

Lottery Operations and Charitable Gaming

Follow-up Report
June 2013

Office of Performance Evaluations
Idaho Legislature



Report 13-07F

Created in 1994, the legislative Office of Performance Evaluations operates under the authority of Idaho Code §§ 67-457 through 67-464. Its mission is to promote confidence and accountability in state government through professional and independent assessment of state agencies and activities, consistent with legislative intent.

The eight-member, bipartisan Joint Legislative Oversight Committee approves evaluation topics and receives completed reports. Evaluations are conducted by Office of Performance Evaluations staff. The findings, conclusions, and recommendations in the reports do not necessarily reflect the views of the committee or its individual members.

2013–2014 Joint Legislative Oversight Committee

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Rakesh Mohan, Director
Office of Performance Evaluations

Lottery Operations and Charitable Gaming

Follow-up Report

Executive Summary

In 2012 we released an evaluation report on lottery operations and charitable gaming in Idaho. We found that operations of the Lottery generally aligned with the framework set in Idaho Code. However, several sections of code regarding lottery operations and charitable gaming were vague and needed some clarity. In addition, some of the charitable gaming regulations needed restructuring because they created an unnecessary burden for nonprofits as well as additional work for Lottery staff. We made six recommendations to the Legislature and the Lottery to address these findings.

During the 2013 legislative session, the Legislature implemented two of those recommendations with the passage of Senate Bill 1127. The bill added clarifying language to code that provides for consistent retention of business records by charitable or nonprofit organizations licensed to conduct bingo games or raffles. The bill also removed any reference to Christmas tree fundraisers because they did not meet the legal criteria for gambling in Idaho.

Acknowledgments

We appreciate the assistance of the Idaho State Lottery. Hannah Crumrine of the Office of Performance Evaluations conducted this follow-up, Amy Lorenzo performed the quality control review, and Margaret Campbell copy edited and desktop published the report.

Overview of the Initial Report

In March 2011 the Joint Legislative Oversight Committee directed us to evaluate the operations of the Idaho State Lottery, including the regulation of charitable gaming. The initial report was released in February 2012.

Lottery Operations

The Idaho State Lottery was created in 1988 to generate revenue for the state. It is a self-governing agency overseen by a five-member commission, and its primary duties include managing the distribution and sale of lottery games and regulating charitable gaming.

The Lottery generates revenue from games sold at more than 1,000 retailers and proceeds from the games are returned to the state's public schools and the permanent building fund. In fiscal year 2012 Lottery sales totaled nearly \$176 million with \$41.5 million returned to the state.

The Lottery is statutorily required to keep advertising costs below 3.5 percent of its annual revenue. Our analysis of the Lottery's financial statements from 1991 to 2011 found that advertising costs averaged 2.8 percent.¹ We also found that legislative intent was unclear about what costs should be included in the 3.5 percent advertising cap. To clarify which costs should be considered advertising, we recommended the Legislature define advertising, marketing, and promotional costs in Idaho Code.

Charitable Gaming

The Lottery oversees charitable gaming, and the Bingo-Raffle Advisory Board reviews the operation and regulation of bingo games and raffles. In 2011, 196 licensed organizations conducted charitable gaming. Our analysis of their annual reports found that they donated more than \$3.7 million to charitable purposes.

Nonprofits that wish to conduct charitable gaming activities must be licensed by the State of Idaho through the Lottery, pay an annual license fee, and submit an annual report to the Lottery that demonstrates compliance by the organization. These nonprofits are allowed to conduct bingo games, raffles, duck races, and holiday Christmas tree fundraisers.

¹ Since the release of the initial report, the Lottery has reported that between fiscal years 2007 and 2012, average advertising costs were 2.2 percent. The average decreased to 1.9 percent in fiscal year 2012 and is projected to be 1.9 percent in fiscal year 2013.

To reduce the regulatory burden on nonprofits and the regulatory workload of the Lottery, we made four recommendations for the Legislature to modernize specific sections of Idaho Code:

- Clarify the time needed for record retention of organizations that conduct bingo games
- Allow the Lottery to offer licenses for more than one year
- Allow the Lottery to determine prize amounts for raffles
- Remove holiday Christmas tree fundraising from Idaho Code

We also recommended that the Lottery implement online forms and allow for electronic submission of annual reports.

Status of Recommendations

We assessed the status of recommendations within four categories:

- **Implemented:** The agency has measurably met the recommendation's intent.
- **Addressed:** The agency has taken an approach that diverged from the recommendation but has still met the recommendation's intent.
- **In process:** The agency has begun to measurably address the recommendation's intent.
- **Not implemented:** The agency has not begun to measurably address the recommendation's intent.

Of the six recommendations made in the initial report, two have been implemented, one is in process, and three have not been implemented for reasons explained later in this report.

Lottery Operations

Recommendation 1.1: *The Legislature should define advertising, marketing, and promotional costs in Idaho Code. This definition should clarify whether internal activities related to advertising should be a part of the advertising and promotional cost cap.*

The Legislature may also wish to redirect this recommendation to the Lottery and have the definition incorporated into Idaho Administrative Code, subject to legislative review.

In its official response to the initial report, the Lottery expressed concern about implementing this recommendation and instead suggested an alternative. Rather than defining which expenses *should be* included as advertising, marketing, and promotional costs, the Lottery proposed defining which costs *should not be* included in the calculations. In its response, the Lottery pointed out that defining specific expenses or items in Idaho Code could eliminate the use of future technologies.

According to Lottery officials, the recommendation—as modified by the Lottery to identify those costs not included—was submitted to the agency’s deputy attorney general for consideration on July 26, 2012. On September 11, 2012, the Lottery received notice that the Office of the Governor had not approved the recommendation for further legislative consideration. The Lottery does not plan to resubmit the recommendation for consideration unless directed to do so.

Status: This recommendation is **not implemented**. The Lottery considered our recommendation and determined that it was not feasible to implement.

Charitable Gaming

Recommendation 2.1: *The Lottery should create and implement an online form for licensed nonprofit organizations to submit their annual reports. An online form will minimize staff resources and time spent on regulating charitable games.*

In its official response to the initial report, the Lottery agreed that this recommendation would streamline the transfer of data between nonprofit organizations and the Lottery. After reviewing the process, however, Lottery officials determined that implementing the recommendation was not feasible.

Lottery officials told us that the deputy director of security, the charitable gaming coordinator, and representatives from the Office of the Attorney General researched available data and determined that our recommended changes would create an undue burden on 28 percent of charitable organizations that do not have access to the Internet, e-mail, or document scanners. Additionally, Lottery

officials reported that more than 65 of 230 charitable organizations request hardcopy applications because they lack computer knowledge or Internet access. Further complicating the implementation of an online process is the requirement that charitable organizations must sign and notarize various documents. The Lottery believes that those organizations without e-mail or scanning capabilities would not be able to submit notarized documents.

Status: This recommendation is **not implemented**. The Lottery considered our recommendation and determined that it was not feasible to implement.

Recommendation 2.2: *The Legislature should provide clarification on record retention for nonprofit organizations that conduct bingo games and define “permanent record” in Idaho Code. Alternatively, the Legislature could remove the word “permanent” from Idaho Code and require the State Lottery Commission to provide a consistent timeframe for record retention in Idaho Administrative Code.*

The Legislature passed Senate Bill 1127 during the 2013 session. The bill amended Idaho Code § 67-7709(2)(j), which is specific to bingo games, by removing the word “permanent” and by clarifying that a charitable or nonprofit organization must retain business records for five years.

Senate Bill 1127 also amended Idaho Code § 67-7710 to clarify that any charitable or nonprofit organizations conducting raffles must retain business records for five years. Additionally, Idaho Code § 67-7715 was amended to clarify that licensed vendors must maintain records of all sales to organizations in Idaho for five years. The statutory changes become effective on July 1, 2013.

Status: This recommendation is **implemented**.

Recommendation 2.3: *The Legislature should amend Idaho Code and allow the State Lottery Commission to offer licenses that would be valid for more than one year. The amendment would reduce paperwork for both nonprofit organizations and the Lottery. To ensure that licensed nonprofit organizations continue to allocate the required amounts for charitable purposes as outlined in Idaho Code, the Legislature should continue the statutory requirement for nonprofit organizations to submit annual reports.*

In its official response to our initial report, the Lottery agreed that two-year licensing for raffles could be beneficial. However, the Lottery opposed multiyear licensing for bingo because of the complex regulations and reporting requirements involved in its oversight. According to Lottery officials, the deputy director of security, the charitable gaming coordinator, and representatives from the Office of the Attorney General researched the feasibility of implementing this recommendation and consulted with the Lottery director and chief operating officer in the final decision-making process.

Ultimately, their review found that implementing the recommendation was not feasible for two reasons:

1. A charitable organization can receive both a bingo and raffle license under one license that can be renewed for a single fee. Issuing a multiyear raffle license would cause confusion for these charitable organizations.
2. All tax-exempt organizations are required to elect new officers annually. The Lottery is required by law to maintain records for all officers as part of its licensure process. Issuing multiyear raffle licenses would make receiving and maintaining accurate officer information difficult.

Status: This recommendation is **not implemented**. The Lottery considered our recommendation and determined that it was not feasible to implement.

Recommendation 2.4: *The Legislature should remove prize maximums for raffles from Idaho Code and charge the State Lottery Commission with setting maximum prize amounts for raffles in Idaho Administrative Code. The amendment would align with how prizes are determined for bingo games.*

Senate Bill 1127 removed language in Idaho Code § 67-7708 for bingo prize maximums but did not remove raffle prize maximums. The Lottery misunderstood the intent of this recommendation and plans to submit changes to Idaho Code § 67-7710 for legislative review during the 2014 session.

Status: This recommendation is **in process**.

Recommendation 2.5: *The Legislature should remove references to holiday Christmas tree fundraisers as charitable gaming in Idaho Code since they are an auction and do not fall under the criteria of gambling.*

The Lottery agreed that Christmas tree fundraisers did not meet the legal criteria for gambling in Idaho and that the fundraisers are technically auctions. With the passage of Senate Bill 1127 during the 2013 legislative session, all references to holiday Christmas tree fundraisers will be removed on July 1, 2013.

Status: This recommendation is **implemented**.



Benefiting Idaho Public Schools and the Permanent Building Fund.

April 18, 2013

Mr. Rakesh Mohan
Office of Performance Evaluations
Idaho Legislature
P.O. Box 83720
Boise, ID 83720

Dear Director Mohan:

We are happy to offer an update regarding progress made by the Idaho Lottery to implement recommendations made during your 2012 report *Lottery Operations and Charitable Gaming*.

We are proud of the work we do on behalf of the citizens of Idaho, our ongoing attention to best practices, and for being a leader in the lottery industry when it comes to technical advances, new game ideas, and cross promotion opportunities. We work responsibly and diligently to improve our dividend each year.

We appreciate the insight from the Office of Performance Evaluations and value their thorough research into the operations of the Idaho Lottery.

Sincerely,

Jeffrey R. Anderson
Executive Director

Enclosures

C: David Hensley – Chief of Staff, Office of the Governor
Shoni Pegram – Office of Governor C.L. “Butch” Otter
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IDAHO LOTTERY UPDATE TO OPE REPORT RECOMMENDATIONS
April 18, 2013

Chapter One – Lottery Operations

Recommendation 1.1: Define Advertising/Marketing and Promotional Costs in Idaho Code

ORIGINAL FEEDBACK – February, 2012

We appreciate the recommendation for clarification of what defines these costs. However, we believe our understanding of legislative intent is clear and we work diligently to adhere to not only the letter but the spirit of the law. Additionally, we've consistently remained well under the 3.5% of sales expense limit currently defined in Idaho Code.

Our past and current practice is to account for all costs associated with communications methods to reach our players, retail partners, and stakeholders. These costs include, but may not be limited to:

| | |
|--|--|
| *traditional media placement and related production (television, radio, billboards, print) | *e-mail and text communication to players, website and related digital advertising |
| *advertising agency fees | *public relations |
| *consumer research | *annual reports |
| *promotions | *events |
| *VIP Club | *sponsorships |
| *permanent signage | *promotional coupons |
| *temporary signage | *premiums |
| *point of sale materials | *ambassadors |

As you can see from the list above, we include all costs for communicating our value proposition. Defining specific items in code would be problematic. The tools we use in the future may not have been invented and brought to market yet.

Should policymakers require clarification, we suggest it may make more sense to define what *isn't* included. If that were the case, we suggest referencing only the costs we do *not* include when calculating the expenses towards the 3.5% limit: (a) employee wages and benefits; (b) travel for continuing education and conferences; and (c) general office overhead. However, parsing out the percentages of employee time and overhead would, in our opinion, be unproductive. Many of our associates are involved in "marketing" and "promotion" since we are essentially a sales and marketing driven enterprise.

Nevertheless, as you accurately note, even if percentages of wages and overhead were somehow able to be accurately calculated we would still be under our statutory limit.

UPDATE - APRIL, 2013

This recommended change was submitted as a Legislative Idea (see attached) and was not approved for advancement to the Legislature.

Chapter Two- Charitable Gaming

Recommendation 2.1 – Implement Online Form for Organizations to Submit Annual Reports

ORIGINAL FEEDBACK – February, 2012

We concur with the recommendation as a way to streamline the transfer of data between non-profit organizations and the Lottery. We will begin work on a specification and implement the changes as soon as possible.

UPDATE - APRIL, 2013

After extensive review of all documents required for evaluation, it is the Lottery's opinion that because legal document transfer is required and many of these documents require signature and notarization, that this recommendation is not feasible as an effort to streamline information sharing. Additionally, many of the charitable organizations representatives are elderly and working from antiquated locations lacking effective internet access. We respectfully request that unless requirements significantly change and access to computers for our charitable organizations improve, that this recommendation be tabled.

Recommendation 2.2 – Record Retention Clarification

ORIGINAL FEEDBACK – February, 2012

We agree and already have language prepared for consideration by the Lottery Commission, the Governor, and the Legislature.

UPDATE - APRIL, 2013

This recommendation was included in the Idaho Lottery's requested Statute and Rule changes, submitted during the 2012/2013 Legislative Session. These changes were approved in S1127 (attached) and will be enacted as of July 1, 2013.

Recommendation 2.3 – Amend Code to Offer Multi-Year Licensing

ORIGINAL FEEDBACK – February, 2012

We agree with two-year licensing for raffles. Since raffles are 75% of the licenses we process, we agree this would significantly reduce paperwork and personnel time. However, we recommend against multi-year licensing for bingo due to the complexity of regulation, reporting requirements, and the amount of cash involved when licensees conduct bingo games.

UPDATE - APRIL, 2013

Despite our initial support of this recommendation, after much discussion and investigation, it appears to be something that isn't feasible.

The Charitable Gaming License covers both bingo and raffles under one license. At renewal, either or both can be applied for with one renewal fee. Making one license longer than the other would cause confusion among our license holders who hold both licenses.

Additionally, Idaho Code requires that the Lottery have the officer's information and background checks on file. We surveyed our database and determined that most organizations elect officers on an annual basis. We're concerned we will be unable to effectively receive this information if a multiple year license is allowed. Code also states that the governing body is directly responsible for their raffle or bingo games. Without a new

application, the governing body could be unaware of their responsibilities for a longer (and detrimental) period of time.

Recommendation 2.4 – Remove Prize Maximums for Raffle

ORIGINAL FEEDBACK – February, 2012

We support this recommendation and will prepare changes to Administrative Code for Legislative review and approval.

UPDATE - APRIL, 2013

This recommendation was included in the Idaho Lottery’s requested Statute and Rule changes, submitted during the 2012/2013 Legislative Session. These changes were approved in S1127 (attached) and will be enacted as of July 1, 2013.

Recommendation 2.5 – Remove Holiday Christmas Tree Fundraisers

ORIGINAL FEEDBACK – February, 2012

We support the recommendation. “Christmas Tree Fundraisers” are actually auctions and do not meet the legal criteria (prize, chance, and consideration) to be considered gambling in Idaho.

UPDATE - APRIL, 2013

This recommendation was included in the Idaho Lottery’s requested Statute and Rule changes, submitted during the 2012/2013 Legislative Session. These changes were approved in S1127 (attached) and will be enacted as of July 1, 2013.

Office of Performance Evaluations Reports, 2011–Present

Publication numbers ending with “F” are follow-up reports of previous evaluations.

| Pub. # | Report Title | Date Released |
|---------------|--|----------------------|
| 11-01 | Distribution and Sale of Liquor in Idaho | January 2011 |
| 11-02 | Coordination and Delivery of Senior Services in Idaho | February 2011 |
| 11-03F | Increasing Efficiencies in Idaho’s Parole Process | February 2011 |
| 11-04F | Idaho Transportation Department Performance Audit | March 2011 |
| 11-05 | Delays in Medicaid Claims Processing | March 2011 |
| 11-06 | Equity in Higher Education Funding | November 2011 |
| 11-07 | Idaho’s End-Stage Renal Disease Program | November 2011 |
| 11-08F | Distribution and Sale of Liquor in Idaho | November 2011 |
| 12-01 | Reducing Barriers to Postsecondary Education | January 2012 |
| 12-02F | Delays in Medicaid Claims Processing | January 2012 |
| 12-03 | Lottery Operations and Charitable Gaming | February 2012 |
| 12-04 | Establishing an Efficiency Commission | February 2012 |
| 12-05F | Coordination and Delivery of Senior Services in Idaho | February 2012 |
| 12-06F | Operational Efficiencies in Idaho’s Prison System | February 2012 |
| 12-07F | Idaho’s End-Stage Renal Disease Program | March 2012 |
| 12-08F | Idaho Transportation Department Performance Audit | March 2012 |
| 12-09F | Delays in Medicaid Claims Processing | November 2012 |
| 12-10F | Increasing Efficiencies in Idaho’s Parole Process | November 2012 |
| 13-01 | Workforce Issues Affecting Public School Teachers | January 2013 |
| 13-02 | Strengthening Contract Management in Idaho | January 2013 |
| 13-03 | State Employee Compensation and Turnover | January 2013 |
| 13-04 | Policy Differences Between Charter and Traditional Schools | March 2013 |
| 13-05F | Coordination and Delivery of Senior Services in Idaho | March 2013 |
| 13-06 | Guide to Comparing Business Tax Policies | June 2013 |
| 13-07F | Lottery Operations and Charitable Gaming | June 2013 |
| 13-08F | Governance of EMS Agencies in Idaho | June 2013 |
| 13-09F | Equity in Higher Education Funding | June 2013 |
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