

**PUBLIC HEARING**  
**ON**  
**The Matter of iGaming**  
**And**  
**Bill 19-474, the “Lottery Amendment Repeal Act of 2011”**

**Before the**  
**Committee on Finance and Revenue**  
**Council of the District of Columbia**

**The Honorable Jack Evans, Chairman**

**Thursday, January 26, 2012**  
**10:00 a.m. until end or 1:00 p.m. recess, resuming at 6:00 p.m.**

**Room 412 - John A. Wilson Building**  
**Council Chambers**



**Testimony of**  
**Buddy Roogow**  
**Executive Director**  
**D.C. Lottery & Charitable Games Control Board**

Good morning Chairman Evans and Committee Members. I am Buddy Roogow, Executive Director of the D.C. Lottery and Charitable Games Control Board. Thank you for this opportunity to testify about a proposed iGaming Program for the District and discuss the findings of the iGaming Community Meetings which took place in the fall of 2011. The complete iGaming Community Meeting Findings Report is available on our website at [www.dclottery.com](http://www.dclottery.com).

In June 2011, a Finance and Revenue Committee Roundtable, chaired by Councilmember Jack Evans, was held to gain public comment on the Lottery Modernization Act of 2010. To address the concerns raised, Chairman Evans requested the D.C. Lottery host a series of public meetings in order to solicit community input regarding a proposed iGaming program for the District. The term iGaming is short for interactive or internet gaming. iGaming typically refers to websites where players may wager money on games of skill or chance, such as Texas Hold'em Poker, Blackjack, Bingo and fixed odds games.

The D.C. Lottery hosted eight iGaming Community Outreach Ward Meetings and an ANC Chair meeting this past fall. In order to seek the greatest amount of community input, meetings were held in all Wards of the District. The goal of these meetings was to obtain comments from District residents about iGaming,

while simultaneously educating the public on a proposed iGaming plan for the District.

**The findings of these community outreach meetings were as follows:**

- 254 individuals signed-in for 8 iGaming Community Meetings
- 155 public comments were made by District residents
- Of these, 105 comments or 68% were in support of iGaming
- 34 Comments or 22% opposed iGaming
- 16 individuals or 10% of the comments asked questions about iGaming in the District but maintained neutral positions.

**Common themes discussed in favor of iGaming:**

- Residents expressed a strong desire that iGaming revenue be allocated for D.C. social programs, and not the General Fund; this was the dominant trend, representing 21% of the comments
- Residents would like a safe, regulated gaming environment for poker players – 20% of the comments expressed this view, which was the second most prevalent trend in favor of iGaming
- Residents expressed the belief that iGaming will attract a new demographic of lottery player with greater disposable income
- Residents want to be able to play from the comfort of home and not travel
- Residents thought the limit of \$250 was a sufficient safeguard
- Residents thought the limit of \$250 was too low

- Residents expressed the view that iGaming would support economic development for the District.

**Common themes discussed in opposition to iGaming:**

- Residents would like to repeal the Lottery Modernization Act of 2010 based on a perceived “flawed” legislative process; this was a dominant theme, expressed by 17% of the comments
- The District of Columbia should not be first in the nation to implement iGaming
- Some residents said iGaming would put senior citizens at risk
- Some residents said gambling and government should not mix
- Some residents said iGaming offered minimal job creation
- Some residents said iGaming would generate minimal revenue for maximum risk

**We also identified Ward specific findings:**

- Ward 6 had the highest community meeting attendance with 56 of the 254 attendees
- Ward 4 was the only Ward which had slightly more residents opposed to iGaming versus being in favor of iGaming
- Ward 8 was the only Ward in which residents did not express any opposition to iGaming

## **The Justice Department Opinion**

Most recently, the United States Department of Justice, Office of Legal Counsel, clarified that iGaming would not violate the Wire Act. DOJ issued an opinion, dated September 20, 2011, which held that “interstate transmissions of wire communications that do not relate to a ‘sporting event or contest’ fall outside the reach of the Wire Act.” This opinion has generated a tremendous amount of interest with other states that are now considering implementing internet gaming and/or online traditional lottery sales. Currently, the District of Columbia and Nevada are the only two jurisdictions which have the legal authority to implement iGaming.

## **Brief Summary of State Activity**

Since the Department of Justice’s advisory opinion regarding the Wire Act was released last September, many states are reviewing the possibility of implementing iGaming and/or online lottery sales. For example, Maryland Lottery Commission Director Stephen Martino told state lawmakers this week that Maryland could have online lottery sales up and running by July 1. Martino said online sales would help bring revenue to the state while also keeping Maryland competitive with D.C. A complete list of states currently considering implementing iGaming can be found in Appendix I, which is attached.

Analysts expect many states to act quickly. I. Nelson Rose, a professor at Whittier Law School and a nationally recognized expert in gaming law who writes a blog called *Gambling and the Law*, predicted that states would move faster to approve Internet gambling than they did to establish lotteries, which are now run in 43 states.

Mr. Rose was quoted as saying: “The speed of the Internet is more like dog years,” he said. “It is not going to take four decades. It won’t even take one decade.”

I would like to emphasize that if the implementation of iGaming moves forward, the Lottery intends to sell only those games not available through its retail locations. The iGamingdc.com website is meant to compliment, not compete, with our retail environment.

### **Technology**

iGamingDC.com is the website address that will serve as a platform for all games offered through the iGaming portal. Access to the platform is controlled through the server. Any organization, such as schools, libraries, houses of worship, recreation centers, and senior centers can block access to this website, and we can also prevent any source IP address from accessing the website.

Much of our ability to control access to iGamingDC.com is based on our ability to “geolocate.” Geolocation simply refers to our ability to identify the location of a

given player/computer. On a broad scale, this is done by creating a boundary around the District. We can then create smaller boundaries within the District which can be used to include or exclude access to our website. This technology also allows us to distinguish between commercial and residential registered organizations.

Personal player information and player privacy in general will be protected consistent with all applicable laws and regulations. Industry best practices will be followed through the use of U.S. Government guidelines developed for *Protecting the Confidentiality of Personally Identifiable Information (PII)*, as described in the Recommendations of the National Institute of Standards and Technology (NIST) Special Publication 800-122.

Finally, our vendor has obtained the services of IBM to manage our intrusion detection and prevention system to prevent hacking. Other measures to prevent fraud, which should not be publicly disclosed, will also be incorporated into the system.

## **Revenue**

The fiscal impact statement (FIS) for iGaming estimated revenues will total approximately \$13 million over the financial plan (FY12 through FY14). The complete FIS is attached as Appendix II.

### **State of the D.C. Lottery**

In the first quarter of FY12, the D.C. Lottery has generated \$60.1 million in sales which is a 5.6% increase over the same period in FY11. The year-to-date transfer for first quarter FY12 is \$17.1 million, which is an 11.56% increase over the same period in FY11.

### **Closing Remarks**

Mr. Chairman, before I close, I'd like to thank the D.C. Lottery's players, retailers, and staff for their continued commitment, dedication, and hard work to the agency. Also, thank you for the opportunity to present testimony on the iGaming Community Meeting Findings. I'm happy to answer any questions.



## APPENDIX I

STATE STATUS		LOTTERY SALES	TYPE OF GAMBLING	COMMENCE	OTHER
CA*	Reviewing State Law	Powerball, Mega Millions,	Poker, Black Jack	Unknown	
CT*	Need Law Change	Powerball, Mega Millions,	Poker, Black Jack	Unknown	
DE	Reviewing State Law	Powerball, Mega Millions,		Unknown	
FL*	Reviewing State Law	Powerball, Mega Millions,	Poker, Black Jack	Unknown	
ID	Law in Place	Subscription sales of Powerball,			
IL	Law in Place	Powerball, Mega Millions,		3 to 4 months	
KS	Reviewing State Law	Powerball, Mega Millions,			
MA	Task Force to Review Issue	Powerball, Mega Millions,			
MD	Need Law Change	Powerball, Mega Millions,	Poker, Black Jack	Unknown	
MI	Reviewing Casino Only		Poker, Black Jack	Unknown	
MN	Reviewing State Law	Powerball, Mega Millions,		Unknown	Subscription Sales
MT	Law in Place	Subscription sales of Powerball,			
ND	Reviewing State Law	Powerball, Mega Millions,		Unknown	Subscription Sales
NJ*	Need Law Change	Powerball, Mega Millions,	Poker, Black Jack	Unknown	
NY	Law in Place	Powerball, Mega Millions, Pick 3 and 4 etc.		Ready to go/waiting for Governor	Subscription Sales
NH	Reviewing State Law	Powerball, Mega Millions,		Unknown	Subscription Sales
NV	Law In Place		Poker, Black Jack	Unknown	
VT	Law in Place				Subscription Sales
WV	Reviewing State Law	Powerball, Mega Millions,		Unknown	

\*These states are reviewing the reinterpretation of The Wire Act as it relates to both online lottery sales and casino style games.

## APPENDIX II

This memorandum outlines the revenue implications of the draft Lottery Modernization proposal your office shared with OCFO on June 23, 2010. This proposal would allow the District of Columbia Lottery and Charitable Games Control Board ("Lottery Board") to offer games of skill and games of chance over the Internet only within the geographical limits of the District of Columbia, provided that the ways in which such games were offered did not violate the Johnson Act<sup>1</sup> or any other federal statute.

According to the Lottery Board and its contractor, Intralot, if this proposal were enacted, the District would offer online poker games (cash poker games and tournaments), bingo games, and fantasy sports. Players, aged 18 or over, could access these games from home or at approved hubs such as hotels, bars, and restaurants. In both cases, players would be required to use their own computers to participate in the games.

To comply with federal laws, the Lottery Board would be required to make online gaming available only within the geographical limits of the District of Columbia. According to Intralot, verification of player location would be done through Internet Protocol (IP) address checks.

Intralot expects to start offering games within four months of the enactment of the legislation, and expects to reach full implementation in four years.

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<sup>1</sup> Johnson Act (15 U.S.C. §§ 1171-1178) is the popular name of the Transportation of Gambling Devices Act of 1951 (Act of January 2, 1951, ch. 1194, § 1, 64 Stat. 1134), which prohibits the shipment of gambling devices to a state where such a device is prohibited by law.

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## Revenue Implications

The District could realize revenue from the implementation of online gaming in two ways. First, the Lottery Board has a 50-50 revenue sharing agreement with Intralot. The Lottery Board could transfer its portion of the gaming revenues,<sup>2</sup> minus any associated marketing costs, to the General Fund. Second, the District could levy income taxes on the winnings of DC residents.

It should be noted that since no US experience exists in regulated online gaming, the preparation of this estimate was a challenge (See Appendix 1). Should the proposal be enacted, the revenue estimate could be revised, perhaps significantly, after the Lottery Board determines the parameters of the program and as we collect actual data on player behavior.

The table below outlines the gross and net revenues that could be generated through online gaming, given the information available to the Office of Revenue Analysis (ORA) today. In FY 2011, the proposed programs are not expected to generate significant revenue. The Lottery Board's projected revenues would be mostly spent on marketing the new games. Income taxes levied of the winnings of DC residents would not be collected until the next fiscal year.

In subsequent years, the market could grow quickly if implementation goes in accordance with Intralot's plans and the proposed legislation could generate \$13.1 million in revenues in the FY 2011 through FY 2014 financial plan period. This estimate assumes that all federal and legal hurdles are cleared, and the District faces no significant market competition.

<b>Lottery Modernization Act of 2010 - Estimated Net Revenue Impact<sup>1</sup></b>					
	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>Total</b>
Gross Revenue from Gaming <sup>2</sup>	\$814,805	\$5,381,332	\$8,494,187	\$11,809,868	<b>\$26,500,192</b>
Lottery Board Share (50%)	\$407,402	\$2,690,666	\$4,247,093	\$5,904,934	<b>\$13,250,096</b>
Marketing Costs	(\$400,000)	(\$750,000)	(\$750,000)	(\$750,000)	<b>(\$2,650,000)</b>
Transfer to General Fund	\$7,402	\$1,940,666	\$3,497,093	\$5,154,934	<b>\$10,600,096</b>
Income tax on winnings (DC residents only) <sup>3,4</sup>	\$0	\$274,084	\$889,083	\$1,319,763	<b>\$2,482,930</b>
<b>Revenue Impact</b>	<b>\$7,402</b>	<b>\$2,214,750</b>	<b>\$4,386,176</b>	<b>\$6,474,697</b>	<b>\$13,083,026</b>

### Table Notes

<sup>1</sup>Estimate assumes all federal and legal hurdles are cleared, and the District faces no significant market competition.

<sup>2</sup>Estimate based on data from H2 Gambling Capital of revenue generated by U.S. offshore players in 2009, adjusted for implementation plan. Games deployed by the end of April 2011. The customer base growth is projected based on the experience in and customer data from Italy, where Intralot implemented online gaming.

<sup>3</sup>Taxing of winnings would be similar to taxing of lottery winnings in the District. Currently only DC residents pay income taxes on lottery earnings to the District of Columbia government. Income taxes for winnings in a given calendar year would be collected the next fiscal year. Tax collection estimated at 6.6 percent of total winnings—the estimated effective income tax rate for the District.

<sup>4</sup>Estimate based on data from H2 Gambling Capital of total winnings of potential player winnings (not including sports betting) under a regulated U.S. market.

<sup>2</sup> Gaming revenues include fees collected by the operator of the game including membership fees, participation fees, and the rake—collections of the game operator from the pot.

## Other considerations

Two aspects of the proposed legislation could have a significant impact on the aforementioned revenue implications.

*First, no consensus exists on whether the proposal is permissible under federal laws.* Several federal laws potentially regulate online gaming. The Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA”)<sup>3</sup> specifically exempts “placing, receiving, or otherwise transmitting a bet or wager where the bet or wager is initiated and received or otherwise made exclusively within a single State” from its prohibitions. There remains some ambiguity in federal law concerning situations in which a state-authorized bet or wager placed and received within a single state with its electronic data intermediately routed outside of the state triggers the application of certain federal anti-gambling statutes, such as the Wire Act.<sup>4</sup> Because of this ambiguity, at least two states, Illinois and New York, have requested clarification from the U.S. Department of Justice (USDOJ). To date, USDOJ has not provided a written response to those inquiries; on the other hand, nor has USDOJ made any efforts to curtail procurements in these states for these types of games since enactment of the UIGEA. Finally, Section 1175 of the Johnson Act makes it unlawful to ‘manufacture, recondition, repair, sell, transport, possess, or use any gambling device’ within the District of Columbia. There is no legal opinion determining that the computer server or related equipment would fall within the definition of a gambling device. However, should a determination be made in the future that such equipment does fall within this definition a change in federal law would be required to make the implementation of the proposed legislation legally permissible.”

*Second, geographical limitations required by law could pose implementation challenges.* The Lottery Board and Intralot did not present to ORA a detailed technical implementation plan, specifically on how they would ensure that games are not accessible from areas outside of the District. Once such a plan is made available, the District must ensure that it is technologically feasible, and can be implemented given the unique geographical characteristics of the District of Columbia. Some aspects of the technical implementation plan Intralot has discussed with ORA give rise to some concerns. For example, planned use IP address checks to enforce geographical restrictions might prove to be a difficult challenge in the District (specifically in contrast to European countries where Intralot has implementation expertise). First, it is ORA’s understanding that geolocation, or the practice of determining the physical location of a person based on information processed through the internet, is not always reliable at the city and state level.<sup>5</sup> Whether the practice is sufficiently reliable to fulfill legal requirements remains to be seen. Second, Intralot plans to require static IP addresses from residential players to increase the reliability of geolocation. Static IP addresses are not always available for DC area consumers, and when available, require subscription to business level services, which are considerably more expensive than residential services.<sup>6</sup>

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<sup>3</sup> 31 U.S.C. § 5361 et seq.

<sup>4</sup> 18 U.S.C. § 1084

<sup>5</sup> The estimates vary from 99 percent at the country level to less than 80 percent at the city level. No reliable estimate exists at the ZIP code level, because service areas of providers do not always coincide with ZIP codes. For details, see Svantesson, D. J. B. (2008). How does the accuracy of geo-location technologies affect the law? Masaryk University Journal of Law and Technology, 2(1), 11-21. Available at [http://mujlt.law.muni.cz/storage/1234798550\\_sb\\_02\\_svantesson.pdf](http://mujlt.law.muni.cz/storage/1234798550_sb_02_svantesson.pdf). Accessed on November 15, 2010.

<sup>6</sup> ORA’s research of pricing among the top three internet service providers in the District shows that business level services could be \$20 to \$30 more expensive on a monthly basis. Additionally business subscribers generally have to pay for the cost of installation, and might be required to pay a monthly fee on equipment.

**Appendix 1 – Data limitations and derivation of DC revenues from US projections under full implementation**

Data on offshore gaming are available from H2 Gambling Capital, a market research firm. According to their published data, internet gambling revenue (excluding sports betting) for offshore companies was estimated to be \$3.7 billion in 2009 from players in the United States.<sup>7</sup> Under a regulated U.S. market, H2 Gambling Capital estimates annual gross winnings in the U.S. to be \$14.4 billion.<sup>8</sup>

The revenues presented here are solely based on the H2 Gambling Capital estimates, prorated by the District’s share in US adult population, adjusted for visitor population (See the appendix table). Office of Revenue Analysis (ORA) does not have player level data or information on player profiles, and does not have a means for conducting sensitivity analysis on these estimates.

<b>Derivation of District revenues from US projections, full implementation*</b>	
<b>Gross Revenues to Lottery Board</b>	
US Population (18 and over) <sup>1</sup>	232,509,573
Total Gross Rev. from US players <sup>2</sup>	\$3,700,000,000
Gross Rev. per capita in US	\$16
Effective DC population (including estimated visitors) <sup>3</sup>	868,843
Total Gross Rev. from DC Players	\$13,826,187
<b>Lottery Board’s Share (50%)<sup>4</sup></b>	<b>\$6,913,093</b>
<b>Income tax on winnings (DC Residents only)</b>	
Total winnings in US <sup>2</sup>	\$14,400,000,000
Winnings per capita in US	\$62
Effective DC population (DC adults only) <sup>1</sup>	485,947
Total Winnings from DC players	\$30,096,123
<b>Income Tax on Winnings<sup>5</sup></b>	<b>\$1,986,344</b>
<b>TOTAL REVENUES TO DISTRICT</b>	<b>\$8,899,438</b>

**Table Notes**

\* Expected to reach full implementation in 2015.

<sup>1</sup>Data from US Census;

<sup>2</sup> Data from H2 Gambling Capital;

<sup>3</sup> Data from US Census and Destination DC;

<sup>4</sup>Per contract between the Lottery Board and Intralot;

<sup>5</sup>Estimated at 6.6 percent of winnings.

<sup>7</sup> Email communication on November 4, 2010 with Simon Holliday, Director, H2 Gambling Capital. The widely cited number is \$5.4 billion with sports betting. Sports betting is illegal in the District of Columbia.

<sup>8</sup> H2 Gambling Capital expects growth in winnings over time. This fiscal impact statement does not include any growth in winnings as the assumptions underlying the growth prediction are unknown to ORA.

**Appendix 2 – Draft Policy Proposal shared with OCFO:**

Sec.\_\_\_\_. The Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code § 3-1301 *et seq.*, and 22-716 *et seq.*), is amended as follows.

a) § 3-1313 is amended by adding a subsection (a) to read as follows:

“A lottery or lottery game is both games of skill and games of chance that are operated by and for the benefit of the District of Columbia by the Lottery and Charitable Games Control Board, however (i) where such games of skill and games of chance are offered via the internet, any technology employed for such play must confirm the play to be at all times within the District, provided however, such restriction shall not apply to the conduct of Fantasy Sports and sweepstakes style games, where such games are lawful, and (ii) that no method, media, or device for play of these games of skill and games of chance can violate the Johnson Act or any other federal statute.”

b) The existing language in § 3-1313 shall be renumbered as subsection (b).

c) a new subsection (c) is added to read as follows:

“The Board, through the Chief Financial Officer, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this section, and may establish which games may be offered and additional terms and conditions for the conduct of the games not inconsistent with subsection (a) of this section, including the percentage of wagered amounts to be retained by the Board, minimum and maximum wagers, and time limitations for the games