

# FILED

APR 19 1993

OKLAHOMA SECRETARY  
OF STATE

State Question No. 658

Initiative Petition No. 358

## WARNING

It is a felony for anyone to sign an initiative or referendum petition with any name other than his own, or knowingly to sign his name more than once for the measure, or to sign such petition when he is not a legal voter. It is unlawful for anyone to sign this petition if he is not a registered voter in the State of Oklahoma.

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## INITIATIVE PETITION

To the Honorable David Walters, Governor of Oklahoma:

We, the undersigned citizens and legal voters of the State of Oklahoma, respectfully order that the following proposed law shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the next regular general election, and each for himself says: I have personally signed this petition; I am a legal voter of the State of Oklahoma; my residence or post office are correctly written after my name. The time for filing this petition expires ninety days from April 19, 1993. The question we herewith submit to our fellow voters is: Shall the following bill be approved?

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### SUGGESTED BALLOT TITLE

This measure would create a State Lottery. It would be operated by the Oklahoma Lottery Authority. The Authority would be run by a board of directors. The Governor would appoint the directors. The Authority would be an independent public body of the state. The Authority would be run with funds from the Lottery. It would not receive tax dollars. Around 50% of lottery money would go for prizes. The Authority would pay its own start-up costs. After that, it would give 35% of the lottery money to the State. One-half of the State's share would be used by the Oklahoma Center for the Advancement of Science and Technology. At least 35% of the State's share would be used for the capital needs of educational entities. The rest of the State's share would be used for the capital needs of the State. The Authority would select people to sell lottery tickets. The Authority would choose the type of lottery games to be played. The Authority could not permit other forms of gambling. The State Lottery would be the only legal lottery. This measure contains many other laws. Those laws would regulate the Lottery and provide criminal penalties.

### SHALL THE PROPOSED LAW BE APPROVED?

- Yes - For the Law.
- No - Against the Law.

**BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:**

**SECTION 1.**

This act shall be known and may be cited as the "Oklahoma Lottery Act".

**SECTION 2.**

As used in this act, unless the context requires otherwise:

1. "Authority" means the Oklahoma Lottery Authority;
2. "Lottery" means any lottery created and operated pursuant to this act. A "lottery", for purposes of this act, is any plan or procedure for the disposal or distribution of money or property by chance among persons who have paid any valuable consideration for the chance of obtaining such property, or a portion of it, upon any agreement, understanding or expectation that it is to be distributed or disposed of by a lot or chance. Valuable consideration shall be construed to mean money or goods of actual pecuniary value. A lottery shall not include card games, dice, dominos, slot machines, roulette wheels, or other similar forms of gambling, or where winners are determined by the outcome of a sports contest except as provided in section 9 of this act. A lottery shall also not include games using any electronic video gaming machine that, upon insertion of cash, coins, tokens, or anything of value, is available to play or simulate the play of a video game, including but not limited to video poker, keno, and blackjack, using a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash, coins, tokens, or any other thing of value, or machines which directly dispense same.
3. "Major procurement" means any gaming product or service including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets, and other products and services unique to the Oklahoma lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of a business corporation;
4. "President" means the president of the Oklahoma Lottery Authority who shall also serve as chief executive officer of the Authority;
5. "Retailer" means any person with whom the Authority has contracted to sell lottery tickets to the public;
6. "Security" means the protection of information that would provide an unfair advantage to any individual involved in the operation of the lottery as well as measures taken to prevent crimes against the Authority and its retailers; and
7. "Vendor" means any person who has entered into a major procurement contract with the Authority.

**SECTION 3.**

A. There is hereby created an independent instrumentality of the State of Oklahoma which shall be a public body corporate and politic to be known as the Oklahoma Lottery Authority. There is also established a State Lottery which shall be administered by the Authority. The operation of the Lottery and participation in lottery games sponsored by the Authority, which are not specifically prohibited by this act, are deemed lawful activities in the State of Oklahoma. The Authority shall be considered a public body for purposes of the Oklahoma Open Meeting Act and the Oklahoma Open Records Act. The Authority shall be managed in such a manner that enables the people of Oklahoma to benefit from its profits and to enjoy the best possible lottery games. The operations of a lottery are unique activities for state government and a corporate structure will best enable the Lottery to be managed in an entrepreneurial and businesslike manner. It is the intent of the people of Oklahoma that government programs and services shall not be mentioned in advertising or promoting the Lottery. It is also the intent of the people of Oklahoma that the Oklahoma Lottery Authority shall be accountable to the Governor, the Legislature and the people of Oklahoma through a system of audits, reports and thorough financial disclosure as required by this act.

B. The existence of the Authority shall begin only upon the appointment by the Governor of a majority of the board of directors as provided hereafter. Until such time, no business shall be conducted on behalf of the Lottery.

C. Notwithstanding any other provision of law to the contrary, no official action of any form shall be taken by the board of directors at any time unless a majority of the members of the board shall have been appointed. Any action taken on behalf of the Lottery when less than a majority of the members of the board of directors shall have been appointed shall be of no effect.

D. The Authority shall be considered as a "governmental entity" for purposes of the Oklahoma Ethics Commission Act.

E. The Authority shall be considered as an instrumentality of the State for purposes of the Governmental Tort Claims Act.

F. The terms "state agency", "agency of the state", "public officer", "state officer", or "state employee" shall not include the Authority, its President, or its employees, except where a contrary intention appears specifically in a statute or this act.

G. It is the public policy of the State of Oklahoma, that all forms of gambling, gaming, lotteries, or other games of chance, are unlawful unless specifically authorized by the Oklahoma Constitution or Oklahoma statutes. Nothing in this act is intended to alter existing state statutes prohibiting various forms of gambling, gaming or games of chance, unless such statute is specifically amended by this act.

#### SECTION 4.

A. The affairs of the Authority shall be governed by a board of directors composed of five (5) members appointed by the Governor. Directors appointed by the Governor shall be citizens of the United States and residents of Oklahoma for five (5) years immediately preceding the appointment, and shall not have been convicted of a felony pursuant to the laws of this state, the laws of any other state, or the laws of the United States. Prior to their appointment, the Governor shall request the Oklahoma State Bureau of Investigation to conduct thorough background checks of each prospective board member. The initial terms of the directors shall be one (1), two (2), three (3), four (4) and five (5) years respectively, and thereafter shall all be for five-year terms. No member shall serve more than two (2) consecutive five-year terms. Members may be removed by the Governor for neglect of duty, misfeasance, or nonfeasance in office. The board shall annually elect a chairman from among its voting members.

B. Members of the board of directors shall not have any direct or indirect interest in an undertaking that puts their personal interest in conflict with that of the Authority. A personal interest shall include, but shall not be limited to, an interest in a major procurement. Directors shall be governed by those portions of the Oklahoma Ethics Commission Act applicable to members of state boards of state governmental entities.

C. Appointed members of the board of directors shall be entitled to Four Thousand Eight Hundred Dollars (\$4,800.00) per year as remuneration for serving on the board, except for the chairman, who shall receive Six Thousand Dollars (\$6,000.00), payable monthly, and all members shall be reimbursed for actual and necessary travel and other reasonable expenses incurred in the performance of their official duties. Members of the board of directors shall also be entitled to a per diem payment of One Hundred Dollars (\$100.00) for their attendance at hearings on appeals provided in this act.

D. The board, upon call of the chairman or the president, shall meet at such times as the chairman or the president may determine. Three (3) members of the board shall constitute a quorum. The board shall also meet upon call of three or more of the voting members of the board. The board shall keep accurate and complete records of all its meetings.

E. The president of the Authority shall be appointed by the board of directors and serve at its pleasure. A vote to appoint or remove the president shall require the concurrence of at least three (3) directors. The board of directors shall conduct its first meeting within thirty (30) days of the date the Governor appoints the third member of the board. The president shall not be a member of the board.

F. All meetings of the board shall be open unless they may be closed under the Oklahoma Open Meeting Act, or relate to trade secrets or the security of lottery operations.

#### SECTION 5.

All records of the Authority shall be deemed open records and subject to public inspection, unless:

1. Such record may be kept confidential pursuant to the Oklahoma Open Records Act;
2. Such record involves a trade secret of the Authority or of a vendor; or
3. The disclosure of the record would endanger the security of the lottery or its retailers.

#### SECTION 6.

A. The board of directors shall provide the president with private-sector perspectives on the operation of a large marketing enterprise. The board shall:

1. Approve, disapprove, amend, or modify the budget recommended by the president for the operation of the Authority;
2. Approve, disapprove, amend, or modify the terms of major procurements recommended by the president;
3. Serve as a board of appeal for any denial, revocation, or cancellation by the president of a contract with a lottery retailer; and
4. Adopt, from time to time, subject to the provisions of Article I of the Administrative Procedures Act, such administrative rules as may be necessary to carry out and implement its powers and duties, the operation of the Authority, the conduct of lottery games in general, and any other matters necessary or desirable for the efficient and effective operation of the lottery or convenience of the public. The board shall be exempt from the rulemaking provisions of the Administrative Procedures Act in its first year of operation, in order to expedite the implementation of the Lottery and the receipt of revenues. The board may adopt, without recourse to the rulemaking process of the Administrative Procedures Act unless it so desires, procedures for the conduct of specific lottery games, including but not limited to, rules specifying:
  - a. the types of games to be conducted,
  - b. the sale price of tickets,
  - c. the number and amount of prizes,
  - d. the method and location of selecting or validating winning tickets,
  - e. the frequency and the means of conducting drawings which shall be open to the public,
  - f. the manner of payment of prizes,
  - g. the frequency of games and drawings,
  - h. the manner and amount of compensation to lottery retailers, except all compensation shall be uniform, and
  - i. any other matters necessary or desirable for the efficient and effective operation of the lottery or for the convenience of the public.

- B. In all other matters the board shall advise and make recommendations. However, the board shall:
1. Conduct hearings upon complaints charging violations of this act or of rules adopted by the Authority and shall conduct such other hearings as may be provided by rule;
  2. Review the performance of the Authority and:
    - a. advise the president and make recommendations to him regarding operations of the Authority, and
    - b. identify potential improvements in this act, the rules of the Authority, and the management of the Authority; and
  3. Request from the Authority any information the board determines to be relevant to its duties.

#### SECTION 7.

A. The Authority shall conduct and administer lottery games which will result in maximization of revenues to the State of Oklahoma while at the same time providing entertainment to its citizens. It shall be the duty of the Authority, its employees, and the directors to provide for the effective operation of lottery games which ensure integrity of the Lottery and maintain the dignity of the state and the general welfare of its citizens. The Authority, in pursuit of the attainment of the objectives and the purposes of this act, may:

1. Sue and be sued in its corporate name;
2. Adopt a corporate seal and a symbol;
3. Hold copyrights, trademarks, and service marks and enforce its rights with respect thereto;
4. Appoint agents upon which process may be served;
5. Enter into written agreements with one or more other states for the operation, marketing, and promotion of a joint lottery or joint lottery games;
6. Acquire real property and make improvements thereon; and
7. Make, execute, and effectuate any and all agreements or contracts including:
  - a. contracts for the purchase of such goods and services as are necessary for the operation and promotion of the Lottery. However, the Authority may not turn over its entire operations to a single private vendor.
  - b. contracts to incur debt in its own name and enter into financing agreements with the State of Oklahoma, its agencies, or with a commercial bank. Any such debt incurred by the Authority shall clearly state that it is not a debt of the State of Oklahoma or of the Authority, and is only payable from revenues derived from the operation of the Lottery.

B. The Authority shall:

1. Supervise and administer the Lottery in accordance with the provisions of this act and the rules adopted by the board;
2. Adopt a system of continuous internal audits;
3. Maintain weekly or more frequent records of lottery transactions, including distribution of tickets to lottery retailers, revenues received, claims for prizes, prizes paid, and all other financial transactions of the Authority.

C. The venue for any action against the Authority, its directors, president, or any of its employees shall be Oklahoma County.

#### SECTION 8.

The Authority shall not utilize amateur athletics for any purpose including, but not limited to, advertising, promoting, conducting a lottery game, or as a basis for a lottery game. "Amateur athletics" means any interscholastic athletics in which the participating athletes are elementary or secondary school students of any public or private institution of learning; any intercollegiate athletics in which the participating athletes are students of any public or private institution of higher education; or any athletics sponsored or regulated by the following amateur athletic associations including, but not limited to (a) United States Olympic Athletic Association; (b) National Collegiate Athletic Association; (c) National Association of Intercollegiate Athletics; (d) Oklahoma Secondary Schools Activities Association; (e) Sooner State Games; (f) Amateur Softball Association; (g) American Legion Baseball; (h) Oklahoma Youth Soccer Association; or (i) Oklahoma Special Olympics. This section shall not be construed to prohibit the Authority from advertising the Lottery at, during, or in connection with other sports contests.

#### SECTION 9.

The Authority may use horse racing or contests involving horses for any purpose including, but not limited to, advertising, promoting, conducting a lottery game, or as a basis for a lottery game, after obtaining the necessary permission from the sponsor of the race and the horse racing track, which track must be licensed by the State. The Authority may negotiate contracts with individual tracks for any promotional activities and may contract with such tracks to operate any lottery game. Any track may be selected as a retailer.

#### SECTION 10.

A. The president, as chief executive officer of the Authority, shall manage the daily affairs of the Authority and shall direct and supervise all administrative and technical activities in accordance with the provisions of this act and with the rules adopted by the board. It shall be his or her duty to:

1. Supervise and administer the operation of the lottery games;
2. Employ and direct such personnel as may be necessary to carry out the purposes of this act and utilize such services, personnel or facilities of the Authority as he or she may deem necessary. The president may

employ, by personal service contract, and compensate advertising firms, legal counsel, accountants, consultants and technical assistants as may be required to carry out the provisions of this act. The president may, by agreement, secure information and services as he or she may deem necessary from any department, agency, or unit of state government, and shall compensate such department, agency, or unit of state government for its services. Such agencies, departments, or units of state government shall cooperate with the Authority and provide such information and services as may be required by the Authority to assure the integrity of the Lottery and the effective operation of the lottery games;

3. Establish a security division within the Authority to be supervised by a chief security officer appointed by the president. The chief security officer must have at least ten (10) years of experience in law enforcement;

4. Contract in accordance with the rules of the Authority with persons to sell lottery tickets at retail;

5. Make available for inspection by the board or any member of the board, upon request, all books, records, files, and other information and documents of his or her office and to advise the board and recommend such rules and other matters he or she deems necessary and advisable to improve the operation and administration of the Lottery;

6. Enter into any contract with any person, firm, or corporation for the promotion and any operations of the Lottery, or for the performance of any of the functions as provided in this act or rules adopted by the board;

7. Attend meetings of the board or appoint a designee to attend on his or her behalf; and

8. Submit, for informational purposes only, the annual budget of the Authority to the Appropriations Committees of the House of Representatives and Senate. The annual budget shall also be submitted to the Director of State Finance to assist the State Board of Equalization in the process of estimating net lottery revenues.

B. Following his or her appointment, and during his or her entire term of employment, the president shall reside in Oklahoma.

C. The president and the board may conduct an ongoing study of the operation and administration of lotteries in other states or countries, of available literature on the subject, of federal laws and regulations which may affect the operation of the lottery, and of the reaction of citizens of this state to existing or proposed features of lottery games, with a view toward implementing improvements that will tend to serve the purposes of this act.

D. The president also may:

1. Require bond from employees of the Authority with access to Authority funds or lottery funds in such an amount as determined by the board. The president may also require bond from other employees as he or she deems necessary; and

2. Suspend, revoke, or refuse to renew any contract entered into in accordance with the provisions of this act or the rules of the board.

## SECTION 11.

A. The Authority shall establish and maintain a personnel program for its employees. Such employees shall not be considered as state employees for any purpose, except for provisions of the Oklahoma Ethics Commission Act applicable to state employees. The Authority may procure benefit programs, group insurance plans and provide a retirement plan for employees of the Authority. Employees of the Authority shall serve at the pleasure of the president who shall determine their compensation and benefits. The employees shall be subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the president. Such personnel actions of the Authority shall be exempt from the provisions of the Oklahoma Personnel Act and the statutes relating to the Merit Protection Commission. The compensation of the president of the Authority shall be set by the board, and not subject to any statutes setting salary caps for state officers and employees.

B. No officer or employee of the Authority shall have a financial interest in any vendor doing business or proposing to do business with the Authority.

C. No officer or employee of the Authority who leaves the employ of the Authority may represent any vendor or lottery retailer before the Authority for a period of one (1) year following termination of employment with the Authority.

D. Background investigations shall be conducted by the security division of the Authority on applicants for employment as provided in Section 26 of this act. Applicants may be fingerprinted as a condition of employment. In addition, all supervisory employees of the Authority and employees of the Authority performing duties primarily related to security matters, prior to employment, shall be subject to a background investigation report conducted by the Oklahoma State Bureau of Investigation, as provided in Section 26 of this act. No person who has been convicted of a felony, bookmaking or other forms of illegal gambling, or of a crime involving moral turpitude shall be employed by the Authority.

## SECTION 12.

A. Any retailer, vendor, or applicant for a retailer or vendor contract aggrieved by an action of the president of the Authority may appeal that decision to the board. Such appeals shall not be subject to the Administrative Procedures Act, but the president's decisions shall be supported by findings of fact and conclusions of law.

B. All appeals before the board shall be decided on the record within thirty (30) days of the hearing.

C. Any person aggrieved by a decision of the board may appeal the decision to district court. Such appeals must be filed within thirty (30) days of the date of the board's decision. Appeals heard by the district court shall be decided on the record, and the appellant shall not be entitled to a trial de novo.

D. The district court may reverse the decision of the board only in the event the decision is found to be:

1. Clearly erroneous; or
2. Arbitrary and capricious; or
3. Procured by fraud; or
4. A result of misconduct by the board, or a member thereof.

#### SECTION 13.

Whenever a bond is required for the protection of the Authority, letters of credit or other surety as may be approved by the Authority may be utilized in lieu of a bond.

#### SECTION 14.

A. Proceeds of lottery prizes shall be subject to Oklahoma state income tax. The sale of lottery tickets by the Authority shall not be subject to any state or local sales tax.

B. The board shall adopt rules to establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, except that:

1. No prize, nor any portion of a prize, nor any right of any person to a prize awarded shall be assignable. Any prize, or portion thereof, remaining unpaid at the death of a prize winner shall be paid to the estate of such deceased prize winner or to the trustee under a revocable living trust established by the deceased prize winner as settlor, provided that a copy of such a trust has been filed with the Authority along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the Authority prior to the settlor's death. Following such a settlor's death and prior to any payment to such a successor trustee, the Authority shall obtain from the trustee and each trust beneficiary a written agreement to indemnify and hold the Authority harmless with respect to any claims that may be asserted against the Authority arising from payment to or through the trust. Notwithstanding any other provisions of this section, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled;

2. No ticket shall knowingly be sold to any person under the age of eighteen (18) years, but this section does not prohibit the purchase of a ticket by a person eighteen (18) years of age or older for the purpose of making a gift to any person of any age. In such case, the Authority shall direct payment to an adult member of the person's family or the legal guardian of the person on behalf of such person. The person named as custodian shall have the same powers and duties as prescribed for a custodian pursuant to the Oklahoma Uniform Transfers to Minors Act;

3. No prize shall be paid arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the Authority within applicable deadlines, lacking in captions that conform and agree with the play symbols as appropriate to the lottery game involved, or not in compliance with such additional specific rules and public or confidential validation and security tests of the Authority appropriate to the particular lottery game involved;

4. No particular prize in any lottery game shall be paid more than once, and in the event of a binding determination that more than one claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them of an equal share in the prize;

5. A holder of a winning cash ticket from an Oklahoma lottery game or for a multi-state lottery game shall claim a prize within one hundred eighty (180) days after the drawing in which the prize was won. In any Oklahoma lottery game in which the player may determine instantly if he or she has won or lost, he or she shall claim a prize within ninety (90) days, or for a multi-state lottery game within one hundred eighty (180) days, after the end of the lottery game. If a valid claim is not made for a prize within the applicable period, the prize shall constitute an unclaimed prize for purposes of subsection C of this section; or

6. No prize shall be paid upon a ticket purchased or sold in violation of this act. Any such prize shall constitute an unclaimed prize for purposes of subsection C of this section.

C. Any unclaimed prize money shall be added to the pool from which future prizes are to be awarded or used for special prize promotions.

D. The Authority is discharged of all liability upon payment of a prize.

E. No ticket shall be purchased by and no prize shall be paid to any of the following persons: any member of the board of directors, officers, or employees of the Authority or to any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any such person.

#### SECTION 15.

A. The Authority shall enter into its contracts after competitive negotiation, bidding, or other procedure authorized by the Authority in its rules, including authority to negotiate a reduced price. Such procedures shall be designed to allow the selection of proposals that provide the greatest long-term benefit to the state, the greatest integrity for the Authority, and the best service and products for the public.

B. In its bidding and negotiation processes, the Authority may do its own bidding and procurement, or may utilize the services of the Central Purchasing Division of the Department of Central Services. All major procurements shall be approved by the board after a competitive selection process.

## SECTION 16.

A. All money received by the Authority from the sale of lottery tickets and all other sources shall be deposited into a corporate operating account. The Authority is hereby authorized to use all money in the corporate operating account for the purposes of paying prizes, the necessary expenses of the Authority and dividends to the state. The Authority shall allocate the amount to be paid by the Authority to prize winners. Such amount in the corporate operating account, which the Authority anticipates will be available for the payment of prizes on an annuity basis, may be invested in direct United States treasury obligations. These instruments may be in varying maturities with respect to payment of annuities and may be in book-entry form.

B. Quarterly, the Authority shall transfer to the Lottery Trust Fund the amount of net revenues which the Authority determines are surplus to its needs. The duty to make such quarterly transfers shall not arise until six (6) months after the sale of the first lottery ticket by the Authority. Such funds shall be held in trust until such time as the Legislature shall determine the manner in which the funds will be allocated and appropriated. The transfer shall be made no later than the tenth day of the month following each calendar quarter. The net revenues shall be determined by deducting from gross revenues the payment costs incurred in the operation and administration of the Lottery, including the expenses of the Authority and the costs resulting from any contract or contracts entered into for promotional, advertising or operational services or for the purchase or lease of lottery equipment and materials, fixed capital outlays, and the payment of prizes to the holders of winning tickets. After the start-up costs are paid, including the repayment of any loans to pay such costs, or one (1) year after the sale of the first lottery ticket, whichever occurs first, the Authority shall transfer each year at least thirty-five percent (35%) of gross revenues to the Lottery Trust Fund for the purposes stated above. Approximately fifty percent (50%) of gross revenues shall be used by the Authority for the payment of prizes.

C. There is hereby created in the state treasury the Lottery Trust Fund. Net lottery revenues shall be credited to this restricted account as provided in subsection B of this section. Moneys credited to the Lottery Trust Fund shall be invested by the State Treasurer in accordance with state investment practices and all earnings from such investments shall accrue to this fund. No moneys shall be allotted or expended from this fund unless pursuant to an appropriation by the Legislature. Moneys in the Lottery Trust Fund shall not lapse at the close of the state fiscal year. Only the net revenues of the Authority, when transferred to the Lottery Trust Fund, shall be considered as revenue of the state for purposes of Section 23 of Article X of the Oklahoma Constitution or any other purpose.

D. The Legislature shall appropriate fifty percent (50%) of the Lottery Trust Fund to the Oklahoma Center for the Advancement of Science and Technology (including funds for the "OCAST Research Endowment Fund"), to provide funds for any of its lawful purposes as provided in the Oklahoma Center for the Advancement of Science and Technology Act, Section 5060.1 et seq. of Title 74 of the Oklahoma Statutes. The Legislature shall appropriate at least thirty-five percent (35%) of the Lottery Trust Fund for capital expenditures of higher education, vocational-technical education and common education. Of the funds appropriated for the capital needs of education, at least seventy percent (70%) shall be for the benefit of higher education. Approximately fifteen percent (15%), representing the remaining portion of the Lottery Trust Fund, shall be appropriated for capital expenditures for general state government needs. It is the intent of the people of the State of Oklahoma that all funds appropriated for capital expenditures shall be, to the extent possible, for nonrecurring expenditures of the educational entities and state government.

E. There is hereby created in the state treasury a trust fund to be known as the "OCAST Research Endowment Fund". The Legislature shall appropriate fifty percent (50%) of the funds earmarked and appropriated to the Oklahoma Center for the Advancement of Science and Technology from the Lottery Trust Fund to this endowment fund, until the principal and accrued income of the OCAST Research Endowment Fund reaches One Hundred Million Dollars (\$100,000,000.00). After the principal balance reaches this figure, all income and investment returns from the OCAST Research Endowment Fund shall be appropriated to the Oklahoma Center for the Advancement of Science and Technology to provide funds for any of its lawful purposes as provided in the Oklahoma Center for the Advancement of Science and Technology Act, Section 5060.1 et seq. of Title 74 of the Oklahoma Statutes, and the Legislature shall be under no further duty to make further appropriations to the OCAST Research Endowment Fund. The OCAST Research Endowment Fund shall be managed and invested by the State Treasurer, consistent with the Treasurer's investment policies, but with emphasis on the security of the principal of the OCAST Research Endowment Fund. All monies in the OCAST Research Endowment Fund shall be held in trust by the State and may not be diverted to any other purpose.

F. The State Auditor & Inspector shall be responsible for a financial postaudit of the books and records of the Authority. The postaudit shall be conducted in accordance with generally accepted accounting principles, shall be paid for by the Authority, and shall be completed within one hundred eighty (180) days of the close of the Authority's fiscal year. The State Auditor & Inspector shall contract with an independent, certified public accountant who meets the qualifications existing to do business within the State of Oklahoma to perform the Authority postaudit. The State Auditor & Inspector shall remain responsible for the annual postaudit and the Authority shall pay all audit costs. The State Auditor & Inspector may, at any time, conduct such additional audits, including performance audits, of the Authority as he or she deems necessary or desirable. Contracts shall be entered into for audit services for a period not to exceed five (5) years and the same firm shall not receive two (2) consecutive audit contracts. All such audits shall be filed with the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. The Authority shall reimburse the State Auditor & Inspector for the reasonable costs of any audits performed by him. The Authority shall cooperate with the State Auditor & Inspector by giving employees designated by the State Auditor & Inspector access to facilities of the Authority for the purpose of efficient compliance with their respective responsibilities. With respect to any reimbursement that the Authority is required to pay to any agency, the Authority shall enter into an agreement with

such agency under which the Authority shall pay to such agency an amount reasonably anticipated to cover such reimbursable expenses in advance of such expenses being incurred.

#### **SECTION 17.**

A. The Authority is hereby authorized to accept and expend such moneys as may be received from any source, including borrowed funds and income from the Authority's operations, for effectuating its corporate purposes including, without limitation, the payment of the initial expenses of administration and operation of the Authority and the Lottery.

B. After any borrowing necessary to begin operations, the Authority shall be self-sustaining and self-funded and moneys in the state general fund shall not be used, appropriated or obligated to pay the expenses of the Authority or prizes of the Lottery and no claim for the payment of an expense of the Lottery or prizes of the Lottery shall be made against any moneys other than moneys credited to the corporate operating account authorized by Section 16 of this act.

C. The finances of the Authority shall not be subject to the Oklahoma Budget Law or any other statutes generally applicable to the finances of state government, unless the contrary appears in this act.

#### **SECTION 18.**

Federally insured financial institutions may be utilized by the Authority to distribute lottery tickets to retailers.

#### **SECTION 19.**

A. The Authority shall not organize, participate in or contribute to a political action committee, either directly or indirectly.

B. No person who receives goods, services, moneys or rights having monetary value in excess of Fifty Dollars (\$50.00) pursuant to any contract with the Authority, and no agent, officer, employee, shareholder or partner of such person, shall pay money, service or other thing of value to or for the benefit of any agent, officer, employee of the Authority or to any person having the authority to appoint or to confirm the appointment of any agent, officer or employee of the Authority on account of, in consideration for or to induce the Authority to enter into the contract. This section shall not apply to otherwise lawful contributions to political campaigns.

#### **SECTION 20.**

A. 1. The people of Oklahoma hereby recognize that to conduct a successful lottery the Authority must develop and maintain a statewide network of lottery retailers that will serve the public convenience or promote the sale of tickets, while ensuring the integrity of the Lottery.

2. To govern the selection of lottery retailers, the board shall, by rule, develop a list of objective criteria upon which the selection of lottery retailers shall be based. Separate criteria shall be developed to govern the selection of retailers of instant tickets and on-line retailers. In developing these criteria the board shall consider such factors as the applicant's financial responsibility, security of the applicant's place of business or activity, integrity and reputation; however, the board shall not consider political affiliation, activities or monetary contributions to political organizations or candidates for any public office. The criteria shall include, but not be limited to, the following:

a. The applicant shall be current in payment of all taxes, interest and penalties owed to any taxing subdivision where the lottery retailer will sell lottery tickets,

b. The applicant shall be current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the State of Oklahoma, excluding items under formal appeal pursuant to applicable statutes,

c. No person, partnership, unincorporated association, corporation, or other business entity shall be selected as a lottery retailer for the sale of instant tickets or on-line games who:

(1) has been convicted of a felony, unless at least ten (10) years have passed since satisfactory completion of the sentence or probation imposed by the court for each felony,

(2) has been convicted of any illegal gambling activity in this or any other jurisdiction, unless at least ten (10) years have passed since satisfactory completion of the sentence or probation imposed by the court for each conviction,

(3) has been found to have violated the provisions of this act or any rule adopted hereunder, unless at least ten (10) years have passed since the violation,

(4) is a vendor or an employee or agent of any vendor doing business with the Authority, except this shall not apply to vendors which only have contracts for the promotion of the Lottery or promoting lottery games conducted by the Authority,

(5) resides in the same household as an officer of the Authority, or

(6) has made a statement of material fact to the Authority, knowing such statement to be false, unless at least ten (10) years have passed since the statement was made,

d. retailers shall be afforded the same exceptions to disqualification as provided for vendors in paragraphs 1 and 2 of subsection D of Section 25 of this act,

e. in addition to the provisions of subsection C of this section, no person, partnership, unincorporated association, corporation or other business entity shall be selected as an on-line lottery retailer who:

(1) has been denied a license to sell instant tickets on the basis of objective criteria established by the board, or any provision of this act, or

(2) has failed to sell sufficient instant tickets to indicate that the location of an on-line game at his outlet would be of economic benefit to him or the Lottery Authority, and

f. the applicant shall not be engaged exclusively in the sale of lottery tickets. However, this subparagraph does not preclude the Authority from contracting for the sale of lottery tickets with nonprofit, charitable organizations or units of local government in accordance with the provisions of this act.

3. Persons applying to become lottery retailers shall be charged a uniform application fee for each lottery outlet. Retailers chosen to participate in on-line games shall be charged a uniform annual fee for each on-line outlet.

4. Any lottery retailer contract executed pursuant to this section may be suspended, revoked or terminated by the president if the retailer is found to have violated any of the objective criteria established by the board as provided in this subsection. Review of such action shall be in accordance with the procedures outlined in Section 12 of this act. All lottery retailer contracts shall be renewable annually after issuance unless sooner canceled or terminated.

B. No lottery retailer contract awarded under this section shall be transferable or assignable. No lottery retailer shall contract with any person for lottery goods or services except with the approval of the board.

C. Each lottery retailer shall be issued a lottery retailer certificate which shall be conspicuously displayed at the place where the lottery retailer is authorized to sell lottery tickets. Lottery tickets shall only be sold by the retailer at the location stated on the lottery retailer certificate.

D. For the convenience of the public, all retailers shall be authorized to pay winners up to Six Hundred Dollars (\$600.00) after the retailer performs validation procedures appropriate to the lottery game involved.

E. Retailers may be permitted to pay winners over Six Hundred Dollars (\$600.00), if the Authority finds that a retailer is financially capable of paying such sums, the retailer is willing to withhold all necessary federal, state or local taxes, and the Authority takes reasonable steps to insure that such sums are only paid after appropriate validation procedures.

## SECTION 21.

A. The Authority shall require each retailer to post a letter of credit or a bond with the Authority using a surety acceptable to the Authority in an amount determined by the board, but which may not exceed twice the average lottery ticket sales of the retailer for the period within which the retailer is required to remit lottery funds to the Authority. For the first ninety (90) days of sales of a new retailer, the amount of the bond shall not exceed twice the average estimated lottery ticket sales for the period within which the retailer is required to remit lottery funds to the Authority. This section does not apply to lottery tickets which are prepaid by the retailers.

B. Any contract executed by the Authority pursuant to this act shall specify the reasons for which any contract may be suspended, revoked or terminated by the Authority, including, but not limited to:

1. Commission of a violation of this act or rules adopted pursuant thereto;
2. Failure to accurately account for lottery tickets, revenues, or prizes as required by the Authority;
3. Commission of any fraud, deceit, or misrepresentation;
4. Insufficient sale of tickets;
5. Conduct prejudicial to public confidence in the Lottery;
6. Any material change in any matter considered by the Authority in executing the contract with the retailer; or
7. Failure to meet any of the objective criteria established by the board pursuant to Section 20 of this act.

C. If, in the discretion of the president, such denial, revocation, suspension or rejection of renewal is in the best interests of the Lottery, the public welfare or the State of Oklahoma, the president may suspend, revoke or terminate, after notice and a hearing, any contract issued pursuant to this act. Such contract may, however, be temporarily suspended by the president without prior notice, pending any prosecution, hearing or investigation, whether by a third party or by the president. A contract may be suspended, revoked or terminated by the president for one or more of the reasons enumerated in subsection B of this section.

## SECTION 22.

A. All proceeds from the sale of lottery tickets received by a person in the capacity of a lottery retailer shall constitute a trust fund until paid to the Authority either directly or through the Authority's authorized collection representative. Proceeds shall include unsold instant tickets received by a lottery retailer and cash proceeds of the sale of any lottery ticket, net of allowable sales commissions and credit for lottery prizes to winners by lottery retailers. Sales proceeds and unused instant tickets shall be delivered to the Authority or its authorized collection representative upon demand. The Authority shall, by rule, require retailers to place all lottery proceeds due the Authority in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid over to the Authority. The Authority may require a retailer to establish a single separate electronic funds transfer account, where available, for the purpose of receiving moneys from ticket sales, making payments to the Authority, and receiving payments from the Authority. Lottery retailers shall be personally liable for all proceeds. Unless otherwise authorized in writing by the Authority, each lottery retailer shall establish a separate bank account for lottery proceeds which shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets. This section shall apply to all lottery tickets generated by computer terminal, other electronic device and any other tickets delivered to lottery retailers.

B. Whenever any person who receives proceeds from the sale of lottery tickets in the capacity of a lottery retailer becomes insolvent, or dies insolvent, the proceeds due the Authority from such person or his estate shall have preference over all debts or demands.

#### SECTION 23.

If a lottery retailer's rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales and such computation of retail sales is not explicitly defined to include sales of tickets in a state-operated lottery, the compensation received by the lottery retailer from the lottery shall be considered the amount of the retail sale for purposes of computing the rental payment.

#### SECTION 24.

A. No person shall sell a state lottery ticket at a price other than established by the Authority, unless authorized in writing by the president. No person other than a duly certified lottery retailer shall sell state lottery tickets, except that nothing in this act shall be construed to prevent a person who may lawfully purchase state lottery tickets from making a gift of such tickets to another. Nothing in this act shall be construed to prohibit the Authority from designating certain of its agents and employees to sell lottery tickets directly to the public.

B. State lottery tickets may be given by merchants as a means of promoting goods or services to customers or prospective customers subject to approval by the Authority.

C. No lottery retailer shall sell a state lottery ticket away from the locations listed in his contract.

#### SECTION 25.

A. The Authority may purchase, lease or lease-purchase such goods or services as are necessary for effectuating the purposes of this act. The Authority shall not contract with any person or entity for the total operation and administration of the State Lottery, but may make procurements which integrate functions such as lottery game design, lottery ticket distribution to retailers, supply of goods and services, and advertising. In all procurement decisions, the Authority shall take into account the particularly sensitive nature of the State Lottery and shall act to promote and ensure security, honesty, fairness and integrity in the operation and administration of the Lottery and the objectives of raising net proceeds for the benefit of the public purpose described in this act.

B. The Authority shall investigate the financial responsibility, security and integrity of any person who submits a bid, proposal or offer as part of a major procurement. At the time of submitting such bid, proposal or offer to the Authority, the Authority may require the following items:

1. A disclosure of the vendor's name and address and, as applicable, the name and address of the following:

a. if the vendor is a corporation, the officers, directors and each stockholder in such corporation; except that, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of such securities need be disclosed,

b. if the vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust,

c. if the vendor is an association, the members, officers and directors, and

d. if the vendor is a partnership or joint venture, all of the general partners, limited partners or joint venturers;

2. A disclosure of all the states and jurisdictions in which the vendor does business, and the nature of the business for each such state or jurisdiction;

3. A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the goods or services involved for each such state or jurisdiction;

4. A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending or has had revoked a gaming license of any kind, and the disposition of such in each such state or jurisdiction. If any gaming license has been revoked or has not been renewed or any gaming license application has been either denied or is pending and has remained pending for more than six (6) months, all of the facts and circumstances underlying the failure to receive such a license shall be disclosed;

5. A disclosure of the details of any finding of guilt, in a state or federal court, against the vendor for any felony or any other criminal offense other than a traffic violation;

6. A disclosure of the details of any bankruptcy, insolvency, reorganization or any pending litigation of the vendor; and

7. Such additional disclosures and information as the Authority may determine to be appropriate for the procurement involved. If the vendor subcontracts any substantial portion of the work to be performed under the contract to a subcontractor, the vendor shall disclose all of the information required by this subsection for the subcontractor as if the subcontractor were itself a vendor.

C. A contract for a procurement with any vendor subject to subsection B of this section who has not complied with the disclosure requirements described in subsection B of this section shall not be entered into, and any contract with such a vendor is unenforceable. Any contract with a vendor who does not comply with such requirements for periodically updating such disclosures during the tenure of contract as may be specified in such contract shall be terminated by the Authority. This subsection and subsection B of this section shall be construed broadly and liberally to achieve the ends of full disclosure of all information necessary to allow for a full and

complete evaluation by the Authority of the competence, integrity, background and character of vendors for major procurements.

D. A contract shall not be entered into with any vendor who has been found guilty of a felony committed within the preceding ten (10) years, unless the Authority determines that:

1. The vendor has been pardoned or the vendor's civil rights have been restored; and
2. If the vendor is a firm, association, partnership, trust, corporation or other entity, the vendor has terminated its relationship with the individual whose actions directly contributed to the vendor's guilt.

E. Each vendor shall, at the execution of the contract with the Authority, post a performance bond or letter of credit from a bank acceptable to the Authority, in an amount to be determined by the Authority not to exceed the full amount estimated to be paid annually to the vendor under the contract. In lieu of the bond, a vendor may, to assure the faithful performance of its obligations, deposit and maintain with the State Treasurer securities that are interest-bearing or interest-accruing and that, with the exception of those specified in paragraph (1) or (2) of this subsection, are rated in one of the three (3) highest classifications by an established nationally recognized investment rating service. Securities eligible under this subsection are limited to:

1. Certificates of deposit issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States and having their principal place of business in this state;
2. United States bonds, notes and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest;
3. General obligation bonds and notes of any political subdivision of the state; or
4. Corporate bonds of any corporation that is not an affiliate or subsidiary of the depositor. Such securities shall be held in trust and shall have at all times a market value at least equal to the full amount estimated to be paid annually to the lottery vendor under contract.

F. Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state. All contracts under this section shall be governed by the laws of this state.

#### SECTION 26.

A. The Oklahoma State Bureau of Investigation shall, at the request of the chief security officer, perform full background investigations on all potential vendors and potential supervisory employees of the Authority, and at any level within the division of security. The Oklahoma State Bureau of Investigation shall cooperate with the chief security officer of the Authority in the conduct of any criminal background investigation authorized under this act, and shall provide all necessary information for such an investigation. The Authority shall reimburse the Bureau for the actual costs of such investigations and assistance, including personnel cost.

B. The Authority or its division of security shall:

1. Conduct criminal background investigations and credit investigations on all potential retailers and investigate all potential employees of the Authority not referred to in subsection (A) of this section;
2. Supervise ticket validation and lottery drawings;
3. Inspect at times determined solely by the division of security the facilities of any vendor in order to determine the integrity of the vendor's product and in order to determine whether the vendor is in compliance with its contract;
4. Report any suspected violations of this act to the appropriate district attorney, or the attorney general and law enforcement agencies; and
5. Upon request, provide assistance to any district attorney, the attorney general or law enforcement agency investigating a violation of this act.

#### SECTION 27.

A. Any person who knowingly sells a state lottery ticket to a person under eighteen (18) years of age shall be guilty of a misdemeanor and fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for the first offense and for each subsequent offense not less than Two Hundred Dollars (\$200.00) nor more than One Thousand Dollars (\$1,000.00).

B. Any person who, with intent to defraud, falsely makes, alters, forges, utters, passes or counterfeits a state lottery ticket shall be guilty of a felony.

C. Any person who influences or attempts to influence the winning of a prize through the use of coercion, fraud, deception or tampering with lottery equipment or materials shall be guilty of a felony.

D. Any person who violates the provisions of subsection (B) of Section 4 of this act shall be guilty of a misdemeanor, fined not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) and shall be removed from the board.

E. Any person who violates the provisions of subsection (B) of Section 11 of this act shall be guilty of a felony and fined not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00), and may be imprisoned for not more than two (2) years.

F. Any person who violates the provisions of subsection (C) or (D) of Section 11 of this act shall be guilty of a misdemeanor and fined not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00).

G. Any person who willfully violates the provisions of subsection A of Section 22 of this act shall be guilty of a felony and fined not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00), and may be imprisoned for not more than two (2) years.

H. Any person who violates the provisions of subsection (A) of Section 24 of this act shall be guilty of a misdemeanor. Punishment for the first offense shall be a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and for each subsequent offense the punishment shall be a fine of



**FILED**

MAY 10 1993

OKLAHOMA SECRETARY  
OF STATE

SUSAN B. LOVING  
ATTORNEY GENERAL OF OKLAHOMA

May 10, 1993

The Honorable John Kennedy  
Secretary of State  
State Capitol, Room 101  
Oklahoma City, OK 73105

RE: Ballot Title for Initiative Petition No. 358, State  
Question No. 658.

Dear Secretary Kennedy:

Having found that the Proponents' Suggested Ballot Title for the above referenced Initiative Petition was not in harmony with the law, we have, in accordance with the provisions of 34 O.S. Supp. 1992, § 9(D)(1), prepared the following substitute Ballot Title for filing in your office:

**BALLOT TITLE**

This measure will make a State Lottery legal. It would be administered by the Oklahoma Lottery Authority. The Governor would appoint the Authority's Board. The Board would choose a President to manage its affairs. The Authority would be run with Lottery funds. It would not receive tax dollars. Around 50% of the Lottery's money would be used for prizes. The Authority would pay its own startup costs. No later than one year after startup, the State would receive at least 35% of the Lottery's gross revenues. The State would use half of this income for the Oklahoma Center for the Advancement of Science and Technology. At least 35% of this income would be used for the capital needs of educational entities. The rest would be used for other state capital needs. The Authority could contract with

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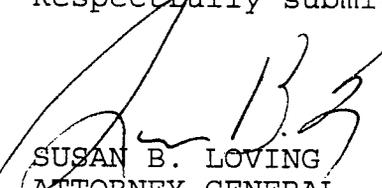
others to operate and promote the Lottery. Lottery games would be selected by the Authority. The Lottery, however, could not include card games, dice, dominoes, slot machines, roulette, other similar forms of gambling, or video gaming machines. The State Lottery would be the only legal non-Indian lottery. This measure contains many other laws. Those laws would regulate the Lottery and provide criminal penalties.

**SHALL THIS PROPOSAL BE APPROVED BY THE PEOPLE?**

\_\_\_\_\_ Yes, for the Proposal.

\_\_\_\_\_ No, against the Proposal.

Respectfully submitted,



SUSAN B. LOVING  
ATTORNEY GENERAL

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