Montana Divided: An Examination Of Cultural And Political Contrariety Between Eastern And Western Montana

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April 1, 1986 Date
MONTANA DIVIDED:
AN EXAMINATION OF CULTURAL AND POLITICAL
CONTRARIETY BETWEEN EASTERN AND WESTERN MONTANA

Submitted in Partial Fulfillment of the Requirements
for Graduation with Honors from the Department of
Political Science at Carroll College, Helena, Montana

Carlo John Canty
April 1, 1986
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**MONTANA DIVIDED**

**CASE STUDY:**

**A WESTERN LIBERAL'S ALTERNATIVE: AN ATTEMPT TO ESTABLISH A MONTANA STATE LOTTERY**

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CHAPTER ONE

PRELIMINARY CONSIDERATIONS: BOUNDARIES AND DIMENSIONS

The question of whether or not political lines of demarcation have been historically consistent with natural boundaries between distinct geographical regions inspires an eternal debate. For, in some cases, planned political divisions have closely paralleled natural boundaries, while in others, artificial lines of partition have been agreed upon with more concern for legality and national interest than the "lay of the land." The boundary between Texas and Mexico would seem to exemplify the first case: politicians and surveyors considerate of southwest topography were naturally inclined to designate the Rio Grande river as both an inherent and politically convenient point of separation between the desert regions. Yet, more often, lines of demarcation have been the result of completely political consideration, excluding the presence of dramatic variation in topography.

If the Texas-Mexican border serves as a classic example of both natural and political considerations in boundary drawing, conversely, the act of determining borders surrounding the state of Montana would appear to have been a completely political exercise. Montana's eastern borders
defy the course of no less than three major river systems (the Yellowstone, Missouri, and Powder rivers) and in the west, Montana intricately cuts across the twisting labyrinth peaks of the Rocky Mountains. No geographical rationale is apparent when one observes a three-dimensional, topographical map display of the region.

Montana is also a very large state. Specifically it is the fourth largest political subdivision in America, stretching five hundred and fifty miles at its largest east to west dimension directly below the Canadian border, and three hundred and twenty five miles at its greatest north to south distance along the Idaho border. Montana's surface area covers an incredible 147,138 square miles.

At the outset of our examination of cultural and political distinctions between eastern and western Montana, both the politically determined boundaries and immense magnitude of the state deserve important consideration as related determining variables. For within political boundaries so distant, dramatic, measurable diversities in resource--wealth, belief, culture, and political persuasion are to be expected. Still, as an influencing variable, "size" is perhaps too abstract to account for dynamics of diversity in Montana. Magnitude cannot truthfully be considered a causal variable. Rather, the dimension of the state should be considered a "given," or more technically an "independent" variable, for it is within Montana's dimension that the real, concrete agents creating
cultural and political variations are to be found.

After a more thorough consideration of these concrete, causal variables, we may then be justified in concluding that although Montana is legally considered one unified political state, it is actually home to two distinct, contrasting and often conflicting regions, and two distinct political philosophies resultant from a further divergence in culture within the two distinct regions.
CHAPTER TWO

THE FOUNDATION FOR MONTANA'S REGIONAL CONTARIETY:

THE ASHLEY/EDGERTON STORY

In his 1984 work, *Montana: Land of Contrast*, noted University of Montana historian and current state legislator Harry W. Fritz, argued that before 1864, Montana did not exist as either a political unity or recognized geographical entity. Rather, Montana's eastern and western halves "had separate territorial histories" from the time of their respective acquisitions early in the nineteenth century.¹ Purchased from France in 1803, eastern Montana was included in the Louisiana Territory. Western Montana was part of the "Oregon Country" held in joint power by both Britain and the United States until 1846 when U.S. President James Polk agreed to partition Oregon at the forty-ninth parallel. Seventeen years later, the Montana territories were first combined in what Fritz described as "an undifferentiated mass" within the then newly created Idaho Territory.²

Fritz's recent research further substantiates the argument that Montana's boundaries were not the result of rational political planning and attentive consideration for natural boundaries. Rather, Fritz argues, Montana's
boundaries were the product of political revenge on the part of one man, Sidney Edgerton.

A former national representative from Ohio, Sidney Edgerton was appointed territorial judge for the Idaho territory's newly settled mining camps along the entire lower portion of the Jefferson River. For Edgerton this meant traveling great distances between the scattered encampments to conduct the affairs of the court. In fact, the distances Edgerton was required to travel were so great that he advanced the Idaho territorial legislature with the proposition of dividing the massive, unmanageable territory into two territories. A new territory, in northern Idaho country would provide a more equitable division of judicial responsibilities, Edgerton argued; moreover, we would assume, Edgerton would be relieved of his northern Idaho affairs altogether with the appointment of several new territorial judges. Yet, the Idaho legislators were naturally wary of relinquishing their potential control over the new apparent mining riches soon to be extracted en masse from the northern country. As Edgerton realized his attempts at persuading the Idaho legislature would be futile, he allowed the ensuing debate amongst lawmakers to continue while he traveled to Washington, D.C. seeking an outside advantage in the battle. In the end, Edgerton's personal political power would prove far superior to that of the entire territorial legislature.

In his days as a national lawmaker, Sidney Edgerton
had guilded a strong friendship with one of his fellow representatives from Ohio, James M. Ashley. And while Edgerton had vacated his national lawmaking seat years before to practice law in the west, Ashley remained in Washington ambitiously climbing the congressional ladder until he secured the chairmanship of the House Committee on Territories. Edgerton capitalized on his relationship with the Territorial Committee chairman, and the two men, in open defiance of the Idaho territorial legislature, literally stole what we today recognize as Montana from the Idaho Territory. Historian Fritz described the Ashley/Edgerton ploy:

The two men relocated the border of Montana some 130 miles to the west, from the crest of the Rocky Mountain chain to the ridge of the Bitterroot Mountains. They added the ... Kootenai, Flathead, Clark Fork, and Bitterroot valleys to Montana, leaving Idaho with an ungainly northern protrusion barely fifty miles wide, and the future state of Idaho looking like nothing so much as a pregnant letter "L."3

After dissecting the Idaho Territory, Ashley decided he and Edgerton's newly created territory should be named "Montana," which in its literal Latin roots means "mountainous region." For several years Congress challenged Ashley's proposed name for the territory, arguing that an Indian name might be more appropriate. Yet, as congressman were unable to agree on the correct Indian name, Ashley again was the political victor. The Ashley/Edgerton would legally be named the "Territory of Montana."

The key consideration in the Ashley/Edgerton story
is that Montana's legal boundaries were the product of political maneuvering and even vengeance, rather than of rational consideration for the geographic dynamics of the area. The ultimate consequence of this inconsideration was that two distinct, opposing land masses would be forcibly fused together in the most unnatural geographical arrangement possible for a political experiment. Consider the land. Only in western Montana did Ashley's created name pertain to the topographical reality of the region, where fifty-three separate chains of the Rocky Mountains stand atop fertile, inhabited valleys. But eastern Montana appears to be a complete topographical opposite of the state's western half. The east is primarily a plains country which Merriweather Lewis was said to have once described as "level as a bowling green."

Now if we agree that an area's given topography and particular resources ultimately dictate the mode of economic activity providing subsistence for the area's inhabitants, and that economic activity in turn dictates the societal structuring of those inhabitants, it is easy to foresee additional consequences of the Ashley/Edgerton decision. Montana, with its mountains in the west, and plains to the east would eventually become home to two opposing economies, and further, two opposing forms of social arrangement.
CHAPTER II

NOTES


2Harry W. Fritz, p. 9.

3Harry W. Fritz, p. 10.
CHAPTER THREE
DEVELOPMENT OF ECONOMY AND SOCIETAL STRUCTURE
IN EASTERN AND WESTERN MONTANA

That Montana would develop two contrasting regional economic and societal arrangements was the natural result of its given topographical situation. Mountains rich in precious metals dictated an economy primarily centered on mass mining in the west; and eventually, the area's mining economy resulted in the formation of an urban societal structure. Conversely, in the east, fertile plains invited settlers to found an agricultural economy; an economy eventually yielding a rural living arrangement. Let us examine more closely the formation of Montana's opposing parent economies and the social arrangements they produced.

The Mining Economy and Urban Societal Structure of Western Montana

That western Montana would develop an economy primarily centered on mass mining and an eventual urban societal structure was the natural result of its given topographical situation.

During the nineteenth century, Montana first attracted predominantly Irish Catholic, Democratic bands of settlers
seeking mineral fortunes hidden within the western mountains, initially, mining in the west was an individual industry: the legendary lone prospector extracted relatively small amounts of precious metal for his own self-subsistence. Yet, as individual prospector's appetites for greater wealth were whetted, the necessity of the consolidated mining operation became readily apparent. Prospectors would soon forfeit elements of their individuality in exchange for increased opportunity as members of an amalgamated mining team. As operations grew larger, so grew the demand for membership in the combined operations, and ultimately, group working arrangements resulted in the formation of group living arrangements.

Small townships in western Montana were the natural by-product of a mining economy. In their infancy, the townships of western Montana were an attempt to reproduce the familiar organized characteristics of more civilized societies which mining families had left in their quest for western fortunes. It is reasonable to assume that the construction of familiar urban institutions held an equal importance with mining expansion. Western Montanans, primarily from eastern American cities, venerated their urban social orientations with the creation of frontier churches, schools, saloons, libraries and reading rooms. Perhaps the best example of the western township's attempt at civilization was the early formation of male-membered fraternal organizations. Miners in their leisure time
donned like uniforms, caps, badges, and (in some extreme cases) swords, to physically demonstrate their belonging to a community of shared values and like philosophies.

Early census figures for Montana further suggest that the state's western inhabitants were inclined to live in close proximity to one another. In 1870, the United States Census Bureau designated 3,106 western Montanans as living within an "urban" (a township of more than 2,500 people) arrangement. The year 1880 seems to represent the point at which western townships began to display the characteristics of actual cities, a transformation which would occur as a result of diversification in the area's mining industry. Within two decades of the twentieth century it became apparent that Montana's gold fortunes were exhausted and that silver and copper would necessarily become the primary marketable metals extracted from western mines. Because silver and copper were far less valuable than gold, the metals would logically have to be taken in greater volume to provide comparable income. Ultimately this would result in the need for substantial additions in the mining labor force. Furthermore, as compared to gold, pure strains of silver and copper were relatively non-existent in Montana; a condition necessitating the creation of a mineral smelting industry in Montana. The effect of the mining diversification on urban population growth was dramatic: from 1880 to 1900, population increased at a rate of 265%;
the number of urban centers grew from two to ten; and actual urban population increased from 6,987 in 1880 to 84,554 in 1900.²

Most of those attracted to western Montana mining towns in the period from 1800 to 1900 were immigrants, predominately Irish, Yugoslavian, and Chinese who had come to America during what historians now refer to as the "super wave" of American immigration—from 1830 to 1860, 31.5 million Europeans had fled their starvation-ridden and politically-torn homelands seeking renewed opportunity in America.³ Unable to gain adequate employment in eastern American cities, immigrants moved westward and mineowners welcomed the abundant source of cheap labor at a time when they needed it most, transforming gold mining operations into silver and copper mining operations.

With the influx of immigrants, western Montana mining cities increasingly displayed characteristics of "melting pot" cities of the American east. Butte for example, was actually the combination of smaller immigrant conclaves: the Italians of Meaderville, Serbian Yugoslavs in Walker-ville, the Irish in the center-city, and below the central district, the Chinese in "Chinatown." Politically, western cities were controlled by Irish Democrats who arriving before other immigrant groups occupied the "ground floor" of municipal political control. Other immigrant groups likewise embraced the Democratic Party philosophy at a time in which the Republican party was distinctly the
"party of business" and the Democratic Party was the "party of the people."

Thus, by 1900, western Montana was, on a small scale, socially cosmopolitan, its five major cities featuring an economy based on heavy industry and an urban social arrangement featuring immigrant groups working and living in close proximity to one another.

The Agricultural Economy and Rural Societal Structure of Eastern Montana

In comparison, the pre-twentieth century development of eastern Montana was perhaps less dramatic than that of western Montana. While coarse individualists converged upon the roaring western mining towns, a predominantly Lutheran people derived from Scandanavian/Northern European origin quietly founded an agricultural economy on the eastern plains.

Initially, Montana's eastern grasslands attracted middle-west and southern American cattlemen. Eastern Montana would first be known as a "cattle kingdom." Bluejoint or bunchgrass that was free, and so rich that it actually fattened cattle in wintertime meant easy money for once-struggling cattle barons in the over-stocked plains of Wyoming and Colorado, and for more established longhorn stockmen of central and west Texas. By shipping eastern Montana beef to mining townships, cattlemen found an appreciative inner-state market, and surplus beef could
be sold in the midwest. An animal purchased for five or six dollars elsewhere, driven to Montana and fattened on the open range could bring its owners as much as $30.00 in the Union Chicago market.

Yet, eastern Montana's apparently predestined future as a cattle kingdom was abruptly cut short by what have become known as the "harsh winters" of 1886 and 1887. From Canada in 1886 came snow filled blizzards devastating the now overstocked eastern plains. Snowfall was so intense that cattle died of asphyxiation. Ice formed jagged edges on the range, fatally lacerating cattle strong enough to move. Weakened and starving cattle lucky enough to survive the winter of 1886 were not strong enough to weather the deep-freezes of the 1887 winter during which temperatures of 60° below zero froze cattle in their tracks. The spring of 1887 would be a time of grim reckoning for the eastern cattlemen. In all, 362,000 cattle valued at twenty million dollars were lost. In central Montana loss of stock ranged from 40% to 60%, and approaching the Dakota Territory border, 90% of eastern Montana's herds had perished.4

In the aftermath of the harsh winters came the cattleman's enemy, the homesteader:

They came to plow and plant, to build homes and put down roots. Their notions of permanence and stability contrasted sharply with their image of the cowboys, whom they stigmatized as rowdy, semi-nomadic, and somehow a lower form of life.5
In increasing numbers after 1890, farmers descended upon eastern Montana dissecting the once open and un-owned cattle ranges into tidy agricultural units of 160 to 320 acres in size. The formation of a farming economy in eastern Montana was the result of two government strategies for western development: "land-grant" railroads and homesteading.

Railroads in nineteenth century Montana were federally subsidized land-grant lines which meant railway companies were expected to sell their government-given real estate holdings as reimbursement for their construction. Thus, land grant railroads could prosper only by bringing in settlers and exploiting the agricultural potential in their territory of operations. Montana's largest land-grant line was the Northern Pacific, owning nearly 13.5 million acres of Montana.

Near the turn of the century Northern Pacific owner James J. Hill unleashed a massive advertising campaign for eastern Montana settlement. Hill's strategy was to send railway cars packed with plains produce throughout the midwest. Additionally, he attracted potential immigrants with low cost transportation to the west: for a mere twelve dollars and fifty cents, Hill offered a one way ticket from St. Paul, Minnesota to Montana. Many jumped at Hill's offer and by 1920 the Northern Pacific had disposed of 80% of its Montana land holdings; 10.8 million acres.
While Hill's real-estate prices were cheap, many could not afford the combined expense of both traveling from the east and acquiring farmland. An enlarged Homestead Act would resolve the situation, bringing the less affluent to Montana.

Lack of moisture, or technically "aridity" prevented earlier utilization of the Homestead Act by those who considered settling in Montana. The original Homestead Act of 1864 presented settlers with the opportunity of owning 160 acres after five years settlement, but those aware of Montana's shorter growing season (above the forty-ninth parallel) and insufficient precipitation knew 160 acres would not yield an income sufficient for a farming family to live for an entire year on the frontier.

By this time in 1900, Montana had achieved statehood and was represented in the Senate by Joseph M. Dixon, a frontier politician interested in equalizing the then imbalanced proportion of east to west settlers in Montana. Finally, after a nine year legislative battle, Dixon and other western state congressmen secured the passage of the Enlarged Homestead Act, doubling the amount of land available for a single homesteader to 320 acres, and in addition, the act's period of tenure was reduced from five to three years. The Enlarged Homestead Act, coupled with an advance in agriculture called "Dryland" farming (featuring deeper plowing and subsurface topsoil packing) brought mid-easterners to Montana in droves: by the end
of 1909, one million acres of the state were homesteaded. By 1919 the figure was thirty million.

The formation of a farming economy does not necessarily dictate the formation of a rural living arrangement. In their previous European farming pursuits, most western settlers had lived in an urban arrangement and commuted each day to labor in community fields. However, farming and settlement in accordance with the Homestead Act would provide a sharp contrast to the folkways of the European agricultural community. One could well argue that the Homestead Act was the single, most influential factor contributing to the development of a rural societal arrangement in eastern Montana. The strongest premise of this argument being that the Homestead Act required settlers to live in a segmented, separatist living arrangement—establishing permanent residence on land to be acquired was indeed the first criterion of the federal land-granting program. Thus, the law actually dictated that eastern Montana farmers would live at considerable distances from one another.

Still, farmers needed commercial products to work their land and agriculture-serving businessmen were inclined to establish their small industries in close proximity to one another, usually near railroad depots linking eastern Montana farmers to the eastern markets. Eventually, these crossroads became small, sparsely populated towns. Socially, the ruralities of eastern Montana were the near antithe-
sis of western Montana's urban cities. Like early western Montana settlers, eastern Montanans quickly erected church buildings (predominantly Protestant) and schools, but saloons were rare and gambling was considered a social taboo. Women's roles in the societies provide a further contrast. In the west, due to the fact that metal mining was a male-dominated industry, men outnumbered women by a considerable ratio. This inequality inevitably provided a market for inner-city brothels and bathhouses, and in general, women were cast in a stigma of second class citizenship, subservient to the needs of their male providers. But eastern Montana was settled by families and historians suggest that during this period of settlement the sexes achieved an equal balance in the state for the first time. Also balanced were the roles of men and women on the eastern farm. Due to semi-arid soil conditions, both men and women were required to work in the fields, and eastern Montana women gained respect as a reward for their labor. Brothels were nonexistent in eastern Montana and rural women existed not as playthings on the frontier, but rather, symbolized purity on the plains, the work ethic, and honesty in politics. This orientation toward hard work and respected social status would later provide inspiration for progressive suffrage and prohibition movements tenaciously led by eastern Montana women in the 1910's.

Montana's rural population grew steadily and by 1910 rural citizens in the east outnumbered westerners by nearly
a two to one ratio. Like the urban centers of the west, the rural society of eastern Montana had arisen quickly, and as history would soon prove, each of the social arrangements shared a strong foundation; foundations dictating their development in the twentieth century. Opposing economies and opposing forms of social arrangement led further to the development of opposing cultures in Montana and inevitable political struggles between east and west.
CHAPTER III

NOTES


2Statistics calculated from raw population data.


5Harry W. Fritz, p. 64.
CHAPTER FOUR
OPPOSING CULTURES

We now turn to an examination of the distinct regional cultures arising from Montana's differing social arrangements in the east and west.

Research would suggest that culture's role in an individual's acquisition of social and political attitudes is strong. As children we are socialized toward particular values held in our immediate environment, and in most cases, cultural values become personal values, cultural attitudes become personal attitudes, and cultural political tendencies become personal political tendencies. Montana, with its distinct economies and dissimilar forms of social arrangement would develop two distinct regional cultures and tendencies of political behavior relative to those cultures.

Through the course of three twentieth-century generations, Montana's rural and urban social arrangements have remained largely unchanged and intact. In the west, the majority of inhabitants live in five established "post-mining" cities, and although eastern rural towns have grown substantially, they are still small by comparison. The particular cultures that have arisen in each region are
reflective of their respective social arrangements.

**The Urban-Liberal, Individualistic Culture of Western Montana**

While western Montana cannot be socially "cosmopolitan" as one would describe large urban centers such as Boston or New York City in eastern America, western Montana residents concentrated in five major cities do display the liberal characteristics of urban Americans.

By national standards, most citizens in western Montana are not affluent. Throughout the history of western Montana large-scale industries have been developed by non-resident financiers from other states. The best historical example is the Anaconda Minerals Company which consolidated and then controlled mining, smelting, and timber industries in Montana and dominated the growth and economy of western Montana until very recently. Anaconda was financially constructed and controlled by investors George Hearst of San Francisco and equally wealthy California tycoons James Haggin and Lloyd Tenis. While Anaconda was masterfully managed by state resident Marcus Daly and his predecessors, the company was subject to great degrees of "outer-state" control.

The essential point is that most western Montanans are of a working class orientation. Professionals still enjoy a minority status in the state while white and blue collar employees constitute the majority of the working
population. Paralleling political persuasions of most urban working-class Americans, western Montanans have historically supported Democratic party principles which have historically served the interests of the laboring middle class. The western Montana's identification with the Democratic party has perhaps been intensified due to the unstable nature of the western economy. The record of profitability and the ability to provide for mining and its related industries have been terribly inconsistent. Thus, the western Montanan has characteristically relied on government as a provider during the frequent periods of recession and stagnation in the mining economy. Furthermore, western Montanans have supported the Democratic party principle of expansive government and creation of the welfare state. Political support for increased federal programs geared to aid the working-class individual would seem a logical form of insurance against an insecure economy.

In 1978, analyzing Montana elections for United States Representatives (including both the House and Senate), University of Montana Political Scientists Ellis Waldron and Paul Wilson reported that during the period from 1918 to 1976 in the western district, Democrats won twenty-five to thirty elections with an average candidate margin victory at 58.7%. Only one Democrat, (S. O'Connell in 1936) failed to win re-election. Of five Republicans elected to national office from the western district in the last half-century,
only one, Dick Shoup, was elected to a second term.

Western Montanans also display characteristic individualism. Urban society is not heavily organized, providing a recognized and secure occupational and social position for each individual. Rather, the urban environment presents the individual with the opportunity, or more strongly, the responsibility of shaping one's own particular role within the city structure. Family allegiances are strong, but within the urban community the individual is recognized as such. This individualist feature of the western culture will become more apparent after a discussion of the familial, heavily organized cultural orientation of eastern Montana.

Western Montanans are, despite their individuality, deeply influenced by social institutions created in the urban centers. Institutions exist as a substantial force in determining the urban individual's personal values. In western Montana primary institutions determining values are a predominantly Roman Catholic church and powerful labor unions.

From an examination of its history (specific political issues will be discussed in the following chapter), western Montana's most distinctive cultural characteristic would appear to be its collective, liberal attitude toward social behavior and social issues. Consumption of alcohol, gambling, and divorce for example are not stigmatized as running counter to the sanctity of the urban society; rather,
they are commonplace events within the environment. Dispositions regarding social behavior are likewise tolerant: the individual engaging in socially questionable or deviant behavior is not likely to be ostracized from the urban community as a result of the action. Although certain divergent forms of behavior gaining in recent popularity, homosexuality for example, are still considered largely offensive, the western culture is by and large permissive.

Related to this tolerant attitude toward social behavior is the west's characteristically liberal attitude toward progressive attempts to benefit the state through political policies effecting economies or the social condition of the state society. The west is not conservative; rather, urban citizens display a definite inclination to experiment in finding means of solving social and economic problems encountered by the state.

The Rural-Moralistic, Conservative Culture of Eastern Montana

The word "conservative" has achieved a great contemporary notoriety in its being used to generalize non-progressive behavior. It is not in this stereotypical fashion that I employ the word "conservative" to describe the culture of eastern Montana. Literally, by definition, "conservation" is behavior motivated by the interests of preservation. The conservative must therefore have something specific to preserve. The eastern Montanan
strives to conserve a particular time-honored lifestyle.

Development of cultural tendencies in twentieth century eastern Montana have closely paralleled cultural principles instituted by the area's homesteading forefathers. As the majority of eastern Montanans continue to live at considerable distances from one another and townships have not grown large enough to inherit urban characteristics, the immediate family, rather than the individual or institution, is of primary cultural importance. Within the family traditional values of the work ethic, strong Protestant faith, and fidelity in moral matters are stressed.

Our contemporary society, which is in the observation of the rural citizen becoming increasingly permissive, is a challenge to these traditional values. The conservative culture has developed an aversion to changes in urban society which have in their collective opinion, jeopardized the value of marriage through divorce, the value of the work ethic through creation of the welfare state and bumbling, and the value of religion by scientific explanation. Interested in the preservation of these values "under attack," the rural society has become the responsible defendant of tradition, invariably opposing dramatic change which is seen through the rural cultural perspective as an attempt to subvert principles conducive to a healthy society. Defending traditional values, however, is a difficult challenge for the rural culture whose membership
is small and scattered and therefore unable to accomplish all that is necessary to ensure the protection of an unvitiated lifestyle. Historically, eastern Montanans have sought strength through the Republican Party, culturally considered the political vanguard of traditional values and cautious progress.

A second, less apparent form of responding to the challenge of preservation in eastern Montana has been an attempt to organize, both formally (in small-scale membered organizations) and informally, the rural society. Distinct organizations function to provide a recognized place for every individual, giving the rural citizen a secure and recognized status within the community. Security of cultural organization does not preclude an individual's desire to leave that position and strive for another through economic advancement but it does provide the citizen with an apparent sense of "safety." In 1981, Montana State University sociologists Frank Alexander and Carl F. Kraenzel examined Sweet Grass County, Montana to see if its characteristics of organization conformed to the theoretical assumption about eastern Montana society. Kraenzel and Alexander reported the existence of eighty-five formal organizations in the county; an average of one organization for every thirty-six persons. Excluding numerous school, youth, and church organizations, a similar study of Troy, Montana in 1944 found fifty recognized organizations for a mere population of 4,500 people.² This assumption about
concentrated organizations in eastern Montana, although still relatively untested, seems to be substantiated by the two formal inquiries.

Still, the most displayed characteristic of the eastern Montana culture is its collective aversion to change and will to venerate tradition. It is in this respect that the cultures of eastern and western Montana differ most. Unlike western Montanans who apparently display a collective liberal attitude toward social behavior and social issues, eastern Montanans display a protective, nearly prudent attitude concerning community behavior. Common events in urban Montana: overt consumption of alcohol, gambling, divorce and abortion are seen as running counter to the stability of the traditional society. To illustrate the polarity of attitudes toward social behavior, consider the following statistics regarding divorce in Montana for the years 1981 through 1984:

<table>
<thead>
<tr>
<th>Year</th>
<th>Western Montana Counties</th>
<th>Eastern Montana Counties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>4032 (82%)</td>
<td>890 (18%)</td>
</tr>
<tr>
<td>1982</td>
<td>3720 (82%)</td>
<td>810 (18%)</td>
</tr>
<tr>
<td>1983</td>
<td>3718 (81%)</td>
<td>843 (19%)</td>
</tr>
<tr>
<td>1984</td>
<td>3493 (82%)</td>
<td>784 (18%)</td>
</tr>
</tbody>
</table>

Clearly, the statistics show a marked difference between regions regarding the dissolution of marriages.
For the four year period, divorce in western Montana occurred an average of 4.5 more times per year than in eastern Montana.3

Likewise, rural dispositions toward variant behavior are somewhat intolerant: individuals engaging in socially questionable or deviant behavior are more likely to be ostracized from the rural community than the more tolerant urban community. Reactions to divergent behavior, homosexuality or acute alcoholism, for example, which flagrantly violate the rural community's concept of ideal behavior can be intense.

The culmination of this attitude, as previously mentioned is an attempt to preserve the traditions of the rural society through the political medium. Progressive legislative policies affecting the economic or social condition of the state society are likely to meet with staunch opposition in the east. The inclination to experiment politically is solely characteristic of Montana's urban, western culture. For the eastern Montanan, still looking askance at his western counterparts, politics is still the art of preservation.
CHAPTER IV
NOTES


CHAPTER FIVE  
ANALYSIS OF HISTORICAL REFERENDUM VOTING BETWEEN  
EASTERN AND WESTERN REGIONS/PREFACE TO THE  
CASE STUDY

Up to this point our theories of cultural divergence in Montana have been largely justified by an observation of social historical evidence. Yet, further justification is essential; justification based on additional forms of empirical evidence. Still, this presents a problem: what type of empirical data will provide an adequate test of whether or not fundamental ideological differences exist between eastern and western Montanans?

Perhaps political activity will best serve our examination. Naturally, if substantial differences in belief between the regional cultures do indeed exist, they are bound to manifest in political activity, the eventual end in which cultures attempt to guild through legislation, their particular ideals. However, in choosing political activity we encounter yet another question: which type of political activity should be examined?

An analysis of referendum voting seems the most logical choice. Historically the referendum process has been used in Montana when state legislators, unable to faithfully
interpret the collective will of their constituencies, have sought a direct, non-interpreted decision on difficult social issues through grass-roots, popular voting. In this direct participation culture has perhaps its greatest opportunity to effect legislation.

The history of referendum voting in Montana could actually be described as a contest between eastern and western cultures. Consider the following examples.

1914: Workmen's Compensation

Developed in Europe during the 1880's, workmen's compensation programs relieved employees of liability for employee accidents in exchange for their contributions to accident compensation funds. Nineteen hundred and nine Montana laws had enacted such a system for coal mining operations but the state supreme court held the program unconstitutional in 1911. Changing the program to incorporate more than one sole industry, western industrial interest groups (primarily the Anaconda Minerals Company) submitted a new comprehensive workman's compensation proposal to the voting public. The most interesting fact about the modified workman's compensation program placed on the referendum ballot in 1914 is that it would not guarantee compensation for farmers. Rather, compensation funds would provide insurance for Montana citizens in forty-seven classes of "extra hazardous" employment; primarily mining, smelting, and lumbering—all western-based industries.¹

The reaction of the agricultural east was, as we
would expect, intense. Although the referendum received voter support above 60% in the western counties Missoula, Mineral, and Silver Bow, the proposal was defeated in every eastern county (twenty, in 1914)—a level of opposition reaching more than 75% in Choteau and Sweet Grass counties.2

1914: An Attempt to Legalize Boxing

The 1914 conflict concerning workman's compensation was perhaps more a conflict between regional economies than of culture philosophy. Yet in the same year a western attempt to legalize boxing in Montana would inspire such a contest between cultural values.

For the western urban resident in 1914, boxing was perceived as a legitimate sport for the participant, and a genuine form of entertainment for the spectator. However, in the east, it would appear that boxing was not considered a sport at all, but rather, a somewhat barbaric custom popularizing violence and running counter to eastern religious principles. Prior to 1913, supporting the eastern position, Montana law classified boxing as a criminal misdemeanor except in cases where "soft gloves" were used in a "gymnasium for exercise."3 In 1913 enterprising Butte Democrat M.F. Kiley narrowly gained the legislature's approval to submit a legalized boxing proposal, featuring a state boxing commission for regulation of the sport, to the collective will of Montana citizens.

In 1914, the "Kiley Boxing Bill," so named for its
original sponsor, was, as we might expect, defeated in every eastern Montana county. The only support for the proposal came from the western urban centers of Helena, Butte, Billings, and the citizens of the far western Mineral county.

Failing to secure a 1914 referendum majority, boxing advocates attempted again in 1916 to legalize the activity. Analysis of the county roll call reveals that with the second attempt, the western citizens of Beaverhead and Deer Lodge counties joined Silver Bow, Lewis and Clar, and Yellowstone counties in supporting the proposal. Yet, opposition in the east remained relatively steadfast with only Blaine, Sheridan, Phillips, and Prairie counties being swayed toward support in the two year interim since 1914.

Finally, in 1920, western boxing advocates drafted a referendum which would give the decision on whether or not to legalize boxing to the counties themselves. As an added incentive for eastern voters, western sponsors added that half of the net proceeds from licensed bouts would be used to finance a state home for war veterans. Despite the seemingly reasonable county compromise, the referendum gained a majority vote in only half of the state's eastern counties; yet, western approval was great enough to make the referendum law by a statewide majority vote of 55.7% "for" and 44.3% "against." After an eight year battle, western liberals, finally drafting a compromis-
ing referendum respectful of eastern county values, would enjoy legalized boxing.

1916: Liquor Prohibition

In the same era, a similar issue illustrating fundamental differences in attitude between the regional cultures was prohibition. Again, as emphasized in Chapter Four, consumption of alcohol in the urban environment is a common and perhaps even encouraged activity, while rural citizens often view overt consumption of alcohol as running counter to principles conducive to a morally stable society. As we would expect in the wake of intense nationwide temperance movements, voters in 38 of 41 Montana counties, including every eastern county, supported a state prohibition law voted upon only two weeks before ratification of the Eighteenth Amendment. Still, several tenacious western counties, unmoved by progressivist campaigns, opposed prohibition. In Silver Bow county, Butte voters rejected the referendum by a three to two margin and were joined by western Lewis and Clark and Deer Lodge county voters in their defiant support for legal drinking.5

By 1926, with the intensity of temperance movements diminished, a national "Association Against Prohibition" and the "Anti-Prohibition Society of Montana" led by former Butte mayor W.H. Maloney proposed to repeal state prohibition laws via referendum. A repeal of state prohibition laws would presumably leave enforcement of national prohibition laws to a small force of the state's federal officers
and federal district courts. In 1916, only Butte, Helena, and Deer Lodge voters had opposed prohibition, but now, a decade later, they headed the list of twenty-three counties voting for the repeal. Only three western counties (Sanders, Lake, and Flathead) favored retention of prohibition; only four eastern counties (Musselshell, Phillips, Roosevelt, and Custer) favored a repeal.6

1950: An Attempt to Legalize Slot Machines

Gambling, like alcoholic consumption is a common activity in western Montana. Furthermore, the activities have a definite relationship and are often dependent on one another. Yet in the rural, conservative eastern culture "idle games of chance" oppose a strongly venerated work ethic. A more thorough discussion of the cultural positions on gambling will be provided in the upcoming thesis case study.

Nineteen hundred and one Montana laws had declared slot machines "illegal gaming devices, but beginning in 1937, fraternal and non-profit charitable organizations were allowed to use slot machines for "fundraising purposes." Abuse of the law's mentioning "fraternal organizations" led to the installment of thousands of machines in saloons, and winnings "designated for charities" were more often kept by participants. By 1949, abuses of the 1937 law were so extreme that Governor John W. Bonner proposed legislation to ban slot machines entirely. Although six bills paralleling Bonner's intention were intro-
duced to the 1949 legislature lawmakers could agree only to submit the proposal to Montana voters.

The 1950 referendum, which if passed would legalize slot machines, was soundly rejected in every Montana county gaining only 28.3% of voter acceptance statewide. McCone county, with 90% voter disapproval led twenty-two eastern counties who each gave less than 24% support for the proposal. As we would now expect, voters in Silver Bow County gave the greatest measure of approval at 48%. Eight western counties joined Butte area voters in a 33 to 48% range of support for gambling expansion.7

In 1972, when Montanans voted to ratify a new constitution, an accompanying ballot referendum presented citizens with the opportunity to vote "for allowing the people or legislature to authorize gambling" or "against allowing the people or legislature to authorize gambling." Voting tendencies between eastern and western regions were similar to those displayed in the 1950 referendum decision on slot machines. However, twenty-two years later, the 1972 expansion proposal was approved by a 61.1% majority. The strongest support for expanded gambling occurred in nine western counties whose votes ranged from 64-73% for passage. Twenty-two eastern counties. However, disapproved of the measure giving only 43 to 49% approval.8

Cumulative Voting Characterizations of Eastern and Western Regions

In 1978, using the preceding referendum issues: work-
man's compensation, boxing, prohibition, and gambling, Montana voting analysts Ellis Waldron and Paul Wilson attempted to further classify Montana counties after reviewing their cumulative, historical voting tendencies on what they termed "life-style" issues, i.e., issues involving cultural values "related to matters of personal taste and style more than to organization or essential functions of government." Relying on Pearson "R" correlations to measure voting consistency on "life-style" issues, Waldron and Wilson classified Montana's counties as being: (A) Regulatory; (b) Moderate; or (C) Permissive.

Waldron and Wilson's results further support our essential thesis: each of twelve Montana counties deemed "permissive" were western; no eastern counties were so classified. Of twenty-two counties classified as "regulatory," sixteen were eastern. Moderate counties were primarily located in the middle of Montana.

Both our analysis of historical referendum voting and the recent Waldron-Wilson findings suggest there exists a definite difference, if not a genuine disagreement, between Montana's eastern and western regions on issues with the potential to dramatically alter cultural norms. Still our evidence remains historical. Do dramatic differences still exist between present day eastern and western cultures? Justification based on more contemporary evidence is essential.

In 1985, while serving as an intern for Butte lawmakers
during the forty-ninth Montana Legislature, I had the opportunity to do extensive research for this thesis on an issue which I felt would most clearly illustrate cultural/political differences between eastern and western Montanans: a proposed dramatic expansion of gambling in the form of a state-sponsored lottery game. The final product of this four-month research project is a comprehensive "case-study" of the political battles surrounding the lottery proposal and the way in which the issue brought forth a conflict of cultures between Montana's urban and rural regions.

As an intern I often had research advantages not shared by journalists. In addition to compiling information from open legislative floor debates and committee hearings, I was also able to collect first hand information from private staff meetings, specific strategy planning sessions, and had complete access to committee files and documents.

The case-study is designed to first provide the reader with a thorough knowledge of the issue being examined: the proposed Montana State Lottery. After the brief introductory chapters, specific attention is given to controversies arising during the legislature's consideration of the proposal. The final chapter, number nine, which explains the lottery proposal's failure is of the greatest significance to the thesis.
CHAPTER V

NOTES


2Statistics derived from Waldron and Wilson's county roll call presentation of the 1914 Workman's Compensation referendum vote, p. 59.

3Waldron and Wilson, p. 55. Montana Code: Ch. 97 (HB 154).

4Waldron and Wilson, p. 89.

5Waldron and Wilson, p. 67.

6Waldron and Wilson, p. 110.


8Waldron and Wilson, p. 263.

9Waldron and Wilson, p. 152.
MONTANA DIVIDED
CASE STUDY:
A WESTERN LIBERAL'S ALTERNATIVE: AN ATTEMPT TO
ESTABLISH A MONTANA STATE LOTTERY
INTRODUCTION

As early as July in 1982, Larry Stimatz, a former United States Attorney and current Democratic State Senator from Butte, Montana, began drafting a bill which would establish a statewide lottery game in Montana. As a three-term member of the Montana House of Representatives, and a four-term member of the State Senate, Mr. Stimatz had seen the state's ability to generate revenue decreasing with each passing year; but, he also understood that with each passing year the citizens of Montana grew more vehemently opposed to state income tax increases and the looming probability of a sales tax on consumer products. To Stimatz, the concept of a lottery seemed an attractive and viable alternative for generating a great deal of desperately needed revenue: if a lottery was successful, the state of Montana could very well avoid the hostile controversy sure to erupt if the government set a policy course featuring tax increases or an all-encompassing sales tax.

From the Senator's perspective, the alternative's time had come. He would introduce a lottery proposal to the Forty-ninth Montana State Legislature.
CHAPTER ONE

THE LOTTERY

Thousands of words and definitions have been used to describe what a "lottery game" is, but essentially a "lottery" is a procedure by which prizes are distributed among certain persons who have paid for a chance to win a prize.

When first considering the possibility of establishing a lottery in Montana, Larry Stimatz was attracted to the game's historical success in generating revenue.

**Lottery History**

It is suggested that the formal lottery game had its origin in Italy during the Middle Ages. In their infancy as a fundraising technique, lotteries were run both by governments and entrepreneurs of the private sector, each of whom offered market goods as prizes. The first lottery featuring cash prizes was held in Florence, Italy, in the year 1530. Yet, lotteries would not attain great popularity until the seventeenth century when games were sponsored in Western Europe by Charles I and Charles II. To the English kings, the lottery became the preferred prescription for tremendous post-war debts. As other European nations observed the English success with the
lottery, they too, began to pad royal and public coffers with lottery revenue.

While our textbooks would suggest our American forefathers left Europe due to the weakness of its moral condition, it appears that gambling in the form of the lottery did not make the Colonists' list of evils. Colonists brought the European lottery with them to America, and game revenue was used to fund new schools, public works in colonial townships, and was reserved in funds for rebuilding after expected Indian attacks. Colonial America's most significant lottery-aided achievement was the construction of the "Ivy League" universities: Harvard, Princeton, Yale, Columbia, and Dartmouth. Yet, after their initial success in America, lotteries were soon to be outlawed in the wake of moralist and populist movements during the mid 1800's.

Rediscovering the Lottery

The lottery was first rediscovered in the twentieth century by a New Hampshire State Representative named Lawrence Picket, who introduced a lottery bill to the New Hampshire State Legislature in 1953. For ten years, Picket was unsuccessful in gaining his peers' approval of a lottery, but finally, in 1964, after Picket proposed that all lottery revenue would be used to improve education in New Hampshire, his legislation passed. The nation's first twentieth-century lottery, with a "start-up" allocation of only $250,000, was to be an instant success.
Although New Hampshire's population consisted of only 620,000 people, the state sold over 400,000 three-dollar tickets from March to July in 1964. By August, lottery ticket sales would exceed a 2.5 million dollar sales level, and by September, the month of the first New Hampshire Lottery drawing, citizens had purchased over 5.7 million dollars worth of lottery tickets. On September 12, 1964, exactly six months after the first State Lottery ticket was sold, six lucky New Hampshire residents were awarded cash prizes of $100,000. The state's public education programs would share over 2.7 million dollars.

While New Hampshire's first lottery was a dramatic success, it is important to note that legislative restrictions prohibited the state's Lottery Commission from advertising on radio or television, or in New Hampshire newspapers. Yet, those prohibiting barriers have since been removed. Twenty years later, in 1984, America's first modern lottery state reported an overall sales volume of 18.7 million dollars and a net lottery income of over 5.7 million dollars.

Expansion

New Hampshire's rediscovery of the lottery signaled the beginning of a very lucrative trend. Soon, other New England states witnessing an incredible success in New Hampshire, hurried lottery legislation through their own state governments. Pennsylvania would join New Hamp-
shire as a "lottery-state" and would be followed by Connecticut, Massachusetts, Maryland, Delaware, New York, and New Jersey. Next, the lottery expanded westward, as Michigan, Ohio, and Illinois established state-run games in the Midwest. Finally, during the early nineteen-seventies, Arizona would lead the nation's far-western states in creating state lotteries.

Today there are eighteen legalized lotteries in America whose combined gross revenue in 1984 was 6.9 billion dollars, with the average lottery-sponsoring state gaining 382.9 million dollars for its General Fund. Each year the new American lotteries are logging substantial increases in generated revenue (as much as 29.6% in 1984), and the incidence of a lottery failing to show profit has not occurred since New Hampshire's first game in 1964.

While ticket-game lotteries have been incredibly successful during their rediscovered twenty-year history in the United States, lottery games of the future will undoubtedly enjoy a much greater success due to the advancement of gaming technology.

**The Video Lottery**

America's lottery states have utilized the past decade's technological breakthroughs, and today sophisticated computer networks are facilitating the "Video Lottery" whereby a participant can purchase a chance to win a State Lottery prize through a "Player Activated Lottery Machine (PALM)."
PLAYER ACTIVATED LOTTERY MACHINES
After inserting the price of a lottery-chance, the participant has the ability to select what he or she feels are winning lottery numbers, and if that participant's guess is correct, the Video Lottery machine instantly prints a "winner's voucher" which the player can redeem for a cash prize up to $5,000. Thus far, the Video Lottery, or "Lotto" as it is often called, has been a marketing success as players are attracted to colored video game graphics and the chance of winning a large cash prize instantly; no longer does the lottery player have to wait for a traditional monthly or weekly ticket drawing.

For security purposes, each player-activated video machine taperecords the numbers that players have selected during games, and also records time lapses between plays. The video units are also linked electronically to a state central computer security system which taperecords the same information. Tapes from both the video game and the central computer are continuously audited by State Lottery employees to determine whether or not players' wins are legitimate, and if a lengthy time lapse is recorded between plays, an investigation for machine tampering will follow. The paradox of the Video Lottery is that the growth and sophistication of a state computer security system must continually match the growth of the game it examines.

The video lottery machine and the video lottery security systems have created nationwide industries. More than
twenty American computer corporations are offering expensive "on-line" (as they are referred to in the computer industry) Video Lottery equipment, and an average matching computer security system can cost as much as nine million dollars.

Yet, states are willing to pay the enormous costs of establishing a Video Lottery as they are confident the "on-line" systems will "pay for themselves" almost immediately. An example of this "immediate payment" can be seen in the state of Nebraska's experience in establishing a Video Lottery. In the first two-week period after the Nebraska State Lottery converted to an on-line game system, the state generated $490,000 from its new Video Lottery machines. In comparison, the state of New Hampshire, using a ticket lottery in 1964, would require more than two months to achieve comparable revenue.4 The greatest example of the Video Lottery's earning potential was demonstrated during May of 1984 when the state of New York broke all previous lottery sales records in generating forty-one million dollars in a single week.5 During this brief period it is estimated that as many as 18,000 lottery chances were sold on the state's 2,500 Video Lottery game terminals, amounting to 1.08 million dollars in sales every hour. At week's end, New York awarded the largest lottery jackpot in history, 22.8 million dollars, and by the end of fiscal year 1984, New York had grossed over one billion dollars in lottery revenue.6

Thus, the lottery's previous historical success has
been dramatically improved with the advent of computer technology. As this technology has been applied, lotteries have become a more efficient and lucrative means of increasing state revenue, and employed marketing strategies have made the twentieth-century lottery an institution amongst game-loving Americans.

Senator Larry Stimatz would attempt to make the lottery an institution in Montana.
CHAPTER I

NOTES


4 After two months, New Hampshire's first lottery had an approximate gross ticket sales volume worth $480,000.

5 Financial figures for the New York State Lottery, courtesy of Control Data Corporation--Automated Wagering Division, New York, New York.

6 Control Data Corporation.
CHAPTER TWO

A MONTANA LOTTERY: SENATE BILL 324

On February 6, 1985, Senate Bill 324 was approved by Montana's Legislative Legal Service Office and the Legislative Council, its final draft title reading: "A bill for an act entitled: an act establishing a State Lottery and providing for a Commission, Director, and personnel to operate the State Lottery." The bill's first section suggested Senate Bill 324 be cited as the "Montana State Lottery Act of 1985."\(^1\)

In drafting Senate Bill 324, Senator Stimatz had drawn from the examples of other lottery-sponsoring states and wanted to structure a Montana lottery in accordance with a key principle, proven effective in the experience of those established lottery-states. That principle would be to organize the State Lottery as a "business." Stimatz described this "business principle" in Senate Bill 324's required statement of intent:

A state lottery is primarily a business operation and has the purpose of earning net revenue. The successful operation of a state lottery, as shown by the experience of other state lotteries depends to a large degree upon the flexibility to operate the lottery as a business activity.

The success of a state lottery also depends upon the operation of the lottery within a statutory framework ensuring the integrity of the
staff and all phases of the operation of the lottery and the avoidance of even the appearance of any illegalities or conflicts of interest.  

On the basis of this theory, Stimatz would structure the proposed state lottery much like any other state-run business. First, Stimatz would create a policy-making apparatus—the State Lottery Commission.

The Lottery Commission

Sen. Stimatz' proposed Lottery Commission would be empowered be:
1. establish and operate a State Lottery;
2. determine policies for the operation of the State Lottery;
3. determine the price of each lottery ticket or chance;
4. carry out a continuing study to make the State Lottery more efficient, profitable, and secure from violations of the law;
5. study the possibility of working with other lottery states to offer regional lottery games; and finally,
6. prepare quarterly and annual reports on all aspects of the operation of the State Lottery including: gross revenue, prize money paid, operating expenses, net revenue for the state, and contracts with gaming suppliers.

The proposed policy-making Lottery Commission would consist of five members, all of whom would live in Montana, and would be appointed by the governor. In Section Three of SB 324, Senator Stimatz described the Commission members:
. . . at least one Commissioner must have at least five years experience as a Law Enforcement Officer. . . at least one Commissioner must be an Attorney admitted to the practice of law in Montana. . . at least one Commissioner must be a Certified Public Accountant licensed in Montana.

In using this arrangement, Stimatz hoped to wed the experience of the law enforcement officer, the attorney, and the accountant so that competent decisions would be made in regard to the lottery.

A Lottery Director

In addition to establishing the procedure and policies by which the State Lottery would be run, the Lottery Commission was also empowered to select a "Lottery Director."

The Lottery Director's job would be to operate the State Lottery in accordance with the directives of the Lottery Commission, or "manage" the lottery "business" on a day-to-day basis--creating and entering into contracts with those parties supplying lottery equipment, game designs, consultant service, or the promotion of the State Lottery.

The Director would also appoint an "Assistant Director" who would work in accord with the state Attorney General's Office to provide security for the Lottery. Concentrating primarily on the lottery's computer security system, the Assistant Director would also be responsible for conducting background examinations of all prospective State Lottery employees, ticket agents, and contractors. Finally, the Assistant Director would be required to report any alleged
violation of the law in relationship with the lottery to the Attorney General for further investigation.6

Sales Agents

After presenting the Lottery Commission, the Lottery Director, and their responsibilities in Senate Bill 324, Senator Stimatz discussed the role private Montana businesses would play in operating the State Lottery-selling lottery tickets or chances.

In a joint responsibility, the Lottery Commission would determine general locations where tickets and chances would be sold, and the Lottery Director would issue sales licenses to specific businesses if they met a certain criteria. Before issuing a license the Director would consider:

1. the financial responsibility and security of the person and his (her) business or activity;
2. the accessibility of his (her) place of business;
3. the sufficiency of existing licenses to serve the public convenience and the volume of expected sales.

Sales agents would be required to keep complete records and accounts of ticket or chance sales for which the vendor would be responsible at the request of the Lottery Commission, the Department of Administration, or the Attorney General. Finally, an agent's commission on sales was set at five percent.

Reactions

As Montana lawmakers studied Senate Bill 324, the
consensus was that Stimatz had answered the question, "who would operate the lottery?" quite adequately, and that the bill's structured Commission and Director could successfully manage a statewide lottery business. Still, most legislators were more concerned with three basic financial questions: (1) How much would it cost the State of Montana to operate a lottery? (2) How much increased revenue could a lottery generate for Montana? and (3) What would be the policy for disposition of lottery revenue?

**How Much Would a Lottery Cost?**

In drafting Senate Bill 324, Larry Stimatz had structured a system for the disposition of lottery revenue and had requested that 1.5 million dollars to start the lottery, but to first determine the amount of money it would cost to continuously operate a state lottery and the amount of revenue that established lottery could generate, we must turn our attention to the findings of the Montana State Office of Budget and Program Planning.

On February 6, 1985, the State Budget Office received a legislative request to conduct research and produce cost estimates for the proposed lottery's operating expenses and potential for generating revenue. In establishing the financial estimates Budget Director David L. Hunter examined the lottery-sponsoring states of Arizona, Maine, New Hampshire, and Vermont--states with a population and demographics similar to Montana. Lottery operating expenses and the earned lottery revenue for each of the four
states was determined, and then the figures were averaged. Hunter suggested that this four-state average would represent an accurate financial scenario for the state of Montana:

Revenue estimates were derived from research conducted regarding (i.e., using) the gross per capita (lottery ticket and chance) sales of other states... (The Office of Budget's research) is based on a mathematical model that determines gross sales from population and disposable income statistics as reported by states with lotteries. This method produced a gross per capita sales amount of $16.00 for Montana... Costs of administration would be a maximum of 20% of gross sales. 8

The Budget Office's four-state mathematical model was released on February 18, 1985, and according to David Hunter the proposed Montana State Lottery could generate $6,584,000 in total revenue for 1986, and the total cost of sponsoring a lottery for its first year would be $4,260,489. Thus, the state would net $2,323,511 in lottery revenue. In estimating costs and revenue, the Budget Office had assumed the lottery would not be played for an entire year due to a "start up delay." 9

Fiscal Year 1986

<table>
<thead>
<tr>
<th>Total Revenue</th>
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<tbody>
<tr>
<td>Total Costs</td>
<td>$4,260,480.00</td>
</tr>
<tr>
<td>Net Revenue</td>
<td>$2,323,511.00</td>
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</tbody>
</table>

For fiscal year 1987, the Budget Office's figures showed a substantial increase. Again, according to Hunter's model, the lottery in 1987 would generate an estimated $13,168,000; costs would be $8,507,358, and the net lottery revenue $4,660,642.
Fiscal Year 1987

Total Revenue $13,168,000.00
Total Costs $8,507,358.00
Net Revenue $4,660,642.00

Disposition of Lottery Revenue

The Budget Office's fiscal note, now attached to Senate Bill 324, suggested the lottery would be a very lucrative state enterprise. In a two-year period the state of Montana could expect to earn a net revenue of nearly seven million dollars. But, what would be the policy for disposition of that revenue? i.e., the way in which lottery money would be divided or allocated within the state.

In Senate Bill 324, Senator Stimatz had created a "State Lottery Fund" to be made up of the gross revenue from the state lottery. From this State Lottery Fund, forty-five percent (45%) of the gross lottery revenue would be used as prize money, and twenty percent (20%) of gross revenue would be reserved for the lottery's operating expenses. Stimatz proposed that of the remainder of the fund--net revenue, fifty percent (50%) would be placed in the state's General Fund. The additional fifty percent (50%) of the net lottery revenue would be given to Montana counties. Counties would then place portions of the fifty percent (50%) net revenue in the General Funds of incorporated cities, townships, and consolidated local governments. The amount of lottery revenue each community would receive would be determined by the Lottery
Commission and equitably based on the last preceding federal census.

Reactions

As Senate Bill 324 and its attached Budget Office fiscal note were circulated throughout the state capitol, most legislators agreed that Stimatz had drafted an attractive, legally sound lottery proposal. Lawmakers first attracted to the Senator's "business-like" Commission system for operating the lottery were even more attracted to the Budget Office's revenue estimates and SB 324's system for revenue disposition---guaranteed to please constituencies. Indeed, by February 13th, the State Lottery proposal carried forty-one co-sponsoring legislators' signatures as well as official endorsements from the Montana Association of Counties and the Montana League of Cities and Towns.

Yet, while many were attracted to the quality and revenue-generating potential of Stimatz' bill, they could not support its ends. To many legislators and their constituents, the creation of a lottery would be an unpermit-table, dramatic expansion of gambling in the state of Montana...the stage was set for a great debate.
CHAPTER II
NOTES

1See Appendix--Introduction Copy of Senate Bill 324 (White Copy): Section 1, page 1.

2See Appendix--Second Reading Copy of Senate Bill 324 (Yellow Copy): pp. 1, 2.

3For an entire description of the Lottery Commission's powers, see Appendix--Introductory Copy of Senate Bill 324 (White Copy): pp. 2, 3, 4.

4Introductory Copy of Senate Bill 324, pp. 2, 3, 4.

5For a further description of the proposed Lottery Director, see Appendix--Introduction Copy of Senate Bill 324 (White Copy): Sections 5 and 6, pp. 5, 6.

6For a further description of the proposed Assistant Lottery Director, see Appendix--Introduction Copy of Senate Bill 324 (White Copy): Section 7, pp. 6, 7.

7One could well question the Budget Office's inclusion of Arizona, a state which has a population of approximately 1,752,122, nearly twice that of Montana.

8State of Montana Office of Budget and Program Planning--Fiscal Note: Senate Bill 324, see Appendix (Gold Copy) Note--financial figures were available to Stimatz, his co-sponsors, and the State Administration Committee before the Budget Office's official report was published on February 18, 1985.

9State of Montana Office of Budget and Program Planning.
That Senate Bill 324 would inspire one of the Forty-ninth Legislature's greatest controversies could not be questioned. Already, during the first four weeks of the 1985 session, lesser attempts to expand gambling had been the impetus for extremely emotional debates. For example, House Representative Robert Pavlovich in introducing a bill to "re-legalize" electronic poker machines in Montana (after the Montana Supreme Court had declared the devices illegal slot machines in 1984) was accused of attempting to make Montana the next "immoral Las Vegas or Atlantic City." In addition, senior members of the House of Representatives had stated publicly that "the boys from Butte will never be satisfied until the entire state is an arena for completely legalized gambling." It was certain that those against a gambling expansion in Montana would aggressively attack Senate Bill 324.

The arguments of those opposed to a state lottery seemed to fit into three distinct categories: (1) Moral Arguments - suggesting that increased gambling would be counter productive, and morally injurious to the citizens
of Montana; (2) **Business-Related Arguments** - criticizing the proposed lottery's potential to take revenue away from the state's previously established gambling industries; and finally, (3) **Legal Arguments** - maintaining the establishment of a lottery would contradict existing Montana laws regarding gambling.

**Moral Arguments Against a State Lottery**

Suggestions that the proposed State Lottery would be immoral first surfaced during Senate Bill 324's introduction to the Senate State Administration Committee. On February 15, 1985, members of the Montana Association of Churches and others representing religious interests testified that a lottery game would be detrimental to the citizens of Montana.

Led by Montana Association of Churches' spokeswoman Catherine Campbell, the religious groups collectively argued that a lottery would: be a dangerous temptation to compulsive gamblers and act as an agent to create more compulsive gamblers; inspire lawlessness in the state society and especially on Montana Indian Reservations; and, collectively weaken the moral principles of the citizens of Montana.³

But, the church leaders' strongest argument against the lottery was that state-run games would realistically act as a regressive tax on Montana's low income-earning families. According to the religious groups, poor and uneducated persons would be enticed by lottery advertise-
ments and the prospect of winning instant wealth—the impoverished would then play the lottery compulsively, and what little money poor citizens possessed would be wasted on an unrealistic dream. Meanwhile, demand for welfare aid would increase and the poor's socio-economic condition would remain stagnant. In closing, Cathering Campbell insisted, "a lottery is nothing more than a politically expedient stopgap measure that lulls the populace into a state of complacency while social and fiscal problems intensify."  

Yet, Stimatz had collected research information that allowed him to rebut the strongest religious argument. The Senator maintained that the idea of the impoverished and uneducated playing the lottery more than any other segment of the population was a popular misconception. Stimatz argued, "the wealth of gathered data on who buys lottery tickets has shown that college-educated, middle-income persons play the lottery most."  

To support his contention, Stimatz produced a report from a research study conducted by the Scientific Games of Georgia Corporation which concluded that seventy to seventy-five percent of American lottery players in 1985, had household incomes exceeding $15,000 or more; and further, that the poor (under $5,000 in annual income) were substantially under-represented in lottery play. The Senator then furnished committee members with a second report from an independent study on Arizona's lottery
showing the southwestern state's poor were dramatically under-represented in lottery play, and that the median income of Arizona participants ranged from twenty-one to twenty-two thousand dollars. Finally, making reference to a third report, Stimatz announced that the average lottery player in Colorado made from twenty-five to thirty thousand dollars in 1983. The Colorado study also reported that participation amongst the state's residents with annual incomes of less than five thousand dollars and above fifty thousand dollars was well below average.

In closing, Senator Stimatz challenged the Church coalition's testimonial statement that those persons playing the lottery most were uneducated. Quoting a Washington state survey, Stimatz said that Washington citizens with one to three years of college education have been over-represented in lottery play, while those with only eight years of education were substantially under-represented. For fiscal year 1983, the Washington survey concluded that most state players had from thirteen to fifteen years of education.

Successful in his rebuttal to moral arguments against the proposed lottery, Stimatz would now face opposition from Montana businessmen.

The Business-Related Argument: Opposition to the Lottery from Montana's Parimutuel Industry

During its committee hearing, Senate Bill 324 was also strongly opposed by those suggesting that a lottery
would critically injure previously established gambling industries in Montana, specifically, the state's "parimutuel" or horse-racing industry.

Before the Senate State Administration Committee, Steven Meloy, the Executive Secretary for the Montana Board of Horseracing, attacked the lottery's potential to bankrupt Montana's parimutuel industry. According to Meloy, "any impact on the dollar available for wagering would have a devastating effect on all phases of an industry (parimutuel) which is at least less than a break-even point now." As Meloy understood Senate Bill 324, "there would be thousands of dollars under (sic-appropriated for) administration that would be available for the promotion of the lottery which in essence would cause the state and private industry to be in competition for the same dollar...this seems less than fair." In closing the Board of Horseracing spokesman stated that statistics varied as to the impact of a lottery on the disposable income dollar available for parimutuel wagering, but that every study "has indicated there is in fact a substantial impact."

A lottery's affect on parimutuel industry had been a significant concern for Larry Stimatz, but in disagreement with the Montana Board of Horseracing, the Senator maintained that a state-run lottery's impact on parimutuel wagering would be beneficial, serving to complement the industry. "No hard evidence exists," said Stimatz, "that
lotteries take money away from a state's parimutuel industry." The Senator argued that in the eighteen American states with lotteries, parimutuel betting had increased dramatically after the states established their lotteries. Since the lottery's inception in Connecticut, parimutuel betting had increased by 184 million dollars; in Rhode Island betting increased by 140 million dollars; and in Illinois, betting increased by 222 million dollars. Stimatz' produced report suggested that collectively, parimutuel wagering in the eighteen lottery-sponsoring states had increased from 5.1 billion dollars when lotteries began to over 8.3 billion dollars in 1983.13

Again, Stimatz' rebuttal was effective, but the strongest opponents of the proposed lottery had yet to be heard.

The Legal Arguments

As the Senate State Administration Committee's hearing of Senate Bill 324 continued, the Stimatz campaign to create a Montana lottery would be injured by testimony suggesting the game would contradict existing Montana laws regarding gambling.

Legal opponents of SB 324 first argued that the citizens of Montana did not want a lottery. Suddenly on the defensive, Stimatz was unable to challenge the fact that Montanans had voted against a ballot referendum to expand gambling in the fall of 1982. His opponents also provided committee members with statistic sheets showing that although those in support of the expansion referendum had
spent more than the referendum's opponents by a two-to-one ration, the measure was defeated by a considerable margin.

Yet, the strongest legal argument against the passage of Senate Bill 324 was that the "instant winner" video game machines to be used in the lottery were actually slot machines—illegal in the state of Montana.

According to Montana law, a slot machine is defined as:

a machine operated by inserting a coin, token, chip, trade check, or paper currency therein by the player and from the player of which he obtains or may obtain money, checks, chips, tokens or paper currency redeemable in money.14

In drafting Senate Bill 324, Stimatz had labored to make a distinction between the video-lottery machines and illegal slot machines. Realizing the similarity between the devices, the Senator had written, "electronic video games operated by the State Lottery are not slot machines" in Senate Bill 324's title. The quotation was also repeated on page 22 of the legislation, Section 20.15

Yet, Stimatz' opponents could not draw such a distinction, arguing that realistically, the only difference between the devices was that a slot machine was activated by a handle rather than buttons. As the "legal opponents" closed in their testimony, State Administration Committee member Senator John Mobar quipped, "I guess a horse by any other name is still a horse."16

In ending his introduction of Senate Bill 324 before Committee, Stimatz seemed to avoid the slot-machine contro-
versy, preferring to argue the financial merits of the proposed lottery, and repeated that a lottery would not be a regressive tax on Montana's poor, and that a lottery would enhance rather than cripple the state's parimutuel industry. Still, there could be no question that the lottery proposal had been severely injured by the legal argument that electronic video-lottery devices were actually slot machines.

Jack Haffey, Chairman of the Senate State Administration Committee, deferred "Executive Action" (the committee's vote on whether or not to approve the bill for Second Reading on the Senate floor) until Monday, February 18, 1985.

Executive Action

On February 18, Senate Bill 324 was given a "Do Pass" Committee Recommendation--eight Senators voting "yes," two Senators voting "no." The lottery bill was then scheduled for Second Reading before the Senate on February 25, 1985.
CHAPTER III

NOTES


3Submitted testimonial, Montana Association of Churches - Exhibit #7: Senate State Administration Committee's consideration of SB 324, February 18, 1985. Religious interests were also represented by Father John McMillen, Great Falls; Pastor William Riser, St. John's Lutheran Church; George Harper, United Methodist Churches; Phillip Young, Billings Presbyterian Administration; Lawrence Nelson, Montana Board of Churches.

4Montana Association of Churches - Exhibit #7, p. 2.


6Stimatz quoted "Lotteries Popular with Middle America," The Lottery Journal, October, 1984, p. 29.

7The Lottery Journal, p. 32.

8The Lottery Journal, p. 34.

9The Lottery Journal, p. 36.
Submitted testimonial, Montana Board of Horseracing - Executive Secretary - Steven Meloy - Exhibit #10: Senate State Administration Committee's consideration of SB 324, February 18, 1985. Parimutuel interests were also represented by Dale Hoffman, Chairman, Yellowstone Exhibition - Billings, MT.

Montana Board of Horseracing - Exhibit #10

Montana Board of Horseracing - Exhibit #10.


See Appendix - Refer to Introduction Copy of Senate Bill 324 (White Copy): pp. 1, 22

Senator Joe Mobar (R-Troy) quoted during Senate Administration Committee's consideration of Senate Bill 324, February 15, 1985.
CHAPTER FOUR

THE SENATE DEBATES

(Author's note: In examining the Senate debates it is essential to the thesis that in addition to analyzing arguments, the reader must recognize the senator's place of residence and county constituency in eastern or western Montana. This regional information has been provided parenthetically following the participating senators' names.)

Hours before Senate Bill 324's introduction to the entire Senate, Larry Stimatz felt confident that his lottery proposal would be approved despite the controversy which had arisen over the Player Activated Lottery Machines. Collectively, the Senator and his staff had: developed and rehearsed an argument strategy for the February twenty-fifth floor debate; persuaded the Montana League of Cities and Towns and the Montana Association of Counties to launch a major lobbying campaign for passage of the lottery bill, and on February twenty-third the University of Montana's Bureau of Business and Economic Research had sent Stimatz an advance copy of a completed report showing that seventy-seven percent (77%) of Montanans favored a lottery. Senate Bill 324's author entered the Senate chambers expecting
an emotional debate, but was certain the assembly would endorse the State Lottery.

Second Reading

On February twenty-fifth, Senate Bill 324 was atop the list of bills to be considered on Second Reading, and Stimatz began his introduction of the lottery bill by recommending a "Do Pass" motion. The Senator then thoroughly discussed the bill's Commission management system and plan for revenue disposition. Continuing, Stimatz presented the lottery's historically demonstrated success as a fundraising technique, and produced the Budget Office's fiscal note suggesting the State Lottery could provide "considerable prosperity amidst the Treasure State's current economic hardship." ¹ Closing his introduction, the Senator argued for the creation of a lottery as an alternative to the Forty-ninth Session's expected tax increase legislation or the establishment of a sales tax in 1987. Yet, Stimatz had not expected what would occur next; a bipartisan attempt to "kill" Senate Bill 324.

Stimatz had thought the Senate Republican leadership would support SB 324 and sway the Republican party vote, but Republican Minority Whip Bruce Crippen (Billings) quickly destroyed such an assumption. Attacking Stimatz's arguments, Crippen charged that if Montana resorted to using a lottery game to generate revenue, the state "would realistically be exploiting the weaknesses of its own citizens for its continuity." ² Crippen then argued that
the state had already capitalized on its citizens' weaknesses with electronic poker machines and "should not involve itself in any further gambling operations."³

Next, eastern Montana Senator Les Hirsch (Miles City) rose to support his colleague, suggesting that the Senate in endorsing the lottery would be "forcing the state to take a 1.5 million dollar risk."⁴ Hirsch then made a substitute motion to "indefinitely postpone" Senate Bill 324. Arguing for passage of Hirsch's substitute motion, Robert Williams (Hobson) was the first Senator to resort to sensationalism: Williams described an imaginary scenario in which a once-innocent five-year-old boy was begging grocery store customers for money he could use to play the Lottery Machine again... "It had gone that far."⁵ The eastern Senator closed by questioning the morality of creating a lottery and implied that attempts to legalize slot machines and casinos would soon reach the Legislature. According to Williams, the lottery would also signal the demise of the state's parimutuel industry.

Visibly angered by the Republican's comments, Senate Labor and Employment Relations Committee Chairman J.D. Lynch (Butte) rose to confront Williams. "This Lottery bill has certainly made strange bedfellows in terms of opposition," Lynch said. "Racetrack owners are now arm in arm with the League of Churches... they're each wondering how much the lottery will take from their cut."⁶ Despite Lynch's coy rebuttal, it appeared that Senate
Bill 324 would soon be defeated.

As the debate continued, Republican Senator Thomas Towe (Billings) offered a compromising amendment whereby Stimatz' Lottery Commission would be prohibited from using "on-line" Player Activated Machines and "instant-winner" games in the State Lottery. The amendment which would effectively diminish the lottery's ability to generate revenue by at least fifty percent, passed--forty-six Senators voting "Aye," four Senators voting "No." Following the acceptance of the Towe amendment, the Senate defeated Hirsch's substitute motion to "indefinitely postpone" SB 324 by a twenty-seven "No," twenty-one "Aye" vote. Next, the chair entertained another amendment proposed by Senator Joe Mazurek (D-Helena) which would give the lottery decision to the voters of Montana via a referendum to be placed on a ballot in November, 1986. Mazurek's amendment was narrowly defeated by a vote of 25 - No to 22 - Aye.

At this point, Senator Stimatz pleaded for the assembly's approval of the standard, non-electronic, ticket lottery. "Perhaps," the Senator said, "the machines won't seem so evil in two years." Finally, the "Previous Question" to end debate on Senate Bill 324 was called and accepted; the Senate would vote on Senator Stimatz' original "Do Pass" motion. When the final vote was tallied, twenty-five Senators voted "Aye;" twenty-two Senators voted "No" . . .the proposed State Lottery had narrowly escaped defeat.
The February twenty-fifty lottery debate which had ended in the Senate continued in the media.

Senator Bruce Crippen, who led the Second Reading attack on Senate Bill 324, vowed to continue his attempt to kill the lottery proposal. When asked if Senator Thomas Towe's amendment to prohibit video-lottery terminals might persuade him to vote for Senate Bill 324 on its Third Reading scheduled for February twenty-seventh, Crippen said the amendment was "a nice ploy to get the lottery temporarily approved." Crippen, the Senate Minority Whip, would encourage his party to defeat Senate Bill 324 on its Third Reading.

Stimatz also made use of the media, releasing the University of Montana's research report suggesting that seventy-seven percent of Montanans supported the establishment of a State Lottery. Senate Majority Leader Fred Van Valkenburg (D-Missoula) also aided Stimatz in his media defense of the lottery proposal stating: "If the Legislature rejects something the public wants, special interests will write their own law in the form of an initiative that carries none of the safeguards contained in Senate Bill 324." In his final press comment of February 25, Larry Stimatz attempted to simplify the reason why the Senate should approve the lottery saying, "You can't live someone else's life."

Third Reading

In spite of Senate Bill 324's near defeat on February
25, Stimatz was confident that those who had voted for the lottery on Second Reading would do so again during Third Reading. The power of the Republican leadership's attack on the lottery would be met with majority party's endorsement of the lottery and the Montana Association of Counties and Montana League of Cities who were now lobbying intensely for Senate Bill 324's passage. Stimatz himself did little lobbying for the lottery bill's Third Reading, expecting that his proposal would pass by "at least six votes."

**February 27, 1985**

On February 27, in a voting turnaround that Larry Stimatz would later describe as "totally beyond belief," Senate Bill 324 was defeated by a 26 to 24 vote.

The reversal can be described by the following: Due to extreme opposition from their constituencies, voiced after they had voted for the lottery proposal on February 25, Democratic Senators Richard Pinsoneault (St. Ignatius) and Cecil Weeding (Hysham) changed their Second Reading "Aye" votes to "No" on February 27. Republican Larry Tviet (Fairview) then joined the Democratic Senators, voting "No" in "retaliation against some western Senators" who favored the lottery, but failed to support his bill (defeated one hour before Senate Bill 324's Third Reading) exempting oil and gas wells from several state environmental regulations. Stimatz' three-year campaign to establish a State Lottery was over.
Relevance to the Thesis

At this point in the case study it is necessary to examine the roll call vote on Senate Bill 324 to determine whether the senators' collective voting behavior supports our essential thesis. Will we observe dramatic differences between the rural east and urban west on the final vote concerning the lottery proposal? For the purposes of regional analysis I have divided the state's eastern and western senatorial districts in the following manner:

<table>
<thead>
<tr>
<th>Western Senatorial Districts</th>
<th>Eastern Senatorial Districts</th>
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<tbody>
<tr>
<td>1. Yellowstone</td>
<td>1. Toole</td>
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<tr>
<td>2. Gallatin</td>
<td>2. Meagher</td>
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<tr>
<td>3. Cascade</td>
<td>3. Wibaux</td>
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<td>4. Powell</td>
<td>4. Sheridan</td>
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<td>5. Deer Lodge</td>
<td>5. Richland</td>
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<td>7. Missoula</td>
<td>7. Lake</td>
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<td>10. Lewis and Clark</td>
<td>10. Bighorn</td>
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<td>12. Liberty</td>
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<td>13. Sahders</td>
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<td>14. Park</td>
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<td>16. Lake</td>
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<td>17. Hill</td>
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<td>18. Ravalli</td>
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*Note: The west enjoys a majority of six senatorial districts.

The roll call has been divided both according to the senator's district, political party, and vote of "yes" or "no."
Democrats Voting "Yes" on SB 324:

Bengston - Yellowstone (west)  Lynch - Silver Bow (west)  
Boylan - Gallatin (west)  Manning - Treasure (east)  
Christiansen - Cascade (west)  Stimatz - Silver Bow (west)  
Conover - Yellowstone (west)  Towe - Yellowstone (west)  
Daniels - Powell (west)  Van Valkenburg - Missoula (west)  
Haffey - Deer Lodge (west)  Williams - Judith Basin (west)  
Hirsch - Custer (east)  Yellowtail - Bighorn (east)  
Jacobsen - Silver Bow (west)  Norman - Missoula (west)  
Lane - Gallatin (west)  

Democrats Voting "No" on SB 324:

Blaylock - Yellowstone (west)  
Eck - Gallatin (west)  
Fuller - Lewis and Clark (west)  
Halligan - Missoula (west)  
Lybeck - Flathead (west)  
Mazurek - Lewis and Clark (west)  
Mobar - Lincoln (east)  
Newman - Cascade (west)  
Pinsoneault - Lake (east)  
Regan - Yellowstone (west)  
Weeding - Garfield (east)  

Republicans Voting "Yes" on SB 324  

Anderson - Madison (west)  
Farrell - Missoula (west)  
Goodover - Cascade (west)  
Kolstad - Liberty (west)  
McCallum - Sanders (west)  
Story - Park (west)  
Thayer - Cascade (west)  

Republicans Voting "No" on SB 324  

Akelstad - Toole (east)  
Brown - Flathead (west)  
Crippen - Yellowstone (west)  
Gage - Glacier (west)  
Galt - Meagher (east)  
Hager - Yellowstone (west)  
Hammond - Phillips (east)  
Harding - Lake (west)  
Himsl - Flathead (west)  
Keating - Yellowstone (west)  
Severson - Ravalli (west)  
Shaw - Wibaux (east)  
Smith - Sheridan (east)  
Stephens - Hill (west)  
Tviet - Richland (east)  

The final, third reading roll call appears to provide at least adequate support for the thesis. Among twenty-four senators voting "yes" on the lottery proposal, a mere
three were from eastern counties (Hirsch [D] Custer; Manning [D] Treasure; and, Yellowtail [D] Bighorn). The eastern votes thus constituted a scant 12% of the "yes" vote. The remaining 88% approval of SB 324 was provided by western senators.

Opposition to SB 324 included votes from nine eastern senators. The remaining seventeen "no" votes came from western democrats. Again to use percentage figures, eastern disapproval constituted 35% of the "no" vote, and western opposition, 65%.

I use the term adequate to describe the roll call's support for the thesis because the vote does not demonstrate dramatically a progressive, favoring western attitude toward the lottery. True, 88% of lottery approval came from the west. Yet, dissension among westerners on the issue is apparent, illustrated by the fact that 65% of the "no" votes on the lottery were western. The vote does, however, clearly display the conservation of eastern senators, only three of whom voted for the lottery proposal.

To use percentage figures for the eastern senators alone, 75% voted against the measure.

In sum, the statistics better display eastern conservatism than western liberalism. With western senators somewhat divided on the issue, the east's clear-cut, consolidated opposition was the strongest factor leading to the rejection of the lottery by a two-vote margin.
CHAPTER IV

NOTES

1 Senator Larry Stimatz quoted during Senate consideration of SB 324 on Second Reading, February 15, 1985.

2 Senator Bruce Crippen, February 15, 1985, Second Reading.

3 Bruce Crippen, February 15, 1985, Second Reading.

4 Senator Les Hirsch; recall that Stimatz requested 1.5 million dollars be allocated to establish the Lottery game and its administration.


7 Senator Larry Stimatz, February 15, 1985, Second Reading.

8 Crippen was quoted in "Lottery Bill Still Breathing," The Montana Standard, 26 February 1985, p. 4.

9 Senator Fred Van Valkenburg's comments appeared in the same article, p. 4.

10 Senator Larry Stimatz, p. 4.

CHAPTER FIVE
EXPLAINING THE LOTTERY PROPOSAL'S FAILURE

It is difficult to provide absolute reasoning for the Lottery's failure in the Forty-ninth Legislature. Perhaps one could argue that Senator Stimatz' apparent over-confidence and lack of lobbying after SB 324's fragile Second Reading victory allowed for the Third Reading voting reversal. Those who had voted for the lottery on Second Reading were not pressured to do so again; instead, the pro-lottery coalition concentrated on collecting votes from senators already entrenched in their opposition to the lottery, who had voted against the lottery on Second Reading. Senators supporting Stimatz on February 25 were not compelled to vote for the lottery on February 26—the last minute inattention would allow Weeding and Pinson-eault's "defection," as Stimatz put it, and Tviet's politically inclined revenge.¹

Certainly, last minute strategies and decisions must be analyzed to explain any bill's immediate defeat, but in a larger sense, the unsuccessful attempt to establish a State Lottery serves to illustrate a continuing conflict in the state of Montana.

Throughout the course of Montana's history, gambling
has been perceived by the state's citizens as either a pleasurable social activity or a challenge to the moral principles of society; one's opinion is dependent upon the acceptance of a particular cultural philosophy. Although it is legally considered one unified state, Montana is actually home to two distinct cultural philosophies: the Urban Liberal-Individualistic Culture of Western Montana and the Rural Conservative-Moralistic Culture of Eastern Montana.

True, while Western Montana cannot be considered socially cosmopolitan, its residents, concentrated in five major cities, do display the liberal-individualistic characteristics of urban America. The liberal, more inclined to experiment in finding a means to solve social and economic problems, might consider the Lottery an attractive and even exciting way to generate increased state revenue. In his environment, the urban Montanan has been amply exposed to, and has participated in poker games, Keno and Bingo--conditioned by an environment where gambling is considered pleasurable, the Western Montanan would be less inclined to consider gambling immoral. Rather, to the urban Montanans, gambling would be perceived as a commonplace activity in an urban life.

Yet, Montanans living in Eastern Montana's ruralities seem to embrace an entirely different, conservative cultural philosophy founded on strong moral principles. By definition, the "Conservative" must have something to conserve;
the rural Montanan strives to preserve a particular way of life.

In Eastern Montana life is primarily centered upon agriculture and governed by a strong and venerated work ethic instituted by the area's homesteading forefathers of a century ago. As time progressed, Eastern Montanans slowly established a society based on tradition. This is not to say that Eastern Montana has resisted the march of time; Eastern Montanans have applied technology's incredible growth to agriculture and its related industries. Yet, the rural society is often unmoved by social change, preferring to adhere to a simple and time-honored lifestyle. Gambling is not an accepted part of the Eastern Montana lifestyle. Rather, the activity is perceived as a challenge to the work ethic (one must earn money), family unity, and a community's collective integrity.

A member of Senator Larry Stimatz' staff attempted to candidly describe Montana's regional/cultural contrast: "Essentially it's the difference between Sunday drives, Christmas carolling, and homemade ice cream, and payday in the local saloon, Monday night poker, and St. Patrick's Day in Butte."

Logically then the regional/philosophical conflict is transferred to the political arena, and as each region intensely values its particular way of life, the Montana legislator must make parochial policy befitting his constituency while simultaneously contesting any legislation
challenging his electors' principles. Montana politics then, by the very nature of the state's society, is an invitation to conflict.

Yet, despite the intensity of Montana's regionalism, Montana politicians realize that concessions must be made in order to achieve progress in policy-making. Gambling, then, has been permitted by Eastern Montana legislators, but only to a degree at which the activity will not infringe upon their region's conservative lifestyle. Likewise, Western Montana legislators will not accept an entire prohibition of gambling which would infringe upon their region's lifestyle. Gambling's existence in Montana rests upon a delicate political compromise.

Perhaps, then, the key reason for the Lottery's failure was that the proposal, a dramatic and all-region encompassing expansion of gambling, was an encroachment upon this delicate compromise.

During the Forty-ninth Legislative Session, politicians were the actors in the Lottery controversy, but after the passage of Representative Robert Pavlovich's House Bill 945, the citizens of Montana will have the opportunity to decide whether or not they want a lottery. The Lottery referendum will appear on Montana's voting ballots in the fall of 1986.
CHAPTER V

NOTES


2Matthew McCarthy, Legislative Intern - Senator Larry Stimatz.
BIBLIOGRAPHY


VI.
APPENDIX
SENATE BILL 324
INTRODUCED BY

BILL NO. 324

BILLS FOR THE PURPOSE OF ESTABLISHING A STATE LOTTERY, PROVIDING FOR A COMMISSION, DIRECTOR, AND PERSONNEL TO OPERATE THE STATE LOTTERY; PROVIDING THAT ELECTRONIC VIDEO GAME MACHINES OPERATED BY THE STATE LOTTERY ARE NOT SLOT MACHINES; PROVIDING THAT THE MONTANA CARD GAMES ACT AND BINGO AND RAFFLES LAW DO NOT APPLY TO THE STATE LOTTERY; AMENDING SECTIONS 23-5-101, 23-5-202, 23-5-302, AND 23-5-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 20] may be cited as the "Montana State Lottery Act of 1985".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Commission" means the state lottery commission created by [section 3].

(2) "Director" means the director appointed by the commission under [section 4] to administer and manage the state lottery.

(3) "Lottery" or "state lottery" means the Montana...
state lottery created and operated pursuant to [sections 1 through 20].

(4) "Lottery game" means any procedure, including any on-line or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, electronic video machine games, and sports pool games, except sports pools governed by Title 23, chapter 5, part 5.

NEW SECTION. Section 3. State lottery commission -- allocation -- composition -- compensation -- quorum. (1) There is a state lottery commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner shall be appointed to a 4-year term of office, and the terms shall be staggered.

(5) A commissioner may be removed by the governor for
good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall appoint one of its members as chairman.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of $100 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of commerce for administrative purposes only, except that only subsections (1)(a), (1)(c), (2)(e), (3)(a), and (3)(b) of 2-15-121 apply to the commission.

NEW SECTION. Section 4. Powers and duties of commission. The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) appoint, and may remove for good cause, a director of the state lottery as provided in [section 5];
(3) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(4) determine the price of each ticket or chance and the number and size of prizes;

(5) provide for the conduct of drawings of winners of lottery games;

(6) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(7) study the possibility of working with other lottery states to offer regional lottery games;

(8) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to [sections 1 through 20], and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and
each member of the appropriate committee of each house of
the legislature as determined by the president of the senate
and the speaker of the house; and

(9) adopt rules necessary to carry out [sections 1
through 20].

NEW SECTION. Section 5. Director -- appointment --
compensation -- qualifications. (1) The director is
appointed by the commission, which may remove him for good
cause.

(2) The director must be qualified by training and
experience to direct the state lottery. He must be a
full-time employee and may not engage in any other
occupation.

(3) The director's salary is equal to 90% of the
salary of the director of the department of commerce.

NEW SECTION. Section 6. Powers and duties of
director. (1) The director shall:

(a) administer the operation of the state lottery in
accordance with [sections 1 through 20] and the rules and
other directives of the commission;

(b) appoint an assistant director for security and
employ and direct personnel necessary to the operation of
the state lottery;

(c) license lottery ticket or chance sales agents and
suspend or revoke licenses pursuant to [sections 1 through
(d) maintain, with the assistant director for security, the security of the state lottery.

(2) With the concurrence of the commission or pursuant to commission direction or rules, the director may enter into contracts of no longer than 6 months for materials, equipment, and supplies to be used in the operation of the state lottery, for the design and installation of games, for consultant services, and for promotion of the lottery. No contract is legal or enforceable that provides for the management of the state lottery or for the entire operation of its games by any private person or firm. When a contract is awarded, a performance bond satisfactory to the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission, in an amount equal to the price of the contract, must be delivered to the commission.

NEW SECTION. Section 7. Assistant director for security -- qualifications -- duties. (1) The director shall appoint an assistant director for security.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security shall:
(a) be responsible for a security division to assure security, honesty, fairness, and integrity in the operation and administration of the lottery, including but not limited to an examination of the background of all prospective employees, ticket or chance sales agents, lottery vendors, and lottery contractors;

(b) in conjunction with the director, confer with the attorney general or his designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the lottery; and

(c) in conjunction with the director, report any alleged violation of law to the attorney general and any other appropriate law enforcement authority for further investigation and action.

NEW SECTION. Section 8. Ticket or chance sales agents -- licenses. (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

   (i) the financial responsibility and security of the person and his business or activity;

   (ii) the accessibility of his place of business or
activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) No person under 18 years of age may sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

(4) The director may issue temporary licenses upon conditions he considers necessary.

(5) License applicants must be charged a $50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display his license or a copy thereof conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) No employee of a ticket or chance sales agent may be required to sell lottery game tickets or chances if the sale is against his religious or moral beliefs.
(10) Sales agents are entitled to no more than a 5% commission on tickets and chances sold.

(11) The director may require each sales agent to keep a complete and up-to-date set of records and accounts fully showing his sales and provide it for inspection upon request of the commission, the director, the department of administration, or the office of the attorney general.

(12) Payments by sales agents to the state lottery must be by check, bankdraft, electronic fund transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of [sections 1 through 20] or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing.

NEW SECTION. Section 9. Sales restrictions. (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances must be paid for in cash.
(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, any person auditing or investigating the state lottery, or members of their families living with them.

(5) The names of elected officials may not appear on any ticket or chance.

NEW SECTION. Section 10. Disclosure of odds. The director shall make adequate disclosure of the odds with respect to each state lottery game by stating the odds in lottery game advertisements and by posting the odds at each place in which tickets or chances are sold.

NEW SECTION. Section 11. State lottery fund. There is a fund of the enterprise fund type, as defined in 17-2-102, to be known as the state lottery fund. The gross revenue from the state lottery, consisting of money from the sale of lottery tickets and chances, ticket or chance sales agent license fees, unclaimed prizes, or any other source, must be deposited in the fund, except that, at the discretion of the director, money for prizes paid immediately by a sales agent and money equaling the sales agent's commission may be drawn by a sales agent from his gross revenue before depositing his gross revenue with the state lottery.

NEW SECTION. Section 12. Disposition of revenue. (1)
Forty-five percent of the money paid for tickets or chances in each separate state lottery game must be paid out as prize money for the game.

(2) Up to 20% of the gross revenue from the state lottery may be used by the director to pay the operating expenses of the state lottery. Commissions paid to lottery ticket or chance sales agents are a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by [section 11] as follows:

(a) 50% into the state general fund;
(b) 50% of the net revenue generated in each county must be paid into the general fund of that county. Fifty percent of the net revenue paid into the general fund of each county must be paid by that county to the general funds of the incorporated cities and towns and consolidated local governments in that county in the ratio which the population within the corporate limits of each city, town, or consolidated local government bears to the total population of the county. The population of each city, town, and consolidated local government shall be determined by the last preceding official federal census.

NEW SECTION. Section 13. Felony and gambling-related
convictions — ineligibility for lottery positions. No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent.

NEW SECTION. Section 14. Conflict of interest. No commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of his family living with him may have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier.

NEW SECTION. Section 15. Drawings for and payment of prizes — unclaimed prizes. (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings must be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff and a professional staff employee of the legislative auditor's office prior to and after each public drawing.

(2) The commission may provide for the immediate
payment of prizes by the ticket or chance sales agent who
sold the winning ticket or chance whenever the amount of the
prize is less than an amount set by commission rule.
Payment may not be made directly by an electronic game,
machine, or device, or by a computer terminal.

(3) Prizes over $100,000 may in the discretion of the
director be paid either in one lump sum or in equal yearly
installments without interest over a period of not more than
10 years, except that each installment payment must be at
least $20,000.

(4) Prizes not claimed within 6 months are forfeited
and must be paid into the state lottery fund. No interest is
due on a prize when a claim is delayed but made within 6
months.

(5) The right to a prize is not assignable, but prizes
may be paid to a deceased winner's estate or to a person
designated by judicial order.

NEW SECTION. Section 16. Disclosures by gaming
suppliers. (1) Any person, firm, association, or corporation
that submits a bid or proposal for a contract to supply
lottery equipment, tickets, or other material or consultant
services for use in the operation of the state lottery shall
disclose at the time of such bid or proposal:

(a) the supplier's business name and address and the
names and addresses of the following:
(i) if the supplier is a partnership, all of the general and limited partners;

(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved therewith and the officers, directors, and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company which is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(b) if the supplier is a corporation, all the states
in which the supplier is authorized to do business and the
nature of that business;

(c) other jurisdictions in which the supplier has
contracts to supply gaming materials, equipment, or
consultant services;

(d) the details of any conviction, state or federal,
of the supplier or any person whose name and address are
required by subsection (1)(a) of a criminal offense
punishable by imprisonment for more than 1 year;

(e) the details of any disciplinary action taken by
any state against the supplier or any person whose name and
address are required by subsection (1)(a) regarding any
matter related to gaming consultant services or the selling,
leasing, offering for sale or lease, buying, or servicing of
gaming materials or equipment;

(f) audited annual financial statements for the
preceding 5 years;

(g) a statement of the gross receipts realized in the
preceding year from gaming consultant services and the sale,
lease, or distribution of gaming materials or equipment to
states operating lotteries and to private persons licensed
to conduct gambling, differentiating that portion of the
gross receipts attributable to transactions with states
operating lotteries from that portion of the gross receipts
attributable to transactions with private persons licensed
to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of [sections 1 through 20].

(2) No person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may have any financial interest or connection with any person, firm, association, or corporation licensed as a ticket or chance sales agent.

(3) No contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is enforceable against the state unless the requirements of this section have been fulfilled.

NEW SECTION. Section 17. Annual audit. The legislative auditor shall conduct an annual audit of the state lottery. The costs of the audit must be paid out of the state lottery fund. A copy of the audit report must be delivered to the commission, the director, the governor, the
president of the senate, the speaker of the house of
representatives, and each member of the appropriate
committee of each house of the legislature as determined by
the president of the senate and the speaker of the house.

NEW SECTION. Section 18. Study of lottery security.
(1) After the first 9 months of sales to the public and
every 2 years after that, the commission shall engage an
independent firm experienced in security procedures,
including but not limited to computer security and systems
security, to conduct a comprehensive study and evaluation of
all aspects of security in the operation of the lottery. The
study must include:
(a) personnel security;
(b) lottery sales agent security;
(c) lottery contractor security;
(d) security of manufacturing operations of lottery
contractors;
(e) security against ticket or chance counterfeiting
and alteration and other means of fraudulently winning;
(f) security of drawings among entries or finalists;
(g) computer security;
(h) data communications security;
(i) database security;
(j) systems security;
(k) lottery premises and warehouse security;
(1) security in distribution;

(m) security involving validation and payment procedures;

(n) security involving unclaimed prizes;

(o) security aspects applicable to each particular lottery game;

(p) security of drawings in games where winners are determined by drawings;

(q) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration, or sales; and

(r) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

(2) The security audit report must be presented to the commission, the director, the governor, the president of the senate, and the speaker of the house of representatives.

**NEW SECTION.** Section 19. Investigations and legal services and proceedings. (1) The attorney general shall provide legal services for the state lottery at the request of the director, assistant director for security, or commission. The attorney general shall make reasonable efforts to ensure that there is continuity in the legal services provided and that the attorneys providing legal services.
services have expertise in the field.

(2) The attorney general shall make investigations and prosecute or defend, on behalf of the director and commission, suits and other proceedings involving the state lottery or necessary to carry out the purposes of [sections 1 through 20].

(3) The commission, director, and assistant director for security may also carry out investigations. The attorney general must be informed of each investigation before it begins and must be informed of the results of the investigation.

(4) Upon the request of the assistant director for security, the attorney general and the department of justice must give the assistant director for security such information as may tend to assure security, honesty, fairness, and integrity in the operation and administration of the lottery as they may have in their possession, including but not limited to manual or computerized information and data.

NEW SECTION. Section 20. Penalties. It is a misdemeanor, punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, to knowingly or purposely:

(1) require an employee to sell lottery tickets or chances in violation of [section 8(9)];
(2) violate [section 8(11)];
(3) sell a lottery ticket or chance to a person under 18 years of age;
(4) violate [subsection (3) or (4) of section 9];
(5) serve as a commissioner, director, assistant director, employee, or licensed agent of the state lottery in violation of [section 13];
(6) violate [section 14];
(7) violate [section 16]; or
(8) influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials.

Section 21. Section 23-5-101, MCA, is amended to read:
"23-5-101. Definitions. (1) A slot machine is defined as a machine operated by inserting a coin, token, chip, trade check, or paper currency therein by the player and from the play of which he obtains or may obtain money, checks, chips, tokens, or paper currency redeemable in money. Electronic video game machines operated by the state lottery are not slot machines. Merchandise vending machines where the element of chance does not enter into their operation are not within the provisions of this part.

(2) In addition to their ordinary meaning, the words "person" or "persons", as used in this part, include both natural and artificial persons and all partnerships,
corporations, associations, clubs, fraternal orders, and
societies, including religious, fraternal, and charitable
organizations."

Section 22. Section 23-5-202, MCA, is amended to read:
"23-5-202. Application. This part shall not apply to
the provisions of part 4 of this chapter, to [sections 1
through 20], or to the giving away of cash or merchandise
attendance prizes or premiums by public drawings at
agricultural fairs or rodeo associations in this state, and
the county fair commissioners of agricultural fairs or rodeo
associations in this state may give away at such fairs cash
or merchandise attendance prizes or premiums by public
drawings."

Section 23. Section 23-5-302, MCA, is amended to read:
"23-5-302. Definitions. As used in this part and
unless the context requires otherwise, the following terms
or phrases have the following meanings:
(1) "Authorized card game" means any card game
permitted by this part.
(2) "Card game" means any game played with cards for
which the prize is money or any item of value, except games
played on electronic video game machines operated by the
state lottery."

Section 24. Section 23-5-402, MCA, is amended to read:
"23-5-402. Definitions. As used in this part, unless
the context requires otherwise, the following terms or phrases shall have the following meanings:

1. "Game of chance" means the specific kind of game of chance commonly known as:
   a. "bingo" or "keno", in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random, except games played on electronic video game machines operated by the state lottery;
   b. "raffles", which are conducted by drawing for prizes.

2. "Equipment" means:
   a. with respect to bingo or keno, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo or keno; or
   b. with respect to raffles, the implements, devices, and machines designed, intended, or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of right to participate in
raffles."

NEW SECTION. Section 25. Initial appointment and terms of commissioners. Initial appointments to the commission must be made within 30 days after [the effective date of this act]. Two of the initial appointees shall serve for 2 years, two shall serve for 3 years, and one shall serve for 4 years.

NEW SECTION. Section 26. Initial duties of commission -- lottery study -- first game. (1) The commission shall immediately conduct an initial study of other state lotteries.

(2) The commission shall begin the operation of state lottery games at the earliest practicable time and in any event within 150 days after [the effective date of this act].

NEW SECTION. Section 27. Temporary state treasury line of credit for expense of starting state lottery. There is a temporary line of credit that may be drawn by the director of the state lottery from the state general fund and deposited in the state lottery fund, in the amount of $1,500,000. This temporary line of credit may be drawn upon only during the first 12 months after the effective date of [sections 1 through 20] and only for the purpose of financing the initial expenses of starting the state lottery. The director may draw upon all or part of this
temporary line of credit. Any funds advanced under the temporary line of credit must be repaid to the general fund within 1 year of the advance. Interest must be paid at an annual simple interest rate of 10% on funds advanced, commencing on the day funds are advanced and until the funds are repaid.

NEW SECTION. Section 28. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 29. Effective date. This act is effective on passage and approval.

-End-
STATEMENT OF INTENT

SENATE BILL 324

Senate State Administration Committee

A statement of intent is required for this act because under the provisions of the act the state lottery commission must establish and operate a state lottery and adopt policies and rules regarding but not limited to:

(1) the operations of the lottery director and his staff;

(2) the price, number, and size of tickets or chances;

(3) the drawing of lottery winners;

(4) lottery tickets or chance sales and ticket or chance sales agents;

(5) the immediate payment of small prizes;

(6) lottery security;

(7) purchase or rental of gaming equipment and supplies; and

(8) other matters relating to the successful operation of the lottery.

A state lottery is primarily a business operation and has as a purpose the earning of net revenue. The successful operation of a state lottery, as shown by the experience of other state lotteries, depends to a large degree upon the flexibility to operate the lottery as a business enterprise.
The success of a lottery also depends upon the operation of
the lottery within a statutory framework ensuring the
integrity of the staff and all phases of the operation of
the lottery and the avoidance of even the appearance of any
illegalities or conflicts of interest.

To these ends, it is contemplated that the state
lottery commission will be composed of persons conversant
with the types of administrative rules necessary to the
successful operation of the lottery and will adopt rules
ensuring the integrity and success of the lottery.

In accord with the theory that a lottery is primarily a
business, it is contemplated that the rules will change or
allow changes in the operation of the lottery consistent
with statutes as new business techniques and ideas, new
games and prizes, better outlets for ticket sales, and
better management techniques are discovered.

Any definitions contained in this act pertain only to
the state lottery. It is the intent of the legislature that
the state lottery commission operate a state lottery only,
and it is not intended that the commission shall be involved
in any way in other forms of gambling.
SENATE BILL NO. 324

INTRODUCED BY STIMATZ, PAVLOVICH, LYNCH, JACOBSON,
BENGTSON, TOWE, LANE, B. WILLIAMS, DRISCOLL, KOEHNKE,
ELLISON, LORY, PHILLIPS, NATHE, BACHINI, PISTORIA,
TVEIT, VAN VALKENBURG, DANIELS, HAFFEY, QUILICI,
CHRISTIAENS, DEVLIN, ZABROCKI, MANNING, KOLSTAD,
D. BROWN, NISBET, KRUEGER, HARP, PECK, PINSONEAULT,
KEENAN, O'CONNELL, KEYSER, MCCORMICK, GOULD,
MCCALLUM, HARRINGTON, MENAHAN, C. SMITH,
MONTAYNE, JACK MOORE, J. HAMMOND, HAND

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A STATE
LOTTERY AND PROVIDING FOR A COMMISSION, DIRECTOR, AND
PERSONNEL TO OPERATE THE STATE LOTTERY; PROVIDING THAT
ELECTRONIC VIDEO GAME MACHINES OPERATED BY THE STATE LOTTERY
ARE NOT SLOT MACHINES; PROVIDING THAT THE MONTANA CARD GAMES
ACT AND BINGO AND RAFFLES LAW DO NOT APPLY TO THE STATE
LOTTERY; AMENDING SECTIONS 23-5-101, 23-5-202, 23-5-302,
AND 23-5-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1
through 20] may be cited as the "Montana State Lottery Act
of 1985".
NEW SECTION. SECTION 2. PURPOSE. (1) THE PURPOSE OF
[SECTIONS 1 THROUGH 20] IS TO ALLOW LOTTERY GAMES IN WHICH
THE PLAYER PURCHASES FROM THE STATE, THROUGH THE
ADMINISTRATORS OF THE STATE LOTTERY, A CHANCE TO WIN A
PRIZE. [SECTIONS 1 THROUGH 20] DO NOT ALLOW AND MAY NOT BE
CONSTRUED TO ALLOW ANY GAME IN WHICH A PLAYER COMPETES
AGAINST OR PLAYS WITH ANY OTHER PERSON, INCLUDING A PERSON
EMPLOYED BY AN ESTABLISHMENT IN WHICH A LOTTERY GAME MAY BE
PLAYED.

(2) THE ADMINISTRATION AND CONSTRUCTION OF [SECTIONS 1
THROUGH 20] MUST COMPLY WITH ARTICLE III, SECTION 9, OF THE
MONTANA CONSTITUTION, WHICH MANDATES THAT ALL FORMS OF
GAMBLING ARE PROHIBITED UNLESS AUTHORIZED BY ACTS OF THE
LEGISLATURE OR BY THE PEOPLE THROUGH INITIATIVE OR
REFERENDUM. THEREFORE, [SECTIONS 1 THROUGH 20] MUST BE
STRICTLY CONSTRUED TO ALLOW ONLY THOSE GAMES THAT ARE WITHIN
THE SCOPE OF THIS SECTION AND WITHIN THE DEFINITION OF
"LOTTERY GAME".

(3) THE STATE LOTTERY MAY NOT:

(A) OPERATE A SLOT MACHINE OR CARRY ON ANY FORM OF
GAMBLING PROHIBITED BY THE LAWS OF THIS STATE; OR

(B) CARRY ON ANY FORM OF GAMBLING PERMITTED BY THE
LAWS OF THIS STATE BUT WHICH IS NOT A LOTTERY GAME WITHIN
THE SCOPE OF THIS SECTION AND WITHIN THE DEFINITION OF
"LOTTERY GAME".

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NEW SECTION. Section 3. Definitions. As used in 
[sections 1 through 20], the following definitions apply:

(1) "Commission" means the state lottery commission 
created by [section 34].

(2) "Director" means the director appointed by the 
commission GOVERNOR under [section 46] to administer and 
manage the state lottery.

(3) "Lottery" or "state lottery" means the Montana 
state lottery created and operated pursuant to [sections 1 
through 20].

(4) "Lottery game" means any procedure, including any 
on-line or other procedure using a machine or electronic 
device, by which one or more prizes are distributed among 
persons who have paid for a chance to win a prize and 
includes but is not limited to weekly (or other, longer time 
period) winner games, instant winner games, daily numbers 
games, electronic video machine games, and sports pool 
games, except GAMES PROHIBITED BY TITLE 23, CHAPTER 5, PART 
1; LOTTERIES PROHIBITED BY TITLE 23, CHAPTER 5, PART 2; CARD 
GAMES REGULATED BY TITLE 23, CHAPTER 5, PART 3; RAFFLES AND 
BINGO GAMES GOVERNED BY TITLE 23, CHAPTER 5, PART 4; AND 
sports pools governed by Title 23, chapter 5, part 5.

NEW SECTION. Section 4. State lottery commission -- 
allocation -- composition -- compensation -- quorum. (1) 
There is a state lottery commission.

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(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner shall be appointed to a 4-year term of office, and the terms shall be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall appoint one of its members as chairman.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of $188 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as
provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of commerce for administrative purposes only except that only subsections (f) and (g) of 2-15-120 apply to the commission as prescribed in 2-15-121.

NEW SECTION. Section 5. Powers and duties of commission. The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) appoint, and may remove for good cause, a director of the state lottery as provided in section 5;

(3) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(4) determine the price of each ticket or chance and the number and size of prizes;

(5) provide for the conduct of drawings of winners of lottery games;

(6) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;
(6) study the possibility of working with other lottery states to offer regional lottery games;  
(7) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to [sections 1 through 20], and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and  
(8) adopt rules necessary to carry out [sections 1 through 20].

NEW SECTION. Section 6. Director -- appointment -- compensation -- qualifications. (1) The director is MUST BE appointed by the commission, which may remove him for -- good cause GOVERNOR AND SHALL HOLD OFFICE AT THE PLEASURE OF THE GOVERNOR.  
(2) The director must be qualified by training and experience to direct the state lottery. He must be a full-time employee and may not engage in any other occupation.
(3) The director's salary is equal to 90% of the salary of the director of the department of commerce.

NEW SECTION. Section 7. Powers and duties of director. (1) The director shall:

(a) administer the operation of the state lottery in accordance with [sections 1 through 20] and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the operation of the state lottery;

(c) license lottery ticket or chance sales agents and suspend or revoke licenses pursuant to [sections 1 through 20] and commission rules; and

(d) maintain, with the assistant director for security, the security of the state lottery.

(2) With the concurrence of the commission or pursuant to commission direction-or rules, the director may enter into contracts of--no--longer-than-6-months for materials, equipment, and supplies to be used in the operation of the state lottery, for the design and installation of games, for consultant services, and for promotion of the lottery. ALL CONTRACTS MUST BE MADE IN ACCORDANCE WITH STATE LAW. No contract is legal or enforceable that provides for the management of the state lottery or for the entire operation of its games by any private person or firm. When a contract

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is awarded, a performance bond satisfactory to the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission, in an amount equal to the price of the contract, must be delivered to the commission.

NEW SECTION. Section 8. Assistant director for security -- qualifications -- duties. (1) The director shall appoint an assistant director for security.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security shall:

(a) be responsible for a security division to assure security, honesty, fairness, and integrity in the operation and administration of the lottery, including but not limited to an examination of the background of all prospective employees, ticket or chance sales agents, lottery vendors, and lottery contractors. THE SECURITY DIVISION IS HEREBY DESIGNATED A LAW ENFORCEMENT AGENCY FOR THE PURPOSE OF ADMINISTERING [SECTIONS 1 THROUGH 20].

(b) in conjunction with the director, confer with the attorney general or his designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the lottery; and
(c) in conjunction with the director, report any alleged violation of law to the attorney general, THE LEGISLATIVE AUDITOR, and any other appropriate law enforcement authority for further investigation and action.

NEW SECTION. Section 9. Ticket or chance sales agents -- licenses. (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the person and his business or activity;

(ii) the accessibility of his place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) No person under 18 years of age may sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

(4) The director may issue temporary licenses upon
conditions he considers necessary.

(5) License applicants must be charged a $50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display his license or a copy thereof conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) No employee of a ticket or chance sales agent may be required to sell lottery game tickets or chances if the sale is against his religious or moral beliefs.

(10) Sales agents are entitled to no more than a 5% commission on tickets and chances sold.

(11) The director may require each sales agent to keep a complete and up-to-date set of records and accounts fully showing his sales and provide it for inspection upon request of the commission, the director, the department of administration, Commerce, the Office of the Legislative Auditor, or the office of the attorney general.

(12) Payments by sales agents to the state lottery must be by check, bankdraft, electronic fund transfer, or other
recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of sections 1 through 20 or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing.

NEW SECTION. Section 10. Sales restrictions. (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances must be paid for in cash.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, any-person EMPLOYEES OF ANY FIRM OR GOVERNMENTAL AGENCY auditing or investigating the state lottery, or members of their families living with them.

(5) The names of elected officials may not appear on any ticket or chance.

NEW SECTION. Section 11. Disclosure of odds. The
director shall make adequate disclosure of the odds with
close to each state lottery game by stating the odds in
lottery game advertisements and by posting the odds at each
place in which tickets or chances are sold.

NEW SECTION. Section 12. State lottery fund. There is
a fund of the enterprise fund type, as defined in 17-2-102,
to be known as the state lottery fund. The gross revenue
from the state lottery, consisting of money from the sale of
lottery tickets and chances, ticket or chance sales agent
license fees, unclaimed prizes, or any other source, must be
deposited in the fund, except that, at the discretion of the
director, money for prizes paid immediately by a sales agent
and money equaling the sales agent's commission may be drawn
by a sales agent from his gross revenue before depositing
his gross revenue with the state lottery.

NEW SECTION. Section 13. Disposition of revenue. (1)
Forty-five-percent APPROXIMATELY 45% of the money paid for
tickets or chances in each separate state lottery game must
be paid out as prize money for the game.

(2) Up to 20% of the gross revenue from the state
lottery may be used by the director to pay the operating
expenses of the state lottery. Commissions paid to lottery
ticket or chance sales agents are NOT a state lottery
operating expense.

(3) That part of all gross revenue not used for the
payment of prizes, SALES COMMISSIONS, and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by [section 11] as follows:

(a) 50% into the state general fund;
(b) 50% of the net revenue generated in each county must be paid into the general fund of that county. Fifty percent of the net revenue paid into the general fund of each county must be paid by that county to the general funds of the incorporated cities and towns and consolidated local governments in that county in the ratio which the population within the corporate limits of each city, town, or consolidated local government bears to the total population of the county. The population of each city, town, and consolidated local government shall be determined by the last preceding official federal census.

NEW SECTION. Section 14. Felony and gambling-related convictions -- ineligibility for lottery positions. No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent. PRIOR TO APPOINTMENT TO ANY OF THE ABOVE POSITIONS, A PERSON SHALL SUBMIT TO THE COMMISSION A FULL SET OF FINGERPRINTS MADE AT A LAW ENFORCEMENT AGENCY BY AN AGENT OR OFFICER OF SUCH AGENCY ON FORMS SUPPLIED BY THE
AGENCY.

NEW SECTION. Section 15. Conflict of interest. No commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of his family living with him may have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier.

NEW SECTION. Section 16. Drawings for and payment of prizes -- unclaimed prizes. (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings must be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff and a professional staff employee of the legislative auditor's office prior to and after each public drawing.

(2) The commission may provide for the immediate payment of prizes by the ticket or chance sales agent who sold the winning ticket or chance whenever the amount of the prize is less than an amount set by commission rule. Payment may not be made directly by an electronic game, machine, or device, or by a computer terminal.
(3) Prizes over $100,000 may in the discretion of the director COMMISSION be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 10 years, except that each installment payment must be at least $20,000.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order.

NEW SECTION. Section 17. Disclosures by gaming suppliers. (1) Any person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of such bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;

(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;
(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved therewith and the officers, directors, and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company which is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;

(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;
(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (l)(a) of a criminal offense punishable by imprisonment for more than 1 year AND SHALL SUBMIT TO THE COMMISSION A FULL SET OF FINGERPRINTS OF SUCH PERSON MADE AT A LAW ENFORCEMENT AGENCY BY AN AGENT OR OFFICER OF SUCH AGENCY ON FORMS SUPPLIED BY THE AGENCY;

(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (l)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) audited annual financial statements for the preceding 5 years;

(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming
materials or equipment for the supplier;

   (i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and
   (j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of [sections 1 through 20].

(2) No person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may have any financial interest or connection with any person, firm, association, or corporation licensed as a ticket or chance sales agent.

(3) No contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is enforceable against the state unless the requirements of this section have been fulfilled.

NEW SECTION. Section 18. Annual audit. The legislative auditor shall conduct an annual audit of the state lottery. The costs of the audit must be paid out of the state lottery fund. A copy of the audit report must be delivered to the commission, the director, the governor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate
committee of each house of the legislature as determined by the president of the senate and the speaker of the house.

NEW SECTION. Section 19. Study of lottery security.

(1) After the first 9 months of sales to the public and every 2 years after that, the commission shall engage an independent firm experienced in security procedures, including but not limited to computer security and systems security, to conduct OFFICE OF THE LEGISLATIVE AUDITOR SHALL CONDUCT OR HAVE CONDUCTED a comprehensive study and evaluation AUDIT of all aspects of security in the operation of the lottery. THE COSTS OF THE AUDIT MUST BE PAID OUT OF THE STATE LOTTERY FUND. The study AUDIT must include:

(a) personnel security;
(b) lottery sales agent security;
(c) lottery contractor security;
(d) security of manufacturing operations of lottery contractors;
(e) security against ticket or chance counterfeiting and alteration and other means of fraudulently winning;
(f) security of drawings among entries or finalists;
(g) computer security;
(h) data communications security;
(i) database security;
(j) systems security;
(k) lottery premises and warehouse security;
(l) security in distribution;
(m) security involving validation and payment procedures;
(n) security involving unclaimed prizes;
(o) security aspects applicable to each particular lottery game;
(p) security of drawings in games where winners are determined by drawings;
(q) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration, or sales; and
(r) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

(2) The security audit report must be presented to the commission, the director, the governor, the president of the senate, and the speaker of the house of representatives.
services-have-expertise-in-the-field:

{2}--The-attorney-general-shall-make-investigations-and
prosecute--or--defend---on--behalf--of--the--director---and
commission--suits-and-other-proceedings-involving-the-state
lottery-or-necessary-to-carry-out-the-purposes-of--{sections
1--through-20}:

{3}--The--commission--director--and-assistant-director
for-security-may-also-carry-out-investigations.--The-attorney
genral--must-be-informed-of--each--investigation--before--it
begins--and--must--be--informed-of--the--results--of--the
investigation:

{4}--Upon-the-request-of--the--assistant--director--for
security--the-attorney-general-and-the-department-of-justice
must--give--the--assistant--director--for--security--such
information--as--may--tend--to--assure--security--honesty,
fairness--and-integrity-in-the-operation-and-administration
of-the--lottery--as--they--may--have--in--their--possession;
including--but--not--limited--to--manual--or--computerized
information-and-data:

NEW SECTION. Section 20. Penalties. It is a
misdemeanor, punishable by a fine not to exceed $500 or
imprisonment in the county jail for a term not to exceed 6
months, or both, to knowingly or purposely:

(1) require an employee to sell lottery tickets or
chances in violation of {section 8 2}(9);
(2) violate [section 8 9(11)];

(3) sell a lottery ticket or chance to a person under 18 years of age;

(4) violate [subsection (3) or (4) of section 9 10];

(5) serve as a commissioner, director, assistant director, employee, or licensed agent of the state lottery in violation of [section 13 14];

(6) violate [section 14 15];

(7) violate [section 16 17]; or

(8) influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials.

Section 21. Section 23-5-101, MCA, is amended to read:

"23-5-101. Definitions. (1) A slot machine is defined as a machine operated by inserting a coin, token, chip, trade check, or paper currency therein by the player and from the play of which he obtains or may obtain money, checks, chips, tokens, or paper currency redeemable in money. Electronic video game machines operated by the state lottery are not slot machines. Merchandise vending machines where the element of chance does not enter into their operation are not within the provisions of this part.

(2) In addition to their ordinary meaning, the words "person" or "persons", as used in this part, include both natural and artificial persons and all partnerships,
corporations, associations, clubs, fraternal orders, and societies, including religious, fraternal, and charitable organizations."

Section 22. Section 23-5-202, MCA, is amended to read:

"23-5-202. Application. This part shall not apply to the provisions of part 4 of this chapter, to [sections 1 through 20], or to the giving away of cash or merchandise attendance prizes or premiums by public drawings at agricultural fairs or rodeo associations in this state, and the county fair commissioners of agricultural fairs or rodeo associations in this state may give away at such fairs cash or merchandise attendance prizes or premiums by public drawings."

Section 23. Section 23-5-302, MCA, is amended to read:

"23-5-302. Definitions. As used in this part and unless the context requires otherwise, the following terms or phrases have the following meanings:

(1) "Authorized card game" means any card game permitted by this part.

(2) "Card game" means any game played with cards for which the prize is money or any item of value, except games played on electronic video game machines operated by the state lottery."

Section 24. Section 23-5-402, MCA, is amended to read:

"23-5-402. Definitions. As used in this part, unless
the context requires otherwise, the following terms or phrases shall have the following meanings:

(1) "Game of chance" means the specific kind of game of chance commonly known as:

(a) "bingo" or "keno", in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random, except games played on electronic video game machines operated by the state lottery;

(b) "raffles", which are conducted by drawing for prizes.

(2) "Equipment" means:

(a) with respect to bingo or keno, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo or keno; or

(b) with respect to raffles, the implements, devices, and machines designed, intended, or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of right to participate in
raffles."

NEW SECTION. Section 25. Initial appointment and terms of commissioners. Initial appointments to the commission must be made within 30 days after [the effective date of this act]. Two of the initial appointees shall serve for 2 years, two shall serve for 3 years, and one shall serve for 4 years.

NEW SECTION. Section 26. Initial duties of commission -- lottery study -- first game. (1) The commission shall immediately conduct an initial study of other state lotteries.

(2) The commission shall begin the operation of state lottery games at the earliest practicable time and in any event within 150 days after [the effective date of this act] NO LATER THAN NOVEMBER 1, 1985.

NEW SECTION. Section 27. Temporary state treasury line of credit for expense of starting state lottery. There is a temporary line of credit that may be drawn by the director of the state lottery from the state general fund and deposited in the state lottery fund, in the amount of $1,500,000. This temporary line of credit may be drawn upon only during the first 12 months after the effective date of [sections 1 through 20] and only for the purpose of financing the initial expenses of starting the state lottery. The director may draw upon all or part of this
temporary line of credit. Any funds advanced under the
temporary line of credit must be repaid OUT OF THE LOTTERY'S
NET REVENUE to the general fund within 1 year of the
advance, AND NO NET REVENUE MAY BE PAID OUT UNDER [SECTION
13(3)(B)] UNTIL ALL ADVANCED FUNDS ARE REPAID. Interest must
be paid at an annual simple interest rate of 10% on funds
advanced, commencing on the day funds are advanced and until
the funds are repaid.

NEW SECTION. Section 28. Severability. If a part of
this act is invalid, all valid parts that are severable from
the invalid part remain in effect. If a part of this act is
invalid in one or more of its applications, the part remains
in effect in all valid applications that are severable from
the invalid applications.

NEW SECTION. Section 29. Effective date. This act is
effective on passage and approval.

-End-
STATEMENT OF INTENT

SENATE BILL 324

Senate State Administration Committee

A statement of intent is required for this act because under the provisions of the act the state lottery commission must establish and operate a state lottery and adopt policies and rules regarding but not limited to:

1. the operations of the lottery director and his staff;
2. the price, number, and size of tickets or chances;
3. the drawing of lottery winners;
4. lottery tickets or chance sales and ticket or chance sales agents;
5. the immediate payment of small prizes;
6. lottery security;
7. purchase or rental of gaming equipment and supplies; and
8. other matters relating to the successful operation of the lottery.

A state lottery is primarily a business operation and has as a purpose the earning of net revenue. The successful operation of a state lottery, as shown by the experience of other state lotteries, depends to a large degree upon the flexibility to operate the lottery as a business enterprise. The success of a lottery also depends upon the operation of the lottery within a statutory framework ensuring the integrity of the staff and all phases of the operation of the lottery and the avoidance of any illegalities or conflicts of interest.

To these ends, it is contemplated that the state lottery commission will be composed of persons conversant with the types of administrative rules necessary to the successful operation of the lottery and will adopt rules ensuring the integrity and success of the lottery.

In accord with the theory that a lottery is primarily a business, it is contemplated that the rules will change or allow changes in the operation of the lottery consistent with statutes as new business techniques and ideas, new games and prizes, better outlets for ticket sales, and better management techniques are discovered.

Any definitions contained in this act pertain only to the state lottery. It is the intent of the legislature that the state lottery commission operate a state lottery only, and it is not intended that the commission shall be involved in any way in other forms of gambling.
SENATE BILL NO. 324
INTRODUCED BY STIMATZ, PAVLOVICH, LYNCH, JACOBSON,
BENGTSON, TOWE, LANE, B. WILLIAMS, DRISCOLL, KOEHNKE,
ELLISON, LORY, PHILLIPS, NATHE, BACHINI, PISTORIA,
TVEIT, VAN VALKENBURG, DANIELS, HAFFEY, QUILICI,
CHRISTIAENS, DEVLIN, ZABROCKI, MANNING, KOLSTAD,
D. BROWN, NISBET, KRUEGER, HARP, PECK, PINSONEAULT,
KEENAN, O'CONNELL, KEYSER, MCCORMICK, GOULD,
MCCALLUM, HARRINGTON, MENAHAN, C. SMITH,
MONTAYNE, JACK MOORE, J. HAMMOND, HAND

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A STATE
LOTTERY AND PROVIDING FOR A COMMISSION, DIRECTOR, AND
PERSONNEL TO OPERATE THE STATE LOTTERY; PROVIDING-- THAT
ELECTRONIC-VIDEO-GAME-MACHINES-OPERATED-BY-THE-STATE-LOTTERY
ARE NOT SLOT MACHINES;-- PROVIDING-- THAT-- THE- MONTANA-CARD-GAMES
ACT-- AND-- BINGO-- AND-- RAFFLES-- LAW DO NOT APPLY TO THE STATE
LOTTERY; AMENDING SECTIONS SECTION 23-5-1817, 23-5-202,
23-5-3027-- AND-- 23-5-4027 MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1
through 20] may be cited as the "Montana State Lottery Act
of 1985".
NEW SECTION.  SECTION 2.  PURPOSE.  (1) THE PURPOSE OF
(SECTIONS 1 THROUGH 20) IS TO ALLOW LOTTERY GAMES IN WHICH
THE PLAYER PURCHASES FROM THE STATE, THROUGH THE
ADMINISTRATORS OF THE STATE LOTTERY, A CHANCE TO WIN A
PRIZE.  (SECTIONS 1 THROUGH 20) DO NOT ALLOW AND MAY NOT BE
CONSTRUED TO ALLOW ANY GAME IN WHICH A PLAYER COMPETES
AGAINST OR PLAYS WITH ANY OTHER PERSON, INCLUDING A PERSON
EMPLOYED BY AN ESTABLISHMENT IN WHICH A LOTTERY GAME MAY BE
PLAYED.

(2) THE ADMINISTRATION AND CONSTRUCTION OF (SECTIONS 1
THROUGH 20) MUST COMPLY WITH ARTICLE III, SECTION 9, OF THE
MONTANA CONSTITUTION, WHICH MANDATES THAT ALL FORMS OF
GAMBLING ARE PROHIBITED UNLESS AUTHORIZED BY ACTS OF THE
LEGISLATURE OR BY THE PEOPLE THROUGH INITIATIVE OR
REFERENDUM.  THEREFORE, (SECTIONS 1 THROUGH 20) MUST BE
STRICTLY CONSTRUED TO ALLOW ONLY THOSE GAMES THAT ARE WITHIN
THE SCOPE OF THIS SECTION AND WITHIN THE DEFINITION OF
"LOTTERY GAME".

(3) THE STATE LOTTERY MAY NOT:

(A) OPERATE A SLOT MACHINE OR CARRY ON ANY FORM OF
GAMBLING PROHIBITED BY THE LAWS OF THIS STATE; OR

(B) CARRY ON ANY FORM OF GAMBLING PERMITTED BY THE
LAWS OF THIS STATE BUT WHICH IS NOT A LOTTERY GAME WITHIN
THE SCOPE OF THIS SECTION AND WITHIN THE DEFINITION OF
"LOTTERY GAME".

THIRD READING
NEW SECTION. Section 3. Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Commission" means the state lottery commission created by [section 3 4].

(2) "Director" means the director appointed by the commission GOVERNOR under [section 4 6] to administer and manage the state lottery.

(3) "Lottery" or "state lottery" means the Montana state lottery created and operated pursuant to [sections 1 through 20].

(4) "Lottery game" means any procedure, including any on-line or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant-winner-games, daily-numbers games, electronic-video-machine-games, and sports-pool games, except GAMES PROHIBITED BY TITLE 23, CHAPTER 5, PART 1; LOTTERIES PROHIBITED BY TITLE 23, CHAPTER 5, PART 2; CARD GAMES REGULATED BY TITLE 23, CHAPTER 5, PART 3; RAFFLES AND BINGO GAMES GOVERNED BY TITLE 23, CHAPTER 5, PART 4; AND sports pools governed by Title 23, chapter 5, part 5.

NEW SECTION. Section 4. State lottery commission -- allocation -- composition -- compensation -- quorum. (1) There is a state lottery commission.
(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner shall be appointed to a 4-year term of office, and the terms shall be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall appoint one of its members as chairman.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of $188 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as
provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of commerce for administrative purposes only, except that only subsections (1), (2), (3), (4), (5), and (6) of 2-15-121 apply to the commission as prescribed in 2-15-121.

NEW SECTION. Section 5. Powers and duties of commission. The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;
+(2) appoint and may remove for good cause a director of the state lottery as provided in section 5;
+(3) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;
+(4) determine the price of each ticket or chance and the number and size of prizes;
+(5) provide for the conduct of drawings of winners of lottery games;
+(6) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;
study the possibility of working with other lottery states to offer regional lottery games;

prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to [sections 1 through 20], and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

adopt rules necessary to carry out [sections 1 through 20].

NEW SECTION. Section 6. Director -- appointment -- compensation -- qualifications. (1) The director is MUST BE appointed by the commission, which may remove him for good cause GOVERNOR AND SHALL HOLD OFFICE AT THE PLEASURE OF THE GOVERNOR.

(2) The director must be qualified by training and experience to direct the state lottery. He must be a full-time employee and may not engage in any other occupation.
1 (3) The director's salary is equal to 90% of the
2 salary of the director of the department of commerce.
3 
4 NEW SECTION. Section 7. Powers and duties of
5 director. (1) The director shall:
6 (a) administer the operation of the state lottery in
7 accordance with [sections 1 through 20] and the rules and
8 other directives of the commission;
9 (b) appoint an assistant director for security and
10 employ and direct personnel necessary to the operation of
11 the state lottery;
12 (c) license lottery ticket or chance sales agents and
13 suspend or revoke licenses pursuant to [sections 1 through
14 20] and commission rules; and
15 (d) maintain, with the assistant director for
16 security, the security of the state lottery.
17 
18 (2) With the concurrence of the commission or pursuant
19 to commission direction or rules, the director may enter
20 into contracts of—no—longer—than—6—months for materials,
21 equipment, and supplies to be used in the operation of the
22 state lottery, for the design and installation of games, for
23 consultant services, and for promotion of the lottery. ALL
24 CONTRACTS MUST BE MADE IN ACCORDANCE WITH STATE LAW. No
25 contract is legal or enforceable that provides for the
26 management of the state lottery or for the entire operation
27 of its games by any private person or firm. When a contract
is awarded, a performance bond satisfactory to the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission, in an amount equal to the price of the contract, must be delivered to the commission.

NEW SECTION. Section 8. Assistant director for security -- qualifications -- duties. (1) The director shall appoint an assistant director for security.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security shall:

(a) be responsible for a security division to assure security, honesty, fairness, and integrity in the operation and administration of the lottery, including but not limited to an examination of the background of all prospective employees, ticket or chance sales agents, lottery vendors, and lottery contractors. THE SECURITY DIVISION IS HEREBY DESIGNATED A LAW ENFORCEMENT AGENCY FOR THE PURPOSE OF ADMINISTERING [SECTIONS 1 THROUGH 20].

(b) in conjunction with the director, confer with the attorney general or his designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the lottery; and
(c) in conjunction with the director, report any alleged violation of law to the attorney general, THE LEGISLATIVE AUDITOR, and any other appropriate law enforcement authority for further investigation and action.

NEW SECTION. Section 9. Ticket or chance sales agents -- licenses. (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

   (i) the financial responsibility and security of the person and his business or activity;

   (ii) the accessibility of his place of business or activity to the public; and

   (iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

   (b) No person under 18 years of age may sell lottery tickets or chances.

   (c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

   (4) The director may issue temporary licenses upon conditions he considers necessary.

   (5) License applicants must be charged a $50 fee to cover the cost of investigating and processing the application.

   (6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

   (7) A licensed agent shall display his license or a copy thereof conspicuously in accordance with the commission's rules.

   (8) A license is not assignable or transferable.

   (9) No employee of a ticket or chance sales agent may be required to sell lottery game tickets or chances if the sale is against his religious or moral beliefs.

   (10) Sales agents are entitled to no more than a 5% commission on tickets and chances sold.

   (11) The director may require each sales agent to keep a complete and up-to-date set of records and accounts fully showing his sales and provide it for inspection upon request of the commission, the director, the department of administration COMMERCE, THE OFFICE OF THE LEGISLATIVE AUDITOR, or the office of the attorney general.

   (12) Payments by sales agents to the state lottery must be by check, bankdraft, electronic fund transfer, or other
recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of sections 1 through 20 or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing.

NEW SECTION. Section 10. Sales restrictions. (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances must be paid for in cash.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, any-person employees of any firm or governmental agency auditing or investigating the state lottery, or members of their families living with them.

(5) The names of elected officials may not appear on any ticket or chance.

NEW SECTION. Section 11. Disclosure of odds. The
director shall make adequate disclosure of the odds with respect to each state lottery game by stating the odds in lottery game advertisements and by posting the odds at each place in which tickets or chances are sold.

NEW SECTION. Section 12. State lottery fund. There is a fund of the enterprise fund type, as defined in 17-2-102, to be known as the state lottery fund. The gross revenue from the state lottery, consisting of money from the sale of lottery tickets and chances, ticket or chance sales agent license fees, unclaimed prizes, or any other source, must be deposited in the fund, except that, at the discretion of the director, money for prizes paid immediately by a sales agent and money equaling the sales agent's commission may be drawn by a sales agent from his gross revenue before depositing his gross revenue with the state lottery.

NEW SECTION. Section 13. Disposition of revenue. (1) Forty-five-percent APPROXIMATELY 45% of the money paid for tickets or chances in each separate state lottery game must be paid out as prize money for the game.

(2) Up to 20% of the gross revenue from the state lottery may be used by the director to pay the operating expenses of the state lottery. Commissions paid to lottery ticket or chance sales agents are NOT a state lottery operating expense.

(3) That part of all gross revenue not used for the
payment of prizes, **SALES COMMISSIONS**, and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by [section 1112] as follows:

(a) 50% into the state general fund;

(b) 50% of the net revenue generated in each county must be paid into the general fund or that county. Fifty percent of the net revenue paid into the general fund of each county must be paid by that county to the general funds of the incorporated cities and towns and consolidated local governments in that county in the ratio which the population within the corporate limits of each city, town, or consolidated local government bears to the total population of the county. The population of each city, town, and consolidated local government shall be determined by the last preceding official federal census.

**NEW SECTION.** Section 14. Felony and gambling-related convictions -- ineligibility for lottery positions. No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent. **PRIOR TO APPOINTMENT TO ANY OF THE ABOVE POSITIONS, A PERSON SHALL SUBMIT TO THE COMMISSION A FULL SET OF FINGERPRINTS MADE AT A LAW ENFORCEMENT AGENCY BY AN AGENT OR OFFICER OF SUCH AGENCY ON FORMS SUPPLIED BY THE**
AGENCY.

NEW SECTION. Section 15. Conflict of interest. No commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of his family living with him may have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier.

NEW SECTION. Section 16. Drawings for and payment of prizes -- unclaimed prizes. (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings must be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff and a professional staff employee of the legislative auditor's office prior to and after each public drawing.

(2) The commission may provide for the immediate payment of prizes by the ticket or chance sales agent who sold the winning ticket or chance whenever the amount of the prize is less than an amount set by the commission. Payment may not be made directly by an electronic gaming machine, or device, or by a computer terminal: IMMEDIATE
PAYMENT OF PRIZES, INCLUDING PAYMENT MADE DIRECTLY BY AN ELECTRONIC GAME, MACHINE, OR DEVICE OR BY A COMPUTER TERMINAL, MAY NOT BE PERMITTED.

(3) Prizes over $100,000 may in the discretion of the director COMMISSION be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 10 years, except that each installment payment must be at least $20,000.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order.

NEW SECTION. Section 17. Disclosures by gaming suppliers. (1) Any person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of such bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;
(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved therewith and the officers, directors, and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company which is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed;

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;
(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;
(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (1)(a) of a criminal offense punishable by imprisonment for more than 1 year AND SHALL SUBMIT TO THE COMMISSION A FULL SET OF FINGERPRINTS OF SUCH PERSON MADE AT A LAW ENFORCEMENT AGENCY BY AN AGENT OR OFFICER OF SUCH AGENCY ON FORMS SUPPLIED BY THE AGENCY;
(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (1)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;
(f) audited annual financial statements for the preceding 5 years;
(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts
attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of [sections 1 through 20].

(2) No person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may have any financial interest or connection with any person, firm, association, or corporation licensed as a ticket or chance sales agent.

(3) No contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is enforceable against the state unless the requirements of this section have been fulfilled.

NEW SECTION. Section 18. Annual audit. The legislative auditor shall conduct an annual audit of the state lottery. The costs of the audit must be paid out of the state lottery fund. A copy of the audit report must be
delivered to the commission, the director, the governor, the
president of the senate, the speaker of the house of
representatives, and each member of the appropriate
committee of each house of the legislature as determined by
the president of the senate and the speaker of the house.

NEW SECTION. Section 19. Study of lottery security.
(1) After the first 9 months of sales to the public and
every 2 years after that, the commission shall engage an
independent firm experienced in security procedures,
including but not limited to computer security and systems
security, to conduct OFFICE OF THE LEGISLATIVE AUDITOR SHALL
conduct or have conducted a comprehensive study and
evaluation of all aspects of security in the operation
of the lottery. THE COSTS OF THE AUDIT MUST BE PAID OUT OF
THE STATE LOTTERY FUND. The study must include:

(a) personnel security;
(b) lottery sales agent security;
(c) lottery contractor security;
(d) security of manufacturing operations of lottery
contractors;
(e) security against ticket or chance counterfeiting
and alteration and other means of fraudulently winning;
(f) security of drawings among entries or finalists;
(g) computer security;
(h) data communications security;
(i) database security;
(j) systems security;
(k) lottery premises and warehouse security;
(l) security in distribution;
(m) security involving validation and payment procedures;
(n) security involving unclaimed prizes;
(o) security aspects applicable to each particular lottery game;
(p) security of drawings in games where winners are determined by drawings;
(q) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration, or sales; and
(r) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

(2) The security audit report must be presented to the commission, the director, the governor, the president of the senate, and the speaker of the house of representatives.

NEW-SECTION.--Section-19.--Investigations--and--legal services-and-proceedings.--The--attorney--general--shall provide--legal-services-for-the-state-lottery-at-the-request of--the--director--assistant--director--for--security--or
commission—the attorney—general—shall—make—reasonable
efforts—to—ensure—that—there—is—continuity—in—the—legal
services—provided—and—that—the attorneys—providing—legal
services—have—expertise—in—the—field.

(2) The attorney—general—shall—make—investigations—and
prosecute—or—defend—on—behalf—of—the—director—and
commission—suits—and—other—proceedings—involving—the—state
lottery—or—necessary—to—carry—out—the—purposes—of—sections
i—through—21.

(3) The—commission, the director, and assistant director
for—security—may—also—carry—out—investigations. The attorney
general—must—be—informed—of—each—in—investigation—before—it
begins—and—must—be—informed—of—the—results—of—the
investigation.

(4) Upon—the—request—of—the—assistant—director—for
security—the attorney—general—and—the—department—of—justice
must—give—the—assistant—director—for—security—such
information—as—may—tend—to—assure—security, honesty,
fairness—and—integrity—in—the—operation—and—administration
of—the—lottery—as—they—may—have—in—their—possession,
including—but—not—limited—to—manual—or—computerized
information—and—data.

NEW SECTION. Section 20. Penalties. It is a
misdemeanor, punishable by a fine not to exceed $500 or
imprisonment in the county jail for a term not to exceed 6
months, or both, to knowingly or purposely:

(1) require an employee to sell lottery tickets or chances in violation of [section 8 9(9)];
(2) violate [section 8 9(11)];
(3) sell a lottery ticket or chance to a person under 18 years of age;
(4) violate [subsection (3) or (4) of section 9 10];
(5) serve as a commissioner, director, assistant director, employee, or licensed agent of the state lottery in violation of [section 13 14];
(6) violate [section 14 15];
(7) violate [section 16 17]; or
(8) influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials.

Section 21.--Section 23-5-18: -MCA, is amended to read:

23-5-18: Definitions:--1--A slot machine is defined as a machine operated by--inserting--a--coin--token--chip,
trade--check--or--paper--currency--therein--by--the--player--and
from-the-play--of--which--he--obtains--or--may--obtain--money;
checks--chips--tokens--or--paper--currency--redeemable--in
money: Electronic-video-game-machines-operated-by--the--state
lottery--are--not--slot--machines; Merchandise-vending-machines
where-the-element--of--chance--does--not--enter--into--their
operation--are--not--within--the--provisions--of--this--part.
Section 21. Section 23-5-202, MCA, is amended to read:

"23-5-202. Application. This part shall not apply to the provisions of part 4 of this chapter, to [sections 1 through 20], or to the giving away of cash or merchandise attendance prizes or premiums by public drawings at agricultural fairs or rodeo associations in this state, and the county fair commissioners of agricultural fairs or rodeo associations in this state may give away at such fairs cash or merchandise attendance prizes or premiums by public drawings."

Section 23. Section 23-5-302, MCA, is amended to read:

"23-5-302. Definitions. As used in this part and unless the context requires otherwise, the following terms or phrases have the following meanings:

1. "Authori zed card game" means any card game permitted by this part;
2. "Card game" means any game played with cards for which the prize is money or any item of value, except games played on electronic video game machines operated by the
SB 0324/03

Section 24—Section 23-5-402, MCA, is amended to read:

"23-5-402—Definitions. As used in this part—unless the context requires—otherwise—the following terms or phrases shall have the following meanings:

(a) "Game of chance" means the specific kind of game of chance commonly known as:

(b) "Bingo" or "Keno," in which prizes are awarded on the basis of designated numbers or symbols on a card—which conform to numbers or symbols selected at random—except games played on electronic video game machines—operated by the state lottery;

(b) "Raffles," which are conducted by drawing for prizes;

(a) "Equipment" means:

(a) With respect to bingo or keno, the receptacle—and numbered—objects drawn from it—the master board upon which such objects are placed—as drawn—the cards—or—sheets bearing—numbers—or other designations to be covered and the objects used to cover them—the boards—or—signs—however operated—used—to announce—or—display—the numbers—or designations as they are drawn—the public address system—and all other articles essential to the operation—conduct—and playing of bingo or keno—or

(b) With respect to raffles, the implements—and devices,
and—machines—designed—intended—or—used—for—the-conduct-of
raffles—and—the-identification-of-the-winning-number-or-unit
and—the-ticket—or-other-evidence-of-right-to-participate—in
raffles:"

NEW SECTION. Section 22. Initial appointment and
terms of commissioners. Initial appointments to the
commission must be made within 30 days after [the effective
date of this act]. Two of the initial appointees shall serve
for 2 years, two shall serve for 3 years, and one shall
serve for 4 years.

NEW SECTION. Section 23. Initial duties of commission
-- lottery study -- first game. (1) The commission shall
immediately conduct an initial study of other state
lotteries.
(2) The commission shall begin the operation of state
lottery games at the earliest practicable time and in any
event within 150 days after [the effective date of this act]
NO LATER THAN NOVEMBER 1, 1985.

NEW SECTION. Section 24. Temporary state treasury
line of credit for expense of starting state lottery. There
is a temporary line of credit that may be drawn by the
director of the state lottery from the state general fund
and deposited in the state lottery fund, in the amount of
$1,500,000. This temporary line of credit may be drawn upon
only during the first 12 months after the effective date of
[sections 1 through 20] and only for the purpose of financing the initial expenses of starting the state lottery. The director may draw upon all or part of this temporary line of credit. Any funds advanced under the temporary line of credit must be repaid OUT OF THE LOTTERY'S NET REVENUE to the general fund within 1 year of the advance, AND NO NET REVENUE MAY BE PAID OUT UNDER [SECTION 13(3)(B)] UNTIL ALL ADVANCED FUNDS ARE REPAIRED. Interest must be paid at an annual simple interest rate of 10% on funds advanced, commencing on the day funds are advanced and until the funds are repaid.

NEW SECTION. Section 25. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 26. Effective date. This act is effective on passage and approval.

-End-
ASSUMPTIONS: (continued)

Legislative Auditor
1. That lottery drawings will be held in Helena each week of the year.
2. Witnessing, including examination of the equipment prior to and after each public drawing will be required and will cost $80 each.
3. That good controls are established centrally over the lottery system with accountability for money and tickets for each lottery drawing.

FISCAL SUMMARY

<table>
<thead>
<tr>
<th>OPTION I</th>
<th>OPTION II</th>
</tr>
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<tbody>
<tr>
<td><strong>Average of Arizona, Maine, New Hampshire and Vermont</strong></td>
<td><strong>Arizona's Experience</strong></td>
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<tr>
<td><strong>$16 Per Capita Gross Sales</strong></td>
<td><strong>$26 Per Capita Gross Sales</strong></td>
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<tr>
<th>Year</th>
<th>Total Revenue</th>
<th>Total Costs</th>
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<td>FY1987</td>
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<td><strong>Total Costs</strong></td>
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<td><strong>$7,061,717</strong></td>
<td><strong>$7,061,717</strong></td>
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*Assumes partial implementation due to start up delay.
Based on data from Arizona, it is assumed it will take 8 months before the Lottery is operational.

Costs of administration for the Lottery would be a maximum of 20% of gross sales. The 5% sales commission reflects the maximum revenue potential of this proposal.

is based on Arizona's gross per capita sales of $25. The fiscal impact of this option has been provided to the Lottery. New Hampshire and Vermont, Option II is the average of gross per capita sales observed in Arizona, Maine, and Massachusetts, and is the most likely scenario consistent with the method used to determine gross sales from人口. Revenue estimates were derived from research conducted, reflecting the gross per capita sales of other states.

Revenue estimates are based on actual revenue potential of 72% for revenues. This estimate represents a most likely scenario consistent with the Lottery.

The Department of Commerce would realize no increased costs resulting from this option.

The act allocates the Lottery to the Department of Commerce for administrative purposes, but excludes the establishment of new administrative functions.

This fiscal note is written assuming that a Lottery is the only activity that will be implemented. However, the act allocates the Lottery to the Department of Commerce for administrative purposes. Department of Commerce Department of Commerce.

ASSUMPTIONS: Providing that the Montana card games act and bingo and raffles law do not apply to the state lottery.

Providing that electronic video game machines operated by the state lottery are not slot machines, an act establishing a state lottery and providing for a commission, director, and personnel to operate the state lottery, in compliance with a written request received February 6, 1985.
**Total Expenditures:**

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<td>Equipment</td>
<td>$ 16,626</td>
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</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td><strong>$ 1,297,689</strong></td>
<td></td>
</tr>
<tr>
<td>Prizes</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Costs</strong></td>
<td><strong>$ 2,962,800</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Total Revenue:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Proposed</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 6,584,000</td>
<td></td>
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</tbody>
</table>

**Fiscal Summary:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Revenue</td>
<td>$ 6,584,000</td>
</tr>
<tr>
<td>Total Costs</td>
<td>$ 4,260,489</td>
</tr>
<tr>
<td><strong>Net Revenue</strong></td>
<td>$ 2,323,511</td>
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</table>

**Revenue Distribution:**

<table>
<thead>
<tr>
<th>Source</th>
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<tbody>
<tr>
<td>State General Fund</td>
<td>$ 1,161,756</td>
</tr>
<tr>
<td>Local Governments</td>
<td>$ 1,161,755</td>
</tr>
<tr>
<td><strong>Net Revenue</strong></td>
<td>$ 2,323,511</td>
</tr>
<tr>
<td>FY 87</td>
<td></td>
</tr>
<tr>
<td>-----------------</td>
<td>-------</td>
</tr>
<tr>
<td>$ 680,006</td>
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<tr>
<td>1,879,587</td>
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<tr>
<td>22,165</td>
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<tr>
<td><strong>$ 2,581,758</strong></td>
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<tr>
<td><strong>5,925,600</strong></td>
<td></td>
</tr>
<tr>
<td>$ 8,507,358</td>
<td></td>
</tr>
<tr>
<td><strong>$13,168,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>$13,168,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>8,507,358</strong></td>
<td></td>
</tr>
<tr>
<td><strong>$ 4,660,642</strong></td>
<td></td>
</tr>
<tr>
<td><strong>$ 2,330,321</strong></td>
<td></td>
</tr>
<tr>
<td><strong>2,330,321</strong></td>
<td></td>
</tr>
<tr>
<td><strong>$ 4,660,642</strong></td>
<td></td>
</tr>
<tr>
<td>Description</td>
<td>FY 87</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Increase Total Proprietary Fund</td>
<td>$1,499,861</td>
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<tr>
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<tr>
<td>Operating Expenses</td>
<td>$1,749</td>
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<tr>
<td>Personal Services</td>
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<tr>
<td>Proposed</td>
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<tr>
<td>Current Department of Justice Proposed</td>
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<tr>
<td>Increase Total Proprietary Fund</td>
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<tr>
<td>Operating Expenses</td>
<td>0.00</td>
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<tr>
<td>Personal Services</td>
<td>0.00</td>
</tr>
<tr>
<td>Proposed</td>
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<tr>
<td>Current Legislative Auditor</td>
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<tr>
<td>Operating Expenses</td>
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<tr>
<td>Personal Services</td>
<td>0.00</td>
</tr>
<tr>
<td>Proposed</td>
<td>0.00</td>
</tr>
<tr>
<td>Current Lottery Commission</td>
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<tr>
<td>Expenditures:</td>
<td></td>
</tr>
<tr>
<td>Fiscal Impact: <em>Based on the average of Arizona, Maine, New Hampshire and Vermont ($16 per capita gross sales)</em></td>
<td></td>
</tr>
</tbody>
</table>

*OPTION 1:

Request No. FREN358-85
TECHNICAL OR MECHANICAL DEFECTS:

1. The Attorney General believes Section 19 of Senate Bill 324 to be duplicative and recommends its removal. If Section 19 is removed, the following costs would be applicable.

   Department of Justice
   
   General Fund Expenditures                                FY 86                FY 87
   with Section 19:                                          $ 80,548              $ 149,861
   Without Section 19:                                      $ 17,968              $  32,089

2. Administrative attachment is inconsistent with other attached entities, accounting, payroll, personnel and record keeping functions would have to be duplicated within the lottery, adding to operating expenses.

3. The constraints placed on license suspension; the requirement to give "notice and opportunity for a hearing" prior to suspension of a license would make it impossible to stop a licensee who was in violation from continuing to violate the act, e.g. selling tickets to minors.

4. The percentage to be "paid" out for prizes is too precisely stated. An exact 45% is required to be paid out which is nearly impossible to achieve. A qualifier such as "at least" or "not less than" would allow some flexibility in an uncertain marketing program.

5. There is neither provision for payment of proceeds from lottery sales by agents to the lottery nor penalty for failure to do so. The act does not specify whether sales agents must pay for tickets before or after they are sold. There is no requirement to pay weekly, monthly or even annually. No remedy is provided if they fail to pay for tickets to assure collection. Washington had 6% of sales in receivable status at the end of its first 8 months of operation and over half of the receivables were in a delinquent status. In Montana that would equate to over a million dollar in delinquent receivables.

6. Violations which are criminal in nature are not dealt with in a consistent manner. Forgery alteration and counterfeiting, the most common crimes against a lottery are not even mentioned in the act. If prosecuted as acts of fraud under the act, the maximum penalty would be $500 or 6 months in prison - the same penalty as that for accepting a check or not keeping "up-to-date" records. Ref.: Pg. 19 and 20 starting at line 20.

7. The grant of authority to the commission is very broad. The commission could in the name of lottery adopt any game format it chooses and effectively create almost any casino game that could be adapted to ticket or electronic video form.
<table>
<thead>
<tr>
<th>Year</th>
<th>Per Capita Proceeds (000)</th>
<th>Per Capita Gross Sales (000)</th>
<th>Net</th>
<th>Population (000)</th>
<th>Average Rates of Return</th>
<th>Totals</th>
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<tbody>
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<td>2,088,512</td>
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<td>5,358</td>
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<td>495</td>
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<tr>
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<tr>
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<td></td>
</tr>
</tbody>
</table>

*By 1983 Population & Income Data for Lottery States*

The figures below were derived from an article in the March, 1984 issue of *State Legislatures Magazine.*