewed by:

Kristi Bowman, Committee Assistant

Kim Taylor James, Committee
Coordinator

Exhibit Summary:

1. 1. HB 2237, Staff Measure Summary, Malik, 2 pp., 04/15/05
2. 2. HB 2585, Staff Measure Summary, Malik, 1 pg., 04/15/05
3. 3. HB 2585, Revenue Impact Statement, Malik, 1 pg., 04/18/05
4. 4. HB 2585, Handout, Nelson, 4 pp., 04/18/05
5. 5. HB 2585, Handout, Nelson, 2 pp., 03/31/05
6. 6. HB 2671, Staff Measure Summary, Malik, 1 pg., 04/15/05
7. 7. HB 2671, Revenue Impact Statement, Malik, 04/15/05
8. 8. HB 2671, Testimony, Campbell, 2 pp., 04/18/05
9. 9. HB 2671, Amendment HB 2671-1, Legislative Counsel, 04/18/05
10. 10. HB 2671, Handout, Campbell, 11 pp., 04/18/05
11. 11. HB 2671, Testimony, Benson, 2 pp., 04/18/05

12. 12. HB 2671, Testimony, Nelson, 8 pp., 04/18/05
13. 13. HB 2671, Testimony, Root, 2 pp., 04/18/05
14. 14. HB 2671, Testimony, Marotta, 1 pg., 04/18/05
15. 15. HB 2691, Staff Measure Summary, Malik, 04/18/05
16. 16. HB 2691, Revenue Impact Statement, Malik, 04/18/05
17. 17. HB 2691, Testimony, Penn, 2 pp., 04/15/05
18. 18. HB 2691, Testimony, Feuerstein, 1 pg., 04/18/05
19. 19. HJR 30, Staff Measure Summary, Malik, 1 pg., 04/18/05
20. 20. HJR 30, Revenue Impact Statement, Malik, 1 pg., 04/18/05