

# **SUNSET COMMISSION DECISIONS**



**TEXAS LOTTERY COMMISSION**

**July 2004**

## **AGENCY INFORMATION**

## Agency at a Glance

---

In 1991, Texas voters approved a constitutional amendment authorizing a state lottery. In 1993, the Legislature created the Texas Lottery Commission (the Commission) to assume the administration of the lottery and also transferred the administration of the Bingo Enabling Act to the new agency. Today, the Commission administers and markets the state lottery and regulates the charitable bingo industry through licensing and enforcement.

### Key Facts

- **Funding.** The Commission operated with a budget of \$193.7 million in fiscal year 2003 – all of which came from lottery proceeds and bingo licensing fees.
- **Lottery Revenue.** In fiscal year 2003, the lottery generated about \$3.1 billion in revenue, of which \$882 million was transferred to the Foundation School Fund. During that same year, the agency transferred unclaimed prize money totaling \$66.9 million to accounts benefitting indigent health care. The remainder of the proceeds pay for prizes, the agency's administrative costs, and retailer commissions. Through fiscal year 2003, the Texas Lottery transferred \$10.8 billion dollars to the State.
- **Bingo Revenue.** In calendar year 2003, charitable bingo generated \$573 million in revenue, of which \$30 million was distributed for charitable purposes. Also in that year, the Commission collected about \$24.9 million in prize fees, licensing fees, and rental taxes from the conduct of bingo.
- **Staffing.** The Commission has 325 full-time equivalent positions. Nearly three-quarters of the positions are located in the Austin headquarters and the rest are in the Commission's 16 claim centers and five regional offices.
- **Licensing.** The Commission regulates approximately 16,307 lottery retailers, 1,389 bingo conductors, 449 bingo lessors, 15 bingo equipment manufacturers, 15 bingo equipment distributors, and one bingo system service provider.
- **Enforcement.** In fiscal year 2003, the agency received 800 complaints for both lottery and bingo, resolved 772 complaints, inspected 727 licensed lottery retailers, and inspected and audited 1,045 bingo licensees and applicants. Additionally, the Commission issued 363 agency orders resulting in sanctions.
- **Contracts.** The Commission outsources many key lottery functions including lottery games operation. The contracted lottery operator, GTECH Corporation, is responsible for providing lottery information technology systems, equipment, and sales staffing. In fiscal year 2003, the Commission spent about \$83.4 million on this contract. The Commission's other major contracts include advertising services and instant ticket manufacturing.



## **ISSUES / RECOMMENDATIONS**

# **Issue 1 Texas Has a Continuing Need for the Texas Lottery Commission.**

## **Recommendation**

### Change in Statute

#### **1.1 Continue the Texas Lottery Commission for 12 years.**

This recommendation would continue the Texas Lottery Commission as the agency responsible for administering and marketing the State lottery and regulating charitable bingo.

## **Fiscal Implication**

If the Legislature continues the current functions of the Lottery Commission, using the existing organizational structure, the agency's annual appropriation of approximately \$179 million would continue to be required for its operation. This appropriation is entirely paid for by the sale of lottery products and the licensing of bingo entities.

## **Responses**

---

---

### **Agency**

The Lottery Commission concurs with this recommendation. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The Bingo Advisory Committee concurs with this recommendation.

### **For**

Cliff O. Bickell, President – Scientific Games

### **Against**

None received.

**Recommended Action:** Adopt Recommendation 1.1.

**Commission Decision:** Adopted Recommendation 1.1.



## **Issue 2 The Small Size of the Texas Lottery Commission Limits Its Effectiveness and Communication Among Its Members.**

### **Recommendation**

#### Change in Statute

#### **2.1 Expand the Texas Lottery Commission from three to five public members.**

This recommendation would increase the size of the Lottery Commission by two members. Commissioners would continue to serve on a part-time basis and one member would still be required to have experience in the bingo industry. The Commission would still be subject to the Open Meetings Act when a quorum of its members deliberate and make decisions concerning the agency. However, with an expanded Commission, two members would be able to have informal discussions and share ideas concerning the agency. Further, with more members, the Commission should consider creating subcommittees to oversee bingo regulation, procurement practices, and any other functional areas needing a high level of oversight.

### **Fiscal Implication**

This recommendation would have a minor fiscal impact to the State. Expanding the Commission would result in additional travel expenses for two new Commission members. Based on current projections, costs would increase by about \$1,600 per Commissioner per year. The agency currently receives up to 7 percent of lottery sales for its administration and should use this allocation to pay the travel expenses of the two new Commission members.

## **Responses**

---

---

### **Agency**

The Commission does not concur with this recommendation. (C. Tom Clowe, Jr., Chairman – Texas Lottery Commission)

### **For**

None received.

### **Against**

None received.

### **Modification**

1. Increase the size of the Commission from three to six or seven members. One or two public members should be lottery retailers and one or two other members should be individuals who are either lottery players with full understanding of the games or “recovered gamblers.” (Dawn Nettles – The Lotto Report)

**Recommended Action:** Adopt Recommendation 2.1.

**Commission Decision:** Adopted Recommendation 2.1.



## **Issue 3 The Lottery Commission’s Analysis and Approval of Major Financial Decisions Could Be Strengthened.**

### **Recommendations**

#### Change in Statute

##### **3.1 Require the Commission to review and approve all major expenditures.**

This recommendation would give procurement authority to the Commission, which could delegate certain procurement duties to the Executive Director. This authority is typical for most state boards and commissions. All major procurements would require Commission review and approval. The Commission would determine, by rule, which procurements would be considered major, based on the cumulative value of the contract, as well as other relevant factors.

##### **3.2 Require the agency to develop a comprehensive business plan.**

The Lottery Commission’s major initiatives should be guided by a comprehensive business plan to ensure their cost effectiveness. The business plan should include a specific description of each program, key management information, accurate financial data, and a detailed financial management plan. The Commission should review the business plan at least annually to assess the overall performance and value of each project. Projects that fail to meet financial objectives should be adjusted or terminated. This recommendation will build on recent efforts by the agency and ensure that business planning continues in the future.

#### Management Action

##### **3.3 The agency should use its cost-benefit analyses as a benchmark to judge the ongoing effectiveness of its expenditures.**

Since the agency has begun performing cost-benefit analyses of major expenditures, it should use this information to determine whether those expenditures are achieving their original objectives once underway. Further, by comparing a program’s original expectations to its ongoing performance, the agency will be able to judge the accuracy of the projections provided in its cost-benefit analyses.

### **Fiscal Implication**

These recommendations could potentially have a positive fiscal impact to the State. Oversight of major programs and procurements should ensure that the actual costs of agency initiatives, as well as a reasonable estimate of the benefit of the initiative, are taken into consideration when committing public funds, potentially reducing the administrative costs of the agency. Costs in preparing the agency-wide business plan should be offset by resulting savings, and any savings resulting from lower administrative costs would provide additional funding to the Foundation School Fund.

## **Responses**

---

---

### **Agency Response**

The Lottery Commission concurs with these recommendations with the following comments.

Recommendation 3.2: While the agency currently relies on several documents for the purpose of business planning, the agency recognizes the benefit of developing a single comprehensive business plan. The Commission is moving forward with implementation of this recommendation.

Recommendation 3.3: The agency notes that, as its process for developing cost benefit analyses was only recently put in place, the proper time to perform retrospective analysis has just begun. It is the agency's intent to utilize the cost benefit analysis information to assess the effectiveness of major expenditures.

(Reagan E. Greer, Executive Director – Texas Lottery Commission)

**For**

Supports Recommendations 3.1 and 3.3. (Cliff O. Bickell, President – Scientific Games)

**Against**

None received.

**Modification**

1. Although Recommendation 3.1 takes contracting authority from the Executive Director and gives it to the Commission, the Executive Director's authority should be limited even further. (Dawn Nettles – The Lotto Report)

**Recommended Action:** Adopt Recommendations 3.1 through 3.3.

**Commission Decision:** Adopted Recommendations 3.1 through 3.3.

## **Issue 4 The Bingo Advisory Committee Has Progressed, but Needs Continued Improvement to Effectively Advise the Commission on Bingo Regulation in Texas.**

### **Recommendations**

#### Change in Statute

#### **4.1 Require the Bingo Advisory Committee to develop an annual work plan and make recommendations to the Commission that identify specific issues that need addressing.**

This recommendation requires the Committee to develop a yearly work plan that would detail its objectives and issues it would like to address during the year. This work plan should be formally approved by the Lottery Commission in a public meeting. The issues addressed by BAC should include assessing how trends in the charitable bingo industry relate to Commission regulation, reviewing bingo rules for needed changes, additions, or deletions, and addressing other issues as determined by the Commission. At year's end, BAC should assess its accomplishments, identify opportunities to improve the way the agency regulates charitable bingo, and develop specific recommendations for Commission action.

#### **4.2 Eliminate the statutory designation of a slot for a system service provider on the advisory committee.**

Since the agency only licenses one system service provider, this recommendation would eliminate an unnecessary slot on the Bingo Advisory Committee. The Commission could fill this position with a person representing the general public or another license group.

### **Fiscal Implication**

These recommendations would not result in a fiscal impact to the State.

## **Responses**

---

---

### **Agency Response**

The Lottery Commission concurs with these recommendations. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The Bingo Advisory Committee concurs with these recommendations.

### **For**

None received.

### **Against**

None received.

**Recommended Action:** Adopt Recommendations 4.1 and 4.2.

**Commission Decision:** Adopted Recommendations 4.1 and 4.2.



## **Issue 5 State Oversight of System Service Providers Is No Longer Needed.**

### **Recommendation**

Change in Statute

#### **5.1 Abolish regulation of system service providers.**

This recommendation would abolish the licensing requirements for system service providers and the regulation of automated bingo services. Any licensee choosing to use such services in the future will continue to be subject to all provisions of the Act and agency rule. If licensing were repealed, the section of the Bingo Enabling Act that requires one member of the current nine-member advisory committee to be a system service provider should also be repealed, as provided for in Issue 4 of this report

#### **Fiscal Implication**

This recommendation would not result in a fiscal impact to the State. Savings from eliminating licensure of the existing SSP would be offset by reductions in licensing revenue, or \$1,000 per year, per license.

### **Responses**

---

#### **Agency Response**

The Lottery Commission concurs with this recommendation. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The Bingo Advisory Committee concurs with this recommendation.

#### **For**

None received.

#### **Against**

None received.

**Recommended Action:** Adopt Recommendation 5.1.

**Commission Decision:** Adopted Recommendation 5.1.



## **Issue 6 Key Elements of the State Lottery Act and the Bingo Enabling Act Do Not Conform to Commonly Applied Licensing Practices.**

### **Recommendations**

#### **Licensing**

##### Change in Statute

#### **6.1 Require the agency to adopt clear qualifications for bingo licensure.**

This recommendation would require the agency to develop, through rule, comprehensive licensing qualifications. By listing specific qualifications for licensure, licensees and the public are provided sufficient notice of licensing requirements. Guidelines would also assist the agency in consistent licensing, and provide a sound basis for license denials and other enforcement matters.

#### **6.2 Eliminate statutory requirements governing the length of time bingo conductors must be in existence to be eligible for a license.**

This recommendation would eliminate varying existence requirements for conductors currently in statute. Instead, the statute would require the Commission to adopt rules establishing standard time periods for the existence of all types of conductors. This change would ensure organizations are legitimate and established, and eliminate inconsistent standards for different types of organizations.

#### **6.3 Require the agency to create a standard bingo license renewal process.**

This recommendation would require the Commission, through rule, to document its renewal process from submission to completion. The Commission would adopt provisions addressing license renewals for all licensees to ensure continued competency of the licensee. These guidelines will provide notice, maintain consistency, and designate standard renewal practices.

#### **6.4 Require the agency to consider compliance history before renewing bingo licenses and authorize denial of license renewals based on outstanding administrative sanctions.**

This recommendation would require the agency to consider compliance history before all license renewals, providing the agency statutory authority to deny renewals based on the licensee's outstanding noncompliance with an existing agency enforcement action. Considering compliance history before license renewals will ensure timely resolution of any compliance issues and also increase accountability.

##### Management Action

#### **6.5 The agency should increase oversight of temporary bingo licenses where appropriate.**

The Lottery Commission should consider subjecting temporary licenses to the same oversight requirements provided in statute for standard licenses, where appropriate.

#### **Enforcement**

##### Change in Statute

#### **6.6 Require the agency to analyze sources and types of all complaints to identify and address problem areas and trends.**

This recommendation would require the agency to analyze its reported complaint activity to identify any trends or issues concerning certain violations. The agency could use this information to educate

its licensees, focus on common problems, and possibly change regulatory language to address new concerns.

**6.7 Provide statutory language to ensure all complaints are investigated in a reasonable amount of time.**

This recommendation would help ensure speedy resolution of complaints by requiring investigations to be completed in a reasonable amount of time, which should be defined by the Commission in rule. Though a current internal policy encourages timely resolution, statutory language would formalize adherence to reasonable time requirements, and provide public notice of expected time frames for resolution.

**6.8 Require the agency to adopt clear standards of conduct for bingo licensees.**

This recommendation would require the Commission to adopt, by rule, standards of conduct developed by the agency. Comprehensive standards of conduct would include ethical standards and appropriate behavior for bingo licensees. This recommendation would give notice to both the public and licensees of appropriate standards of practice, and provide greater enforcement authority for the agency to act on various complaints. Adopting standards through the rulemaking process provides bingo licensees and the public an opportunity to participate in the development of these rules.

**6.9 Provide the Commission with authority to put suspended bingo licensees on probation.**

This recommendation would give the Commission a full range of administrative sanctions for its bingo licensees, allowing the agency to put a suspended licensee on probation. If the agency chooses to use probation as a sanction, it should have clear probation standards in rule, including procedures for imposing appropriate conditions, notifying probationers of those conditions and actions they need to take, and tracking probationers' progress.

**6.10 Require the Commission to adopt rules governing all bingo compliance monitoring and enforcement procedures.**

This recommendation would require the Lottery Commission to develop rules that provide a framework for its compliance monitoring efforts, such as audits and inspections, and enforcement activities. The recommendation would also require the Commission to develop, by rule, timelines for resolutions of violations found in audits. A licensee would have to prove corrective measures or be subject to sanctions within the established timelines.

**6.11 Require the Commission to adopt a schedule of sanctions for bingo enforcement actions in rule.**

The recommendation would direct the agency to develop a penalty structure, by rule, to guide the application of administrative penalties against licensees for failing to comply with the statute and rules. Such a penalty structure would ensure the appropriate application of penalties to each violation. The Commission would develop a list to define or summarize the most common violations, and a schedule of penalties tied to the seriousness and frequency of particular offenses. The penalty structure would allow for deviations if mitigating circumstances are involved, for which the Commission would need to clearly establish reasons.

## **6.12 Expand the Lottery Commission's authority to temporarily suspend bingo licenses to prevent financial losses to the State.**

This recommendation would amend the agency's existing temporary suspension authority to include the ability to temporarily suspend a bingo license in instances where action is necessary to prevent financial loss to the State. For example, the Bingo Division Director could issue a temporary suspension order if a licensee fails to remit quarterly taxes or prize fee payments to the agency. To implement this recommendation, the Commission would be required to adopt rules governing the use of its temporary suspension authority.

### **Fiscal Implication**

These recommendations would not have a significant fiscal impact to the State. The recommendations change procedures in ways that should not require additional resources. Allowing the Commission to temporarily suspend a bingo license when tax revenue is at stake may result in fewer losses to the State, however, the savings cannot be estimated.

## **Responses**

---

### **Agency Response**

Recommendations 6.1 and 6.2: The *Lottery Commission* concurs with these recommendations. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The *Bingo Advisory Committee* concurs with these recommendations.

Recommendation 6.3: The *Lottery Commission* concurs with this recommendation. The agency has started the process to develop the rules referred to in this recommendation. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The *Bingo Advisory Committee* concurs with this recommendation.

Recommendation 6.4: The *Lottery Commission* concurs with this recommendation. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The *Bingo Advisory Committee* concurs with this recommendation.

Recommendation 6.5: The *Lottery Commission* generally concurs with this recommendation. The agency will continue to examine the potential fiscal impact of this recommendation. The agency will explore a variety of options that will meet the intent of the recommendation while remaining fiscally responsible. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The *Bingo Advisory Committee* opposes this recommendation. The Committee feels that no further oversight is required.

Staff Comment: This recommendation is a management action, rather than a recommendation for statutory change. As such, the agency will be able to decide how to implement the change in the most cost-effective manner. For example, the agency may choose to audit only temporary licenses that have generated significant revenue and may be at risk of failing to remit the full amount of taxes owed to the State.

Recommendation 6.6: The *Lottery Commission* concurs with this recommendation. The agency will continue to develop its universal complaint tracking system. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The *Bingo Advisory Committee* concurs with this recommendation.

Recommendation 6.7: The *Lottery Commission* concurs with this recommendation. The agency will continue to develop its universal complaint tracking system. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The *Bingo Advisory Committee* concurs with this recommendation.

Recommendations 6.8, 6.9, 6.10, and 6.11: The *Lottery Commission* concurs with these recommendations. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The *Bingo Advisory Committee* concurs with these recommendations.

Recommendation 6.12: The *Lottery Commission* concurs with this recommendation. (Reagan E. Greer, Executive Director – Texas Lottery Commission)

The *Bingo Advisory Committee* opposes this recommendation. The Committee feels the recommendation is very vague and there are still questions about how the suspension of one licensee in a hall can affect the continuity of the remaining bingo sessions in the hall.

**For**

None received.

**Against**

None received.

**Recommended Action:** Adopt Recommendations 6.1 through 6.12.

**Commission Decision:** Adopted Recommendations 6.1 through 6.12.

## **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas Lottery Commission</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Already in Statute	1. Require public membership on the agency’s policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Update	3. Require unbiased appointments to the agency’s policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Apply	7. Require separation of policymaking and agency staff functions.
Apply	8. Provide for public testimony at meetings of the policymaking body.
Apply	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

**Recommended Action:** Adopt staff recommendations.

**Commission Decision:** Adopted staff recommendations.



**NEW ISSUES**

## New Issues

---

The following issues were raised in addition to the issues raised in the staff report. The issues are numbered sequentially to follow the staff's recommendations.

7. Require the Lottery Commission to go through the Texas Building and Procurement Commission like all other state agencies. (Dawn Nettles – The Lotto Report)
8. Require the Lottery Commission to adhere to consumer laws regarding advertising and disclosure of information about lottery games. (Dawn Nettles – The Lotto Report)
9. Require 50 percent of sales be returned to players as prizes for all online games, with the exception of the *Pick 3* game. (Dawn Nettles – The Lotto Report)
10. Require the Lottery Commission to set in rule the percentages of sales allocated for prizes for each game and require the agency to follow these rules. (Dawn Nettles – The Lotto Report)
11. Make the Lottery Commission's rulemaking process more accessible to the public by implementing the following changes.
  - Require proposed rule changes to be posted on the agency's Web site on the day that they are proposed by the Commission.
  - Require that proposed rule changes be posted in a highly visible place on the agency's Web site and be written in layman's terms.
  - Require notices of proposed rule changes be distributed to lottery retailers so that players know of the proposals.
  - Extend the comment period on proposed rules from 30 days to 45 or 60 days. (Dawn Nettles – The Lotto Report)
12. Require the Lottery Commission's player research to include lottery sales by zip code or districts. (Dawn Nettles – The Lotto Report)
13. Require that the odds for any Texas online game be no greater than the population of the state. (Dawn Nettles – The Lotto Report)
14. Cease retailers from checking players' tickets as a courtesy. Allow retailers to only validate a "winning ticket" when the player says they have won and would like to collect their winnings. Require players to bear the sole responsibility of checking their own tickets. (Dawn Nettles – The Lotto Report)
15. Require consumers to present a valid ID prior to using gambling devices, such as scratch ticket vending machines, self service online ticket terminals, and eight-liners, to ensure minors cannot play these games. (Dawn Nettles – The Lotto Report)
16. Require the agency to pay lottery winners all of their earnings if they choose the annual payout option, and to pay all of the money in the prize pool to winners who choose the cash value option. Require the agency to provide winners with all documents related to the securities purchased on their behalf, including proof of payment for the securities, information about the

“brokers take,” and a statement of the total sales for the winning draw and what percentage of those sales the winner actually won. (Dawn Nettles – The Lotto Report)

17. Require the agency to “round up” or “round down” prize payments according to generally accepted rounding rules. (Dawn Nettles – The Lotto Report)
18. Require that a notice of all upcoming scratch tickets be posted in the *Texas Register* and in each retail location at least two weeks prior to the start date. (Dawn Nettles – The Lotto Report)

**Recommended Action:** Staff made no recommendation on the new issues listed above.

**Commission Decision:** The Commission adopted New Issue 8, modified to require the Lottery Commission to comply with and adhere to existing relevant and applicable laws regarding consumer information and protection.