



Oregon Racing Commission

# Uncertainty and Risk Remain After Gambling Industry Has Evolved Faster than State Law

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Report 2023-24



Secretary of State  
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# Audit Highlights

Oregon Racing Commission  
Uncertainty and Risk Remain After Gambling  
Industry Has Evolved Faster than State Law

## Why this audit is important

- The horse racing industry, which has been regulated for almost a century, faces challenges around its financial stability.
- Oregon Racing Commission (ORC) commissioners have broad authority over all aspects of animal racing and wagering in the state. This oversight includes live, simulcast, and historical races.
- ORC regulates over \$6 billion annually from wagering on races conducted inside and outside of Oregon. The state receives about \$3 million each year, with the majority going to ORC to support Oregon horse associations and those running horse race meets.
- Controversy around proposed HHR machines at The Flying Lark in 2021 had ORC commissioners publicly disagreeing with the Attorney General's opinion.

## What we found

1. Wagering on horse races has dramatically evolved from attending live race meets at tracks within Oregon to placing bets using electronic methods on races outside the state. Ambiguous state gambling laws have resulted in mixed interpretations of what constitutes legal wagering within Oregon. As technology changes, laws and rules need to be better defined to ensure there are no conflicts between existing statutes authorizing pari-mutuel gambling with Oregon's constitutional prohibition of casinos. ([pg. 21](#))
2. ORC did not have a full commission for nearly three years, only recently having five commissioners as of Spring 2023. It also has long-standing commissioners overdue for successors to be appointed. These situations can lead to issues such as burnout and meeting quorum if commissioners have emergencies or those with expired terms decide to leave. ([pg. 26](#))
3. ORC allocates money to financially support summer race meets, commercial races, and Oregon horse associations. There is limited oversight and transparency of how those funds are approved, distributed, and used. ([pg. 27](#))
4. ORC has procedures for overseeing and conducting reviews of Historical Horse Racing (HHR) machines but was missing key documentation of its past oversight conducted when Portland Meadows had HHR machines, which stopped in 2019. We were unable to assess the extent of the oversight performed given this lack of documentation. ([pg. 30](#))

## What we recommend

We made four recommendations to ORC. ORC agreed with all of our recommendations. Additional recommendations were made to the Legislature and Governor's Office. The response can be found at the end of the report.



# Introduction

Oregon's gambling industry has changed dramatically in the past 90 years with increased options, technological advancements, and statutory changes. Pari-mutuel gambling in Oregon has grown from betting in person on live horse and greyhound races to also placing electronic bets on live races occurring outside of the state. More recently, it has included wagering on historical in addition to live horse races.<sup>1</sup>

The Oregon Racing Commission (ORC) regulates all aspects of the state's pari-mutuel industry. Six Tribal governments signed a letter to the Secretary of State requesting this audit; while not the sole determinant, this request was a key consideration. Despite the growth and transformation within the industry, state gambling laws are vague, resulting in mixed interpretations of what the laws allow. This audit focuses on ORC's regulatory duties and its allocation of wagering funds.

## Horse racing was the first gambling legalized in Oregon and gambling has since expanded significantly

State and local governments collected about \$30 billion nationally in fiscal year 2020 from various types of gambling. Some types of gambling are newer while others have existed for many decades.

Pari-mutuel wagering on horse and dog racing became the first type of legalized gambling in Oregon in 1933. Other state-regulated gambling in Oregon significantly increased in the 1980s. Oregon's gambling laws also allow charitable and social gambling, a state-run lottery, and sports betting.

Multiple entities regulate gambling in Oregon. ORC oversees pari-mutuel wagering, the Oregon State Lottery runs the state lottery and sports betting, and the Department of Justice manages charitable and social gambling. In Oregon, the vast share of state revenue from gambling is generated by state lottery games.

While the Oregon Constitution prohibits casinos from operating on state lands, federally recognized Tribes in Oregon have entered into Tribal-State compacts for Class III gaming (e.g., blackjack, craps, roulette, slot machines, and baccarat) on their lands.<sup>2</sup> Class III Tribal gaming operations have multiple layers of oversight including their own Tribal Government(s), Tribal Gaming Commission(s), the Oregon State Police Tribal Gaming Section, and the National Indian Gaming Commission. Some Tribes also offer Class II gaming (e.g., bingo and non-banked card games).

The gambling landscape has undergone some significant changes and shifts in recent years. In 2018 the U.S. Supreme Court struck down a federal law that then enabled states to legalize sports gambling. The gambling industry has leveraged new technologies to expand and broaden the appeal of gambling with more modern options such as mobile betting.

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<sup>1</sup> The pari-mutuel industry in Oregon is limited to any exhibition of animal racing where the mutuel system is used; see [ORS 462.010](#). Pari-mutuel and mutuel are used interchangeably to define a system of betting through which winners divide the total amount bet for that specific type of wager after management expenses have been deducted.

<sup>2</sup> The federal Indian Gaming Regulatory Act was enacted in 1988 to regulate the conduct of gaming on Indian Lands. The Act established a National Indian Gaming Commission and a regulatory structure for Indian gaming in the U.S., which includes Tribal-State compacts that have agreed upon conditions for Class III gaming activities.

**Figure 1: Oregon gambling laws underwent significant changes starting in the 1970s**



## ORC oversees the state's pari-mutuel industry

ORC's mission is to regulate and facilitate all aspects of the pari-mutuel industry in Oregon for the benefit of the citizenry, the licensees, the participants, and the economy. The Legislature has delegated ORC broad authority and discretion in overseeing this industry. ORC is responsible for licensing, regulating, and supervising all state horse race meets, racing participants and personnel, and public training tracks as well as race wagering entities and applicable personnel.

### Oregon Horse Racing - ORS 462.304 Legislative Findings

(1) The Legislative Assembly finds and declares that the horse racing industry is economically important to this state and that the general welfare of the residents of this state will be promoted by the advancement of horse racing and related projects and facilities in this state.

As of August 2022, ORC had about 2,400 active licenses across more than 70 categories. The number of licenses can fluctuate drastically throughout a year due to the timing of race meets and staffing changes. Over the years, the number of licensees has overall been relatively stable. ORC licenses the following:

- racetracks used for horse race meets;
- public horse training tracks;
- any individual person participating (e.g., jockey, horse owners, and trainers) in a race meet or off-track betting operation;
- owners and mutuel managers of off-track establishments, employees of Advance Deposit Wagering facilities (ADW hubs); and
- any company wishing to operate an ADW hub or totalizer.<sup>3</sup>

In general, ORC staff conduct reviews of licensed ADWs hubs annually at locations in and out of the state.<sup>4</sup> This work includes reviewing policies, risk management and operations, customer accounts, anti-money laundering, financial operations and verification, training, security, and information technology. Totalizators licensed by ORC are reviewed by third-party providers. ORC staff reconcile money wagered through totalizators. Off-track betting facilities have regular inspections by ORC staff to ensure they are meeting state rules. The commercial racetrack licensee manages the simulcast network used by those facilities.

ORC has multiple staff involved in supervising state horse race meets. For example, ORC staff provide surveillance of racing activities and investigate horse racing irregularities and safety issues, while race stewards are responsible for onsite supervision of live race meets to ensure sport integrity and safeguard the well-being of participants, animals, and the public. ORC veterinary staff also help ensure the health, safety, and welfare of racehorses and assess whether horses participating in a race meet are fit to race.

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<sup>3</sup> A totalizer is a numeric or alphanumeric display used to convey information at the racetrack to display the odds or payoffs for each horse.

<sup>4</sup> Headquarters for licensed ADWs are located out of state; however, there must be a physical location in Oregon.



There are three horse associations that regularly work with and receive funds from ORC. Those consist of the Oregon Horsemen’s Benevolent Protective Association, Oregon Thoroughbred Owners and Breeders Association, and Oregon Quarter Horse Racing Association. The associations have programs and provide funding to support the state’s horse racing industry.

**ORC is statutorily governed by five commissioners and funded from the money it collects from regulating pari-mutuel gambling**

ORC is governed by a five-member board of commissioners. Board commissioners are Governor-appointed and confirmed by the Senate to serve for four years. Commissioners appoint the executive director and other employees as well as officials for each race meet. Commissioners are required to be U.S. citizens and Oregon residents, and commissioners as well as their immediate family members are prohibited from certain animal racing activities (e.g., may not own or have any other financial interest in any race meet or in any animal participating in any Oregon race meet). Per statute, commissioners receive set compensation. ORC only had four members serving as of March 31, 2023.

At the end of June 2022, ORC’s prior executive director retired after serving approximately nine years. After having an interim director for a couple of months, the current executive director was appointed effective September 1, 2022.

ORC is funded entirely with Other Funds, revenues it collects from the pari-mutuel industry. Funding is derived from the agency’s share of live horse racing, simulcast wagering, and off-track betting wagering receipts, licensing fees and fines, and unclaimed wins from wagers. Most racing proceeds are used to support the commission and racing industry. The commission’s 2021-23 biennium budget totaled \$7.35 million.

**Figure 2: ORC’s adopted budget has increased gradually over time while FTE has declined**

|             | 2013-15     | 2015-17     | 2017-19     | 2019-21     | 2021-23     |
|-------------|-------------|-------------|-------------|-------------|-------------|
| Other Funds | \$5,146,512 | \$5,871,560 | \$6,179,495 | \$6,329,944 | \$7,351,396 |
| Total Funds | \$5,146,512 | \$5,871,560 | \$6,179,495 | \$6,329,944 | \$7,351,396 |
| Positions   | 15          | 14          | 14          | 14          | 14          |
| FTE         | 13.27       | 12.27       | 12.27       | 10.40       | 10.39       |

Source: Oregon Legislative Fiscal Office’s Legislatively Adopted Budget Detailed Analyses

**License fees:** ORC uses license fees to help fund its operations. There are annual licenses for race meet participants, ADW hubs, the commercial track, totalizator companies, and summer fair meet organizers. Fees are as follows:

- License fees for individuals who are race meet participants and owners and employees of licensed businesses start at \$20 per year.
- ADW hubs pay a licensing fee of \$200 per operating day.
- Commercial track pays a license fee of \$100 per racing day. Off-track betting facilities are under the commercial license and do not have a separate licensing fee.
- Totalizator companies pay an annual licensing fee of either \$100 or \$1,000 depending on the services they provide.
- County fairs and other entities holding summer race meets pay an annual license fee of \$25.

Since 2012, ORC's license fees for individuals and employees involved with race meets have been established by administrative rule and limited by state statute to a maximum of \$30 per year. Prior, ORC's license fee structure was set in statute and the fees had been the same for over 30 years.<sup>5</sup> ORC management has found its license fees are again low compared to other states and was looking into potential fee changes.



Jockey at CRRU | Source: ORC

**Wagering funds:** In addition to licensing fees, ORC receives 1% of all bets made at the live races and on simulcasted races that take place in Oregon. Additionally, the commercial racetrack gives a smaller percentage to applicable horse associations (0.75%) and to a special track fund (0.20%). The percentage of gross pari-mutuel wagering can increase if the average daily handle exceeds a set threshold.<sup>6</sup>

**ADW hub funds:** ADW hubs are an online method of wagering on simulcasted race events occurring in other states and internationally (multi-jurisdictional simulcasting).<sup>7</sup> The state imposes a tax for its share of the part-mutuel handle collected by each licensed ADW, and that is shared between the state's General Fund and ORC. Each ADW is required to pay a monthly tax on all the gross wagering receipts it collected; the tax moneys are referred to as hub funds.<sup>8</sup>

ADWs can select from two options to calculate the tax. The first tax option has two components: 0.125% assessed on gross wagering receipts for the first \$60 million then 0.25% beyond that to the maximum cap. The second tax option has one rate of 0.25% assessed on gross wagering receipts to the cap but ORC allows the ADW to exclude wagering receipts from a single state. Regardless of which

<sup>5</sup> The fee rate structure for ORC race meet participants set by the legislature in 1979 was \$10 per year with a \$2 per year add-on charge of additional licenses and that fee structure stayed the same until 2012.

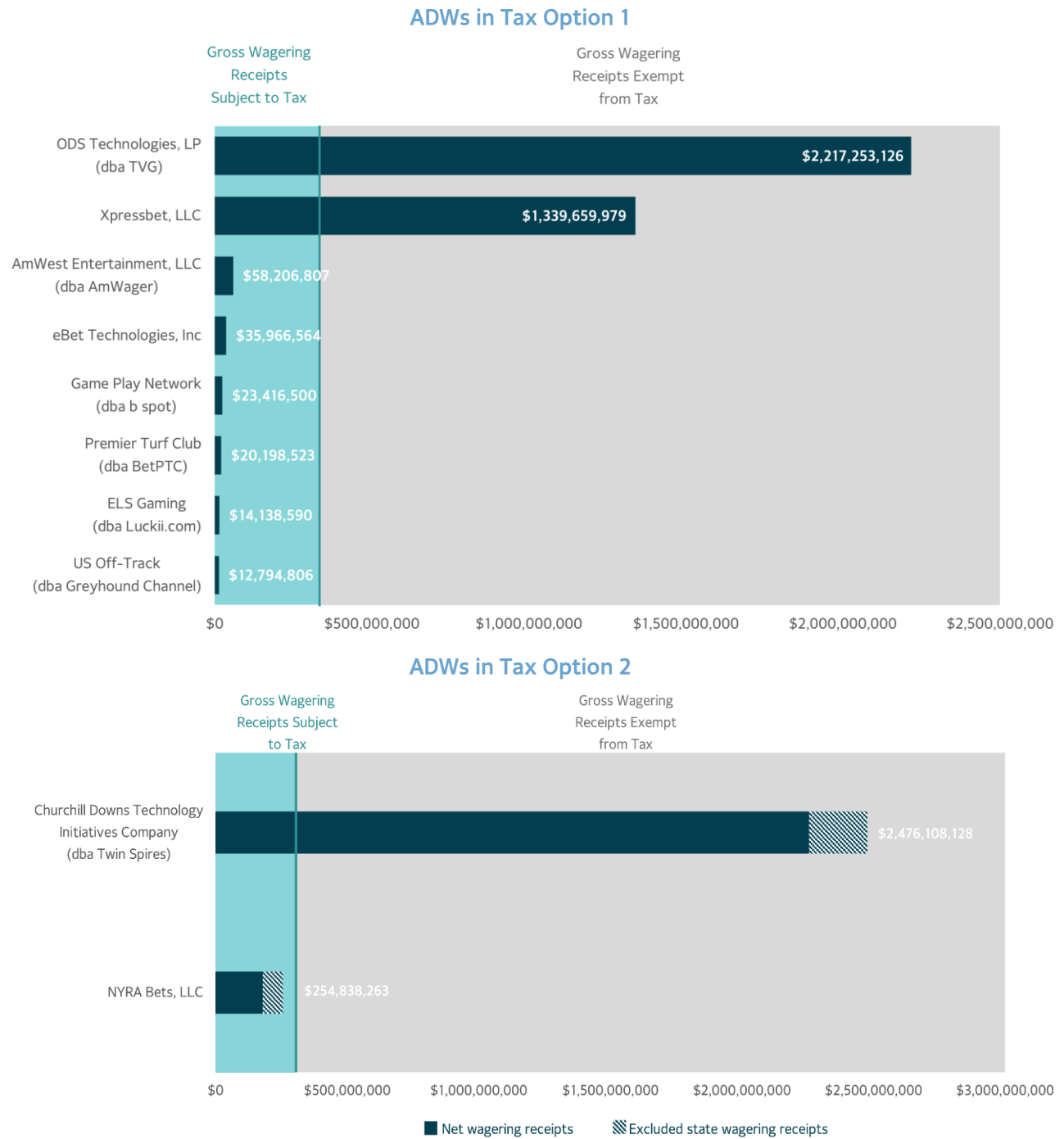
<sup>6</sup> Handle is the amount of money wagered in the pari-mutuels on a race.

<sup>7</sup> Live races held in Oregon are not currently being simulcasted.

<sup>8</sup> ADWs can take up to 22% of the pari-mutuel handle for their share of the revenue.

option, the cap is the same and increases 2.5% annually.<sup>9</sup> The cap, which is set in administrative rule, was \$759,212 for 2021-22. Three ADWs regularly have gross wagering receipts that surpass the cap.

**Figure 3: Of their total gross wagering receipts, three ADWs surpassed the tax assessment cap while most were in the lower tax tier for fiscal year 2022**



Source: ORC

<sup>9</sup> The cap was effective in 2005 and set at \$300,000 for fiscal year 2006, \$325,000 for fiscal year 2007, and \$350,000 for fiscal year 2008, then annually increased thereafter by 7.5%. The annual increase was lowered to 2.5% beginning with fiscal year 2018. The cap is \$778,192 for 2022-23 and will be \$925,025.97 for 2029-30.



Once an ADW reaches the cap, it can be assessed an additional tax if any of its affiliates individually has gross wagering receipts of more than \$20 million. If both those conditions are met, the tax structure for the affiliate’s gross wagering receipts follows the same structure of the ADW. This occurred for one ADW in fiscal year 2022. In that case, the ADW owed a total \$1,046,992. ORC management noted the same affiliate will also be subject to the tax assessment for fiscal year 2023.

**Figure 4: ADWs owed over \$3 million in tax assessment for fiscal year 2022**

| ADW   | Gross Wagering Receipts Tax Owed | Affiliate Tax Owed | Total Tax Owed     | Effective Weighted Tax Rate Paid* |
|---|----------------------------------|--------------------|--------------------|-----------------------------------|
| Churchill Downs Technology Initiatives Company (dba TwinSpires) | \$759,212                        | N/A                | \$759,212          | 0.031%                            |
| ODS Technologies, LP (dba TVG)                                  | \$759,212                        | N/A                | \$759,212          | 0.034%                            |
| Xpressbet, LLC  | \$759,212                        | \$287,780          | \$1,046,992        | 0.078%                            |
| NYRA Bets, LLC  | \$449,403                        | N/A                | \$449,403          | 0.176%                            |
| AmWest Entertainment, LLC (dba AmWager)                         | \$72,759                         | N/A                | \$72,759           | 0.125%                            |
| eBet Technologies Inc.  | \$44,958                         | N/A                | \$44,958           | 0.125%                            |
| Game Play Network (dba b spot)                                  | \$29,271                         | N/A                | \$29,271           | 0.125%                            |
| Premier Turf Club (dba BetPTC)                                  | \$25,248                         | N/A                | \$25,248           | 0.125%                            |
| ELS Gaming (dba Luckii.com)                                     | \$17,673                         | N/A                | \$17,673           | 0.125%                            |
| US Off-Track (dba Greyhound Channel)                            | \$15,994                         | N/A                | \$15,994           | 0.125%                            |
| <b>Total</b>  |                                  |                    | <b>\$3,220,722</b> |                                   |

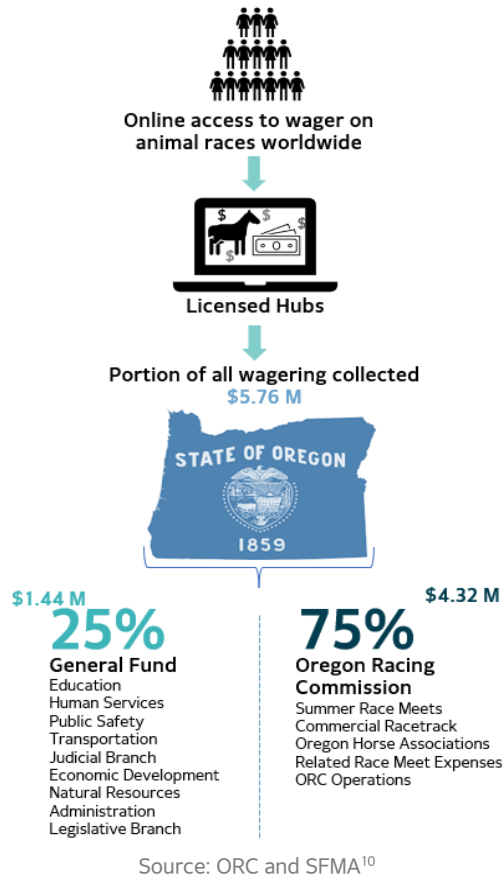
\* Weighted tax is based on the portion of tax owed of the total gross wagering receipts.

Source: ORC

Oregon is only one of two states that offer ADWs a multi-jurisdictional license, the other being North Dakota. A multi-jurisdictional license can be used by other states as a consideration factor and to streamline their processes for licensing or renewing an ADW to operate within their states. While both Oregon and North Dakota actively offer this license, they have different processes and fees. For instance, Oregon’s cap for assessing taxes on gross wagering is more than 1.5 times higher than that in North Dakota.

When the legislature allowed ADWs in 1999, one-third of hub funds were required to go to the General Fund and the remainder to ORC. With the passage of HB 2719 in 2015, the allocation to Oregon’s General Fund was reduced to 25% and ORC’s portion increased to 75%. This change seemed spurred to help support Oregon’s horse racing industry with the impact of growth in gambling options allowed in the state and the decline in the number of foals.

Figure 5: Licensed ADW wagering brought \$5.76 million to the state during the 2019-21 biennium



Of the total hub funds ORC received, it distributed approximately \$3.2 million during the 2021-23 biennium for racing development; this amount was shared among summer race meet organizers, the commercial track, and three Oregon horse associations. Summer race meets use those funds to pay for race meet expenses such as purse and purse incentives, photo finish, and marketing and advertising. The commercial track uses the funds for things such as track improvements. Associations commonly use these funds to supplement race purses and stake races, and to provide incentives and awards for breeders and owners. Additionally, ORC uses hub funds to directly pay for jockey incentives, track surface consultants, and totalizator consultants.

In 1949-51, the Oregon Racing Commission’s estimated contributions to the General Fund totaled \$1.17 million and administrative expenses totaled \$47,436.

**HHR machines:** Historical Horse Racing (HHR) machine wagering is not actively operating in Oregon. However, HHR machines were in operation at Portland Meadows from 2015 to 2019. During that time, 8% of the revenue those machines collected, about \$3 million during the 2017-19 biennium, went to ORC and horse-related associations.

<sup>10</sup> Appendix C shows some of the historical contributions from ORC to the General Fund.

Legislation in 2021 changed the HHR fee structure from a percentage of revenue to a fixed rate of \$470,000 with small annual increases. Of those funds, ORC would receive almost half with the remaining going to a couple horse associations and racing funds. C3 Gaming Casino Consultants Consortium conducted an analysis of HHRs for ART Public Affairs. Its analysis included a forecasting model that found the change from a percentage to the fixed fee could significantly reduce the revenue portion the state receives down to a potential of 1.8%.<sup>11</sup>

### ORC strives to ensure live race meets are run safely and fairly

Besides racing requirements and medication provisions set in administrative rule, ORC has many processes and inspection protocols in place to help ensure live race meets keep horsemen, horses, and spectators safe. For example, there is limited access to certain areas at the racing venue, and ORC staff conduct inspections at least a few days before race meets to assess the condition of the track surface and safety rails, communication set-up, licenses, and facility maintenance. During the race meets, ORC staff coordinate to have aspects well covered and careful consideration taken for horses and racing participants before, during, and after a race. For example:

**ORC veterinarian and assistants** conduct pre-race inspections to confirm and observe all horses participating on the day of the race and again once races are about to begin to ensure the horses are fit to race. If a horse is deemed unfit to race, the horse is scratched.<sup>12</sup> During the race, the veterinarian remains with the horses to look for any issues or concerns. If necessary, a horse may be reinspected prior to racing. Post-race, the veterinarian observes horses for signs of distress, and, in severe cases, can place horses on a 14-day wait prior to racing again. Also, every winning horse, most horses being claimed, and any other horse selected by the veterinarian or investigator will immediately go through post-race testing. Horses are placed in a motorized hotwalker to cool down at a controlled pace for observation.



Mechanical hotwalker used at Grants Pass Downs.

<sup>11</sup> C3 Gaming Casino Consultants Consortium, [Examination of Historical Horse Racing Machines](#), September 2021.

<sup>12</sup> A “scratch” is when a horse is entered for a race but either the horse’s connections decide not to run the horse, or the racetrack veterinarian determines that the horse is not fit to race (pre-race exam failure). Other reasons a horse may be scratched can include a starting gate issue or absent jockey.

**ORC investigator staff** query the licensing database once racing programs are finalized to confirm all those required are correctly licensed and in good standing. ORC investigative staff conduct constant surveillance before and during a meet, walking the grounds and doing physical inspections, to ensure there are no illegal items or paraphernalia. The ORC's Chief Investigator emphasized the importance of relationship building with all licensees for them to share concerns or violations, as well as the expectation that anyone will receive disciplinary action. As the horsemen and horses prepare for the race, the investigators confirm all personnel are correct and observe all aspects of the race preparation process, including the wearing of protective gear.

**Stewards** and assistants, typically three in total, continuously observe various operations of the racetrack at the top of the grandstands. This observation area also includes the video camera operator, photo finish booth, and race announcer. The steward is in frequent communication with investigator and veterinarian staff. If they identify a violation of racing rules, such as inappropriate use of a crop, they issue sanctions in the form of fines and suspensions. Oregon has reciprocal agreements with neighboring states if a person is suspended from racing. Additionally, the steward has a computer terminal directly connected to the racetrack's tote system, which controls when the system stops taking bets on the upcoming race. The steward ultimately confirms the finishing positions, which is then communicated to the tote system and the announcer.



Stewards Box at Grants Pass Downs.

Some owners, trainers, and workers live onsite with their families in an adjacent area on the backside of the grounds during the racing season, sometimes for months. ORC staff estimated around 200 horses, including race, pony, and companion horses, were in residence at the Josephine Fairgrounds in June 2022. Auditors observed the fairgrounds seemed to be kept tidy, although some of the permanent structures' condition aged with heavy wear.

ORC has a medication and horse welfare subcommittee that keeps apprised of health concerns and makes recommendations, such as medication allowability, to the commission. For example, in the November 2022 meeting, the subcommittee recommended changing the rule to lower allowable Lasix dosage and to review all medication rules.



Even though industry integrity and horse welfare are highly important to ORC, the subcommittee did not recommend participating in the Horseracing Integrity and Safety Authority (HISA) at this time. Congress created HISA to establish and enforce uniform rules over racetrack safety and medication control for all thoroughbred racing participants. Those that do not participate may not simulcast their races outside of their state. ORC commissioners and staff were concerned with impacts such as having differing processes for thoroughbreds than quarter horses, reducing some Oregon testing protocols, and the additional costs involved. For example, ORC management estimated the cost to join HISA in Spring 2023 was approximately one million each biennium, not including other potential expenses. HISA rules continue to change as it is being implemented and has been and continues to face litigation challenges on its constitutionality.



One of the 2023 Grants Pass Downs horse participants | Source: ORC

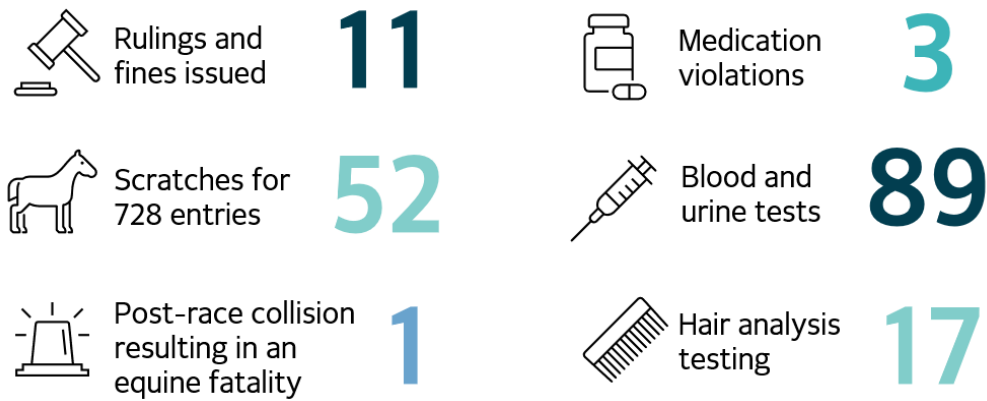
Even with medication and safety parameters in place, horse injuries and fatalities can occur. This can happen during or after a race or training exercises; horses are typically exercised for several weeks prior to a race, some daily. Besides tracking race-related horse fatalities for one of its key performance measures, ORC staff also monitor training fatalities of horses involved in Oregon horse racing. From race years 2018 through 2021, there were 14 race-related fatalities and four training-related fatalities; the most common causes of fatalities included fractures and cardiac events.<sup>13</sup>

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<sup>13</sup> Per ORC's [key performance measure on animal safety](#): "From fiscal year 2018-2022, the state saw a total of 13,773 starters and 17 fatalities. That works out to 1.23 horses per 1,000 starters — below the national average."



Figure 6: ORC's efforts and outcomes to help horse races run safely and fairly during the 2022 race year



Source: ORC

## Oregon's animal racing industry faces an uncertain future

Animal racing has declined in popularity over the years both nationally and in Oregon. Concerns of animal welfare have led to the waning and outlawing of greyhound racing throughout much of the nation, and alternative forms of gambling have increased over the years such as sports betting and state lottery games. Oregon has also seen continual changes with horse racing venues and declines in horse breeding that have further impacted the stability of horse racing. Though Oregon has authorized other methods to gamble on horse races, according to stakeholders, betting on live horse racing is a vanishing industry that will likely cease to exist without intervention or subsidization.

### Oregon's live animal racing faces continual changes

Oregon's commercial dog racetrack used for greyhound racing ceased operations almost two decades ago and horse racing venues have gone through multiple changes in the past few years.

Greyhound racing began in 1933 and was organized by the Multnomah Kennel Club. Though the venues changed a few times over the years, there was consistently one greyhound racetrack located in the Portland metro area. There was a reported high of spectators in the late 1980s, but attendance took on a steady decline in the 1990s. The racetrack closed in 2004. Since then, no live dog racing has occurred in Oregon. While legislators considered making greyhound racing and wagering illegal in Oregon, state legislation in 2022 stopped the approval of any new licenses for a commercial dog racetrack in the state but seemed to still allow greyhound wagering. Dog racing still occurs in a few states nationally and in other countries.

Greyhound racing is not operating in Oregon. There is no licensed commercial dog racing track. As of July 1, 2022, no commercial licenses can be authorized for dog racing. While greyhound races are not occurring in the state, it appears Oregonians can still wager on races held in other states and countries.

Oregon horse race meets in 2022, on average, have eight races on a typical day. Ideally, according to ORC staff, each race would have eight horses, though, fair meets usually had four to six competing horses. Grants Pass Downs, the commercial track had about eight horses competing in a race.

In Oregon, live horse racing typically occurs seasonally at rural fairs in the summer and at a single commercial racetrack for a handful of months during a year. Portland Meadows, the commercial horse

racetrack since 1946, closed for live racing in February 2019. TMB Racing obtained the commercial license and opened Grants Pass Downs to races in June 2019.

With COVID-19 restrictions, summer fairs were not held in 2020. Four summer fairs resumed, having horse race meets in the following years but the one in Harney County did not. In April 2022, TMB Racing decided not to hold any races at Grants Pass Downs in 2022 and to not renew its commercial track license. The Southern Oregon Horse Racing Association was approved and held races over the course of seven days in June and July at Grants Pass Downs to help with the loss of races. A new commercial track license was issued in 2022 to HRA LLC and it anticipates holding races beginning in 2023. The number of Oregon live horse race days has reduced at least 20% since 2018.

**Figure 7: Overall, Oregon's live horse races are in decline**

|  | Races Held During the Calendar Year |            |            |            |            | Avg No. Race Days Per Year |
|--|-------------------------------------|------------|------------|------------|------------|----------------------------|
|  | 2018                                | 2019       | 2020       | 2021       | 2022       |                            |
| Portland Meadows                                 | 332                                 | 92         | -          | -          | -          | 36 days                    |
| Grants Pass Downs (GPD)                          | -                                   | 194        | 228        | 285        | -          | 29 days                    |
| Eastern Oregon Livestock Show (EOLS)             | 7                                   | 21         | *          | 15         | 9          | 3 days                     |
| Crooked River Roundup (CRRU)                     | 36                                  | 36         | *          | 29         | 30         | 4 days                     |
| Tillamook County Fair (TCF)                      | 24                                  | 33         | *          | 23         | 32         | 4 days                     |
| Harney County Race Meet (HCF)                    | 20                                  | 20         | *          | -          | -          | 3 days                     |
| Southern Oregon Horse Racing Association (SOHRA) | 71                                  | -          | *          | -          | 58         | 8 days                     |
| <b>Total</b>                                     | <b>490</b>                          | <b>396</b> | <b>228</b> | <b>352</b> | <b>129</b> |                            |

\*Due to COVID, no fair race meets occurred in 2020

Source: ORC and Equibase Company LLC



Left: Poster of Racing on the Rogue. Right: Crossing the finish line, Grants Pass Downs, June 2022.

Oregon horse breeding has significantly declined from a decade ago. This is not solely an Oregon trend, but also occurring nationally. Horse breeding is a key aspect in racing. Oregon-bred horses compete in races not only in the state but across the nation and internationally. Races held in Oregon commonly include either thoroughbreds or quarter horses — thoroughbreds excel in long distance racing while quarter horses are known for their ability to sprint short races. There are Oregon horse association award and incentive programs to promote breeding and racing. Though there are horse breeders and owners in most counties across the state, breeding can be significantly impacted by the number of racing opportunities offered by commercial tracks. Without that, a horse association noted the only incentive for breeding horses is for out-of-state racing or equestrian disciplines.

### Oregon has authorized alternative ways to gamble on animal races to help sustain the industry

Oregon legislation has expanded gambling opportunities for wagering on live animal races to include physical locations other than the racetrack, online wagering, and wagering on historical horse racing. Oregon was the first state to authorize online wagering for horse racing. These provide other opportunities to wager on animal races and money is then used to support the industry. The following wagering options are authorized in Oregon:

**Off-Track Betting (OTB):** A facility where people can place bets prior to the animal race occurring and watch the race live via a simulcasted signal displayed on televisions or various other displays. These facilities are often combined into other existing businesses such as bars, restaurants, or bowling alleys, and may feature other gambling options such as video lottery machines. While allowed to have up to 20 OTBs, there are 10 OTBs operating in Oregon. Oregon’s current commercial racetrack licensee publicly shared its intention to extend the OTB network by expanding into additional locations. As of February 2023, a Prineville location was close to opening and other locations were being sought out including a perspective one in Medford.



Emerald Lane Bowling in Eugene, OR

**Advanced Deposit Wagering (ADW):** A form of gambling where a person wagers through an online account into which they deposit money in advance; they can then use that account to bet on any simulcasted live animal race offered by the ADW provider on its interactive wagering hub. Wagering on live racing must be legal in the jurisdiction of the bettor’s residence; however, the races may occur all over the world. This is one of the most popular ways to bet on animal racing. There were 10 ADWs licensed in 2020, then reduced to nine ADWs in 2022, and there are eight ADWs with about 26 affiliates as of July 1, 2023.



**HHR machines:** Video gambling machines that allow players to bet on horse races that were previously held. Typically, previously held races are randomly selected from a large database of past races, and the player is presented with limited statistics regarding the participants from those actual races. Information concerning the selected race is presented to the player in such a way it is not possible to identify the race in question. Players then place wagers and afterwards it is revealed to them whether they won or lost.

These devices have quickly evolved. The most popular versions present a user interface that overlays spinning reels and game themes like what is found on popular casino slot machines and may appear to have nothing to do with horse racing. These machines can resemble the appearance and user interaction of slot machines; however, bets are required to be pooled and divided among winners following the mutuel system. From 2015 to 2019, ORC authorized Portland Meadows to have HHR machines while it held a commercial racetrack license. There are currently no approved HHR machines operating in Oregon.



HHR Terminal | Source: AmTote  
PariMAX

### **Wagering on state horse races has declined, but is supplemented by multi-jurisdictional wagering**

Wagering revenues are the primary source of funding for ORC to regulate and facilitate the horse racing industry. Betting on live Oregon horse races and through state-licensed ADW hubs for wagering on animal races outside of the state has helped the industry withstand stability challenges, but has not been able to further industry growth.

Using the pari-mutuel system to wager on animal races traditionally pools all the bets for a race together. After a small percentage is deducted from the pool for administration, the pool is shared among all winning bettors. There are various types of bets that can be placed on races. As bets are placed, the totalizator, also referred to as totalizer or tote, calculates and offers payoff odds that people can consider in placing bets. The betting operator (e.g., racetrack) has no stake in the outcome of the race or the wagers as the bettors are not wagering against the operator.

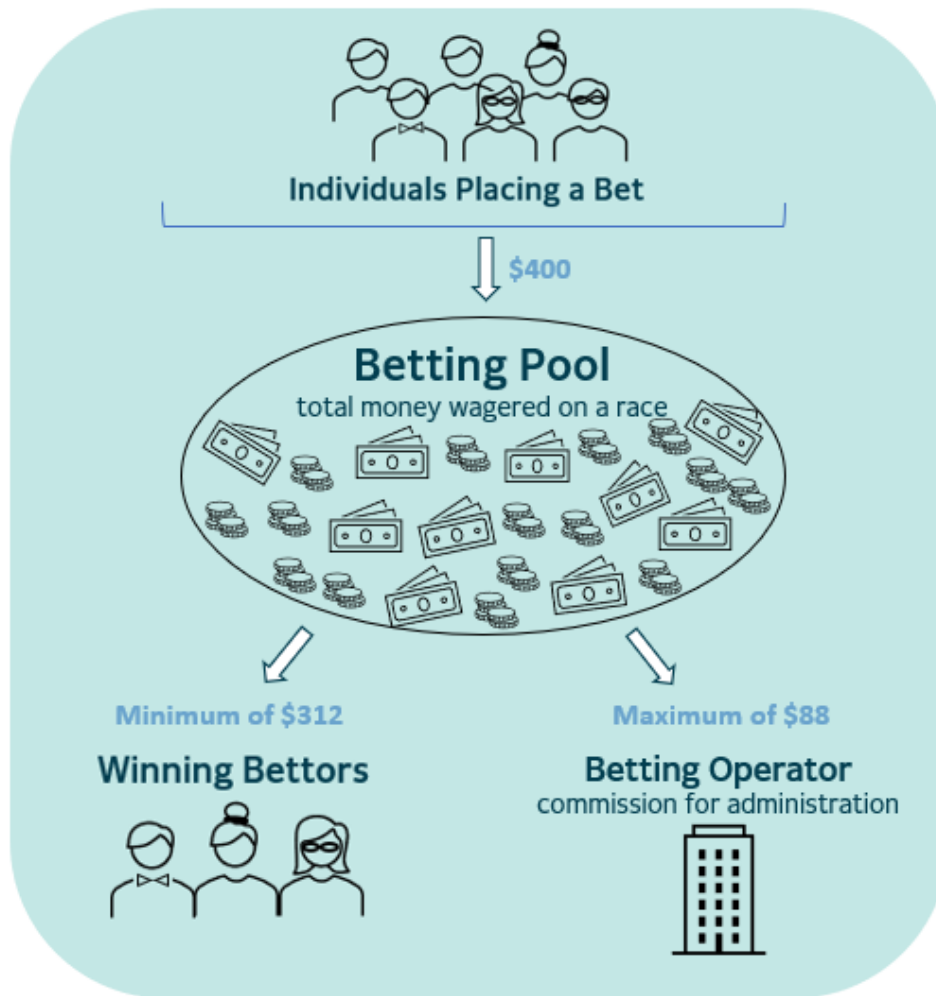
According to ORC, approximately 97% of all pari-mutuel wagering it regulates occurs out-of-state. The gross wagering handle for Oregon-licensed hubs has mostly been steadily growing. In 2022, licensed ADW hubs had gross wagering totaling over \$6.4 billion. For 2022 Oregon-held live races, the betting pool, or handle per race meet, ranged from almost \$21,000 to over \$269,000.

Horse racing revenues help the industry by increasing purses that attract more horses, leading to increased interest and visitation as well as breeding as horse ownership becomes more profitable. Purses are the prize money earned when horses finish well in a race and are given to the horses' owners. For 2022 live races in Oregon, the base purse amount allocated per race during summer race meets was \$2,250, funded by hub funds. Those amounts can increase due to additional contributions from ORC, state horse associations, summer race organizers, sponsors (e.g., businesses), and horsemen



(e.g., Firecracker race). ORC committed to raising the purse base and provide more direct funding to summer race meets in 2023.

Figure 8: Traditional pari-mutuel betting passes much of the betting pool to the winning bettors



Pari-mutuel bets can be placed on a single horse or multiple horses in a race or on multiple races

**Win** - Betting on a horse to come in 1st in a race

**Place** - Betting on a horse to place either 1st or 2nd in a race

**Show** - Betting on a horse to come in either 1st, 2nd, or 3rd in a race

**Exacta** - Betting which horses will finish 1st and 2nd in correct order

**Trifecta** - Betting which horses will finish 1st, 2nd, 3rd in correct order

**Superfecta** - Betting 1st, 2nd, 3rd, and 4th in correct order

**Pick 3** - Betting the 1st place finisher across three races

**Quinella Double** - Betting the 1st and 2nd place finishers, irrespective of order, across two races



## The Flying Lark sparked controversy with HHR gambling



The Flying Lark art and signage.

In 2020, a new venue at the Grants Pass Downs horse racing complex in southern Oregon was announced. The Flying Lark was a planned 35,000 square foot hospitality and entertainment center that intended to offer 225 HHR game terminals. This number exceeded the number of HRR terminals that had been approved for the previous track by approximately 30% to 50%. This, coupled with the technology used within those terminals, resulted in significant contention among the state, Tribes, and private industry, revealing various concerns and complexity around constitutional allowability and regulation authority over such gambling.

Applications related to the matter were pending for over eight months before a decision was made. After TMB Racing had invested significant time and money on the endeavor, the HHR machines proposed were denied by ORC and The Flying Lark never opened.

**Late spring 2021:** The licensed commercial racetrack owner, TMB Racing, and its associated vendors began submitting applications to ORC to offer HHR wagering at a new facility, The Flying Lark, at Grants Pass Downs.

**October 6, 2021:** Six Oregon Tribal leaders jointly sent a letter to both the Governor's Office and Secretary of State expressing concern over whether ORC was equipped to regulate HHR and a location with more than 200 machines. The Tribes commissioned and provided studies on the evolution and impact of HHR machines to Oregon's gambling industry.<sup>14</sup>

**October 20, 2021:** ORC requested a legal opinion from the Oregon Department of Justice (DOJ) about the HHR machines. ORC delayed its decision pending the opinion.

**December 28, 2021:** TMB Racing filed a court petition to compel ORC to act, claiming the delay on a decision not only left TMB Racing in financial limbo but also unfairly hurt hundreds of employees, suppliers, Josephine County, and thousands of people supported by the Oregon horse racing

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<sup>14</sup> C3 Gaming Casino Consultants Consortium, [Examination of Historical Horse Racing Machines](#), September 2021; ECONorthwest [Historical Horse Racing Machines: Recent Trends and Future Impacts in Oregon](#), September 17, 2021.

industry. In its petition, TMB Racing noted ORC oversaw Portland Meadows' operation of HHR terminals from 2015 to 2019 without issue and stated the Oregon Legislature had reaffirmed the lawfulness of HHR wagering earlier in the year.

**January 13, 2022:** 17 Oregon legislators signed a letter sent to the ORC commissioners, Governor, and Attorney General asking ORC to act as soon as possible to provide the necessary approvals for The Flying Lark to open. Stating, in part, "...There is no legal or moral reason why the Oregon Racing Commission has delayed The Flying Lark's applications... It has been the policy of this state to allow HHR machines to be offered on premises by the state's commercial horse racing licensee. We ask the ORC grant the necessary approvals so The Flying Lark can open as planned." Less than a week later, one legislator stated publicly he most likely would be changing his position as his awareness had been raised on what exactly the gaming activity looks like.

**February 1, 2022:** Two legislative bills related to gambling were introduced at the request of six Tribes. One bill, House Bill 4046, would have established a special joint legislative committee on state gambling and the other, House Bill 4047, would have set certain requirements on devices for wagering on historical animal racing (e.g., HHR machines). Neither bill had any hearings during the legislative session.

**February 11, 2022:** DOJ released its opinion, concluding the operation of 225 proposed HHR machines at The Flying Lark would violate two provisions of the Oregon Constitution that prohibit casinos and lotteries. DOJ determined, unlike traditional horse racing, these particular HHR machines were games of chance that did not afford players any meaningful opportunity to exercise skill. As a result, it concluded those HHR machines were lotteries, which are constitutionally prohibited in Oregon unless run by the State Lottery. DOJ also stated the planned number of HHR machines offering games of chance at the planned facility was an impermissible concentration of gambling activity that constituted a casino. Five days later, Governor Brown issued a letter to the ORC commissioners with her expectation they adhere to DOJ's opinion and act consistent with the law, or it would be grounds for removal.

**February 20, 2022:** ORC commissioners issued a resolution regarding The Flying Lark, saying, "...The proposed Flying Lark in Grants Pass does not violate the Oregon Constitution. It is not a Casino. The Oregon Racing Commission would license The Flying Lark by allowing its application if it were not prohibited from doing so by the Attorney General's erroneous opinion..." ORC adhered to DOJ's opinion and denied the application.

**April 12, 2022:** TMB Racing announced it was no longer viable for it to host the 2022 commercial race meet, and surrendered its commercial race meet license.

**February 16, 2023:** TMB Racing notified county officials it would be terminating its lease, with its lawyers telling the county in a letter, "TMB Racing has irrevocably and permanently abandoned the project located at the Josephine County Fairgrounds, including the 'Flying Lark' building."

With the concerns raised from The Flying Lark as well as in other aspects of gambling, a Joint Interim Committee on Gambling Regulation met to review the policies and structures that regulate state-sanctioned gambling and to look comprehensively at the future of the industry in Oregon during the latter half of 2022. The committee released an interim progress report summarizing its work and co-

chairs also issued a letter sharing their observations and recommendations.<sup>15</sup> For the 2023 regular legislative session, there was a House Committee on Gambling Regulation.

Despite the DOJ opinion issued and ORC's rejection of TMB Racing's application for HHR wagering at its facility, Oregon statutes, as they stand still authorize HHR. Differing opinions regarding what is or is not constitutional remain. There persists a risk of a similar situation to The Flying Lark reoccurring, if another party ever decides to pursue what they may be led to believe is a legal business opportunity, despite the potential of it being unconstitutional.



The Flying Lark at the Grants Pass Downs horse racing complex.

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<sup>15</sup> Joint Interim Committee on Gambling Regulation [Interim Progress Report](#), December 2022. Joint Interim Committee on Gambling Regulation [Co-Chairs Letter to House Speaker and Senate President](#), December 2022.



# Audit Results

ORC has broad authority to approve and oversee pari-mutuel gambling, but ambiguous state gambling laws have resulted in mixed interpretations of what the laws allow posing risks to economic interests in the state. As technology changes, laws and rules need to be better defined to ensure there are no conflicts between existing statutes authorizing pari-mutuel gambling with Oregon’s constitutional prohibition of casinos and limitation of lotteries. For example, there is no clear definition of the term “casino” except for in a narrowly applicable city planning and zoning law. Differing opinions regarding what is or is not constitutional remain, leaving a situation like The Flying Lark to reoccur.

ORC did not have a full commission for over three years, only recently appointing a fifth commissioner, and has some long-standing commissioners overdue for a successor to be appointed. Given its significant responsibilities and authority, more emphasis should be placed on ORC having a complete and renewed commission.



ORC should enhance its oversight and transparency of the money it allocates for summer horse race meets, commercial racetrack, and specific Oregon horse associations. ORC should provide better clarity on how much money is given to the organizations and ensure funds are being used in the best interest of the industry.

Lastly, we found ORC’s records are inadequate to assess its oversight of HHR machines when they were operating in Oregon. HHR machines have not operated in Oregon since 2019, but because current statutes allow them to operate, despite constitutional complexities, a licensee may try to introduce these devices again in Oregon.



2019 race at Grants Pass Downs. | Source: ORC

## Existing Oregon laws invite conflicting interpretations of legal gambling within the state

Gambling methods are constantly evolving and expanding, and Oregon statutes and rules are not keeping pace. The Oregon Constitution of 1859 prohibited lotteries and casinos from operating in the state. Measures 4 and 5 in 1984 added new constitutional provisions to establish a State Lottery. Limited case law from prior decades and Attorney General opinions offer some clarity to areas around the laws governing gambling, casinos, and lotteries; however, areas remain that have not been well litigated or defined. This is a longstanding issue we noted in a 2015 audit of the Oregon State Lottery.<sup>16</sup> Further, recent changes in law allow additional forms of gambling, and changes in technology have altered the gambling landscape. Without better clarity, the application of existing laws to new technologies brought forth varying interpretations that have led to controversy, resulting in tremendous amounts of time, money, and resources expended.

“...prohibiting the operation of “casinos,” the voters intended to prohibit the operation of establishments whose dominant use or dominant purpose, or both, is for gambling...”

- Oregon Supreme Court case (*Ecumenical Ministries v. Oregon State Lottery Comm.*)

### The state lacks statutory definitions needed to better enforce the constitutional prohibition of casinos

The Oregon Constitution states the Legislative Assembly has no power to authorize and shall prohibit casinos from operating in the State of Oregon; however, it does not define “casinos.” Oregon Revised Statutes, similarly, do not define the term “casino” except for a narrowly applicable city planning and zoning law that is not relevant outside its particular context. The lack of a clear legal definition of this term makes enforcement of the casino prohibition difficult and invites differing interpretations that can result in conflict.

There has been limited legal clarification of these definitions provided by the courts. In a 1994 Oregon Supreme Court case (*Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551, 871 P2d 106 (1994)), the court determined “casinos” are establishments whose primary purpose is gambling. This interpretation remains the primary means of determining whether an operation is a prohibited casino, but its subjectivity makes it susceptible to conflicting interpretations. Entities tasked with gambling regulation, operation, or oversight in Oregon are left to make their own subjective interpretation of what may or may not violate these constitutional prohibitions. For example:

- The Oregon State Lottery (Lottery) has taken steps to regulate video lottery games in such a way to proactively prevent retailers from violating the prohibition on casinos. This includes, but is not limited to, setting an income threshold and multiple subjective factors such as: appearance, business name, and the presence of non-lottery products and entertainment. For example, no more than six video lottery game terminals may be placed

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<sup>16</sup> OAD Report 2015-21 titled “OSL Lottery: Unclear Laws May Let Prohibited Casinos Operate in Oregon.” <http://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/4119420>.



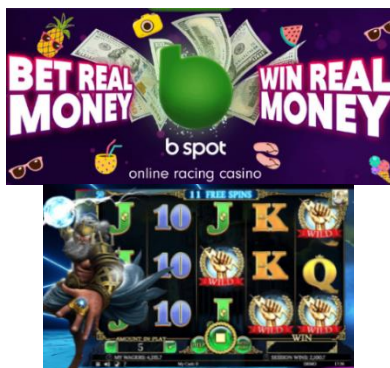
in an establishment (the only exception is provided for the premises of a race meet licensee where they are allowed a maximum of 10 terminals).

- DOJ has various limitations on charitable gaming. In part, those limitations help avoid the casino issue while making sure the activity is for nonprofits to raise revenue while not becoming a source of gambling problems or criminal activity. For example, Monte Carlo events may not offer cash prizes, require the purchase of imitation money, must limit the buy-in to \$500 per player, and may not last more than 12 hours at once or occur at the same place more than 40 times a year.
- Similarly, DOJ has limited other forms of nonprofit gaming such as values of prizes, hours and days of operations, and wages, while participation is generally restricted to nonprofits. It also capped administrative expenses and limited independent contractors in this area.

Unlike the Lottery and DOJ, ORC has not established any rule or policy that would prevent an establishment from operating as a prohibited casino. Instead, the commission focuses on evaluating whether the wagering operations it regulates comply with industry-specific requirements for mutual wagering systems. A 1932 Oregon Supreme Court Case (*Multnomah County Fair Association vs. Langley*, 140 Or. 172, 13 P.2d 354 (1934)) determined that such mutual wagering on live horse racing did not constitute a lottery. Thus, by focusing on exclusively on whether the establishment is using an industry-specific mutual wagering system, ORC’s standard overlooks how to determine whether the method of wagering constitutes a constitutionally prohibited “casino.” ORC maintains no express limits on the number of game machines an entity may apply to operate. In the past, ORC had previously approved the now-defunct Portland Meadows to operate at least 150 pari-mutuel HHR machines.

ORC also does not limit or prevent its licensees from naming, identifying, or advertising themselves as “casinos,” nor their gambling products as “casino games.” For example, ORC licenses and regulates an ADW company called Game Play Network, Inc (doing business as b spot), which up until early June 2023, promoted and described itself as a “online racing casino.” B spot is also affiliated with other entities that use their betting platform and technology to offer similar casino game experiences online, even via mobile devices. One of which is an entity called “Wild Ruby Casino” that advertises and describes its gambling products as “New Exciting Casino Games.”

Finally, ORC’s standards do not consider whether HHR machines, as opposed to live horse racing, might constitute a “game of chance” or lottery. But gaming technology has changed rapidly over the past decade to the point that some HHR machines bear little resemblance to traditional live horse racing.



Screenshots from b spot website



Screenshots from Wild Ruby Casino website

## Oregon Supreme Court Case - *Multnomah County Fair Association vs. Langley*, 140 Or. 172, 13 P.2d 354 (1934)

In 1932, the Oregon Supreme Court heard the case of Multnomah County Fair Association v. Langley District Attorney, Et Al. The complaint alleged prior to a horse race occurring, the plaintiff would solicit contributions of \$2, \$5, and \$10 from interested persons and alleged it used the sum obtained for the following purposes:

- (1) To offer prizes to owners of horses as inducements for the entry of their horses in the races;
- (2) To discharge the expenses attendant upon the races (cover the costs of hosting the races);
- (3) To create a fund for distribution among those contributors who, at the time when making their contributions, select a horse which wins first, second or third place in the race.

The plaintiff referred to these contributions as “subscriptions,” not bets or wagers. They claimed they would solicit these subscriptions for the purpose of providing purses to the horses, and to cover the costs and expenses of the race. In order to induce subscriptions for those purposes, they would give to each “subscriber” a proportion of the earnings of any horse the subscriber may select — but considered this a gratuity, not winnings. The complaint alleged the subscriptions were received in a building “fitted with booths, at which booths the subscriptions were received and receipts therefor issued, adjacent to the race track.”

The district attorney argued the conduct of the plaintiff in soliciting contributions and distributing the surplus among those who select the three winning horses violated the legislative act proscribing lotteries or common law nuisances. The plaintiff argued its conduct was lawful, due to, in part:

- (1) The outcome of a race is not dependent upon chance;
- (2) When a contributor makes a selection among the horses, his choice is the result of judgment, based upon information, and therefore, the subsequent distribution of the surplus among the contributors is not a lottery;
- (3) The contribution is not a wager or a bet and, therefore, does not constitute gaming.

The problem for solution was whether the manner in which the plaintiff intends to conduct horse racing, as described in its complaint, is a lawful activity or constitutes a lottery or nuisance.

A lower circuit court had previously concluded the plaintiff’s scheme constituted a lottery.

Ultimately, the Supreme Court concluded it seemed clear when the plaintiff formulated its plan, it did not intend to set up a lottery. The court cited one of the purposes of the plaintiff was to add interest to the breeding of good horses and that it intended the predominant feature in its plan should not be chance but skill, judgment, and horsemanship. Stating the plaintiff’s plan is illegal but does not constitute a lottery. The court concluded the operation of its scheme constituted the maintenance of a nuisance prohibited by 14-722, Oregon Code 1930.

## State gambling laws have not kept pace with gaming technology advancements

ORC does not currently have any rules or written policies containing explicit limitations that would prevent its licensees or affiliates from offering gambling products using game interfaces that mimic, or closely emulate, popular casino games. For example, a licensee operates what it referred to as an online racing casino featuring multiple games containing virtual spinning reels and game themes similar to those found on casino slot machines.

ORC has requirements for how the games determine their outcomes (commonly referred to as game math) as well as how wagers are pooled and paid out; however, technological advances have made it possible for these items to largely exist behind the scenes. Game developers and manufacturers have found ways to overlay the game interface of their choice on top of a variety of game determinant methods. This allows them to effectively present the popular casino themed game of their choice to the player for interaction, while having it operate using a game outcome method that is legal in their jurisdiction. In Oregon, this has come to fruition in two distinct ways: developers have figured out how to layer traditional casino slot machine game experiences over game outcomes based on live and previously held horse races.

Oregon lawmakers made a series of changes to existing laws to accommodate HHR wagering. Starting in 2013, they passed legislation (House Bill 2613) legalizing mutuel wagering on horse races previously held; however, this effort came into conflict with several existing Oregon laws, such as:

- ORS 462.010 defined a “mutuel” wagering system such that wagers with respect to the outcome of a race are placed with a wagering pool in which the participants are wagering with each other and not against the operator.
- Oregon law did not explicitly accommodate wagering pools being carried forward and included in other pools from other races.
- ORS 167.108 to 167.164 also defines certain devices to be considered “gray machines” or “slot machines” and criminalizes their possession or use.<sup>17</sup>

A key factor with HHR machines is the practice of selecting the races randomly from a large database to prevent users from recognizing the race in question and betting on a known outcome. As a result, it is highly unlikely players in an HHR gambling facility are wagering on the same races at the same time, effectively preventing the players from wagering with each other as previously required by Oregon law.

To eliminate these barriers, the Legislature in 2014 passed Senate Bill 1537, which in part, redefined “mutuel” to no longer require participants wager with each other and allowed mutuel pools including amounts carried forward from the mutuel pool of one or more previous races as well as be carried forward and included in the mutuel pool of subsequent races.

“House Bill 2613 was of some concern in that it created private gaming, but the machines that could be used could not run afoul of Oregon’s prohibition on slot machines... Senate Bill 1537 creates a whole new form of private gaming using machines that would otherwise constitute slot machines and specifically exempts their use from Oregon criminal laws... These types of devices display traditional slot machine displays that align in a line game display, i.e., three sevens, three cherries, three mega winner symbols, etc.... These types of devices may use random number generators to select amongst tens of thousands of outcomes of old races, and may use random number generators to select horses in those races. The player experience is the experience of a slot machine and is not the experience of the sport of kings.”

*- Written testimony by an attorney for the Klamath Tribes citing Tribal concerns about Senate Bill 1537 in a hearing prior to bill passage, 2014*

<sup>17</sup> Under ORS 167.117(9), gray machines are generally electrical or electromechanical devices used in gambling that either award credits earned by a player, or play, emulate, or simulate a casino game, bingo, or keno. Certain devices are expressly excluded in statute from being considered gray machines such as any device operated under the authority of the Oregon State Lottery.

The bill also contained language stating a device is not a slot machine or gray machine if it is used for the purpose of carrying out a form of mutuel wagering offered by a race meet licensee in accordance with commission rules.

HHR games were originally described to Oregon legislators in 2013 as “...present[ing] the races to a new customer that is much less intimidating than the current racetrack experience...you can bet at your own leisure, you can take as much time or as little time as you want...it’s less intimidating and presents the information to the players in a way that is easier to grasp the sport” Yet technological advances have leveraged these statutory changes to transform game offerings (Thoroughbred Mania HHR game), to more modern machines virtually indistinguishable from casino slot machines, as found at Portland Meadows in 2017 (Buffalo Downs HHR game).



Left: Thoroughbred Mania HHR game screenshot. | Source: 2013 OR Legislative hearing testimony  
Right: Buffalo Downs HHR game at Portland Meadows in 2017 | Source: ORC

Oregon Laws regulating gambling need to be brought up to speed to account for these technological advances that have been occurring in the pari-mutuel industry. Oregon statutes could explicitly define and prohibit operations that constitute casinos, in alignment with the constitutional mandate to prohibit them from operating in Oregon. The definition could include specific elements of the physical or online establishment, such as whether a reasonable person would perceive the appearance, business name, or advertising and promotional activities of the entity to be that of a casino.

Statutory limitations should be expanded to include specific elements pertaining to the user interface and experience, such as virtual or physical spinning reels and speed of play, as opposed to relying on regulating the game outcome determinants. In clarifying and expanding the definition, a statute would reduce the risk of another party attempting to build and outfit a pari-mutuel wagering facility with potentially unconstitutional gambling machines, as well as provide a clear basis for regulators to inform their evaluation of whether existing online wagering operations are lawful.



“Technology has outpaced regulation in Oregon and most policy makers are not aware of how this technology has changed the gambling experience.”

- Oregon Joint Committee on Gambling Regulations co-chairs letter to the Speaker of the House and Senate President, December 2022

## ORC effectiveness is hindered by commissioners serving beyond term limits and a long-standing vacancy

Five commissioner positions have been delegated broad authority for regulating the state’s pari-mutuel industry, all races and wagering. However, at least one commissioner position was vacant for over three years, and for a few months in 2022 there were multiple vacancies where all three commissioners were needed to maintain a quorum. Additionally, three out of the four commissioners are on extended terms, with two serving for over ten years. Given its responsibilities and authority, more emphasis should be placed on ORC having a complete and renewed commission.

Commissioners are the fiduciaries responsible to steer the commission. Besides fulfilling legal duties to govern and advise, they contribute to the strategic direction, financial sustainability, management policies, and culture. Oregon statute intends to have ORC commissioners refreshed every four years. As with many other commissions, the Governor, with Senate approval, appoints ORC commissioners for a term of four calendar years.

**Figure 9: ORC commissioner vacancy and extended lengths of service are a continuing issue (as of March 31, 2023)**

|                         | Commissioner Starting Date | Length of Time on ORC Commission |
|-------------------------|----------------------------|----------------------------------|
| Commissioner Position 1 | Vacant since 2019          | N/A                              |
| Commissioner Position 2 | 9/28/2022                  | 6 months                         |
| Commissioner Position 3 | 7/1/2011                   | 11 years, 9 months               |
| Commissioner Position 4 | 9/26/2016                  | 6 years, 6 months                |
| Commissioner Position 5 | 9/18/2007                  | 15 years, 6 months               |

Source: Governor’s Office Executive Appointment Expiration List and Oregon Legislature Interim Executive Appointments Journal

An ORC commissioner must meet few qualification requirements. One requirement is to be a U.S. citizen and the other is to be an Oregon resident. No specific backgrounds are required for ORC commissioners, unlike other state racing commissions (e.g., previous engagement in the racing industry or a practicing veterinarian) and the Lottery (e.g., a licensed CPA).

A best practice is having commissioners serve no more than two terms on a commission. It can be challenging to recruit and retain positions on over 250 state boards and commissions. However, it does not seem this commission has been made a priority or triaged to address shortages or longevity on those delegated with significant authority. With the Governor transition in 2023, ORC’s legal counsel mentioned there are many boards and commissions waiting for appointments and no set timeline of when that will occur. There was interest to fill at least one ORC commissioner seat since at least Fall 2022, and one commissioner has stated being ready yet waiting multiple years to be replaced.

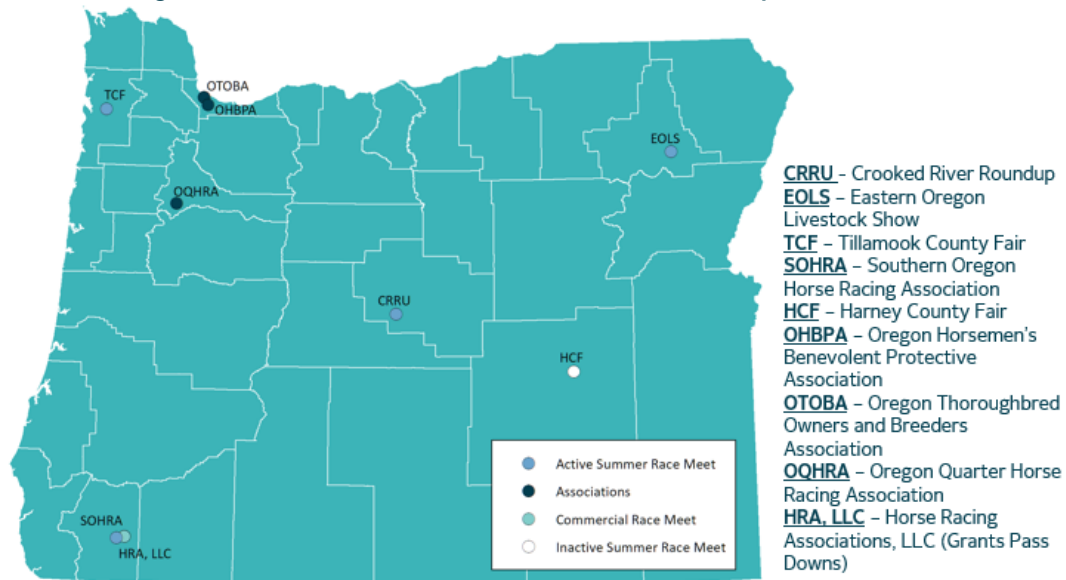
In Spring 2023, Governor Tina Kotek nominated an ORC commissioner appointee to fill the vacant position and the Senate confirmed the appointee in April 2023. As of May 2023, ORC had a full commission but still had a couple commissioners serving well beyond two terms.

Continually extending commissioners' appointments creates a risk of stagnation, burnout, and over-familiarity. Closely adhering to term limits engages others in commission work, offers fresh perspectives, promotes new ideas and innovation, and helps ensure the commission composition reflects its current and future leadership needs. Not filling positions reduces the opinions, ideas, and representation valuable in decision-making and can leave the commission without enough members for a quorum if emergencies arise or those with expired terms decide to leave. When commissions have substantial authority, such as ORC, it is even more critical to address vacancies and extended terms promptly.<sup>18</sup>

## ORC should enhance its oversight and transparency of wagering funds allocated to horse associations and race meet organizers

ORC distributes the ADW hub funds it collects to horse associations and race meet organizers to facilitate meets and horse breeding in the state. Entities submit requests for a share of the funds but there is inconsistency with what is required along with the detail provided. The entities provide differing levels of information about how the funds were used. There are few, if any, limits on how entities can use the funds and there is no formal process for reallocating funds when race meets are cancelled. Further, there is no mechanism used to track how hub funds are spent and their impact to the industry. Without consistency, clarity, and transparency, ORC cannot ensure hub funds are being used in the best interest of the industry.

Figure 10: Horse races and associations are in various parts of the state



Source: ORC and entities' websites

<sup>18</sup> The Audits Division 2023-24 Audit Plan includes a special project examining risks with state boards and commissions. <https://sos.oregon.gov/audits/Documents/2023-24-Audit-Plan.pdf>

## Requests from associations and the commercial track for ADW hub funds lack consistency and details

Each budget cycle, ORC staff estimate the amount of hub funding available to allocate to horse associations and race meet organizers for the upcoming racing seasons. Upon knowing the amount of funding available, those entities submit their requests to the commission. Fairs are required to use a request form detailing the way funds will be spent, such as on purse supplements, racing secretary, marketing, and photo finish. Alternatively, associations and the commercial track submit a written request that can be either an individual or group letter or form. Sometimes commissioners request entities submit an allocation letter request. However, much of the time, there is no required level of detail of how those funds are intended to be used. For the last two biennia, the request was a percentage of the hub funds available including a total percentage with no specific amount or detail for the use of the funds.

For the past few biennia, ORC projected hub funds would be around \$3 million. During the 2021-23 biennium, roughly \$1.47 million was approved for associations; \$630,000 to the commercial track; \$611,000 for summer fair race meets; and \$308,000 for related fair race meet expenses such as jockey incentives and insurance, and race consultants.

**Figure 11: ORC pays a significant portion of ADW hub funds to horse associations**

|                           | FY 2019     | FY 2020   | FY 2021     | FY 2022     | Total       |
|---------------------------|-------------|-----------|-------------|-------------|-------------|
| <b>Horse Associations</b> |             |           |             |             |             |
| OHBPA                     | \$275,500   | \$215,465 | \$902,000   | \$490,000   | \$1,882,965 |
| OTOBA                     | \$134,725   | \$162,415 | \$356,025   | \$178,500   | \$831,665   |
| OQHRA                     | \$108,750   | \$138,765 | \$219,000   | \$178,500   | \$645,015   |
| <b>Commercial Track</b>   | \$217,500   | \$104,355 | \$363,750   | \$318,000   | \$1,003,605 |
| <b>Summer Race Meets</b>  |             |           |             |             |             |
| CRRU*                     | \$202,870   | \$63,335  | \$220,815   | \$259,880   | \$749,900   |
| EOLS                      | \$63,370    | \$0       | \$73,300    | \$52,850    | \$189,520   |
| TCF                       | \$182,420   | \$0       | \$143,960   | \$13,200    | \$339,580   |
| SOHRA                     | \$228,020   | \$0       | \$0         | \$140,000   | \$368,020   |
| HCF                       | \$67,565    | \$58,620  | \$9,000     | \$0         | \$135,185   |
| <b>Related Expenses*</b>  | \$28,370    | \$17,180  | \$39,845    | \$105,190   | \$190,585   |
| <b>Total Expenses</b>     | \$1,509,090 | \$760,140 | \$2,327,695 | \$1,736,120 | \$6,333,040 |

Source: SFMA data on expenditures by fiscal year

Note: CRRU includes funding for jockey insurance and tote expenses for all summer race meets; Related expenses includes things such as jockey incentive, photo finish, and summer race meet consultants.

Once the amounts are set for the biennium, there is no policy or formal written process for hub fund updates or surplus reallocations. This was the case during 2021-23, when TMB Racing announced it was not renewing its commercial license. Around \$315,000 was made available to the other associations and summer race meets. We heard from a stakeholder that it was not always conveyed what additional funding was available.

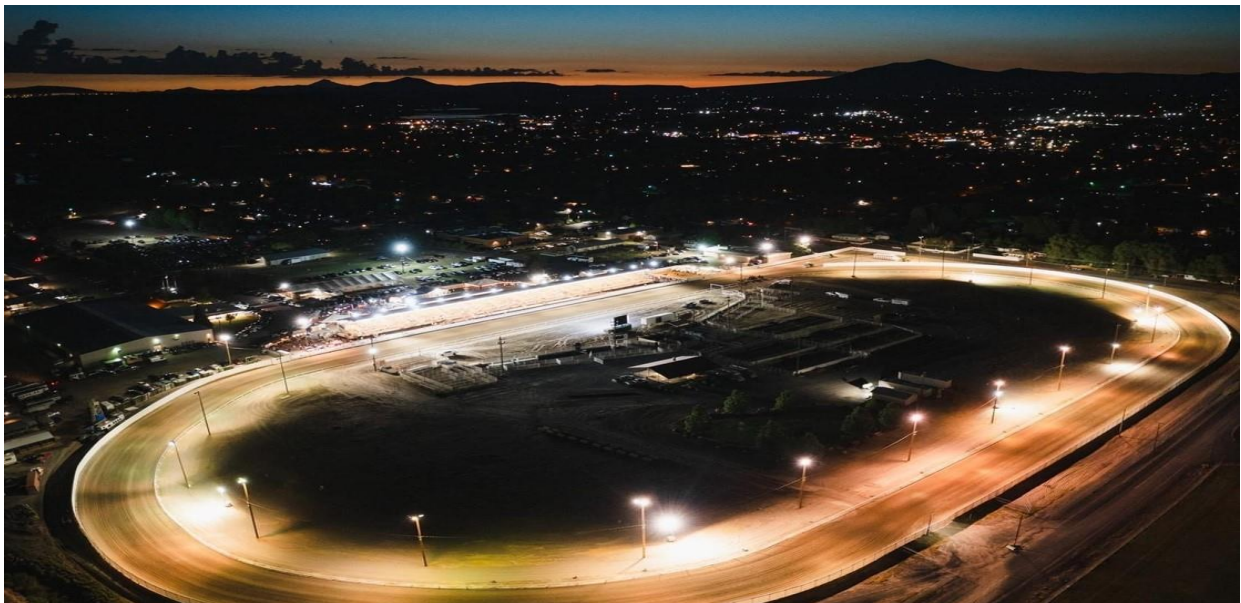
## ORC does not know the full extent of how ADW hub funds are spent

ORC allows immense leeway on how entities can use their hub fund moneys and there has been no standardized or consistent reporting and review of how the money was actually used.

State statute and administrative rule allow ORC to use the money it retains from hub revenues in any manner it decides. According to ORS, hub funds may be distributed and used for the benefit of Oregon's pari-mutuel racing industry. At the conclusion of the racing seasons, fairs typically provide a short verbal and written report to commissioners annually. However, these reports do not provide consistent detail among the race events and do not specifically describe how hub funds were used or compared to the intended uses as detailed in their applications. For example, most fairs provide some overall race meet statistics on varying scales, but do not give a direct connection of expenses to the hub funds they received. Associations and the commercial racetrack may provide verbal reports; however, the reports are also not provided consistently and do not account for how hub funds were spent.

Based on concerns around accountability of hub funds, ORC administration began a process in October 2022 to review the three associations' financial information. ORC staff looked at overall projected expenses and compared them to total aggregate hub fund allocations. While this type of review shows the relationship between requested and received hub funds, it does not demonstrate which expenses were actually paid by hub funds. The information provided does not show how hub funds are directly benefiting the industry and ensuring those funds are targeting racing development needs. Rather, it shows hub funds are helping pay for the overall expenses of Oregon horse associations.

ORC distributes a significant amount of funding and should have more assurance of how those funds were directly used to support racing. While those involved have the intention and passion to further Oregon horse racing, there is the potential those funds can be redirected to other purposes of the entities without the proper accountability and oversight.



2022 CRRU race meet at the Crook County Fairgrounds. | Source: ORC



## **ORC needs better transparency around how ADW hub funds are collected and allocated**

Commission meeting minutes are the record of commission decisions that are available to stakeholders and Oregonians. ORC's meeting minutes did not always provide clear information and detail about hub fund allocations and usage, raising questions about those funds.

ORC has meeting minutes available on its website from 2013 through the first part of 2023 and also began posting commission meeting recordings in November 2022. These minutes document commission members present, the results of motions that are voted on, and a summary of information shared and discussed. However, there were some areas where the minutes did not provide sufficient information about commission decisions. Some examples include:

- When Portland Meadows ceased its license for the commercial racetrack, there was \$200,000 from allocated hub funds unused that remained with ORC. These funds were not mentioned in the commission meeting minutes; however, they were noted on the internal ORC hub fund allocation spreadsheet to track those funds until reallocated. The \$200,000 went to TMB Racing, the succeeding commercial racetrack, but approval of this action was not in commission meeting minutes.
- There were commission-approved, race-related expenses, such as racetrack consultants and jockey insurance during the 2017-19 and 2019-2021 biennia, but no approval was documented in the minutes during the 2021-23 biennium.
- Race meet days for summer race meets were approved, but the commission minutes did not always note the actual dates approved or the approval amount of allocated funds to each entity.
- At times, there were contingent approvals for fairs or associations to provide additional documentation, but there was no further mention in subsequent meeting minutes of whether contingent information was provided to complete approval.
- Additionally, the meeting minutes did not always show action or approvals of funds or payments.

Commission members receive information packets for a meeting that are used to help inform decision making; these packets are referred to in some of the meetings, but at times little of that information is available on its website. Though ORC began sending such supporting documents to those on its email listserv in late 2022 when sending out meeting agendas, this left relevant background information not readily available to the public. Without sufficient transparency of information from discussion and decisions regarding hub funds, stakeholders and Oregonians are not able to trust that their interests are respected, and that public money is used appropriately.

## **ORC had insufficient documentation of its HHR machine reviews**

ORC has a written process for regularly reviewing HHR machines when the commercial racetrack has been approved to have them. However, ORC had limited documentation of its HHR machine reviews conducted at Portland Meadows, so we could not assess the efforts taken by ORC to ensure the extent to which reviews followed the process and were adequate.

Portland Meadows had HHR machines from 2016 until it ceased commercial racetrack operations in 2019. From available ORC records, Portland Meadows had between approximately 150 to 170 machines authorized.



Portland Meadows Hall in July 2017. | Source: ORC

ORC has an HHR facility inspection checklist and a review program comprised of multiple steps for staff to complete. The review includes inspecting various aspects of machine requirements, software requirements, and standards for monitoring and control systems, as well as additional steps targeting areas such as reporting, physical location security, and operation plans. As a part of its review, ORC contracted with a third party, GLI, to assess the machine's game applications. Upon completing the review, ORC staff would issue a letter to the commission suggesting approval of HHR machines and games if no issues were found. ORC was able to provide copies of several approval letters, which referenced the review of specific HHR game titles, the documents and equipment reviewed, and interviews conducted. Though, these letters provided limited information on the extent of the staff's review. For example, letters commonly mentioned staff using testing software, but no other documentation was referenced or maintained that identified the tests performed or their purpose. The ORC staff who conducted these reviews left in June 2021, prior to commencement of our audit.

Without adequate documentation, ORC is not able to demonstrate the extent of efforts it took to assess HHR machines, the related games, and overall operations. Due to the absence of these details, it was not feasible for auditors to compare past ORC HHR oversight practices to leading industry standards. ORC has since developed a process to address this issue.

# Recommendations

To increase oversight and transparency over pari-mutuel wagering, ORC should:

1. Add requirement(s) either in policy or rule to evaluate, new and changes to, game and wagering operations to ensure there is no conflict with the Oregon Constitution and state statutes.
2. Enhance rules and develop policies and procedures for allocating and reviewing the use of ADW hub funds.
3. Ensure commission meeting minutes provide clear and transparent communication approval detail, including attachments received by the commission to inform action approval.
4. Ensure documentation of its licensee reviews are maintained and safeguarded.

To address potential constitutional issues relating to casinos and provide clarity over state gambling and pari-mutuel wagering, the Legislature should consider:

5. With stakeholder and Tribal input, providing additional clarity around the definition of a casino in state statutes.
6. To manage technological advances, setting specific statutory limitations on elements of user interfaces and player experiences, for online and physical gambling products. This could include modifying related sections of ORS Chapters 167 and 462. Ensure limitations apply to those licensed by ORC.

To help maintain a full and renewed commission, the Governor's Office should consider:

7. Prioritizing the appointment of successors to replace commissioners who have multiple expired terms, as well as to fill all existing vacancies to those commissions delegated broad authority.

# Objective, Scope, and Methodology

## Objective

The objective of the audit was to review the alignment of ORC's regulatory duties with laws and industry standards, and the allocation of wagering funds.

## Scope

The audit focused on the oversight of wagering beyond live racing meets, which included ADW hubs, totalizers, and HHR. It also focused on the steps ORC takes to oversee hub funds allocations.

## Methodology

To gain an understanding of ORC, we:

- interviewed the majority of ORC staff, as well as the director and some commissioners;
- met with members of two Tribes, representatives from the Oregon Legislature and Governor's Office, Oregon horse associations that receive funding from ORC, and The Jockeys' Guild;
- interviewed representatives from the previous commercial horse racetrack (Grants Pass Downs), summer race meets, all nine Oregon-licensed ADW companies, and national and state horse advocate associations;
- conducted a site visit at a horse race meet;
- reviewed related ORS and OARs, agency budget and legislative documentation, relevant legislative testimony and materials;
- observed ORC commission meetings and subcommittee meetings as well as reviewed past meeting minutes;
- assessed ORC-generated documents and entity documents such as, but not limited to, forms, applications, ADW review reports, off-track betting facility review checklists, budget allocations for hub funding, summer race meet financial reviews, horse scratch/injury and fatalities data, and licensing database reports;
- reviewed SFMA, the state's financial records, for fiscal years 2017 through 2022;
- reviewed horse racing information and statistics;
- reviewed applicable court and Attorney General opinion documentation; and
- reviewed state and national studies related to pari-mutuel gambling.

## Internal control review

We determined that the following internal controls were relevant to our audit objective.<sup>19</sup>

- Risk assessment
  - We interviewed staff and stakeholders, reviewed statutes, administrative rules, and ORC and regulated entity documents.

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<sup>19</sup> Auditors relied on standards for internal controls from the U.S. Government Accountability Office, report [GAO-14-704G](#).



- We considered whether management identifies, analyzes, and responds to risks related to achieving the defined objectives.
- We considered whether management considers the potential for fraud when identifying, analyzing, and responding to risks.
- We considered whether management identifies, analyzes, and responds to significant changes that could impact the internal control system.
- Control activities
  - We evaluated policies and procedures, reviewed documentation, observed commission and subcommittee meetings, and reviewed meeting minutes.
  - We considered whether management has designed control activities to achieve objectives and respond to risks.
  - We considered whether management has implemented control activities through policies.
- Monitoring activities
  - We observed a race meet, obtained ORC reviews of entities, and evaluated ORC's role in monitoring compliance, performance, funding, and spending as applicable for regulated entities.
  - We considered whether management has established and operates monitoring activities to monitor the internal control system and evaluate the results.
  - We considered whether management remediates identified internal control deficiencies on a timely basis.
- Information and communication
  - We reviewed hub fund documentation, observed commission and subcommittee meetings, and interviewed staff and recipients of hub funds.
  - We considered whether management used quality information and externally communicated the necessary quality information.

Deficiencies with these internal controls were documented in the results section of this report.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We sincerely appreciate the courtesies and cooperation extended by officials and employees of ORC during the course of this audit.

#### Audit team

Ian Green, M.Econ, CGAP, CISA, CFE, CIA, Audit Manager

Olivia Reched, MPA, Audit Manager

Karen Peterson, Principal Auditor

Nicole Barrett, MPA, Staff Auditor

Andrew Mendenhall, Staff Auditor

## About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of the office, Auditor of Public Accounts. The Audits Division performs this duty. The division reports to the Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division has constitutional authority to audit all state officers, agencies, boards and commissions as well as administer municipal audit law.

# Appendix A: Common Horse Racing Terms and Definitions

| Terms   | Definitions   |
|---|---|
| Advanced Deposit Wagering (ADW)   | A form of gambling on the outcome of horse races in which bettors must fund their account before being allowed to place bets. An ADW Hub is a company that facilitates such wagers.   |
| Associations of Racing Commissioners International (ARCI)                 | An organization for government agencies that regulate horse and greyhound racing and helps in forming policies regarding racing regulation, medication, drug-testing laboratories, totalizator systems, racetrack operation, security, and off-track wagering entities.   |
| Backside  | The stable area of a racetrack.   |
| Breakage  | The pennies left over from pari-mutuel payoffs, which are rounded down to a nickel or dime. Breakage can be used for multiple purposes depending upon a state's racing rules.   |
| Claiming Race   | A race where each horse entered is eligible to be purchased at a set price. Claims must be made before the race and only by certain individuals.  |
| Communication Alliance to Network Thoroughbred Ex-Racehorses (CANTER USA) | Adoption site for off-track Thoroughbreds ready to start new careers.   |
| Crooked River Roundup (CRRU)  | A summer fair meet that is held annually in June and July at the Crook County Fairgrounds in Prineville, Oregon. The Crooked River Roundup Association puts on two separate events: a rodeo and horse races.  |
| Derby   | A stakes race for three-year olds.  |
| Eastern Oregon Livestock Show (EOLS)                                      | A summer fair meet that is held annually in June in Union, Oregon. The EOLS includes 4-H and Future Farmers of America livestock shows and exhibitions, a rodeo, and horse races.   |
| Equibase Company  | A partnership between The Jockey Club and the Thoroughbred Racing Associations to establish and maintain an industry-owned, database of North America racing records.   |
| Gait  | The footfall pattern of a horse in motion. Of thoroughbreds' natural gaits (walk, trot, canter, and gallop), they compete at a gallop.  |
| Gray Machine  | Generally, electrical or electromechanical devices used in gambling, which either award credits earned by a player, or play, emulate, or simulate a casino game, bingo, or keno. Oregon statute expressly excludes certain devices from being considered gray machines such as any device operated under the authority of the Oregon State Lottery. |
| Handle  | The total amount of money wagered in a pari-mutuel race.  |
| Harney County Fair (HCF)  | A summer fair meet that had included horse races annually until 2020 at the Harney County Fairgrounds in Burns, Oregon.   |
| Historic Horse Racing (HHR)   | A betting system that allows players to bet on replays of horse races that were previously held.  |

|  |   |
|--|---|
| <b>Horse Racing Association, Inc (HRA)</b>                               | Commercial racetrack in Grants Pass licensed in 2022 and its inaugural season begins in June 2023.  |
| <b>Horseracing Integrity and Safety Act (HISA)</b>                       | Effective July 1, 2022, congressional legislation designed to create a uniform national standard to govern horseracing, requiring a uniform anti-doping and medication control program.   |
| <b>Hub Funds</b>   | Also known as Racing Development Funds, funds collected by ORC from licensed ADW companies from pari-mutuel racing split 75% for the development of racing in Oregon and 25% toward Oregon's General Fund.  |
| <b>The Jockey Club</b>   | National organization dedicated to the improvement of Thoroughbred breeding and racing and has taken a leadership role in industry concerns ranging from medication and equine welfare to aftercare and marketing of the sport.   |
| <b>Jockeys' Guild</b>  | An American trade association representing horse racing jockeys.  |
| <b>Off-Track Betting (OTB)</b>   | Businesses, not located at a racetrack, permitted to take pari-mutuel racing wagers. Oregon statutes allow up to 20 OTB sites.  |
| <b>Maiden Race</b>   | Race for horses who have not yet won a race.  |
| <b>Mechanical Hot Walker</b>   | A machine used to walk horses to cool them down after a workout or race.  |
| <b>Oregon Horsemen's Benevolent &amp; Protection Association (OHBPA)</b> | A horsemen association that fosters and promotes the interests of the Thoroughbred horse industry and looks out for the health, welfare and safety of its members and their horses.   |
| <b>Oregon Owners and Thoroughbred Breeders Association (OTOBA)</b>       | A horsemen association that strives to increase public interest in Oregon Thoroughbreds while strengthening the industry through the promotion and advancement of breeding and racing.  |
| <b>Oregon Quarter Horse Racing Association (OQHRA)</b>                   | A horsemen association that promotes Quarter Horse racing opportunities in Oregon for fans, owners, breeders, the media, and the public.  |
| <b>Organization of Racing Investigators (ORI)</b>                        | Membership organization that actively investigate race fixing, horse doping, animal abuse, drug abuse, money laundering, cybercrime, fraud, conspiracy, and a host of other infractions of the laws and rules that govern professional horse racing and pari-mutuel activity. |
| <b>Pari-Mutuel</b>   | A form of wagering where all money bet is placed in a pool and divided up among those who have winning tickets after deductions (e.g., taxes and takeout) are made.   |
| <b>Photo Finish</b>  | A result so close it is necessary to use the finish-line camera to determine the order of race winners.   |
| <b>Portland Meadows (PM)</b>   | A former commercial racetrack located in Portland, Oregon, ran horse racing from 1946 - 2019.   |
| <b>Purse</b>   | Prize money that is awarded after a race to winning horse(s) to their owner(s).   |
| <b>Racing Secretary</b>  | Official who drafts the conditions of races.  |
| <b>Scratch</b>   | When a horse is entered for a race but is taken out before the race starts. Trainers usually scratch horses due to adverse track conditions or a horse's health. A veterinarian can scratch a horse it deems unfit to race at any time.                                       |
| <b>Southern Oregon Horse Racing Association (SOHRA)</b>                  | A racing association that puts on a summer race meet known as Racing on the Rogue at Grants Pass Downs in Grants Pass, Oregon.  |



|   |  |
|---|--|
| <b>Stakes Race</b>  | A race where the owner usually pays a fee to run a horse. The fees along with money added by the track make up the total purse. Some stakes are by invitation and require no payment or fee.                               |
| <b>Starting Gate</b>                                      | Partitioned mechanical device having stalls where horses are confined until the starter released the stalls' front doors to begin the race.  |
| <b>Statewide Financial Management Application (SFMA)</b>  | State's repository for state government's financial accounting records.  |
| <b>Stewards</b>   | Officials of a race meet who are responsible for enforcing racing rules.   |
| <b>Thoroughbred Aftercare Alliance</b>                    | Nonprofit that accredits, inspects, and awards grants to approved aftercare organizations to retrain, retire, and rehome Thoroughbreds.  |
| <b>Thoroughbred Racing Protective Bureau, Inc. (TRPB)</b> | National investigative agency in the horse-racing industry, with the goal of ensuring the integrity and security of racetrack wagering networks. It also ensures that Thoroughbreds are correctly documented and tattooed. |
| <b>Tillamook County Fair (TCF)</b>                        | A summer fair meet held annually in August at Tillamook County Fairgrounds in Tillamook, Oregon. The fair includes a carnival, exhibits, Pig-N-Ford races, Demolition Derby, and horse races.                              |
| <b>TMB Racing Inc (TMB)</b>                               | Former commercial horse racetrack licensed in Grants Pass, Oregon, ran racing 2019-2021.   |
| <b>Totalizator/Totalizer/Tote</b>                         | Automated pari-mutuel system that dispenses and records betting tickets and calculates payoff odds and payouts.  |
| <b>Tote Board</b>   | A numeric or alphanumeric display, usually at a racetrack, that conveys up-to-the minute information of the odds or payoffs for a horse race.  |

# Appendix B: Tribal Letter



October 6, 2021

Dear Secretary of State Fagan,

We are writing to ask you to exercise your auditing authority to perform a comprehensive review of the Oregon Racing Commission and determine whether this agency has the proper regulatory framework, statutory authority, security controls and staff expertise to adequately regulate a gaming facility with more than 200 electronic gambling machines like the one proposed for Grants Pass.

It has been 25 years since the state has conducted a comprehensive review of gambling in Oregon. During that time, technological advances have dramatically reshaped the gambling industry. Oregon's regulatory structure and controls have not kept pace with technology.

To help us understand the history and evolution of historic horse race machines, which are regulated by the Oregon Racing Commission, we commissioned two studies from experts in gambling systems and impact analysis. One of the key findings of these studies is that the new generation of HHRs are nearly identical to the traditional slot machines one plays in a casino.

We know a lot about the controls necessary to properly regulate a casino; and these reports raised significant concerns about whether the Oregon Racing Commission is equipped to regulate HHR and a gaming floor with more than 200 machines.

We have attached these studies for your review.

We are happy to discuss our questions with you to better identify the role of your office in evaluating whether the process for approving HHRs machines, the existing regulatory structure and staff experience are adequate to properly protect the public's well being. We believe the regulatory framework for tribal casino gaming and the level of such regulation – tribal, state, and federal – provides a useful comparative model to use in such audit.

Thank you for your time. We look forward to discussing this request with you further.

Sincerely,

Debbie Bossley, Chairwoman  
Confederated Tribes of Coos, Lower  
Umpqua and Siuslaw

Chris Mercier, Vice Chair  
Confederated Tribes of  
Grand Ronde

Delores Pigsley, Tribal Chairman  
Confederated Tribes of  
Siletz Indians

N. Kathryn Brigham, Chair  
Confederated Tribes of  
Umatilla Indian Reservation

Dan Courtney, Chairman  
Cow Creek Band of Umpqua Indians

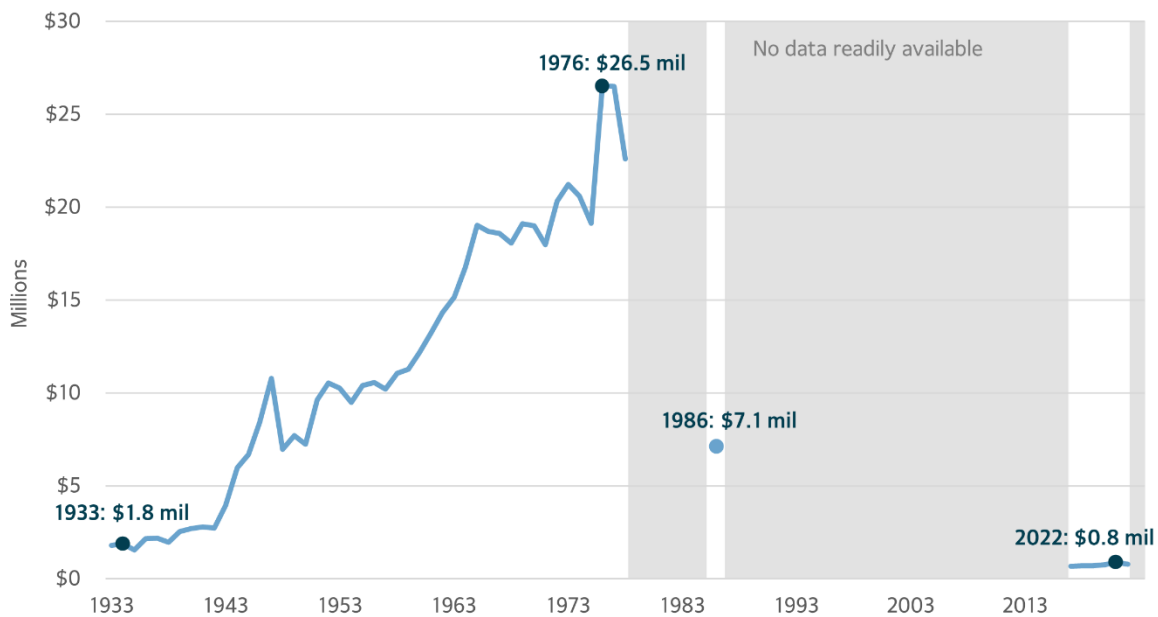
Donald C. Gentry, Tribal Chair  
The Klamath Tribes

Cc: Oregon Governor  
Oregon State Treasurer  
Oregon Attorney General  
Legislative Leadership

## Appendix C: General Fund Contributions

The amount of money ORC contributed over the years to the General Fund has fluctuated but overall increased significantly from 1933 to 1976. ORC's contributions to the General Fund in 1976 totaled over \$4.9 million, or \$26.5 million today after adjusting for inflation. The contributions to the General Fund, when adjusted for inflation, lowered to approximately \$7.1 million in 1986 and then to nearly \$800,000 in 2022.

**Figure 12: ORC contributions to the General Fund, when adjusted for inflation, increased significantly for decades before dropping to current levels**



Source: Archived ORC annual reports, committee minutes, and SFMA.

It was outside the scope of this audit to analyze pari-mutuel wagering receipts and determine why General Fund contributions have declined, but potential reasons include legislation changes, the decline of live horse and greyhound racing, and competition from gambling options.



# Oregon

Tina Kotek, Governor

Oregon Racing Commission

P.O. Box 366

Gresham, OR. 97030

Fax 971-673-0213

<https://www.oregon.gov/racing>

July 27, 2023

***Via Electronic Mail***

Kip Memmott, Director  
Secretary of State, Audits Division  
255 Capitol St. NE Suite 180  
Salem, OR 97310

Dear Mr. Memmott,

This letter provides a written response to the Audits Division's final draft audit report titled *Uncertainty and Risk Remains After Gambling Industry Has Evolved Faster than State Law*. Thank you for the opportunity to respond to the report.

The Oregon Racing Commission (ORC) is in the midst of making bold changes to become a premier agency that is trusted and respected by all. We have a new Executive Director, Chief Investigator, Director of Mutuels, Steward, and Administrative Assistant. We are essentially a renewed organization; we have robust goals and have made pro-active changes that are in alignment with the Governor's priorities, including increased transparency, excellent customer service, strategic planning, and a commitment to the citizens of Oregon through both high-quality work and responsible use of our resources.

The ORC has already begun implementing the Audit Division's recommendations. The status of each of the recommendations is included below.

| <b>RECOMMENDATION 1</b>  |  |  |
|--|--|--|
| To increase oversight and transparency over pari-mutuel wagering, ORC should add requirement(s) either in policy or rule to evaluate, new and changes to, game and wagering operations to ensure there is no conflict with the Oregon Constitution and state statutes. |  |  |
| <b>Agree or Disagree with Recommendation</b>   | <b>Target date to complete implementation activities</b> | <b>Name and phone number of specific point of contact for implementation</b> |
| Agree  | March 1, 2024  | Connie Winn 503-853-5928   |

ORC staff has drafted proposed rule language to implement this recommendation. The staff obtained permission at the July 2023 commission meeting to begin the formal rule-making process. ORC will consult with counsel as needed to evaluate this issue.

The mission of the Oregon Racing Commission is to regulate and facilitate, all aspects of the pari-mutuel industry in the State of Oregon for the benefit of the citizenry, the licensees, the participants, and the economy.

ORC is also in the process of evaluating policies and recommending rules to the commission to ensure that on-ground wagering operations do not conflict with the Oregon Constitution and state statutes.

|   |  |  |
|---|--|--|
| <b>RECOMMENDATION 2</b>   |  |  |
| To increase oversight and transparency over pari-mutuel wagering, ORC should enhance rules and develop policies and procedures for allocating and reviewing the use of ADW hub funds. |  |  |
| <b>Agree or Disagree with Recommendation</b>  | <b>Target date to complete implementation activities</b> | <b>Name and phone number of specific point of contact for implementation</b> |
| Agree   | January 1, 2024  | Connie Winn 503-893-5928   |

ORC staff has drafted proposed rule and policy language to implement this recommendation. Commissioners voted to commence the rule making process at the June 2023 commission meeting. ORC anticipates having an advisory committee meeting in early fall 2023 and filing the rules for public comment no later than November 2023. The staff reviewed the use of the hub funds from the past year. ORC staff made changes and enhancements to the hub fund application process to ensure that requests for funds are specific and detailed, and that unused funds are either returned or subsequent requests be made to use the funds for other purposes.

|   |  |  |
|---|--|--|
| <b>RECOMMENDATION 3</b>   |  |  |
| To increase oversight and transparency over pari-mutuel wagering, ORC should ensure commission meeting minutes provide clear and transparent communication approval detail, including attachments received by the commission to inform action approval. |  |  |
| <b>Agree or Disagree with Recommendation</b>  | <b>Target date to complete implementation activities</b> | <b>Name and phone number of specific point of contact for implementation</b> |
| Agree   | Completed June 2023                                      | Connie Winn 503-893-5928   |

The ORC currently sends out the meeting agenda and non-confidential documents that will be discussed at the meeting to interested parties and industry partners on ORC's distribution list. ORC also posts the agenda and non-confidential meeting materials on its website in advance of the meeting.

ORC Commission meetings are held virtually and are recorded. ORC staff also take minutes of the meeting, which are approved by Commissioners at a subsequent Commission meeting. After a meeting has occurred, the agenda, meeting materials, written minutes, and the meeting recording are posted on ORC's website.

|   |  |  |
|---|--|--|
| <b>RECOMMENDATION 4</b>   |  |  |
| To increase oversight and transparency over pari-mutuel wagering, ORC should ensure documentation of its licensee reviews are maintained and safeguarded. |  |  |

The mission of the Oregon Racing Commission is to regulate and facilitate all aspects of the pari-mutuel industry in the State of Oregon for the benefit of the citizenry, the licensees, the participants, and the economy.



| Agree or Disagree with Recommendation | Target date to complete implementation activities | Name and phone number of specific point of contact for implementation |
|---------------------------------------|---|---|
| Agree                                 | June 1, 2024                                      | Connie Winn 503-893-5928  |

The ORC has set up redundant documentation repositories with separate backups to store audit documents to ensure data integrity and permanence. In addition, the ORC is working closely with the Assistant State Chief Information Officer for Public Safety on our modernization plan including solutions to address further safeguards such as access controls, logging, and automatic document retention.

In conclusion, we believe the current Oregon Racing Commission's administration is in alignment with the findings and recommendations of this audit and are well along the way to addressing all recommendations presented.

Please contact Connie Winn with any additional questions, comments, or requests for clarification.

Regards,



Connie Woods Winn  
Executive Director  
Oregon Racing Commission  
P.O. Box 366  
Gresham OR 97030

The mission of the Oregon Racing Commission is to regulate and facilitate all aspects of the pari-mutuel industry in the State of Oregon for the benefit of the citizenry, the licensees, the participants, and the economy.



Secretary of State  
LaVonne Griffin-Valade



Audits Director  
Kip Memmott

This report is intended to promote the best possible management of public resources.  
Copies may be obtained from:

Oregon Audits Division  
255 Capitol St NE, Suite 180  
Salem OR 97310

(503) 986-2255

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[sos.oregon.gov/audits](http://sos.oregon.gov/audits)