

From: [Kitty M](#)
To: [Zavala, Alisa](#)
Subject: Testimony for upcoming commission meeting - thank you!
Date: Wednesday, June 24, 2020 2:53:07 PM
Attachments: [Kitty Martz Submitted Copy Virtual Sports Public Comment.pdf](#)

Hi Alisa –

Please see the attached letter to present to the Lottery Commissioners on Friday, July 26th, 2020.

Comments in bold are my summary statements and I would appreciate it if they would be recorded as written. Thank you!

1) I object to being censored and having only summary sound bytes read in the public forum portion of the Oregon Lottery Commission Meeting. This is but one more way you are failing to allow transparent communication with the public.

2) Well done with the “Play It Safe” campaign. Your creative team consistently delivers savvy media products. You’ll remember that, as someone who interacts daily with people who suffer from addiction to your Video Lottery Terminals, I’ve asked this agency to please pivot your “Responsible Gambling” marketing strategies to address the unique challenges associated with COVID-19. I was concerned about: stimulus and sizable unemployment checks being senselessly gambled away into the VLT machines, shifts in tolerance, post acute withdrawal syndrome, isolation, or financial pressures. Instead of focussing your efforts on how we can purchase more Scratch-it tickets safety, **A cost effective, wide-reaching marketing campaign should have targeted VLT players for thoughtfully reentering the playing field.**

3) I object to your attempts to add a highly addictive mode of play onto Scoreboard under the guise of it being eligible for treatment as a Temporary Administrative Rule. Please see the attached letter from Nathan Reitman detailing why it is not.

4) The public would like to hear Director Pack’s decision about whether or not Virtual Sports will be launched on Scoreboard, or when that decision will be made. It has been made clear by both Director Pack and Matt Shelby that it is Director Pack’s decision. This commission, the legislature (specifically members of the House Business and Labor Committee), impartial gambling experts, researchers and Oregonians at large have been made well aware that we have zero say in this matter. On behalf of the dozens of individuals and organizations who wrote letters objecting to this move, we would appreciate some open communication on this topic.

5) Please let it go on record that Lottery officials claiming that Virtual Sports are “a new market on an existing platform” are complicit in causing harm, in that they have been informed of the significantly higher addiction rate for Virtual Sports. It’s concerning that your staff complacently recite this party line, along with referring to the pursuing the temporary rules process as a “modest adjustment”. This gives advocates great pause for trusting the Oregon Lottery in the future.

Thank you,

Kitty Martz, CGRM, CGAC II, MBA

(Writing as an Oregonian, advocate and person in recovery from Oregon Video Lottery Terminal addiction)



RIETMANN LAW, P.C.

June 10, 2020

Oregon Lottery
Attn: Kris Skaro
500 Airport Rd. SE
Salem, Oregon 97301

RE: Virtual Sports Rulemaking

Ms. Skaro:

This firm represents Kitty Martz who is a recognized expert in the field of gambling addiction. Ms. Martz opposes the Lottery's plans to expand state sponsored Internet gambling to include "virtual sports" through temporary rulemaking. We ask the Lottery to take these comments into consideration in determining how to proceed and strongly encourage the Lottery to reconsider its current approach to this issue.

Background

Oregon is the 8th most gambling addicted state in the country.¹ Nevertheless, the Oregon Lottery recently brought state sponsored gambling to the Internet by introducing an online application known as Scoreboard. The Scoreboard application enables Oregonians to reach into their pocket and wager up to \$250,000 on live sporting events at any time through a few simple clicks on their phone.²

Internet sports gambling is expected to increase Oregon's already high gambling addiction rates. For this reason and others, many state lawmakers were concerned when the Lottery implemented Internet sports gambling late last year.³ However, it will be several years before there is sufficient empirical data available to draw scientifically valid conclusions regarding the impact of the Lottery's new Scoreboard product on gambling addiction rates. Additionally, there does not at this time appear to be any concrete plan for

¹ https://www.oregonlive.com/trending/2017/04/oregon_is_8th_most_gambling-ad.html

² <https://www.casino.org/news/oregon-could-take-250000-sports-bets-but-there-are-stipulations/>

³ <https://www.wweek.com/news/state/2020/01/29/lawmakers-signal-distrust-for-the-oregon-lottery-by-seeking-to-ban-betting-on-college-sports/>

⁴ <https://www.wweek.com/news/state/2019/11/20/lawmakers-say-the-oregon-lotterys-sports-betting-app-needs-their-oversight/>

researching the impacts of Scoreboard on gambling addiction rates. While it was originally anticipated the Oregon Council on Problem Gambling would be able to retain a neutral third-party to research the issue, these plans are currently on hold due to a lack of funds. Thus, the societal impacts of the Lottery's existing Internet gambling program are currently unknown and there are no plans in place to study those impacts in the future.

Meanwhile, contrary to original projections, Scoreboard is costing Oregon money. Earlier this year, prior to the COVID-19 outbreak, Lottery officials advised Oregon lawmakers that their new Internet gambling program would lose as much as \$5.3 million in 2020.⁵ In view of the fact that Oregon is now in the midst of a global pandemic that has resulted in economic devastation and skyrocketing unemployment through the state, it may reasonably be assumed the Lottery's actual losses will exceed the losses the Lottery was projecting prior to the COVID-19 pandemic.⁶

Although Oregon's new Internet gambling program is losing money, the socio-economic impacts of this program are not yet known, and Oregonians are economically suffering in the midst of a global pandemic; the Lottery is now seeking to expand its Internet gambling operation to include "virtual sports." While the term "virtual sports" suggests wagering on the outcome of a virtual competition (e.g., betting on the outcome of a video game), the term is a misnomer. Virtual sports outcomes are determined solely through "pseudo" random number draws, not real or virtual competition. The only sense in which this form of gambling resembles sports is the outcomes of the random number draws are depicted as the outcome of a simulated sporting event. Depicting the outcome of the random number draws in this manner generates feelings of anticipation and suspense that are similar to what viewers of sporting events experience. Presenting the outcome of random number draws in this visually appealing and suspenseful manner makes the gambling more exciting, and in turn, more addictive.

Currently, the Oregon Lottery is seeking to accomplish its desired expansion by bypassing Oregon's standard rulemaking process and adopting temporary rules on an expedited basis. The Lottery contends temporary rules are needed because "[t]he months-long permanent rulemaking process would negatively impact the Lottery's ability to engage and entertain Scoreboard players, which could have a long-term negative fiscal impact to the Lottery's ability to raise money for public programs."

⁵ <https://www.wweek.com/news/2020/02/24/after-initial-projections-of-profitability-the-oregon-lottery-will-lose-money-on-sports-betting-this-year/>

⁶ <https://www.statesmanjournal.com/story/news/2020/05/14/coronavirus-oregon-unemployment-claims-increase-amid-covid-19-closures/5188265002/>

Proposed temporary rules are unlawful

The Oregon Administrative Procedures act (“Oregon APA”) governs agency rulemaking. In enacting the Oregon APA, the legislature “intended for...public participation to be central to the administrative rulemaking process.” *Friends of the Columbia Gorge v. Energy Facility Siting Council*, 366 Or 78, 90, 456 P3d 635, 642 (2020). Thus, Oregon’s standard rulemaking process requires appointment of rules advisory committees, otherwise ensures there is ample opportunity for public input, and requires agencies to consider impacts on small businesses. ORS 183.336.

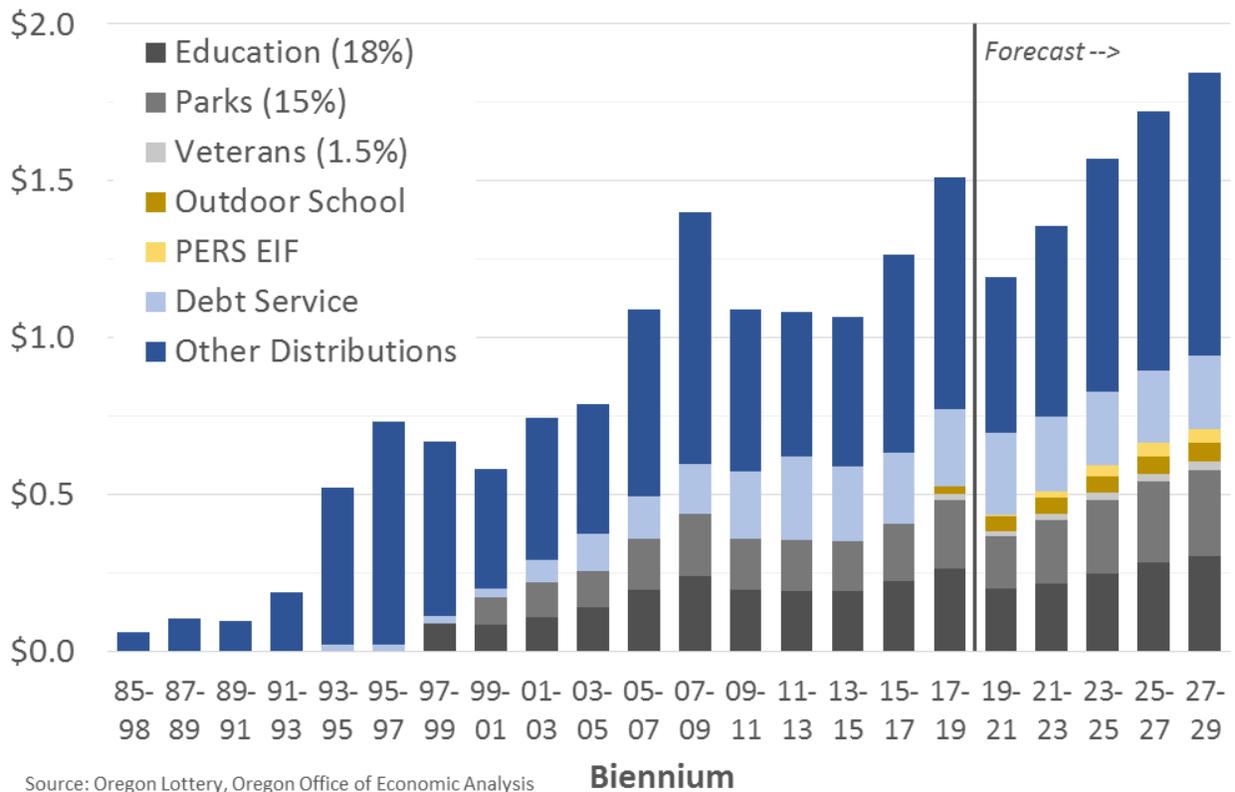
Under the Oregon APA, agencies may bypass the public participation requirements by enacting temporary rules. However, “temporary rulemaking, without that public participation, is intended to be the exception” and is only allowed when “failing to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned.” *Friends of the Columbia Gorge v. Energy Facility Siting Council*, 366 Or 78, 90, 456 P3d 635, 642 (2020); ORS 183.355(5)(a).

In this regard, “substantial prejudice” is not whatever the Oregon Lottery says it is. In *Friends of the Columbia Gorge v. Energy Facility Siting Council*, a temporary rule was challenged on the basis that the agency had failed to show the “substantial prejudice” needed to justify temporary rulemaking. *Friends of the Columbia Gorge v. Energy Facility Siting Council*, 366 Or 78, 90, 456 P3d 635, 643 (2020). The agency argued that the substantial prejudice requirement should be deemed satisfied so long as the agency “perceived” there would be substantial prejudice if the agency did not proceed with temporary rulemaking. The Oregon Supreme Court, sitting *en banc*, rejected this argument and held that the “the courts must review an agency’s determination ‘that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned.’” *Id.* In analyzing the agency’s declaration of significant prejudice, the court proceeded to reject agency claims of significant prejudice that “would allow temporary rulemaking to be commonplace, rather than exceptional, and would be therefore inconsistent with legislative intentions.” *Id.* at 92.

Here, the Oregon Lottery cannot show that “failing to act promptly will result in serious prejudice to the public interest” within the meaning ORS 183.335(5)(a). The Oregon Lottery has been in existence for thirty-six (36) years. During this 36-year period, there have been several economic recessions, including the Great Recession beginning in 2008. Despite short-term downturns in Lottery revenue during these periods, Lottery sales have always rebounded and increased beyond their preexisting levels over time. According to projections from the Oregon Office of Economic Analysis, the same is true here⁷:

⁷ <https://www.oregon.gov/das/OEA/Documents/revenue.pdf>

Lottery Resources and Distributions (\$ billions)



Moreover, at no point in its 36-year history has the Oregon Lottery offered Internet gambling on “virtual sports.” The Lottery continuing its 36-year tradition of not offering Internet gambling on virtual sports for a matter of months, while it deliberates on whether to expand Internet gambling through Oregon’s standard rulemaking process, will not, by any reasonable measure, result in serious prejudice to the public interest.

It is also entirely unclear how the Lottery can seriously contend that delaying its ability to earn revenue from a new Internet gambling program for a short-term period of several *months*, will have “a long term negative impact on the Lottery’s ability to raise money for public programs.” This is especially true where, as here, the Scoreboard program has yet to generate *any* money for public programs in this state and is not the Lottery’s main source of revenue. Furthermore, if substantial prejudice could be found based on the fact that a standard rulemaking process would delay the Lottery’s ability to secure new revenue for a couple months, state agencies would be entitled to use temporary rulemaking anytime delay in adopting a rule would reduce agency revenue. This type of reasoning would allow the exception to swallow the rule and make temporary rulemaking commonplace contrary to the Oregon Supreme Court’s *en banc* ruling in *Friends of the Columbia Gorge v. Energy Facility Siting Council*, 366 Or 78, 90, 456 P3d 635, 643

(2020)(rejecting agency justification for temporary rulemaking that “would allow temporary rulemaking to be commonplace, rather than exceptional”).

The Lottery’s stated justification for temporary rulemaking also takes a myopic view of what constitutes the public interest. While the Lottery asserts it is in the public interest to “engage Scoreboard players,” there are countervailing public interest considerations. For example, it has recently been reported:

“A recent study by the UK’s Gambling commission, which regulates the industry in that country, found that 1.2 percent of people who gamble have developed a problem. When just online sports betting is considered, that figure rises to 2.5 percent. **For online games like roulette, slots and virtual sports, which are basically number generators, its 9.2%.**⁸

Application of the precautionary principle would strongly suggest that it is public interest to thoroughly investigate these types of claims before hastily adopting temporary rules. After all, if the information in this news report is correct, Internet gambling on virtual sports is 268% more addictive than the Lottery’s current Internet sports gambling, and a whopping 666% more addictive than gambling generally.

Lottery is breaching its duty to promote responsible gambling

Under Oregon law, the Lottery has a duty to maximize revenue commiserate with the public good. ORS 461.200. The Lottery’s efforts to introduce Internet gambling that is potentially more highly addictive than other forms of gambling in the midst of a global pandemic that is causing widespread economic desperation, without proper public input and research, suggests the Lottery has lost sight of its mission and is failing to fulfill its duties. For example:

- ORS 461.820(1)(a) requires the Lottery to operate the Lottery in environments that “[e]ncourage responsible gambling practices,” and “discourage problem gambling.” Enabling Oregonians to wager up to \$250,000 on virtual sports (i.e. random number draws) anytime or anywhere, sober or not, fails to “encourage responsible gambling practices” or “discourage problem gambling”.
- ORS 461.820(1)(b) requires the Lottery to operate the Lottery in a manner that “*minimizes* harm to individuals, families and communities caused by problem gambling.”(emphasis added). Introducing new Lottery games that are reported

⁸ <https://www.dw.com/en/coronavirus-and-online-betting-a-perfect-storm-for-gambling-addicts/a-53094333>

to be more highly addictive than other forms of gambling, without further research and robust public input from individuals, families, and communities, does not fulfill the Lottery's duty to "minimize" harm to individuals, families, and communities caused by problem gambling.

- ORS 461.820(2)(c) requires the Lottery to "[r]ely on research to inform all areas of responsible gambling." ORS 461.820(2)(g) also requires the Lottery to "[a]pply evidence-based considerations to the implementation of lottery games...and discourage problem gambling." Failing to heed the precautionary principle and introducing this new form of gambling without more through consideration of its impacts on problem gambling does not appear consistent with this duty.
- ORS 461.820(2) requires the Lottery to "[e]ngage a wide range of stakeholders in the responsible or problem gambling community to provide input regarding the development of lottery games." Short-circuiting the public/stakeholder participation required under standard administrative rulemaking processes and instituting a new form of Internet gambling through temporary administrative rule fails to fulfill this duty.
- ORS 461.820(2)(g) requires the Lottery to "[a]pply evidence-based considerations to the implementation of lottery games...and discourage problem gambling." The Lottery's effort to increase revenues by introducing a new form of Internet gambling that is reported to be highly addictive, instead of trying to increase revenue from forms of gambling where the addictive properties are more well understood, fails to fulfill this duty.

Any number of additional examples might be provided. The point is that in attempting to increase revenue by instituting a new form of state sponsored Internet gambling through a process that is designed to limit public and stakeholder participation, without first conducting appropriate research, the Lottery does not appear to be acting consistently with its statutory duties.

Temporary rules break Lottery's promises to Legislature

While it should be your paramount concern and not ours, we would be remiss if we did not point out that the contemplated action undermines the Lottery's credibility with the Oregon Legislature and the public at large. On multiple occasions during the last 18-months, Spokesman Matt Shelby and Director Pack told members of the Legislative Assembly they would not do exactly what they are proposing to do now. Although this is not something that is legally actionable, it is something the agency *should* take into

consideration. Lawmakers, stakeholders, and the public at large should be able to trust the Lottery's representations. Right now, they can't.

Conclusion

We strongly encourage the Lottery to reconsider its plans to foist a new form of gambling on Oregonians in the midst of a global pandemic through a process that is specifically designed to limit public input.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathan R. Rietmann', with a long horizontal line extending to the right.

Nathan R. Rietmann