

Senate T&E Committee  
May 31, 1991  
Page  
Exec. Reappt.  
HB 3151 - PH

SENATE LEGISLATIVE COMMITTEE  
ON TRADE AND ECONOMIC DEVELOPMENT

May 31, 1991Hearing Room 343  
3:00 P.M.State Capitol  
Salem, OR

Tapes 134 - 135

Executive Reappointment - Gerry Frank - Oregon TourismCouncil  
Video Lottery

MEMBERS PRESENT:           SEN. WAYNE FAWBUSH, CHAIR  
                              SEN. SCOTT DUFF  
                              SEN. JIM HILL  
                              SEN. PEG JOLIN  
                              SEN. EUGENE TIMMS

MEMBERS EXCUSED:SEN. JEANNETTE HAMBY

STAFF PRESENT:           JOSEPH CORTRIGHT, EXECUTIVE OFFICER  
                              TAMIRA MILLER, POLICY ANALYST  
                              JERI CHASE, OFFICE MANAGER  
                              HOLLY BROWN, COMMITTEE ASSISTANT

WITNESSES:GERRY FRANK, OREGON TOURISM COUNCIL  
                              REP. MICHAEL BURTON, HOUSE DISTRICT 17  
                              JIM NIEL  
                              PAUL JEWELL

ERIC MAHAFFY  
                              BOB CANTINE, ASSOCIATION OF OREGON COUNTIES  
                              LETE DAVIS  
                              LUCIEN BAKER  
                              STU RASMUSSEN, PRESIDENT/VICE PRESIDENT IN CHARGE OF  
                                  ENGINEERING FOR OLGAMES MANUFACTURING

NOTE: These minutes contain materials which paraphrases and/or summarizes  
statements made during this  
meeting. Only text enclosed in quotation marks reports a speaker's exact  
words. For complete contents of the  
proceedings, please refer to the tapes.

TAPE 134, SIDE A

000 CHAIR FAWBUSH convenes the meeting at 3:19 p.m.

Executive Reappointment (Oregon TourismCouncil) - Gerry Frank

004 CHAIR FAWBUSH: Summarize the achievements of the Oregon TourismCouncil  
since you were  
appointed and what you think the future holds.

011 GERRY FRANK: We have been trying to spread the interest in tourism around the state. We have prosperity along the I-5 corridor, but other areas are suffering and I think that tourism is one means to bring prosperity to some of the smaller communities in Oregon. We need additional activities and destinations for tourists coming here and we have been very active in this area. There is a lot of internal interest in tourism and we are trying to capitalize on that. I have been frustrated that there hasn't been more private funding and commitment for tourism. I don't think state government should be responsible for all tourism funding and I have been pushing the private sector to participate and fund more. The promotion of the Oregon Coast Aquarium has been a highlight. This is under construction and we have raised \$11.5 million dollars and will be open in approximately one year. I was sorry that DEBBIE KENNEDY left and am interested in the appointment of a new Tourism Division director.

042 SEN. TIMMS: Do you think there is a big advantage to having coordination with the federal government?

046 FRANK: Because of REP. AU COIN and SEN. HATFIELD, we have been able to draw on federal funds for some specific projects in the state and that has been helpful. It has not been helpful for tourism promotion as an industry. We have been able to secure sizable funding for several projects - Oregon Coast Aquarium, Oregon Trail, etc. We are hopeful of increasing interest in places that are unique to the state.

066 CHAIR FAWBUSH: We had a suggestion earlier this year to look at an independent funding source for tourism - a statewide hotel/motel tax, etc. Do you think we should consider something like this?

074 FRANK: It is dangerous for the tourism program to only depend on lottery funding. I think we should consider various alternative ways to fund tourism. Again, we need to return to the private sector and I would like to expand that. We cannot continue to depend upon state funds.

079 CHAIR FAWBUSH: What is the future for tourism? It has been a growth industry; where do you think it is going?

082 FRANK: I have seen the danger of being dependent on one industry. I think tourism is something we can see a steady growth in, but only if we have the destination resorts and an active program. One of the pluses has been our advertising program that has gained national attention. This takes funds. I think we are going to see a growth in Oregon, but it is not going to come naturally; it needs to be worked on. We have to ensure that we have a year-round tourist program. We also have a problem with transportation facilities. Portland is the only major West Coast city that doesn't have non-stop

service to the East Coast. It is difficult to get here and it is expensive. We all need to work on improving this.

140 MOTION: SEN. TIMMS MOVES the reappointment of GERRY FRANK to the Oregon Tourism Council.

VOTE: Passes 5-0. Voting AYE: SENATORS DUFF, J. HILL, JOLIN, TIMMS, and FAWBUSH. EXCUSED: SEN. HAMBY.

HB 3151 (Video Lottery) - Public Hearing

159 JOE CORTRIGHT: Describes what HB 3151 does: 1) defines and bans grey games; 2) repeals the prohibition on direct payment of prizes by machine; 3) repeals existing allocation of video lottery proceeds; 4) creates a local "opt out" provide in which counties could elect not to participate; 5) implies that counties would receive a share of revenues, but has no specific provision to specify this revenue share would be or what they could be used for; 6) requires existing machines be remove from the state by October 1, 1991. The net revenue from this activity has been estimated by the Lottery Commission at \$61 million. We are reviewing that estimate. This estimate depends on what share of the revenue you assume the state will get after prizes are paid out. This legislation does not currently specify how the games would be operated; that authority already exists in statute for the Lottery Commission as a result of 1989 legislation. While this bill does not direct the Lottery Commission to operate these games, they have indicated that the ban of the gray games is what they need in order to carry out the authority they were granted two years ago. There is nothing in the legislation that specifies division of funds - either between the operators, administrative costs to the Lottery, or net proceeds to the state.

199 SEN. HILL: If a county opts out from participating can they still they can still receive funds?

200 CORTRIGHT: There is ambiguous language on Page 1, line 23. It seems to imply some direct share for counties, based on their participation, but it does not make it clear whether or not the state's share of revenues could or could not be expended in a county based on whether or not the county participated.

213 SEN. HILL: That issue needs to be addressed.

222 REPRESENTATIVE MIKE BURTON: I was one of the people who voted for video lottery last session and I regret that vote. Video lottery was incorporated into another bill that I supported governing Sports Action, plus I understood that video lottery machines would not be placed in places where it was not welcome. After the session, the Lottery Commission went to the Multnomah County area and I requested that be rejected. The Lottery Commission then went to other counties and then dropped the idea. I would prefer no video lottery at all, but it is already allowed under current law.

I am presenting amendments that would make this more equitable to the counties. Presents Proposed 345 1-A9 Amendments (EXHIBIT A).

265 BURTON: These amendments would require that a county "opt in" to games, rather than "opt out". This would allow a county to take the action necessary to get in the game and gives the public the opportunity to discuss this issue with the local Commissioners before a decision is made. Also included in these amendments is to place the requirement of not more than five machines in one location in statute, rather than leaving it to the discretion of the Lottery Commission. There are currently many private establishments with more than five machines in them that are going to have to replace those and the Lottery Commission will be under a lot of pressure to allow more than five machines per establishment.

300 CHAIR FAWBUSH: Is it legal now for me to set up machines on my personal property?

312 REP. BURTON: Yes, as long as you don't pay money out. But establishments with many machines that pay off exist.

331 CORTRIGHT: This bill originally contained a provision to restrict placement of machines to places that were licensed by the OLCC. The House eliminated that provision.

342 REP. BURTON: Also included in these amendments is a requirement that a percent of the funds received goes to provide education on gambling. There are also some date changes.

368 REP. BURTON: My first preference would be to eliminate the gray games with these constraints. Submits magazine article, Wheel of Misfortune (EXHIBIT B).

430 JIM NIEL: Testifies in support of HB 3151. Submits EXHIBIT C.

TAPE 135, SIDE B

030 NIEL: Continues testimony. The bottom line return on investment is pretty small (as indicated by EXHIBIT C).

076 CHAIR FAWBUSH: Why would anyone want to run these machines for only a profit of only \$6,000 dollars?

102 NIEL: If the gray video poker games are banned - which this industry supports - and taken away they will not be able to be financially profitable and will have to be in the lottery business. This minor amount will be able to keep them in business; they have no choice, if they want to be in the vending business at all they have to be in this business.

132 CORTRIGHT: In the first line of the center column, the real reason for the \$203,000 drop is the loss from the gray games. Running the games will generate real income would be \$209,000.

150 NIEL: Machines and organizations are much more sophisticated today - security, technicians, etc. The lottery's equipment will be much more technical than is being used today.

179 SEN. TIMMS: Is that going to be a problem in keeping machines up in rural areas?

182 NIEL: That could be a problem. Many operators have been preparing for this eventuality.

195 NIEL: I understand the financial issues. Montana started by collecting 15 percent, South Dakota started at 22 percent and are now up to 25 percent. The program has been successful in those states because the Lottery has allowed the private sector to get a return on its investment.

204 CHAIR FAWBUSH: What do you consider a fair return on an investment?

205 NIEL: If I were in a private business and I had to invest \$3 or \$4 million, I would hope to have a 10 - 20 percent return on that.

210 CHAIR FAWBUSH: That is a pretty wide spread; the Oregon Public Utility Commission considers 12 percent a fair return on utility investment. Is that fair?

213 NIEL: A utility monopoly is a lot different than the private sector with potentially ever-changing industry standards. REP. BURTON indicated he was concerned that most of this is in rule-making, rather than statute. There are a lot of people in the industry who would just as soon that this was in statute so it couldn't be changed by rules. If you are making these kinds of investments, you don't want the rules changed on you in 30 or 60 days. That is a risk.

228 CHAIR FAWBUSH: If the benefit to the state becomes too low, then we would have support to ban the games all together.

233 NIEL: I do not say the State should take such an insignificant portion. All I am saying is that in states where it has worked, they have taken 15 - 25 percent.

238 CHAIR FAWBUSH: What if we instructed the Lottery Commission to establish - through audit processes - what a reasonable rate of return would be and adopt that as a standard payment?

243 NIEL: Would they guarantee that rate of return to the company that make the investment?

244 CHAIR FAWBUSH: It means that, on average, that's what they would aim at for their costs. The other alternative is to direct the Commission to buy the machines themselves. We have a lot of alternatives. If there is a point where there is a lot of discussion and no agreement, that is what we will do.

258 NIEL: I am just trying to explain that I have had the opportunity to

see real companies in this business. With all of the investment involved, they do not make thousands of dollars of profit. It is easier said than done to just have the state do it. That would be a significant expenditure for the state. We think the private sector can do this well.

285 CHAIR FAWBUSH: I just want the options to be clear. Our preference would be to leave as much of this as possible in the private sector, but this is a partnership. We appreciate the numbers. We would probably request the Commission to do an independent audit/evaluation to establish the actual costs and what a fair rate of return would be.

300 NIEL: I want you to understand also that we have advocating for some time reducing the number of games, putting them in only licensed facilities, and other conservative standards.

320 SEN. TIMMS: I think there is great variety in this process. There is a big difference between having machines in Salem and rural Oregon. We need to have flexibility.

377 PAUL JEWELL: Presents testimony in opposition to HB 3151 (EXHIBIT D).

416 CHAIR FAWBUSH: There are a number of video poker operations throughout the state that "pay out". We are trying to find a way to get some control over these games that are out there. There is an effort to try and police these games more effectively. We do share your concern.

474 ERIC MAHAFFY: Testifies in opposition to HB 3151. Submits proposed amendments regarding tax (EXHIBIT E) and a magazine article (EXHIBIT F).

TAPE 134, SIDE B

030 MAHAFFY: I believe that we should tax the video lottery terminals at \$400 per year or \$100 per quarter. If you just outlaw the present video poker machines, 50 percent of the taxes on them is currently given to the Oregon Youth Conservation Core. Since 25 percent of the video games are poker machines, that means OYCC's revenue would be cut by 25 percent. I don't want to see that program go away. If we can shift the burden (as described in EXHIBIT E), they would not lose income.

072 CHAIR FAWBUSH: That is an important point. The games are currently subject to the Amusement Device Tax. The House Revenue Committee is looking at continuing that tax on these games; REP. HOSTICKA has an amendment that would eliminate the tax on the "skill" games and put it all on the video poker games.

077 MAHAFFY: That particular bill is moving no where at this time.

078 SEN. TIMMS: During the interim, the Revenue Committee promised that we would lower their tax; we had doubled their tax last session. We put a lot of people out of business in the process; I have a

bill to do away with it totally.

085 MAHAFFY: The Revenue Committee moved it through their subcommittee but it is presently tabled before the full committee. REP. DELNA JONES is holding it back. REP. HOSTICKA's bill would remove the games of skill completely from the tax and increase the tax on games of chance to \$500. I was told by the Revenue Department that a present-day push - taking the poker games to \$400 per unit - would be comparable to what they are receiving now.

090 SEN. JOLIN: Mr. Mahaffy represents a group of citizens that are being run out of business. I would hope we would consider something to address this issue. I think the burden ought to be eased on the people who own the games of skill.

115 MAHAFFY: The people who have chosen to obey the letter of the law and not run games of chance are dying. This business is taxed so heavily that all of my better locations are failing. If someone would just offer to take over my share of the equipment I currently am involved with, I would take that offer. My average income - across the board - on 90 pieces of equipment is \$15 dollars per month, per machine. I am over \$100,000 in debt; that takes over five years to pay off and the machinery only lasts for three years. This bill takes the poker industry out of the tax and leaves the games of skill holding the bag. Nobody wants to see the OYCC die and nobody wants to touch anything that reduces revenue and I don't blame them for that. But this business is not profitable to me running it legal. South Dakota claims that average income on the machines is \$400 - \$450 per week that is split three ways (state, location, operator). The average that I hear about for Oregon - before the split - is approximately \$35. I believe these poker machines have always been the goal of these taxes. I would like to see it increased to \$400 per year on the poker machines. I would like to see ORS 320 deleted - there are too many loopholes in it. It needs to be completely revised. He continues to discuss the proposed amendment (EXHIBIT E).

210 CHAIR FAWBUSH: Complete revision of that statute (ORS 320) would have to be done by the Revenue Committee; it is not in this committee's jurisdiction. Your concern about machines in or out of the tax is valid and we are going to consider that.

224 MAHAFFY: The Attorney General's Office has issued an opinion (OP 8218) which recommends that the tax be applied to the operator of the machine, not the owner. Also, the Department of Revenue has provided language for an amendment to HB 3077 that would also us to get out of the tax this year.

234 SEN. HILL: I appreciate MAHAFFY's concern - not only about the business aspect of the issue, but also his concern for the continuation of the Youth Conservation Core.

260 BOB CANTINE: Testifies in support of two provisions of HB 3151. We feel that as you structure the allowance of video lottery, there should be a ban on the gray games - only lottery commissioned/regulated machines. We would also like to support the "opt out" provision - limited as it is, we feel it is beneficial and appropriate. We also agree and want to make it clear that if a county "opts out", there is no revenue that could go to that county. How you would control whether or not the state spent some of its percentage of revenues in that county would be difficult to figure out, but you would have to do that. I support the elimination of any revenue returned to a county that "opted out". We would not support the reverse position.

318 SEN. DUFF: In this case there is not future opportunity to get back in after a county has opted out?

320 CANTINE: There is no option to opt out after 60 days. You can come back in, but you cannot opt out after you have opted in.

327 CHAIR FAWBUSH: The reason that the opt out provision is being considered for elimination is that if we do this funds will be dedicated to large capital projects that have statewide significance. Multnomah County may choose to opt out, but if light rail and prisons were funded in the area they would obviously benefit from that. The only reason we are considering this at all is to put the funds into large statewide significance. That is our dilemma and I am not sure how we are going to resolve it.

363 SEN. TIMMS: Have the counties taken a position on what percentage they want?

371 CANTINE: We don't have a fixed percentage to go by. Of the amount that would come to counties, we would take a portion of 5 percent across the top that would be equally distributed to every county; the remainder we would suggest be distributed to county of origin, i.e., where the game was played.

387 SEN. TIMMS: Would those monies be required to be used in an economic development loan fund?

389 CANTINE: There are other things that are consistent with economic development besides a loan fund.

394 CHAIR FAWBUSH: We would envision that the amount returned to counties would have to be used for economic development issues. How, exactly, they did that would be left up to them but there would obviously be some form of review.

405 LETE DAVIS: Testifies against HB 3151. I am concerned about using gambling for state revenue. This sends the wrong message to people. When you gamble - even if you win - you don't gain income you just shift it around. The gray machines are an obvious law enforcement problem and I would like them outlawed. But I do not believe that placing those same types of machines in the hands of the State



Lottery will make the problems we have now go away. The same machines will be in the hands of the same people.

432 CHAIR FAWBUSH: Each one of the machines will be directly plugged into the lottery so there won't be cheating. It is still gambling. But the revenues will be accountable, it will not go to illicit activities, and it will be taxed. That is the difference, but it still is gambling.

449 DAVIS: It is still gambling. The money will be subject to theft; there will still be law enforcement problems, etc. It is bad business and it doesn't sound to me like the profits will be enough to be worth it.

463 CHAIR FAWBUSH: We don't have the final estimates yet on exactly what the revenues would be from this. However, there is a tremendous amount of interest in this out there and that indicates profits to be made.

467 DAVIS: There is also then the chance for corruption.

468 CHAIR FAWBUSH: That is the one thing that we are determined to eliminate. If we have to have this, we are going to make it legal without any hidden cash flow.

471 DAVIS: I would also like to express support for REP. BURTON's suggested amendments. The counties should have the option of deciding if they want video poker as opposed to having to take action to prevent it.

481 CHAIR FAWBUSH: Thank you for your testimony.

TAPE 135, SIDE B

034 LUCIAN BAKER: We own video games of chance here in Oregon and an OLCC licensee. This legislation has put us in a crunch. I understand why the Oregon State Sheriff's Association has endorsed this bill. As a private businessperson, I do not find - in terms of the original rules - I do not find it destructive. The last administrative rules of the Lottery were workable for a private businessman. We are particularly concerned with the problem of the elimination of the gray games and the \$500 fine and being a felon. As of July 1, if this passes, I am in the brink of being a felon if I don't do something instantly. This makes it very difficult for us. Is it the purpose of this legislation to ban these machines that I purchased on the advice of the Attorney General whether the county agrees to it or not. These are a significant investment for us. If the Polk County Commissioners decide not to participate, our business is in a serious bind and we will probably lose it. These machines are instrumental in paying our debt service, our employees, and our own support. We are not asking for a large chunk of money. This is a major concern of ours. My source of income will be eliminated and I wouldn't be able to participate in the state's plan. That is my dilemma. There is no compensation involved in any of this

condemnation process or any way to get remuneration for the condemnation of my personal property.

This is currently licensed and legitimate. I called the Attorney General and got his advice on how to operate these machines the best way possible. He advised me to buy my own equipment. I don't mind paying the license fee next month, but I see no provision for a rebate of the machines or the license fee. This income is essential for our business. In order to continue our business activity without borrowing money, we have to operate our gray games until the last possible day which allows no space for us to get rid of them. Is there a way that we could have a little more lead time in order to get some value from our investment.

171 SEN. DUFF: As a side note, the installation of the network may in some cases be delayed because of the necessity to lay cable or install phone jacks.

180 BAKER: I think that this will be a popular game for the lottery. The state will now be able to compete with private enterprise. If the Lottery Commission can arbitrarily change the odds in one of their operations, why don't they improve the odds on the other regular lottery games and raise the revenues that way. I am just asking you to understand our concerns and that you don't forget us in this process.

240 STU RASMUSSEN: We are an Oregon manufacturer of on-line lottery equipment. We want to be a player in the Oregon market if and when video poker starts. This is an opportunity for the state to give a company a chance to get a start in what is going to be a nation-wide market. The "Proposed -A6 Amendment to HB 3151" (EXHIBIT G) is to address the fact that the lottery is one of three state agencies exempted from the local purchasing preference - that the state shall give preference to Oregon vendors if price, performance, etc., is equal. The Lottery is specifically exempted from that provision, I believe because when the lottery began there was no in-state manufacturer of lottery tickets or machines. Rather than slowing the process down, they allowed the exemption.

262 CHAIR FAWBUSH: We will need to discuss that further.

265 CHAIR FAWBUSH: Can the machines be made tamper proof or are we going to have continuing problems with people unhooking machines and then keeping the money?

267 RASMUSSEN: The machine will not operate if it is disconnected from the central computer. If you access the logic area of it it will not reauthorize itself until it has essentially "called its mother" and got the approval to go ahead.

273 CHAIR FAWBUSH: Nobody yet has developed a way to get around that?

274 RASMUSSEN: The key is to have very tight control on the machines, who operates them, and, especially, who services them - who can actually access to actual logic area. The logic area is behind

a separate key lock and after you open that door and close it again the machine has to be reauthorized by the central computer.

280 CHAIR FAWBUSH: How often would something like that have to be done and how much work is it?  
What kind of a workforce are we talking about in maintaining these kinds of machines?

283 RASMUSSEN: They are very reliable machines. Other than clearing a coin jam or some problem that a normal operator could solve, the machine is going to call in if it has a problem. We are looking at a mean time between failure of two or two and one-half years on the logic area. There will be mechanical problems because these machines are in a hostile environment.

293 SEN. TIMMS: One estimate we have received has a high amount for salaries because of the technical problems that those machines will develop which will create overhead. You are saying that these machines will be better than anything they currently have.

309 RASMUSSEN: They should be comparable in reliability to industrial grade computer equipment. The problems are mainly the normal coin-operated problems.

320 SEN. TIMMS: When they do go wrong, though, you are going to have to have a person with a lot of expertise?

324 RASMUSSEN: I think you will find all the machines in the industry are similar to ours in that the entire logic assembly plugs and unplugs. The lottery will require any manufacturer to maintain a local parts stock. It would be foolish to have to go to some other state every time for parts.

343 SEN. DUFF: Can these games be made interactive? Is there the opportunity from the central computer to change the game on the machine?

345 RASMUSSEN: Yes. However, you will find that people get attracted to a particular game, so if you change the game then people stay away from it for awhile because they don't understand the new rules and they ask for the old game back.

359 SEN. DUFF: It is possible to change the game from the central computer?

361 RASMUSSEN: It is entirely possible, but probably not practical.

370 CHAIR FAWBUSH: How much do the machines cost, on the average?

372 RASMUSSEN: From a low of about \$3,800 for a single-function, button-type machine, up to approximately \$6,000 for a multi-function, touch screen machine.

374 CHAIR FAWBUSH: What would a maintenance contract be on them?

375 RASMUSSEN: It would depend on who was doing the maintenance. If it was factory maintenance contracting with a vending operator who had qualified help, approximately \$200 to \$300 a year. If the

manufacturer were dealing directly with the location and had to send out people and was dealing with less skilled technicians, then it would be more. Normally what we would want to do with a location that owned their own machines would be to have the entire machine physically brought in for repair, so that the operator did not have access to the logic area. I would need to think further about the actuals on this.

390 SEN. TIMMS: How many manufacturers of this machine are there in Oregon?

391 RASMUSSEN: I am the only manufacturer that I know of in Oregon, although there was a similar company in Bend that might be interested in getting into this market.

398 SEN. TIMMS: I am worried about the vending companies in smaller, rural areas that do not have the expertise nor be able to make it work administratively. It would be good if someone could come out and service these areas.

405 RASMUSSEN: It is a requirement in South Dakota and Montana (and I assume this will also be a requirement in Oregon) that the manufacturers will provide training for vending operators on, if nothing else, how to repair the machine - not to the individual chip level, but at least to know which part has the problem. We have diagnostic systems in the machines so the machines can test themselves.

417 CHAIR FAWBUSH adjourns the meeting at 5:14.

Submitted by,

Jeri Chase  
Office Manager

#### EXHIBIT SUMMARY

EXHIBIT A -Proposed -9 Amendments to HB 3151-A, submitted by Rep. Mike Burton, 2 pages

EXHIBIT B - Magazine article, Wheel of Misfortune, submitted by Rep. Mike Burton, 4 pages

EXHIBIT C -Charts/Statements of Operations for Small, Medium, and Large-Sized Operators for one fiscal year, submitted by Jim Niel, 12 pages

EXHIBIT D - Written testimony, presented by Paul Jewell, 1 page

EXHIBIT E - Letter to the Committee regarding proposed amendments to HB 315 1, submitted by Eric Mahaffy, 2 pages

EXHIBIT F - Magazine article, Don't Gamble, submitted by Eric Mahaffy, 3 pages

EXHIBIT G - Proposed -6 Amendments to HB 3151-A, submitted by Stu Rasmussen,

