





## INTEROFFICE MEMO

Gary Grief, Executive Director    Tyler Vance, Acting Charitable Bingo Operations Director

**To:** Robert G. Rivera, Chairman  
Cindy Fields, Commissioner  
Mark A. Franz, Commissioner  
Erik C. Saenz, Commissioner  
Jamey Steen, Commissioner

Approved

Denied

**From:** Deanne Rienstra, Special Counsel *DR*

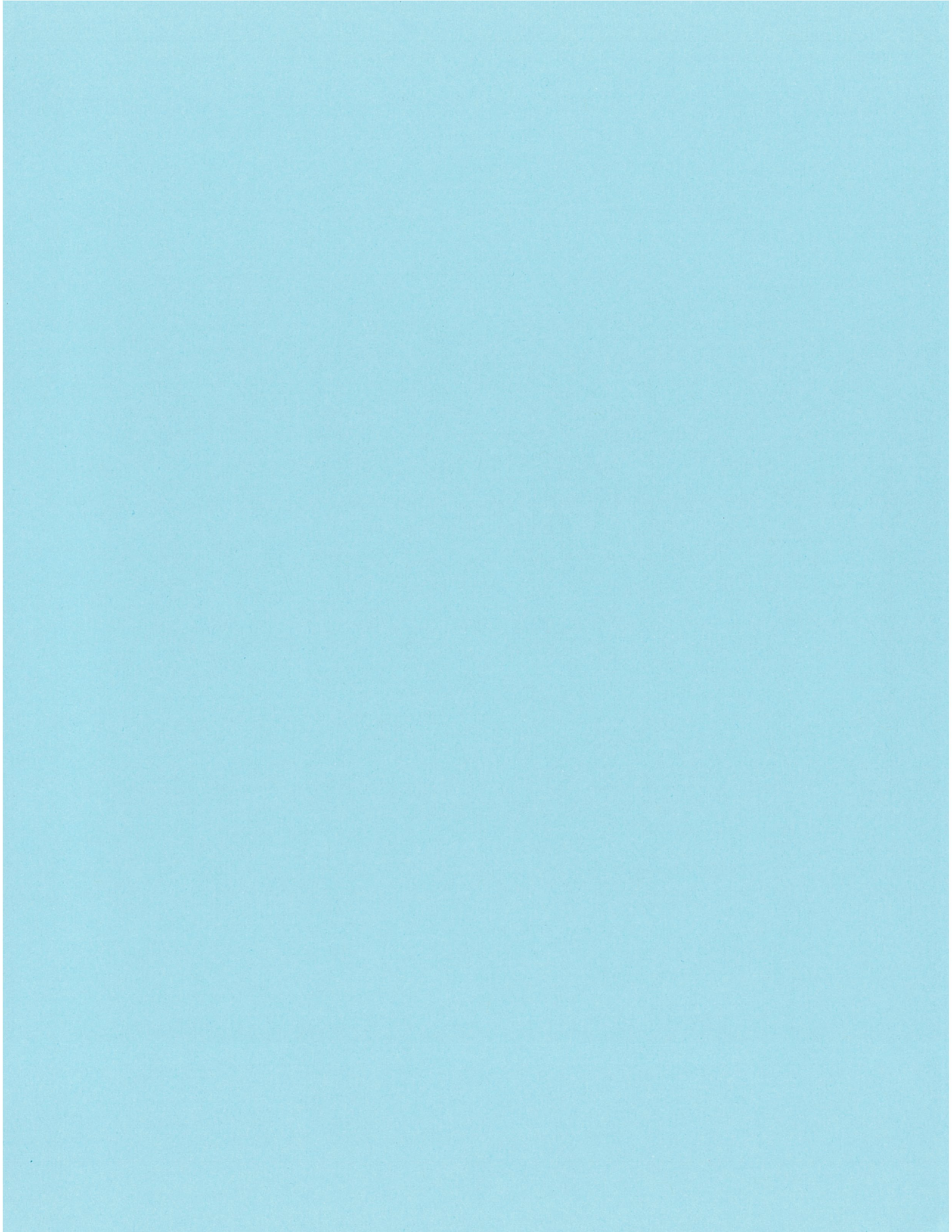
**Date:** April 8, 2021

**Re:** Consideration of and possible discussion and/or action, including proposal, on amendments to 16 TAC §403.101 (Open Records), §403.110 (Petition for Adoption of Rule Changes), §403.301 (Historically Underutilized Businesses), §403.600 (Complaint Review Process), and §403.800 (Savings Incentive Program)

Attached is a draft rule proposal prepared for submission to the *Texas Register* for amendments to the above-referenced rules. The proposed rule amendments are a result of the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039.

The proposed amendments to §403.101 (Open Records) make minor, non-substantive changes to terminology from "open records" to "public information". The proposed amendments to §403.110 (Petition for Adoption of Rule Changes) add language regarding the residency requirement for the petitioner as amended by the 84<sup>th</sup> Legislature, R.S., Ch. 343 (H.B. 763), Sec. 1, effective June 9, 2015. The proposed amendments to §403.301 (Historically Underutilized Businesses) make minor, non-substantive changes to update a citation to the Texas Comptroller's administrative rules. The proposed amendments to §403.600 (Complaint Review Process) address the availability of a dedicated voicemail system for the reporting and investigation of complaints without the requisite complaint information when the facts involve a significant risk to the public or to the integrity of lottery or bingo games. The proposed amendments to §403.800 (Savings Incentive Program) will address the statement that the Commission has no appropriated undedicated general revenue. The Charitable Bingo Operations Division currently is funded by general revenue. The Charitable Bingo program is supported only as required by bingo fees and the Commission does not foresee retaining any general revenue savings. Finally, these amendments also include non-substantive stylistic changes including "agency" to "commission" and "Commission" to "commission."

**Recommendation:** Staff recommends the Commission initiate the rulemaking process by publishing the attached proposed rule amendments in the *Texas Register* in order to receive public comments for a period of thirty (30) days.



1           The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §403.101  
2   (Open Records), §403.110 (Petition for Adoption of Rule Changes), §403.301 (Historically  
3   Underutilized Businesses), §403.600 (Complaint Review Process), and §403.800 (Savings  
4   Incentive Program). The proposed rule amendments are a result of the Commission's recent rule  
5   review conducted in accordance with Texas Government Code §2001.039.

6           The proposed amendments to §403.101 (Open Records) make minor, non-substantive  
7   changes to terminology from “open records” to “public information”.

8           The proposed amendments to §403.110 (Petition for Adoption of Rule Changes) add  
9   language regarding the residency requirement for the petitioner as amended by the 84<sup>th</sup> Legislature,  
10   R.S., Ch. 343 (H.B. 763), Sec. 1, effective June 9, 2015.

11          The proposed amendments to §403.301 (Historically Underutilized Businesses) make  
12   minor, non-substantive changes to update a citation to the Texas Comptroller’s administrative  
13   rules.

14          The proposed amendments to §403.600 (Complaint Review Process) address the  
15   availability of a dedicated voicemail system for the reporting and investigation of complaints  
16   without the requisite complaint information when the facts involve a significant risk to the public  
17   or to the integrity of lottery or bingo games.

18          The proposed amendments to §403.800 (Savings Incentive Program) will address the  
19   statement that the Commission has no appropriated undedicated general revenue. The Charitable  
20   Bingo Operations Division currently is funded by general revenue. The Charitable Bingo program  
21   is supported only as required by bingo fees and the Commission does not foresee retaining any  
22   general revenue savings.

1 Finally, these amendments also include non-substantive stylistic changes including  
2 “agency” to “commission” and “Commission” to “commission.”

3 Kathy Pyka, Controller, has determined that for each year of the first five years the  
4 amendments will be in effect, there will be no significant fiscal impact for state or local  
5 governments as a result of the proposed amendments. There will be no adverse effect on small  
6 businesses or rural communities, micro businesses, or local or state employment. There will be no  
7 additional economic cost to persons required to comply with the amendments, as proposed.  
8 Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required  
9 because the proposed amendments will not have an adverse economic effect on small businesses  
10 or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

11 Bob Biard, General Counsel, has determined that for each year of the first five years the  
12 proposed amendments will be in effect, the public benefit expected is improved clarity and greater  
13 understanding of agency practices and procedures based on the removal of obsolete language and  
14 the use of updated and consistent terminology.

15 Pursuant to Texas Government Code §2001.0221, the Commission provides the following  
16 Government Growth Impact Statement for the proposed amendments. For each year of the first  
17 five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the  
18 following:

19 (1) The proposed rule amendments do not create or eliminate a government program.

20 (2) Implementation of the proposed rule amendments does not require the creation of new  
21 employee positions or the elimination of existing employee positions.

22 (3) Implementation of the proposed rule amendments does not require an increase or  
23 decrease in future legislative appropriations to the Commission.



1 (4) The proposed rule amendments do not require an increase or decrease in fees paid to  
2 the Commission.

3 (5) The proposed rule amendments do not create a new regulation.

4 (6) The proposed amendments do not expand or limit an existing regulation.

5 (7) The proposed rule amendments do not increase or decrease the number of individuals  
6 subject to the rule's applicability.

7 (8) The proposed rule amendments do not positively or adversely affect this state's  
8 economy.

9 The Commission requests comments on the proposed amendments from any interested  
10 person. Comments may be submitted to Deanne Rienstra, Special Counsel, by mail at Texas  
11 Lottery Commission, P. O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-  
12 5189; or by email at *legal.input@lottery.state.tx.us*. Comments must be received within 30 days  
13 after publication of this proposal in the Texas Register in order to be considered.

14 These amendments are proposed under the authority of Texas Government Code §552.230,  
15 which authorizes a state agency to promulgate reasonable rules of procedure under which public  
16 information may be inspected and copied efficiently, safely, and without delay; Texas Government  
17 Code §2001.004(1), which requires state agencies to adopt rules of practice; and Texas  
18 Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement  
19 and administration of the laws under the Commission's jurisdiction.

20 This proposal is intended to implement Texas Government Code, Chapters 466, 467, 552,  
21 2001, 2108, and 2161.

22 §403.101. Public Information. [~~Open Records~~.]

1 (a) Charges for Copies of Public Records. The charges to any person requesting reproductions of  
2 any readily available record of the Texas Lottery Commission will be the charges established by  
3 rule by the Office of the Attorney General in accordance with the Texas Government Code Chapter  
4 552, Subchapter F.

5 (1) Pursuant to Texas Government Code §552.275, the commission [~~Commission~~] has  
6 established a limit of 36 hours per fiscal year as the maximum amount of time commission  
7 [~~agency~~] personnel are required to spend producing public information for inspection or  
8 duplication by a requestor, or providing copies of public information to a requestor, without the  
9 commission [~~agency~~] recovering costs attributable to that personnel time.

10 (2) The commission [~~agency~~] will provide each requestor a written statement of the amount  
11 of personnel time spent complying with each request for public information from the requestor  
12 and the cumulative amount of time spent complying with requests for public information from the  
13 requestor during the fiscal year. Subject to the provisions of §552.275, when the 36-hour limit is  
14 met or exceeded, the commission [~~agency~~] will require a requestor to pay costs attributable to cost  
15 of materials, overhead, and personnel time necessary to comply with the request.

16 (b) The commission [~~agency~~] may furnish public records without charge or at a reduced charge if  
17 it [~~the agency~~] determines that waiver or reduction of the fees is in the public interest.

18 (c) Public Information [~~Open Records~~] Requests. The following guidelines apply to requests for  
19 records under the Public Information Act, Texas Government Code, Chapter 552.

20 (1) Requests must be in writing and reasonably identify the records requested. All requests  
21 must be submitted to the commission's [~~agency's~~] Public Information Coordinator by one of the  
22 methods indicated on the commission's [~~agency's~~] website.

23 (2) Records access will be by appointment only.

1 (3) Records access is available only during the regular business hours of the commission  
2 [agency].

3 (4) Generally, unless confidential information is involved, review may be by physical  
4 access or by duplication, at the requestor's option. Any person, however, whose request would be  
5 unduly disruptive to the ongoing business of the office may be denied physical access and will  
6 only be provided the option of receiving copies.

7 (5) When the safety of any public record is at issue, physical access may be denied, and  
8 the records will be provided by duplication as previously described.

9 (6) Confidential files will not be made available for inspection or for duplication except  
10 under certain circumstances, e.g., court order.

11 (7) All public information ~~[open records]~~ requests appointments will be referred to the  
12 commission's ~~[agency's]~~ Public Information Coordinator before complying with a request.

13 §403.110. Petition for Adoption of Rule Changes.

14 (a) Any interested person or agency may petition the commission ~~[Commission]~~ requesting  
15 adoption of a rule. Petitions shall be in writing, should be filed with the general counsel, and shall  
16 comply with the following requirements.

17 (1) Each petition must state the name and address of the petitioner.

18 (2) Each petition shall include:

19 (A) a brief explanation of the proposed rule;

20 (B) the text of the proposed rule prepared in a manner to indicate the words to be  
21 added or deleted from the current text, if any;

22 (C) a statement of the statutory or other authority under which the rule is proposed  
23 to be promulgated; and



1 (D) a justification for adoption of the rule.

2 (3) For the purposes of this section, an interested person must be:

3 (A) a resident of this state;

4 (B) a business entity located in this state;

5 (C) a governmental subdivision located in this state; or

6 (D) a public or private organization located in this state that is not a state agency.

7 (b) The general counsel or the general counsel's designee shall review all petitions for compliance  
8 with this section. The petitioner shall have the right to file a corrected petition which complies  
9 with the requirements of this section.

10 (c) Upon receipt of a petition which complies with the requirements of this section, the general  
11 counsel or the general counsel's designee will consult with the persons in the commission  
12 [~~Commission~~] who are responsible for the area with which the rule is concerned to evaluate the  
13 merits of the proposal. Not later than the 60th day after the date of receipt of a petition, the general  
14 counsel or the general counsel's designee shall present the petition to the commission with a  
15 recommendation on whether a rulemaking proceeding should be initiated.

16 (d) The commission shall deny the petition or initiate rulemaking proceedings in accordance with  
17 the Administrative Procedure Act (APA) and these rules. The commission may modify any  
18 proposed rule to ensure that it conforms to the format of commission rules, adequately addresses  
19 the perceived problem or other subject matter, and conforms to the filing requirements of the *Texas*  
20 *Register*.

21 §403.301. Historically Underutilized Businesses.

22 The Texas Lottery Commission adopts by reference the rules administered by the Office of the  
23 Comptroller of Public Accounts regarding historically underutilized businesses, which are set forth

1 in the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 1, §§20.281  
2 - 20.298.

3 §403.600. Complaint Review Process.

4 (a) Purpose. This section implements §467.111 of the Texas Government Code, which requires  
5 the commission [~~Texas Lottery Commission (Commission)~~] to maintain a system to promptly and  
6 efficiently act on each complaint filed with the commission [~~Commission~~] and by rule adopt and  
7 publish procedures governing the entire complaint process from submission to disposition. The  
8 Lottery Operations Division shall manage the process for all complaints relating to any  
9 commission [~~Commission~~] activities, regardless of the affected commission [~~Commission~~]  
10 division or subject matter. The Lottery Operations Division may adopt written procedures to  
11 further implement the requirements of §467.111 and this section.

12 (b) Complaint Intake. Complaints must be submitted by mail, email, voice mail on a dedicated  
13 voice mail box, in person, or fax.

14 (1) All complaints shall be monitored through the complaint tracking system and all  
15 jurisdictional complaints will be tracked, from initial intake or discovery of the complaint to final  
16 disposition. A jurisdictional complaint is a complaint which alleges a violation of the State Lottery  
17 Act (Government Code, Chapter 466), the Bingo Enabling Act (Occupations Code, Chapter 2001),  
18 commission [~~Commission~~] rules, or any other applicable provisions of the Texas Government  
19 Code or the Texas Administrative Code under which the commission [~~Commission~~] has the  
20 authority to interpret and apply the law.

21 (2) The commission [~~Commission~~] shall make available information on how to file a  
22 complaint on the commission's [~~Commission's~~] internet website [~~web-site~~], intranet, at

1 commission [~~Commission~~] claim centers, Bingo regional offices, licensed lottery retail locations,  
2 bingo playing locations, and the commission [~~Commission~~] headquarters.

3 (3) Commission staff shall maintain and monitor a toll-free telephone number during  
4 normal working hours to assist complainants. Commission staff may also maintain and monitor a  
5 dedicated voice mail box to assist with complaint intake.

6 (c) Complaint Processing. The commission [~~Commission~~] requires specific information to process  
7 and investigate a complaint. Commission staff will review all complaints to ensure they are  
8 jurisdictional [~~, in writing,~~] and include the complainant's name, mailing address, and contact  
9 phone number. If a complaint is received without all necessary information, the staff will make  
10 reasonable efforts to contact the complainant and obtain the necessary information. Non-  
11 jurisdictional complaints will be entered in the complaint tracking system as contacts along with  
12 an explanation why the complaint is non-jurisdictional, but will not be referred for investigation  
13 or follow-up. Staff will notify the complainant verbally or in writing that the complaint is non-  
14 jurisdictional.

15 (d) If the complaint is jurisdictional and contains the required information, the complaint will be  
16 entered in the complaint tracking system and referred to the appropriate commission [~~Commission~~]  
17 division or department for investigation or follow-up. Commission staff will provide an  
18 acknowledgement notification verbally or in writing to the complainant after the complaint is  
19 processed. Commission staff will provide periodic ongoing complaint status updates verbally or  
20 in writing. A closing notification will be provided to the complainant verbally or in writing when  
21 the complaint is closed.

1 (e) Complaint Analysis and Reports. The commission [~~Commission~~] staff will maintain a  
2 comprehensive database of complaints in order to identify trends or issues related to violations of  
3 state laws under the commission's [~~Commission's~~] jurisdiction.

4 (1) At least once each biennium, designated commission [Commission] staff will generate  
5 a trend analysis report. The report will:

6 (A) categorize complaints based on the type of violation alleged;

7 (B) track each complaint from submission to disposition;

8 (C) evaluate the effectiveness of the of the commission's [~~Commission's~~]  
9 enforcement process; and

10 (D) include any additional information the commission [Commission] considers  
11 necessary.

12 (2) The trend analysis report shall be made available to the public.

13 (f) Americans with Disabilities Act Complaints. Notwithstanding the foregoing, all complaints to  
14 the commission [~~Commission~~] regarding Americans with Disabilities Act violations are governed  
15 by the provisions of §401.407 of this title (relating to Complaints Relating to Non-accessibility),  
16 and not this section.

17 §403.800. Savings Incentive Program.

18 (a) Purpose. This section implements Chapter 2108 of the Texas Government Code, which requires  
19 state agencies to provide notice to the comptroller of savings realized from appropriated  
20 undedicated general revenue and to retain a portion of the amounts verified by the comptroller.  
21 The Charitable Bingo Operations Division is funded by general revenue. However, the Bingo  
22 program is supported by fees and the commission does not foresee retaining any general revenue  
23 savings at this time. [~~Currently, the Commission has no appropriated undedicated general revenue~~

1 ~~and therefore may not retain any savings.~~] However, consistent with the statute, this section will  
2 govern any potential future savings realized from appropriated undedicated general revenue.

3 (b) Retention of Funds. The commission will retain one-half of the amount of savings verified by  
4 the comptroller.

5 (c) Use of Funds. Of the savings retained by the commission [~~Commission~~], one-half:

6 (1) must be used to make additional principal payments for general obligation bonds issued  
7 by the commission [~~Commission~~] or on behalf of the commission [~~Commission~~] by the Texas  
8 Public Finance Authority; or

9 (2) if there are no outstanding general obligation bonds issued by the commission  
10 [~~Commission~~] or on behalf of the commission [~~Commission~~] by the Texas Public Finance  
11 Authority, may be used to provide bonuses, distributed equally, to each commission [~~Commission~~]  
12 employee who:

13 (A) is a current full-time equivalent employee of the commission [~~Commission~~];

14 (B) worked for the commission [~~Commission~~] as a full-time equivalent employee  
15 for the entire fiscal year in which the savings were realized; and

16 (C) is directly responsible for or worked in a department, office, or other division  
17 within the commission [~~Commission~~] that is responsible for the savings realized.

18 (3) If the amount of savings verified by the comptroller, expressed as a percentage of the  
19 total amount of undedicated general revenue derived from nonfederal sources appropriated to the  
20 commission [~~Commission~~] for the fiscal year in which the savings were realized, is:

21 (A) less than three percent, a bonus described by subsection (c)(2) may not exceed  
22 \$250;

1 (B) at least three percent but less than five percent, a bonus described by subsection  
2 (c)(2) may not exceed \$500;

3 (C) at least five percent but less than 10 percent, a bonus described by subsection  
4 (c)(2) may not exceed \$750; and

5 (D) 10 percent or more, a bonus described by subsection (c)(2) may not exceed  
6 \$1,000.

7 (4) The commission [~~Commission~~] may not provide a bonus under subsection (c)(2) to a  
8 [~~an~~] commission employee [~~of the Commission~~] who serves in a director-level position, including  
9 the executive director.