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An Audit Report on

Workforce Management at the Texas Lottery Commission

July 2006

Report No. 06-047



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Overall Conclusion

The Texas Lottery Commission (Agency) has significant weaknesses in its employee relations practices, including a lack of policies and procedures for employee grievances and complaints, inconsistent disciplinary actions, inadequate documentation of terminations, and inconsistent employee performance evaluations. The Agency also has significant weaknesses in its training of supervisors and its recruitment and hiring of new employees.

As a result of these weaknesses, the Agency has not established a positive work environment for all levels of its employees and is not managing the potential risk that employee relations actions can pose to the Agency and the State, such as formal complaints and lawsuits brought by employees. Complaints and lawsuits can result in financial cost to the Agency, damage the Agency's reputation, and divert time away from conducting core business. Agency management can reduce the risk of complaints and litigation, while creating a more positive, constructive work environment, by improving how it manages its workforce.

Background Information

- As of February 2006, the Agency reported that it had 314 employees.
- In fiscal year 2005, the Agency's turnover rate was 17.5 percent.
- In fiscal year 2005, the Agency's salary, wage, and payroll costs totaled \$18.3 million.

State Auditor's Office Survey of Texas Lottery Commission Employees

The State Auditor's Office surveyed all Agency employees in February 2006. We received responses from 207 (66 percent) of the Agency's 314 employees and the survey results were representative of the Agency as a whole. The objective of the survey was to gain an understanding of issues and concerns that Agency employees have about their workplace. The survey responses were anonymous.

Key Points

Incomplete, inconsistent, and undocumented employee relations practices undermine the Agency's ability to create a positive work environment.

The Agency currently does not have formal policies and procedures in place for employee complaints and grievances, including policies and procedures regarding how employees should initiate complaints. Without a formal grievance policy, employees do not know with whom to file their complaint, which may increase the likelihood that they will take complaints and grievances outside the Agency. The

Agency also has not adopted significant employee relations policies and procedures and does not consistently follow the ones it has adopted. The absence of significant employee relations policies has caused Agency divisions to establish their own approaches for managing staff. As a result, divisions handle terminations and other disciplinary actions in an inconsistent manner.

Employees have long-standing concerns about the Agency's work environment.

According to results of the State Auditor's Office survey, a significant proportion of employees do not trust management, and they fear that they may experience retaliation if they raise significant issues, concerns, or complaints. Many employees also feel intimidated and do not believe the Agency handles conflict in a tactful and professional manner. The Survey of Organizational Excellence, a separate survey conducted annually by the University of Texas at Austin, has identified similar results since 2002. The Agency has begun to address employee concerns. For example, it has formed employee work groups charged with examining policies and procedures related to the performance evaluation process, merit increases, and programs for recognizing and rewarding employees.

Vacancies and turnover in leadership positions may impair the ability of Commissioners and management to lead.

The Commission has been operating as a two-member governing board since September 2005, when the third Commissioner resigned. In addition, the Agency has not had stability in its executive director position since its inception in 1993. As a result, the Agency does not have the breadth of knowledge, experience, and stability that an organization as large and complex as the Agency could have in its leadership.

Although most of the Agency's employees are classified correctly, the Agency could benefit from a more structured job analysis process.

The State Auditor's Office's State Classification Office reviewed 287 employment positions at the Agency and found that the Agency correctly classified 253 (88 percent) of these positions.

The Agency is implementing prior audit recommendations.

The Agency has made an effort to implement most of the audit recommendations in a 1997 State Auditor's Office report (*An Audit Report on Management Controls at the Lottery Commission*, State Auditor's Office Report No. 97-092, August 1997).

Selected Recommendations

The Agency should:

- Adopt an employee grievance policy to ensure consistency in how it addresses grievances. The policy should cover the initiation, documentation, investigation, and resolution of all employee grievances, as well as communication with all parties involved.
- Create an employee ombudsman position that reports directly to the executive director, with access to members of the Texas Lottery Commission. The position should meet the qualifications for an ombudsman set forth in the State Classification Plan.
- Conduct its supervisory training program with sufficient regularity to ensure that all Agency supervisors are sufficiently prepared to facilitate the success of the employees they oversee. New supervisors should receive supervisory training as soon as practical after assuming supervisory responsibilities.
- The Agency should establish a more positive work environment by (1) surveying employees at least every two years on specific issues or topics to determine if changes made by management are having the desired effect, and to identify new issues that may negatively affect the workplace; and (2) continuing existing employee work groups charged with examining employee relations policies and procedures.

Summary of Management's Response

The Agency fully agrees with our recommendations.

Summary of Objectives, Scope, and Methodology

The objectives of this audit were to:

- Determine whether the Agency's organizational design and human resources processes protect the Agency from business and financial risk.
- Determine the status of prior audit findings related to human resources management reported in *An Audit Report on Management Controls at the Lottery Commission* (State Auditor's Office Report No. 97-092, August 1997).
- Determine whether the Agency appropriately classifies employees.

The scope of this audit covered activities related the Agency's Human Resources Department for the time period from September 1, 2003, to May 31, 2006,

including the Agency's organizational structure, employee relations, compensation, hiring and selection of employees, training, classification, compliance, and implementation of prior audit recommendations. This audit did not include a review of information technology.

The audit methodology included collecting and reviewing information and documentation, performing selected tests, analyzing and evaluating the results of testing, conducting interviews with Agency management and staff, and conducting an agency-wide survey.

Recent SAO Work		
Number	Product Name	Release Date
06-046	An Audit Report on Lotto Texas Activities at the Texas Lottery Commission	July 2006
06-035	An Audit Report on Security at the Texas Lottery Commission	May 2006
06-017	A Report on an Audit of the Texas Lottery Commission's Annual Financial Report for the Fiscal Year Ended August 31, 2005	December 2005
05-041	A Special Investigations Unit Report Regarding the Texas Lottery Commission	July 2005
04-046	An Audit Report on Selected Controls Over Instant Tickets at the Texas Lottery Commission	August 2004

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Detailed Results

Chapter 1

Weaknesses in the Agency's Management of Its Workforce Inhibit a Positive Work Environment

The Texas Lottery Commission (Agency) has significant weaknesses in the management of its workforce, including employee relations, training, recruitment and hiring, and employee evaluations. In particular, the Agency is not managing potential risks that could lead to legal action, such as formal complaints and lawsuits brought by employees. Complaints and lawsuits can result in financial cost to the Agency, damage the Agency's reputation, and divert time away from conducting core business. Agency management can reduce the risk of complaints and litigation, while creating a more positive, constructive work environment, by improving how it manages its workforce. Table 1 lists employment-related lawsuits filed against the Agency that were pending as of March 31, 2006.

Table 1

Employment-Related Lawsuits Filed Against the Agency That Were Pending as of March 31, 2006	
Lawsuit	Charge
1	Discrimination based on national origin; whistleblower retaliation
2	Discrimination based on race; whistleblower retaliation
3	Discrimination based on gender
4	Retaliation related to a Family and Medical Leave Act claim.

Chapter 1-A

Incomplete, Inconsistent, and Undocumented Employee Relations Practices Undermine the Agency's Ability to Create a Positive Work Environment

Employee Relations

Employee Relations in general refers to activities that involve providing advice and assistance to employees and managers in matters related to employee conduct, performance, attendance, and disputes.

We identified weaknesses in the Agency's employee relations practices, including a lack of policies and procedures for employee grievances and complaints, inconsistent disciplinary actions, and inadequate documentation of terminations. As a result, the Agency is not managing the potential risk that employee relations actions can pose to the Agency and the State.

The Agency does not have an employee grievance policy.

The Agency currently does not have formal policies and procedures in place for employee complaints and grievances, including policies and procedures regarding how employees should initiate complaints. Without a formal

grievance policy, employees do not know with whom to file their complaint, which may increase the risk that they will take complaints and grievances outside the Agency.

The Agency previously had a policy for addressing employee complaints, but it discontinued that policy as of June 15, 2005. However, the old policy was not comprehensive because it considered only employee complaints arising out of a change in employment status, such as being placed on probation, receiving a pay reduction, being placed on suspension, or failing to receive a promotion.

Employee grievances can be related to pay actions, but they can also encompass a much greater range of complaints. For example, they may include complaints concerning hours of work; working conditions; performance evaluations; job assignments; the interpretation or application of a rule, regulation, or policy; or the abuse of employee rights.

According to the results of an employee survey the State Auditor's Office conducted, only 38 percent of the Agency's non-supervisory employees agreed with the statement, "If I raise any issues or concerns, I believe there will be no retaliation against me" (see Appendices 2 and 3 for further details on this survey). Adopting a grievance policy that creates a safe outlet for employees to communicate workplace frustrations can help reduce frustration and increase trust. Providing employees with a credible listener, such as an ombudsman who can review their grievances objectively, may allow employees to feel they are being treated more fairly. It also has the benefit of allowing the Agency to learn, outside of litigation, the details of an employee's concerns.

Without a formal grievance policy, the Agency is at an increased risk of mishandling an employee's complaint and, therefore, unintentionally violating state or federal employment laws.

Employee relations policies and procedures are not clear to employees or supervisors.

The Agency has not adopted significant employee relations policies and procedures and does not consistently follow the ones it has adopted. For instance, the Agency does not provide sufficient guidance or direction to supervisors and employees regarding appropriate actions to take in addressing an employee's unsatisfactory job performance. Agency supervisors lack guidance regarding when to take disciplinary actions, what actions to take, and how long employees and supervisors have to complete disciplinary actions. The Agency also does not have a process in place for employees to appeal disciplinary actions.

The Agency also lacks policies and procedures for guiding supervisors and managers through the process of terminating an employee. Some managers

state that they do not have a clear understanding of the requirements for terminating an employee. While the Agency is an “at-will” employer (which means it has the right to hire and fire at will), it should be able to demonstrate that it uses that right responsibly. The Agency should be able to demonstrate that it complies with state and federal laws designed to protect employees from discrimination, and that it does not take adverse personnel actions against employees for reporting violations of law.

The absence of significant employee relations policies has caused Agency divisions to establish their own approaches for managing staff. As a result, divisions handle terminations and other disciplinary actions in an inconsistent manner. Some divisions, such as the Lottery Operations Division, terminate an employee only after attempting to correct poor performance through counseling, written reprimands, and suspensions. Decisions to terminate may be made less cautiously in other divisions, such as the Administration Division and Legal Division, where terminations may occur immediately upon a manager’s recommendation. In these cases, employees may not receive any documented notification that their performance or behavior is inadequate before their termination. However, reacting to poor employee performance without adequately considering the consequences could produce solutions that place the Agency at risk of legal exposure. The differences among divisions may lead to different disciplinary actions against employees for the same disciplinary issue, thereby increasing the risk that employees may perceive these actions as unfair and discriminatory.

The Agency’s documentation of terminations and other disciplinary actions reflects its lack of significant policies and procedures. We tested documentation supporting 52 involuntary terminations that took place in fiscal years 2004 and 2005 and the first quarter of fiscal year 2006. Of those 52 terminations, 23 were the result of a reduction in force that took place during a reorganization of the Agency in November 2004. For 6 (21 percent) of the remaining 29 terminations, records the Agency provided to us did not document its reasoning for the terminations. In one of those six instances, the employee’s most recent performance evaluation did not indicate that there were problems with the employee’s performance. Although the terminations may have been justified, the Agency did not always document the reasoning for the termination.

Weak employee relations practices divert personnel from performing the business of the Agency and cause employees to spend time responding to lawsuits and complaints, both formal and informal. The Agency, which employs approximately 314 full-time employees, has 1 employee relations officer and 1 attorney whose primary roles include addressing employee relations issues within the Agency. In addition, the Agency’s human resources director, open records attorney, and other legal support staff are regularly involved in addressing claims, lawsuits, and open records requests that arise from involuntary terminations.

Weak employee relations practices also have a negative effect on the work environment. For instance, less than half of non-supervisory Agency employees who responded to the State Auditor's Office survey agreed with the statements, "If I raise any issues or concerns, I believe there will be no retaliation against me," and "I work in an environment that is free of fear and intimidation." Some employees we interviewed confirmed the survey results and asserted that they feared retaliation and did not trust management.

The Agency has begun to address some deficiencies in its employee relations policies and procedures. For instance, the executive director has revised the Agency's policies to ensure that executive management is aware of any existing employee complaints before approving termination of an employee.

Recommendations

The Agency should:

- Adopt an employee grievance policy to ensure consistency in how it addresses grievances. The policy should cover the initiation, documentation, investigation, and resolution of all employee grievances, as well as communication with all parties involved.
- Create an employee ombudsman position that reports directly to the executive director, with access to members of the Texas Lottery Commission. The position should meet the qualifications for an ombudsman set forth in the State Classification Plan. The ombudsman should be responsible for:
 - Ensuring that the employee grievance policy is implemented.
 - Facilitating a confidential and neutral process for resolving employment-related concerns in a fair and equitable manner.
 - Meeting individually with employees to address issues before they become formal grievances.
 - Facilitating ad hoc discussions with non-supervisory employees to give them an opportunity to provide the Commission and management with input on organizational and policy changes, including how to address issues raised in the State Auditor's Office survey and the Survey of Organizational Excellence.
- Develop, implement, and enforce Agency policies and procedures that provide guidance for management on counseling, disciplinary actions, and involuntary terminations. Information regarding best practices in these areas is available from sources such as the Society for Human Resource Management.

- Develop tools and training to assist supervisors and managers in selecting appropriate responses to unsatisfactory job performance.
- Require supervisors and managers to document support for all disciplinary actions using standardized forms to ensure that the Agency can defend such actions and demonstrate compliance with state and federal employment laws.

Management's Response

Management agrees with the recommendations and has already taken several actions in this regard.

Effective July 21, 2005, agency policy was changed to require that all possible employment actions that might result in involuntary terminations of employment be submitted to the Acting Executive Director of the agency at that time for review and approval before any action could be taken. Involuntary terminations of employment included reductions in force, dismissals for cause, at-will terminations and resignations in lieu of involuntary separation.

Subsequent to this policy change, Anthony SADBERRY joined the agency in January 2006 as the Acting Executive Director and, shortly thereafter, additional consideration was given to this and other employee relations policies, culminating in a revised Agency Personnel Policy Manual being adopted by the Texas Lottery Commission in the June 28, 2006 Commission meeting.

Agency policy regarding certain employee disciplinary actions was revised as follows:

Adverse disciplinary action is defined as actions that affect an employee's pay, status, or tenure, and may include a written reprimand, suspension without pay, disciplinary salary reduction, disciplinary demotion, involuntary termination from employment, or resignation in lieu of involuntary termination.

Before issuing a written reprimand, a supervisor must consult with and provide supporting documentation to the Human Resources Division and the Legal Services Division. Then the supervisor must obtain the approval of his or her division director prior to the issuance of the written reprimand. At a minimum, a written reprimand should contain the following components:

- *an explanation of the reason for the written reprimand*
- *an action plan detailing what expectations of performance is expected of the employee*

- *provision for future review by supervisor of whether the employee has met the expectations*
- *space for additional relevant comments by the supervisor*
- *space for employee comments*
- *signature lines for supervisor and employee*

The employee's signature is intended to indicate only that the supervisor has discussed the matter with the employee and does not necessarily mean that the employee agrees with the written reprimand. If the employee declines to sign the written reprimand, the supervisor will make a notation to that effect on the document. Once signed, the original written reprimand should be forwarded to Human Resources. The supervisor and the employee should each receive a copy.

For the actions of suspension without pay, disciplinary salary reduction, disciplinary demotion or involuntary separation, the following steps, in addition to those required for a written reprimand, must be taken before the action may occur:

- *The division director (or the Charitable Bingo Operations Division Director or the Internal Audit Director, as applicable) must consult with the Executive Director, the Deputy Executive Director, the Special Counsel, the Human Resources Director, and another division director named by the Executive Director to discuss the affected division director's recommendation and to review relevant documentation.*
- *The division director (or the Charitable Bingo Operations Division Director or the Internal Audit Director, as applicable) must consult further with the Executive Director. The affected division director will make the final decision regarding the appropriate action to be taken.*

Also included in the revised Personnel Policy Manual are clearly defined processes for the proper handling of both employee general complaints and formal grievances. These processes are in addition to the agency's existing process for handling Equal Employment Opportunity complaints.

The general complaint process includes strict timelines for management responses and allows employees to have outside representation if the employee so desires. The goal of the general complaint process is to reach a consensus resolution to the problem, with management and the employee agreeing on an outcome. However, if such a consensus cannot be reached, the employee is able to appeal the issue to the division director level, or higher if necessary, if the complaint involves the division director.

As an alternative to the general complaint process and in a more formalized manner, an employee is able to use the grievance process to protest any adverse disciplinary action, including involuntary termination. Similar strict guidelines for management responses are included in the process. However, unlike the general complaint process, under the grievance process the employee has access to a hearings process conducted by a hearings officer at the State Office of Administrative Hearings. Similar to administrative proceedings used for lottery and bingo licensees, the hearings officer will issue a recommended decision and the Executive Director shall issue findings of fact and a final written decision to the employee and agency representatives involved in the matter.

The goal in implementing both of these processes is to provide employees with an opportunity for an objective review of their concerns and, ultimately, improve this aspect of employee relations in the agency.

In addition, the agency has a new Human Resources Director with significant state experience who started work June 26, 2006. Executive management will work closely with the Human Resources Director to address the following:

1) Develop job description, formulate hiring process, and recruit for the position of agency Ombudsman, incorporating the responsibilities outlined in this report into the job description for this position.

Target date: December 1, 2006

2) Identify appropriate supervisory tools and training to more appropriately address unsatisfactory job performance.

Target date: February 1, 2007

3) Review progressive disciplinary process and provide guidance and training to supervisory staff in the area of supporting documentation required for all disciplinary actions; implement standardized forms to use in such documentation and conduct appropriate legal review to ensure all documents and actions are in compliance with state and federal employment laws.

Target date: February 1, 2007

Responsible Divisions: Executive Administration and Human Resources

Improved Training for Agency Supervisors Could Enhance the Work Environment for All Employees

The Agency is not complying with its policy requiring all supervisory staff to participate in a supervisory training program at least every two years. Nor is it complying with its policy requiring all new supervisors to take the supervisory training program within 90 days of assuming a supervisory position. In addition, the Agency has not implemented a 1997 State Auditor's Office recommendation to develop a user-friendly database for maintaining training data (see Chapter 5 for detailed information regarding the Agency's implementation of prior audit recommendations).

The Agency last offered a supervisory training program in May 2004. Supervisors hired since then have not received supervisory training. However, because the Agency is not tracking the training it provides to supervisors and other employees, it cannot determine whether supervisors have attended other training that meets its needs.

Without adequate training, the Agency's supervisors may not have the skills and information necessary to protect the Agency from the risks that arise from hiring, supervising, evaluating, and disciplining employees. These skills are critical in enabling the Agency to address the issues raised in this report.

Recommendations

The Agency should:

- Conduct its supervisory training program with sufficient regularity to ensure that all Agency supervisors are sufficiently prepared to facilitate the success of the employees they oversee. New supervisors should receive supervisory training as soon as practical after assuming supervisory responsibilities.
- Enhance its supervisory training program to include training that addresses the issues raised in this report.
- Complete the development and implementation of a training database that allows supervisors and human resources personnel to track training taken by all Agency employees.

Management's Response

Management agrees with the recommendations and will work with the new Human Resources Director in taking the following actions:

1) Review and revise current annual supervisory training to include content necessary for supervisors to facilitate the success of the employees they oversee. Training content will address issues raised in this report.

Target date: March 1, 2007

2) Schedule supervisory training to occur on annual basis for existing supervisors and within first sixty days of employment for new supervisors.

Target date: March 1, 2007

3) Complete development and implementation of training database.

Target date: March 1, 2007

Responsible Divisions: Executive Administration and Human Resources

Chapter 1-C

Inadequate Controls over Its Procedures for Recruiting, Reviewing, and Selecting Candidates for Hiring Increases Risks for the Agency

Weak controls over the Agency's procedures for announcing job opportunities and selecting job applicants to interview may allow management to circumvent the hiring process. As a result, the Agency has not always selected applicants for interviews in accordance with the advertised requirements and criteria for the job.

The Agency did not follow through on assurances included in its job postings.

The Agency's February 2006 job posting for an investigator position specified that the Agency would give preferential treatment to applicants it had dismissed through a prior reduction in force. However, criteria the Agency used to select applicants to interview did not take into consideration whether an applicant was a former employee and had been dismissed through a reduction in force.

The Agency reviews all job applications using a screening matrix that scores candidates against the required and preferred knowledge, skills, and abilities that candidates should possess. The Agency invites candidates who score above a certain level on the matrix to come in for an interview.

The job posting for the Investigator VI-VII positions stated that "applicants affected by a Texas Lottery Commission Reduction-In-Force who meet the minimum qualifications for this position will be given preferential treatment for this posting and be interviewed before those applicants not affected by a Texas Lottery Commission Reduction-In-Force."

The Agency should clarify procedures for deviating from the screening matrix it uses to select job candidates to interview and document the reasons for deviations.

We identified several instances in which the Agency deviated from the screening matrix but did not document its reasons for doing so. In 4 (15 percent) of the 26 job postings that we tested, the Agency did not interview candidates who scored highest in the screening matrix. The Agency did not document the reasons for these deviations from the screening matrix results.

In addition, because the Agency has not established procedures for deviating from the matrix, hiring managers are not certain about how to proceed when they wish to deviate from the screening matrix. For example, we found that hiring managers were reluctant to interview one candidate who scored highest in the screening matrix because of their knowledge of the candidate's prior work history with the Agency. However, because specific procedures for deviating from the matrix have not been established, hiring managers were unclear on how to proceed.

While the screening matrix is the primary tool for determining whom to interview, the Agency is not bound to its results and should consider other information such as direct experience the Agency, or its managers, have had with candidates. The Agency's policy for using screening matrices does allow hiring managers flexibility in selecting candidates to interview to ensure they interview the best qualified applicants. However, managers should clearly document any departures from the screening matrix results. In addition, the screening matrix should identify who prepared the matrix and the date it was prepared.

Recommendations

The Agency should:

- Establish controls to ensure that the Agency honors all assurances in its job postings.
- Refine its existing policies and procedures to make it clear that, if a manager deviates from the results of a screening matrix, the manager must document the rationale for such deviations.
- Adopt a policy that ensures the screening matrix includes the identity of the person who prepares the matrix, along with date it is prepared.

Management's Response

Management agrees with the recommendations and will work with the new Human Resources Director in taking the following actions:

1) Controls will be established to ensure that for each job vacancy notice a screening matrix is developed that includes criteria that is clear and uniformly applied to each applicant for a given job vacancy. The screening matrix will be well documented and used as a tool to objectively compare an applicant's qualifications to a job vacancy. Documentation items reflected on the matrix will include: required and preferred qualifications, job skills such as education, certifications, supervisory/management experience and specific technical job skills or performance job skills, if applicable. Each screening matrix will identify who prepared the matrix and the date of preparation.

2) The agency's current Employment Selection Process Procedure will be revised to reflect documentation requirements for those instances when it is necessary for the agency to supplement the screening matrix results with additional information. To ensure the best qualified applicants are selected for interview, it may be necessary to consider additional information such as specific job skills or previous experience with the agency. All supplemental information utilized outside of the screening matrix will be properly documented with the rationale noted for deviating from the results of the screening matrix.

Target date: February 1, 2007

Responsible Divisions: Executive Administration and Human Resources

Chapter 1-D

Weaknesses in Its Employee Evaluations Decrease Fairness for Employees and Increase the Risk that the Agency Cannot Support Personnel Actions

The Agency's system for evaluating employee performance does not ensure that managers and supervisors measure all Agency employees against similar agency-wide performance standards and the essential job functions of each respective position. In addition, the periodic performance evaluation forms prepared by managers and supervisors do not always support disciplinary decisions taken against employees.

Agency managers and supervisors do not use the same criteria when evaluating employees. We determined that some supervisors evaluate employees on as many as 67 factors, while other supervisors use as few as 8 factors. Some supervisors measure employees on every factor included on the evaluation form, while others combine many factors into one rating. In addition, the Agency's Human Resources Division has not established a standardized evaluation methodology, including a standard form for the entire agency to use. As a result, employees are not always treated consistently when their performance is evaluated.

In addition, the information in performance evaluations does not always support the Agency's decisions to award merit raises to employees or to involuntarily terminate employees. In 5 (13.5 percent) of 37 cases tested, the Agency awarded merit increases to employees who had received less-than-positive ratings on their latest performance evaluations. The Agency's policy for employee evaluations states that such employees are not eligible for merit increases. In addition, as noted in Chapter 1-A, we also found instances in which the Agency has terminated employees whose most recent performance evaluations did not indicate that there were problems with the employees' performance, and the Agency had not documented anything to indicate the employees' performance had changed.

These discrepancies could arise from the inadequate training of employees and supervisors regarding the purpose and intent of the performance evaluation system. As Chapter 1-B of this report discusses, the Agency is not providing all the training to supervisors that its own policies call for.

Performance evaluations should provide evidence that the Agency made a good-faith effort to ensure poor-performing employees are aware of the steps that they must take to improve their performance. If the Agency is involved in an employment-related lawsuit, employee performance evaluations will likely be among the first items entered into evidence.

The Agency has recognized the weaknesses in its current performance evaluation system and has created an employee committee to revise and enhance that system. The committee states that it is working to design an evaluation system that provides consistency and ties pay actions to performance evaluations.

Recommendations

The Agency should:

- Complete the revisions it is currently making to its performance evaluation system. The revisions should set a relative small number of factors against which supervisors must measure employees' performance, and they should ensure that all employees are rated against similar factors while allowing for differences among the knowledge, skills, and abilities required for specific jobs.
- Require all supervisors to attend periodic training regarding the preparation of employee evaluations.

Management's Response

Management agrees with the recommendation and will work with the new Human Resources Director to review the progress that the employee

committee has already made in revising the agency performance evaluation system, incorporating the recommendations contained within this report to the process. Training on the preparation of employee evaluations will be included in the regular supervisory training.

Target date: February 1, 2007

Responsible Divisions: Executive Administration and Human Resources

Employees Have Long-Standing Concerns about the Agency's Work Environment

According to results of the State Auditor's Office survey, a significant number of Agency employees do not trust agency management, and they fear that they may experience retaliation if they raise significant issues, concerns, or complaints. Many employees also feel intimidated and do not believe the Agency handles conflict in a tactful and professional manner.

Employees expressed these concerns in a survey of all Agency employees, including managers and supervisors that the State Auditor's Office conducted in February 2006. We received responses from 207 (66 percent) of the Agency's 314 employees and the survey results were representative of the Agency as a whole. The objective of conducting the survey was to gain an understanding of issues and concerns that Agency employees had about their workplace. We asked employees to rank their level of agreement or disagreement with 28 statements related to communication, job duties and performance, trust and respect, and the Agency's culture. Employees also had an opportunity to provide written comments regarding the general work environment. See Appendices 2 and 3 for detailed survey results.

The concerns employees expressed in the survey are not new. The Survey of Organizational Excellence, a separate survey conducted annually by the University of Texas at Austin, has identified similar results since 2002. For example, the number of employees who either agreed or strongly agreed with the statement, "People who challenge the status quo are valued," ranged from 30.1 percent in 2004 to 39.6 percent in 2005. Responses to other similar statements parallel the results of the survey the State Auditor's Office conducted, which underscores the long-standing nature of these concerns.

The Agency spent \$18.3 million on employees' salaries, wages, and other payroll costs in fiscal year 2005. Employees are a significant asset to the Agency and require a significant investment in terms of time and resources.

A significant proportion of employees do not trust management.

Statements related to trust scored among the lowest on the State Auditor's Office survey. For example, only 40 percent of non-supervisory staff agreed or strongly agreed that they "trust human resources" and 41 percent agreed or strongly agreed that they "trust legal counsel." Approximately 50 percent of

non-supervisory staff agreed or strongly agreed that they “trust the deputy director.”¹ Table 2 presents a summary of the survey results related to trust in the workplace.

Table 2

State Auditor’s Office Survey of Agency Employees Survey Results Related to Trust in the Workplace						
Survey Statement	Average Scores Note: The scale of survey scores ranged from strongly disagree (1) to strongly agree (5)			Percentage of Employees Who Strongly Agreed or Agreed with Survey Statement		
	Agency	Managers	Staff	Agency	Managers	Staff
I trust my immediate supervisor. ^a	3.84	4.30	3.78	72%	100%	69%
I trust my division director.	3.74	4.48	3.66	67%	95%	63%
I trust internal audit.	3.67	4.29	3.59	61%	88%	58%
I trust human resources.	3.11	3.96	2.99	44%	79%	40%
I trust legal counsel.	3.24	4.17	3.12	46%	83%	41%
I trust the deputy director.	3.41	4.23	3.31	54%	86%	50%
I trust the commissioners.	3.65	4.46	3.54	59%	92%	55%

^a For managers and supervisors, the survey statement was worded “My employees trust me.”

Results from the 2002 Survey of Organizational Excellence indicated that 59 percent of non-exempt² employees (those who are most likely to work in non-supervisory positions) agreed or strongly agreed with the statement, “There is basic trust among employees and supervisors.” However, that percentage has declined every year since, and only 41 percent agreed or strongly agreed in 2005.

Employee responses indicate they have fear about raising issues with management.

Another way employees express their lack of trust in management is through their hesitancy to bring issues and concerns to management. When asked in the State Auditor’s Office survey, only 38 percent of non-supervisory staff agreed or strongly agreed with the statement, “If I raise any issues or concerns, I believe there will be no retaliation against me.” Employees responded similarly to survey statements about the Agency’s culture, with

¹ The deputy director served as the acting executive director from July 11, 2005, to January 13, 2006, when the Commission appointed Anthony Sadberry as acting executive director. This survey was conducted in February 2006. We did not survey employees regarding the executive director position because the position had not been filled permanently at the time we conducted our survey.

² “Non-exempt” means that employees are covered by (are not exempt from) the requirements of the U.S. Fair Labor Standards Act.

only 43 percent agreeing or strongly agreeing with the statement “conflict in this Agency is handled in a tactful and professional manner,” and 46 percent agreeing or strongly agreeing that they “work in an environment that is free of fear and intimidation.” Table 3 presents a summary of the survey results related to raising issues with management.

Table 3

State Auditor’s Office Survey of Agency Employees Survey Results Related to Raising Issues with Management						
Survey Statement	Average Scores Note: The scale of survey scores ranged from strongly disagree (1) to strongly agree (5)			Percentage of Employees Who Strongly Agreed or Agreed with Survey Statement		
	Agency	Managers	Staff	Agency	Managers	Staff
If I raise any issues or concerns, I believe there will be no retaliation against me.	3.03	4.08	2.89	43%	79%	38%
In this agency, management leads by example and behaves in an ethical manner.	3.27	4.29	3.13	51%	92%	45%
I work in an environment that is free of fear and intimidation.	3.22	4.13	3.10	50%	83%	46%
I feel that conflict in this agency is handled in a tactful and professional manner.	3.16	3.83	3.07	47%	79%	43%
The culture in our agency is cooperative and supportive.	3.35	4.00	3.26	54%	79%	51%
Employees in this agency are free from concerns about discrimination.	3.41	4.17	3.31	54%	83%	50%
Employees in this agency are free from concerns about harassment.	3.49	4.35	3.38	54%	83%	50%

Results from the Survey of Organizational Excellence reveal the long-standing nature of employees’ apprehension about bringing their concerns to management. In the past four years, no more than 38 percent of the Agency’s non-exempt employees agreed or strongly agreed with the statement, “People who challenge the status quo are valued.” The level of agreement was the lowest in 2004, when only 22 percent agreed or strongly agreed; that percentage increased to 31 percent in 2005.

Employees’ survey responses indicate there is a lack of communication between management and employees.

Employees’ apprehension about raising issues with management goes beyond a fear of retaliation. Their survey responses describe an organization that does not invite participation by employees in the Agency’s affairs. For example, results from the State Auditor’s Office survey showed that only 40 percent of non-supervisory staff agreed or strongly agreed with a statement that management includes employees in the decision making process. Table 4 presents a summary of the survey results related to communication.

Table 4

State Auditor's Office Survey of Agency Employees Survey Results Related to Communication						
Survey Statement	Average Scores Note: The scale of survey scores ranged from strongly disagree (1) to strongly agree (5)			Percentage of Employees Who Strongly Agreed or Agreed with Survey Statement		
	Agency	Managers	Staff	Agency	Managers	Staff
I receive adequate information about organizational decisions that affect my job.	3.55	4.29	3.46	66%	92%	62%
I receive adequate information about important new rules or policy changes or other developments.	3.63	4.33	3.54	68%	96%	64%
I receive adequate information about my job from my manager. ^a	3.71	4.38	3.63	61%	92%	63%
Major organizational changes are clearly communicated to me.	3.52	4.29	3.42	61%	88%	58%
The agency provides me with information about how I am being judged or evaluated in my job. ^b	3.69	4.63	3.58	69%	100%	65%
I understand how my job relates to the total operation of the agency.	4.17	4.54	4.13	87%	96%	86%
In this agency, management includes employees in the decision making process.	3.06	3.67	2.98	42%	63%	40%
^a For managers and supervisors, the statement was worded "I provide adequate communication to my employees regarding their jobs."						
^b For managers and supervisors, the statement was worded, "I provide information to my employees about how they will be judged or evaluated in their jobs."						

Respondents to the Survey of Organizational Excellence have expressed similar opinions. Fewer than half of the Agency's non-exempt employees have agreed or strongly agreed with the following statements during the past four years:

- The work atmosphere encourages open and honest communication.
- Information and knowledge are shared openly within this organization.
- An effort is made to get the opinions of people throughout the organization.
- The right information gets to the right people at the right time.

The Agency has begun to address employee concerns.

The Agency has begun to address some of the issues raised in the Survey of Organizational Excellence. For example, it has formed employee work groups charged with examining policies and procedures related to the performance evaluation process, merit increases, and programs for recognizing and rewarding employees.

However, the Agency has not addressed changes in individual survey scores that indicate other issues and concerns within the workforce. The Agency's 2005-2009 strategic plan states that the Survey of Organizational Excellence indicates, "employees are very satisfied with computer and information systems, sufficient safety procedures, that the workplace is well maintained, and that the Texas Lottery Commission Web site is easy to use." Although these comments are true, the Agency does not acknowledge in its strategic plan the issues identified through the Survey of Organizational Excellence during the last four years.

Differences in how managers and employees perceive their workplace may help explain the Agency's response to these issues. In general, managers expressed a better opinion of the Agency's work environment than non-supervisory employees did. For example, in response to the State Auditor's Office survey, 43 percent of non-supervisory employees agreed or strongly agreed with the statement, "I feel that conflict in this agency is handled in a tactful and professional manner." In contrast, 79 percent of managers agreed or strongly agreed with that statement.

Creating a culture of trust is an ongoing and often difficult task for managers in any state agency. The Agency's high profile and obligation to maintain the public's trust in Lottery games increases the need for proactive policies, procedures, and practices that increase communication and cultivate trust between employees and managers.

Recommendations

The Agency should establish a more positive work environment by:

- Surveying employees at least every two years on specific issues or topics to determine if changes made by management are having the desired effect, and to identify new issues that may negatively affect the workplace. As recommended in Chapter 1-A, the ombudsman would be responsible for facilitating ad hoc discussions with Agency employees to give them opportunities to provide the Commission and management with input on organizational and policy changes.
- Continuing existing employee work groups charged with examining policies and procedures related to the performance evaluation process, merit increases, and programs for recognizing and rewarding employees.

Management's Response

Management agrees with these recommendations. As previously mentioned, Anthony Sadberry joined the agency as Acting Executive Director in January

2006. Mr. Sadberry has targeted improvement to the agency work environment as one of his top priorities.

Several significant organizational changes have occurred since October 2005 and since Mr. Sadberry joined the agency in January 2006, all with the intent to enhance employee communication and trust. These are summarized below.

In October 2005, the Financial Administration Department was renamed the Office of the Controller and separated from the Administration Division to become a stand-alone division. A Controller was hired from outside the agency with significant state experience and reports to the Deputy Executive Director.

In February 2006, an additional change in the reporting structure was made which resulted in the directors of several divisions reporting to the Executive Director rather than the Deputy Executive Director. These divisions included Legal Services, Governmental Affairs, and Media Relations. These changes allow the Executive Director to:

- 1) leverage his experience and knowledge in legal and contractual matters, along with his intent to focus on those areas and accompanying issues facing the agency;
- 2) directly interact with agency staff on matters involving the legislature and state leadership offices; and
- 3) directly interact with agency staff on matters involving the media and better facilitate the management of the public message coming from the agency.

Also in February 2006, in an effort to allow executive management to be more closely and actively involved in the oversight of employment matters, the Human Resources function of the agency was separated from the Administration Division to become a stand-alone division reporting to the Deputy Executive Director.

Additionally, a further enhancement was implemented within the Legal Services Division in April 2006. The key changes in the structure of the division were the creation of two new positions – the Special Counsel and General Counsel Section Chief.

The General Counsel continues to oversee the division and is responsible for providing legal advice and counsel on significant agency policy matters to Commission members, the Executive Director, the Deputy Executive Director, and, when requested, agency staff. The Special Counsel provides direction and advice to the Executive Director, Deputy Executive Director, and division directors regarding human resources, ethics, and other issues involving the integrity of the Commission. The Special Counsel also serves as liaison to all division directors on legal issues except for significant agency policy matters

and general legal transactional matters. The General Counsel Section Chief provides direction and advice to division directors and agency staff regarding general legal transactional matters, including contracts and open records.

Also in an effort to allow executive management to be more closely and actively involved in the area of enforcement, in May 2006 the Enforcement Section of the Legal Services Division was restructured as a stand-alone division with a division director position established as the administrative head of the division. An Acting Enforcement Division Director was appointed at that time. The Enforcement Division Director reports to the Executive Director.

The agency is committed to establishing a more positive work environment and, through the new Ombudsman position, will survey employees at least every two years on specific issues or topics to determine if changes made by management are having the desired effect, identify new issues that may negatively affect the workplace, facilitate ad hoc discussions with Agency employees as need to improve working conditions, and, in addition, facilitate employee work groups charged with examining policies and procedures related to the performance evaluation process, merit increases, and programs for recognizing and rewarding employees.

Target date: March 1, 2007

Responsible Divisions: Executive Administration and Human Resources

Vacancies and Turnover in Leadership Positions May Impair the Ability of Commissioners and Management to Lead

The Commission has been operating as a two-member governing board since September 2005, when the third Commissioner resigned. In addition, the Agency has not had stability in its executive director position since its inception in 1993. As a result, the Agency's leadership does not have the breadth of knowledge, experience, and stability that it could have.

Chapter 3-A

The Number of Commissioners and Their Involvement in Management May Limit the Amount of Independent Expertise Available to Effectively Oversee the Agency

The Commission has been operating as a two-member governing board since September 2005, when the third Commissioner resigned. In addition, the

Requirement for a Three-Member Texas Lottery Commission

Section 467.021 of the Texas Government Codes states:

- (a) The commission is composed of three members appointed by the governor with the advice and consent of the senate.
- (b) In making appointments to the commission, the governor shall strive to achieve representation by all the population groups of the state with regard to economic status, sex, race, and ethnicity.
- (c) One member must have experience in the bingo industry.

Chair of the Commission continues to serve even though his term expired in February 2005. The Governor appoints the three Commissioners with the advice and consent of the Senate, as required by Texas Government Code, Chapter 467 (see text box).

A third Commissioner could bring additional knowledge and experience that the Commission could draw upon when making policies, addressing emerging issues, and overseeing the Agency. Having full membership on the Commission could expand the Commission's expertise in areas discussed in this report, such as employee relations.

The current Commissioners describe themselves as hands-on and assert that they work closely with Agency management in areas such as marketing, lottery operations, and human resources.

However, a governing board should focus on setting policy and approving the strategic direction of an agency. It should maintain a level of independence that allows it to provide a distinct perspective and evaluate management's performance objectively. By taking a hands-on role in Agency management, the Commission may place its independence at risk.

Recommendations

The Commission should:

- Work with the Appointments Division of the Office of the Governor to ensure a third Commissioner is appointed to fill the current vacancy.

- Clarify the roles and responsibilities of the Commissioners and executive management to ensure independence and establish an effective system of checks and balances.
- Establish workgroups or subcommittees, including subcommittees of one member, to address key operational areas such as those covered in this report.

Management's Response

Management will advise the Commission of the findings and recommendations contained in the report and work closely with the Commission to address the issues in a manner acceptable to the Commission.

Target date: July 1, 2006

Responsible Division: Executive Administration

Chapter 3-B

Turnover in the Executive Director Position May Have Hindered Management's Ability to Lead the Agency

The Agency has not experienced stability in its executive director position (see Table 5 on the next page). Since its inception in 1993, the Agency has employed five executive directors and has named acting executive directors on six separate occasions. The Commission appointed an Acting Executive Director in January 2006 and named that individual Executive Director in June 2006.

Table 5

History of Executive Directors at the Texas Lottery Commission	
Date Appointed	Executive Director
November 20, 1991	Nora Linares - Named as Director ^a
February 17, 1994	Nora Linares - Named Agency's first Executive Director
January 7, 1997	Zoann Attwood - Acting Executive Director
February 4, 1997	Kim Kiplin - Acting Executive Director
June 9, 1997	Larry Litwin - Executive Director
October 29, 1997	Linda Cloud - Acting Executive Director
December 16, 1997	Linda Cloud - Executive Director
September 27, 2002	Gary Grief - Acting Executive Director
February 28, 2003	Reagan Greer - Executive Director
July 11, 2005	Gary Grief - Acting Executive Director
January 13, 2006	Anthony Sadberry - Acting Executive Director
June 28, 2006	Anthony Sadberry - Executive Director
^a When Nora Linares was initially named director of the Texas Lottery, it was still a part of the Office of the Comptroller of Public Accounts. The Texas Lottery Commission became a separate agency on December 3, 1993. Nora Linares was appointed as Executive Director of the new agency on February 17, 1994.	

The executive director's lower-than-average salary may hinder the Agency's ability to attract and retain the best-qualified individual to lead the Agency. According to a survey of 42 other state lotteries that the Agency conducted, the salary of the Agency's executive director is not competitive with the salaries of lottery directors in the other states. Executive directors in those states earn an average of 11.6 percent more than the salary earned by the Agency's executive director (see Appendix 4 for additional information on the salaries of executive directors in other states).

The Commission does not have authority to increase the executive director's salary. This can be done only through the legislative process.

Recommendations

The Commission should consider including a performance incentive for the executive director (through a salary increase or a bonus) within its biennial Legislative Appropriations Request and discuss the merits of such an increase with Legislative leadership and in hearings before the Senate Finance Committee and House Appropriation Committee.

Management's Response

Management will advise the Commission of the findings and recommendation in the report and research the concept of a performance incentive plan for the Executive Director to use as a starting point in discussions with the Legislative leadership and in future Legislative budget hearings. The Commission has proposed a lifting of the salary cap restriction for the Executive Director position in past legislative sessions.

Target date: Ongoing

Responsible Divisions: Executive Administration, Office of the Controller, and Human Resources

Although Most of the Agency's Employees Are Classified Correctly, the Agency Could Benefit from a More Structured Job Analysis Process

The State Auditor's Office's State Classification Office reviewed 287 positions at the Agency and found that the Agency correctly classified 253 (88 percent) of these positions (see Appendix 5 for additional details).

The Agency has agreed to reclassify the 34 misclassified positions to appropriate class titles (see Table 6). These reclassifications will not require the Agency to spend additional funds. However, five positions required adjustments to their annual salaries: two reclassifications resulted in annual salary increases of \$936 and \$2,339, while three reclassifications resulted in annual salary decreases of \$3,348, \$9,709, and \$5,766.

Table 6

Agency Positions Reviewed that Were Misclassified	
Class Series	Number of Employees
Account Examiners	4
Auditors	12
Budget Analysts	1
Information Specialists	3
Marketing Specialists	1
Network Specialists	1
Program Specialists	2
Programmers	3
Purchasers	1
Research Specialists	1
Staff Services Officers	2
Systems Support Specialists	3
Total	34

The Agency can improve the process it uses to determine proper position classifications. The Agency currently uses an informal and inadequately documented process to analyze jobs that must be created or reclassified. We tested position reclassifications the Agency did in fiscal years 2004, 2005, and the first quarter of fiscal year 2006, and found that 24 percent of the reclassifications lacked sufficient documentation to demonstrate that they were justified based on the job duties of the employees. In each of these cases, the reclassification was done to realign job functions to comply with management-to-staff ratios.

In addition, job descriptions do not always clearly identify essential functions of the positions. This is important so that the Agency can appropriately determine whether it is able to make reasonable accommodations for applicants or employees to comply with the U.S. Americans with Disability Act.

The Agency also has not updated its policies to ensure it is using current guidelines for determining whether employees are exempt from the U.S. Fair Labor Standards Act. This creates a risk that the Agency may misclassify employees.

The proper analysis and classification of positions helps ensure efficient and effective use of resources. Misclassified positions can pose a business risk to agencies through their effect on services and budgets. If employees are classified in positions at too high of a level for the work they perform, agencies may be paying the employees more than their job duties warrant. If employees are classified in positions at too low of a level for the work they perform, employees could be underpaid. This could affect the employees' morale and lower their motivation, thus affecting services to the citizens of Texas. In addition, it could result in higher turnover, which could be costly for the agencies.

Recommendations

The Commission should:

- Implement a systematic, consistent job analysis process that includes regular reviews of positions to ensure the appropriate classification of Agency employees.
- Revise its job description process and develop more accurate job descriptions that reflect the essential functions of the position and include information about the physical and mental demands of the position.
- Update its policies and procedures to reflect current guidelines for determining employee exemptions under the U.S. Fair Labor Standards Act.

Management's Response

Management agrees with the recommendation and has already taken some actions in this regard. Instructions were given to all division directors on June 8, 2006 in this regard in an effort to improve the consistency of job descriptions and job postings within the agency. A summary of these instructions is below.

To ensure consistency with the minimum qualifications for education and number of years of experience among positions within each division and to promote future compliance with the guidelines of the SAO State Classification Office, charts are being designed to assist divisions in determining the level of education and number of years of experience that should be required for all agency positions. The chart will summarize all of the applicable job classifications in each respective division. The information included on the charts will be as follows:

- 1) Salary Group and Job Classification Title - represents the applicable salary group and State job classification titles*
- 2) Level - represents the level of work as listed on the State classification job descriptions (i.e., highly advanced "senior-level")*
- 3) Education and Years of Experience per Current Job Description - represents the required education and years of experience noted on current agency job description*
- 4) Division Recommendation - this section should reflect the division's proposal for consistent requirements for education and years of experience for future job descriptions/job postings*

Each division has been asked to complete charts for all positions within their respective division using the following guidelines:

Step 1) For each occupied position within the respective division, division management will review all current job descriptions for the required qualifications of education and number of years of experience and enter that information in the "Education and Years of Experience per Current Job Description" section of the chart. Once all of the information has been entered, the chart will assist the agency in determining if there are any inconsistencies.

Step 2) After reviewing all of the information entered on the chart, division management will make recommendations in the "Division Recommendation" section in order to correct any inconsistencies with the education and years of experience requirements and submit this information to Human Resources.

Step 3) Human Resources will review the information to ensure consistency with same/similar classifications within the division and also within the agency. After a review, Human Resources may make further recommendations. These recommendations will be provided to the appropriate division director for review and final approval and the charts will then be utilized for future job descriptions/job postings within divisions.

Full compliance with the State Classification Office is a priority of the Commission. Completed charts for all positions are scheduled to be delivered to the Human Resources Division by September 1, 2006.

In addition, management will work closely with the new Human Resources Director to perform a review of current agency job descriptions, ensuring that the descriptions reflect the essential functions of agency positions and that the physical and mental demands of the positions are clearly stated. Policies and procedures for determining employee exemptions under the U.S. Fair Labor Standards Act will be reviewed and revised as necessary.

Target date: April 1, 2007

Responsible Divisions: Executive Administration and Human Resources

The Agency Is Implementing Prior Audit Recommendations

The Agency has made an effort to implement most of the audit recommendations in a 1997 State Auditor's Office report (*An Audit Report on Management Controls at the Lottery Commission*, State Auditor's Office Report No. 97-092, August 1997).

The Agency has fully implemented three of the nine recommendations related to the management of its workforce that are still applicable; it has substantially implemented two others. The Agency has not implemented one of those recommendations, and its implementation of three others remains incomplete or ongoing.

Full implementation of all the prior recommendations would correct weaknesses in the Agency's management of its workforce that continue to exist today. Table 7 summarizes the implementation status and defines the degrees of implementation.

Status of Prior Audit Recommendations Related to the Texas Lottery Commission's Management of Its Workforce

The State Auditor's Office followed up on the implementation status of nine prior audit recommendations related to the Commission's management of its workforce. The State Auditor's Office originally made these recommendations in *An Audit Report on Management Controls at the Lottery Commission* (State Auditor's Office Report No. 97-092, August 1997).

Table 7

Definition of Degrees of Implementation of Prior Audit Recommendations		
Degree of Implementation	Definition	Number of Prior Audit Recommendations in Category
Fully Implemented	Successful development and use of a process, system, or policy to implement a prior recommendation	3
Substantially Implemented	Successful development but inconsistent use of a process, system, or policy to implement a prior recommendation	2
Incomplete/Ongoing	Ongoing development of a process, system, or policy to address a prior recommendation	3
Not Implemented	Lack of a formal process, system, or policy to address a prior recommendation	1

The State Auditor's Office previously recommended that the Agency develop certain policies and procedures related to ethics, recruitment and selection, performance evaluations, training, demotion, and the U.S. Family Medical Leave Act (FMLA). The Agency is in the process of implementing those recommendations by developing an ethics committee, a training database, and

numerous policies and procedures. However, we found that the Agency has not completely implemented several recommendations. Chapter 1 contains additional details on the status of the agency's policies and procedures related to the management of its workforce.

Table 8 provides information in the implementations status of specific recommendations the State Auditor's Office made in 1997.

Table 8

Status of the Agency's Implementation of Prior Audit Recommendations Related to the Management of Its Workforce		
Recommendation	Implementation Status	Auditor Comments
Develop a specific policy that bans Commission staff from accepting any benefit from vendors or vendors' agents	Fully Implemented	The Agency has developed an ethics policy. The policy prohibits Agency staff from accepting any benefit from vendors or vendors' agents. The policy also covers fraternization.
Adopt fraternization policies such as nonprofessional socialization with vendors and other third parties	Fully Implemented	
Expand the duties of its ethics coordinator to include monitoring for compliance with ethics policies, periodically reviewing and updating the policies, and implementing timely policy corrections. Consideration should be given to having the ethics coordinator report directly to the Commissioners.	Fully Implemented	The Agency has established an ethics committee. The ethics committee has five members: the executive director, the charitable bingo operations director, the internal audit director, the human resources department director, and the general counsel.
The Commission should use its standard recruitment and selection process to fill positions with very few exceptions. Examine those individuals who are not qualified for their positions and take the correct steps to correct a problem if there is one or reexamine the job description to determine whether the qualification is truly necessary.	Substantially Implemented	The recruitment and selections process consistently results in the hiring of individuals who meet the minimum requirements for the position. After the 1997 audit, the Agency examined employees who were not qualified for their positions. However, as reported in chapter 1-C, the Agency needs to update its recruitment and hiring policies and procedures.
All supervisors should be evaluated on the timeliness of formal performance feedback given to staff. A current evaluation should be on file before personnel actions are granted.	Substantially Implemented	Supervisors are completing performance evaluations in a timely manner. However, as reported in Chapter 1-D, evaluations on file do not always support subsequent personnel actions.
Valid criteria should be established to measure the performance of each employee and persons administering evaluations should receive training.	Incomplete/Ongoing	There is inconsistency among supervisors regarding which criteria to use when evaluating employee performance. The Agency does not provide training to supervisors on administering performance evaluations (see Chapter 1-D for additional details).
Maintain training data in a more effective manner.	Incomplete/Ongoing	The Agency is developing a training database to track employee training.
Develop a comprehensive set of policies and procedures that documents the important functions, policies, processes, and steps needed to complete tasks necessary to Commission operations. Procedures in draft form should be reviewed, updated as necessary, and finalized. Include policies and procedures related to: (1) The Commission's hiring policy (2) Demotion	Incomplete/Ongoing	(1) The Agency has developed hiring policies and procedures. However, it should periodically evaluate and update these policies and procedures. (2) The Agency is revising its discipline policy to address demotions. The current compensation policy defines demotions but does not provide guidance for the appropriate use of demotions. (3) The Agency is evaluating and updating the standards of performance policy.

Status of the Agency's Implementation of Prior Audit Recommendations Related to the Management of Its Workforce		
Recommendation	Implementation Status	Auditor Comments
(3) Standards of Performance (4) The Family Medical Leave Act (FMLA).		(4) The Agency updated its FMLA policy in 1999. However, the policy does not include all necessary elements.
All policies and procedures should be fully and fairly enforced. Management should lead by example in placing the highest importance on adherence with policies and procedures to preserve the integrity of management controls. Management overrides of procedures should occur only in situations that are unavoidable and should be documented and justified.	Not Implemented	The Agency does not consistently enforce its policies and procedures. There is little-to-no documentation justifying why a policy or procedure is not enforced as written.

Recommendations

The Agency should:

- Continue to complete the development and implementation of its policies and procedures related to ethics, recruitment and selections, performance evaluations, demotion, and the U.S. Family Medical Leave Act.
- Continue to develop and implement a training program for employees by completing the training database and providing annual management training to supervisors regarding employee discipline issues.

Management's Response

Management agrees with the recommendations.

Please see the management response for Chapter 1 regarding specific action plans responsive to these recommendations.

Responsible Divisions: Executive Administration and Human Resources

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to:

- Determine whether the Texas Lottery Commission's (Agency) organizational design and human resources processes protect the Agency from business and financial risk.
- Determine the status of prior audit findings related to human resources management reported in *An Audit Report on Management Controls at the Lottery Commission* (State Auditor's Office Report No. 97-092, August 1997).
- Determine whether the Agency appropriately classifies employees.

Scope

The scope of this audit covered activities related the Agency's Human Resources Department for the time period from September 1, 2003, to May 31, 2006, including the Agency's organizational structure, employee relations, compensation, hiring and selection of employees, training, classification, compliance, and implementation of prior audit recommendations. This audit did not include a review of information technology.

Methodology

The audit methodology included collecting and reviewing information and documentation, performing selected tests, analyzing and evaluating the results of testing, conducting interviews with Agency management and staff, and conducting an agency-wide survey.

Information collected and reviewed included the following:

- Texas Administrative Code
- Federal labor laws
- Texas Government Code
- Interviews with Agency management and staff
- Agency policies and procedures

- Agency hiring selection packets, including background check documentation.
- Agency termination, disciplinary action, and complaint files
- Survey of Agency employees conducted by the State Auditor's Office
- Survey of Organizational Excellence conducted by the University of Texas at Austin
- Survey of employee classification compliance
- Agency organization structure diagrams
- Agency training database and tracking tools
- Agency policies on compensation and personnel actions

Procedures and tests conducted included the following:

- Reviewed policies and documentation related to employee complaint, discipline, and termination files
- Reviewed policies and documentation in application selections packets
- Reviewed and analyzed Agency responses to State Auditor's Office survey, Survey of Organizational Excellence, and classification compliance survey
- Reviewed the Agency's monthly organizational structure diagrams
- Reviewed the training database and tracking tools
- Reviewed and tested Agency compensation and personnel actions
- Reviewed implementation of prior audit recommendations

Criteria used included the following:

- Texas Government Code
- Texas Commission on Human Rights Act of 1983
- Texas Workers' Compensation Act
- Federal Labor Laws
- Agency policies and procedures

Project Information

Audit fieldwork was conducted from January 2006 through May 2006. This audit was conducted in accordance with generally accepted government auditing standards.

The following members of the State Auditor's staff performed the audit:

- Walton Persons, CPA (Project Manager)
- Christine M. Bailey, CCP (Assistant Project Manager)
- Kathy Aven, CIA
- Pamela A. Bradley, CPA
- Christine Henderson
- Gary Leach, MBA, CQA, CISA
- Audrey A. O'Neill
- Stacey Robbins McClure, PHR
- Katrina M. Schlue
- Verma Elliott, MBA, CGAP
- Worth S. Ferguson, CPA (Quality Control Reviewer)
- Sandra Vice, CIA, CGAP, CISA (Assistant State Auditor)

Results of the State Auditor's Office Survey of Texas Lottery Commission Employees

The State Auditor's Office conducted a survey of Texas Lottery Commission (Agency) employees. In summary:

- A total of 207 (66 percent of the Agency's 314 employees) responded to the survey.
- Approximately 77 percent of managers and 65 percent of employees responded to the survey.
- The survey sample was representative of Agency employees.

Employees responded to survey questions using a scale ranging from 1 (strongly agreed) to 5 (strongly disagreed). Table 9 shows average scores for each survey statement for the agency as a whole, for managers, and for non-supervisory staff members. We also included the percentage of each group agreeing or strongly agreeing with each statement.

Table 9

Summary of Survey Results from the State Auditor's Office Survey of Agency Employees						
Survey Statement	Average Scores			Percentage of Employees Who Strongly Agreed or Agreed with Survey Statement		
	Agency	Managers	Staff	Agency	Managers	Staff
Communication						
I receive adequate information about organizational decisions that affect my job.	3.55	4.29	3.46	66%	92%	62%
I receive adequate information about important new rules or policy changes or other developments.	3.63	4.33	3.54	68%	96%	64%
I receive adequate information about my job from my manager. ^a	3.71	4.38	3.63	61%	92%	63%
Major organizational changes are clearly communicated to me.	3.52	4.29	3.42	61%	88%	58%
Job Duties and Performance						
The agency provides me with information about how I am being judged or evaluated in my job. ^b	3.69	4.63	3.58	69%	100%	65%
I understand how my job relates to the total operation of the agency.	4.17	4.54	4.13	87%	96%	86%
I am allowed to take the training necessary to improve my work skills.	4.16	4.79	4.08	85%	100%	83%
Training and development is encouraged at all levels of the agency.	3.95	4.88	3.83	74%	100%	70%

**Summary of Survey Results from the State Auditor's Office Survey
of Agency Employees**

Survey Statement	Average Scores			Percentage of Employees Who Strongly Agreed or Agreed with Survey Statement		
	Agency	Managers	Staff	Agency	Managers	Staff
Relationships at the Agency						
Overall, employees are treated with respect and dignity in this agency.	3.47	4.17	3.37	59%	83%	55%
In this agency, management includes employees in the decision making process.	3.06	3.67	2.98	42%	63%	40%
I trust my immediate supervisor. ^c	3.84	4.30	3.78	72%	100%	69%
I trust my Division Director.	3.74	4.48	3.66	67%	95%	63%
I trust Internal Audit.	3.67	4.29	3.59	61%	88%	58%
I trust Human Resources.	3.11	3.96	2.99	44%	79%	40%
I trust Legal Counsel.	3.24	4.17	3.12	46%	83%	41%
I trust the Deputy Director.	3.41	4.23	3.31	54%	86%	50%
I trust the Commissioners.	3.65	4.46	3.54	59%	92%	55%
If I raise any issues or concerns, I believe there will be no retaliation against me.	3.03	4.08	2.89	43%	79%	38%
In this agency, management leads by example and behaves in an ethical manner.	3.27	4.29	3.13	51%	92%	45%
The Organization						
Policies and procedures are consistently applied within our agency.	3.46	3.96	3.40	59%	83%	56%
I work in an environment that is free of fear and intimidation.	3.22	4.13	3.10	50%	83%	46%
Although there is some stress in my job, I feel that it is generally manageable.	3.77	4.08	3.73	73%	83%	72%
I feel that my values and beliefs are the same as those of Lottery Commission managers.	3.39	4.13	3.29	53%	74%	51%
I am loyal to the Lottery Commission.	4.24	4.35	4.23	85%	78%	86%
I feel that conflict in this agency is handled in a tactful and professional manner.	3.16	3.83	3.07	47%	79%	43%
The culture in our agency is cooperative and supportive.	3.35	4.00	3.26	54%	79%	51%
Employees in this agency are free from concerns about discrimination.	3.41	4.17	3.31	54%	83%	50%
Employees in this agency are free from concerns about harassment.	3.49	4.35	3.38	54%	83%	50%
<p>^a For managers and supervisors, the statement was worded "I provide adequate communication to my employees regarding their jobs."</p> <p>^b For managers and supervisors, the statement was worded, "I provide information to my employees about how they will be judged or evaluated in their jobs."</p> <p>^c For managers and supervisors, the statement was worded "My employees trust me."</p>						

Recurring Comments from Texas Lottery Commission Employees in Response to the State Auditor’s Office Survey

Agency employees who responded to the State Auditor’s Office survey were given an opportunity to answer three open-ended questions. Employees were asked to describe three things they thought worked well at the Agency, three things that could be improved and any additional information that may be useful.

The employees submitted more than 900 comments. When asked what they thought works well at the Agency, many employees said:

- They enjoy working in their positions.
- They have adequate training opportunities.
- They provide excellent customer service.
- The Agency’s team-oriented approach is effective.
- Monthly staff meetings are an important source of information.

The employee’s comments about things that could be improved centered on five general themes. Table 10 shows the five general themes, along with a summary of the comments within those themes.

Table 10

Recurring Themes and Comments - State Auditor’s Office Survey of Lottery Employees	
General Theme	Summary of Comments
Employment practices and procedures do not appear unbiased and transparent to all employees.	<p>Many employees expressed their belief that:</p> <ul style="list-style-type: none"> ▪ Favoritism is prevalent in employment practices. ▪ Policies and procedures are not consistently applied. ▪ Former Texas Workforce Commission employees have received preferential treatment at the Agency. ▪ Work processes could be improved. ▪ Salaries are fair, but they have concerns about how pay action decisions are made. ▪ Employment practices do not appear to be based on unbiased decisions.
The Agency does not offer employees a safe environment in which to voice concerns.	<p>Several employees expressed their belief that:</p> <ul style="list-style-type: none"> ▪ There is a culture of fear at the Agency. ▪ Agency management appears to have a lack of tolerance for employees offering dissenting views. ▪ Employees do not have a “trusted source/contact” to whom they can voice concerns and issues. In addition, they do not perceive human resources as a trusted, independent resource.
Many employees do not appear to trust members of management.	<p>Many employees expressed their belief that:</p> <ul style="list-style-type: none"> ▪ A small group of managers has had a negative impact on the Agency. ▪ The Legal Division has too much control over the Agency.

Recurring Themes and Comments - State Auditor's Office Survey of Lottery Employees	
General Theme	Summary of Comments
The culture at the Agency does not promote trust and respect.	<ul style="list-style-type: none"> ▪ Several employees expressed a lack of trust in Agency executive management. ▪ Some employees expressed their perception that lower level employees have stronger ethics and integrity than upper management.
Communication processes need improvement.	<ul style="list-style-type: none"> ▪ Although employees receive communication from management, several commented that they would like more information about organizational changes, policies, and procedures. ▪ For some employees, it appears that management is reluctant to share information that can help them do their jobs better. ▪ Several employees expressed their belief that they are not receiving adequate information about changes in the organization.

Salaries of Lottery Executive Directors in Other States

The Agency conducted an informal survey of salaries that top-level executives earn at 42 other state lotteries (see Table 11). Based on the results of the survey, it appears that the salary of the Agency's executive director is not competitive with the salaries of lottery directors in the other states. Executive directors in those states earn an average of 11.6 percent more than the salary earned by the Agency's executive director.

Table 11

Salaries of Lottery Agency Executive Directors in Other States		
State	Top-Level Executive Salary	Cash Bonus
Tennessee	\$350,000	Executive director receives incentives of up to 115 percent of base salary if "aggressive deadline/net revenue goals" are met.
Georgia ^a	\$290,000	Bonuses were awarded in the past, but the present system is under revision.
North Carolina	\$235,000	Executive director receives up to a \$50,000 bonus if the first ticket is sold within four months.
Iowa ^b	\$207,000	None.
New Mexico	\$207,000	None.
South Carolina	\$196,738	None.
Kentucky ^a	\$196,700	None.
Oklahoma ^c	\$175,000	The amount of bonuses varies. Bonuses can include a \$30,000 initial hiring bonus; a goal-oriented \$25,000 bonus if on-line and instant ticket sales goals are met by a set deadline; and a possible second "anniversary" bonus.
New York	\$144,287	Executive director has the use of an automobile.
Connecticut	\$139,256	Bonus amount is awarded on a sliding scale that is based on the return to State. Managerial staff can receive up to a 15 percent bonus. The chief executive officer's bonus was \$14,608 in 2004,
Maryland	\$134,327	None.
Louisiana ^a	\$130,932	None.
District of Columbia	\$128,000	A non-unique performance-based bonus can be awarded to all directors. No rate is specified.
Virginia ^d	\$124,919	None.
Oregon	\$123,756	None.
California	\$123,255	None.
Massachusetts	\$120,000	None.
Arizona	\$117,887	None.
Colorado	\$117,312	No reply.
Washington	\$115,000	None.
Texas	\$114,996	None.

Salaries of Lottery Agency Executive Directors in Other States		
State	Top-Level Executive Salary	Cash Bonus
Minnesota	\$114,297	None.
Michigan	\$113,000	No reply.
Florida ^e	\$107,940	No reply.
Illinois ^a	\$105,600	No reply.
New Jersey ^a	\$102,969	No reply.
Ohio	\$101,982	Executive director receives a monthly automobile allowance of approximately \$500.
Rhode Island ^f	\$101,606	No reply.
Missouri ^d	\$100,152	None.
Hoosier (Indiana)	\$100,000	No reply.
Pennsylvania	\$98,952	No reply.
Delaware	\$98,500	No reply.
Kansas	\$94,899	None.
Wisconsin	\$87,900	None.
Maine	\$86,008	None.
Nebraska	\$82,620	None.
Idaho	\$80,600	None.
New Hampshire	\$78,800	None.
Vermont ^g	\$78,333	No reply.
Montana	\$75,539	None.
West Virginia	\$75,000	None.
North Dakota	\$67,608	None.
South Dakota	\$59,500	None.
<p>Note: Salary amounts have not been adjusted for differences in cost of living among states.</p> <p>^a Source: North American Association of State and Provincial Lotteries (NASPL) 2002 survey of state executive salaries.</p> <p>^b Source: William Petroski, <i>DesMoinesRegister.com</i> 2005 <http://www.dmregister.com/apps/pbcs.dll/article?AID=/20050704/NEWS08/507_040347/1001/archive> (accessed July 13, 2005). Salary was confirmed on July 24, 2005, by Steve King, Iowa Lottery CFO.</p> <p>^c Source: <i>Lottery Post</i>, <http://www.lotterypost.com/news-112961.htm> (accessed July 13, 2005).</p> <p>^d This was the final salary of the former executive director, who departed in June 2005.</p> <p>^e Source: Florida Executive Order #99-265, "Executive Order to Establish the Salary of the Secretary of the Department of the Lottery," 1999.</p> <p>^f Source: Common Cause Education Fund, "Public Employment in Rhode Island: Testing the Public's Right to Know," March 16, 2004, page 27.</p> <p>^g Source: The Snelling Center. <i>Compensating Government Officials in Vermont: A Report to the Legislature</i>, January 15, 2004, <http://www.snellingcenter.org/ppol_legcomp.html> (accessed July 13, 2005).</p>		

Source: Texas Lottery Commission survey conducted in December 2005, unless otherwise noted.

Summary of Employee Misclassifications

The State Auditor's Office's State Classification Office reviewed 287 employee positions at the Lottery Commission and found that the Agency appropriately classified 253 (88 percent). Table 12 shows the number of employees in each job class series, and actions the Agency plans to take to assign the appropriate classification to the 34 misclassified positions.

Table 12

Analysis of Misclassified Positions					
Job Class Series ^a	Total Number of Employees	Number of Employees Identified as Misclassified	Number of Employees Who Moved Up to a Higher Class Title within the Same Class Series ^b	Number of Employees Who Moved Down to a Lower Class Title within the Same Class Series ^c	Number of Employees Who Moved to/from a Different Class Series ^d
Account Examiners	36	4		2	2
Auditors	25	12		12	
Budget Analysts	2	1		1	
Information Specialists	9	3		1	2
Marketing Specialists	8	1			1
Network Specialists	4	1			1
Program Specialists	48	2			2
Programmers	12	3		2	1
Purchasers	3	1	1		
Research Specialists	1	1		1	
Staff Services Officers	12	2	1		1
Systems Analysts	10	3			3
All Other Job Classes	117				
Agency Totals	287	34	2	19	13

^a A class series is a category or jobs or "class" titles.

^b For example, an employee classified as a Program Specialist I has been reclassified to a Program Specialist III.

^c For example, an employee classified as a Program Specialist III has been reclassified to a Program Specialist I.

^d For example, an employee classified as a Program Specialist I has been reclassified to a Customer Service Representative IV.

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