



STATE OF ILLINOIS  
**OFFICE OF THE  
 AUDITOR GENERAL**

Frank J. Mautino, Auditor General

**SUMMARY REPORT DIGEST**

**DEPARTMENT OF THE LOTTERY**

State Compliance Examination  
 For the Two Years Ended June 30, 2021

Release Date: May 26, 2022

FINDINGS THIS AUDIT: 14				AGING SCHEDULE OF REPEATED FINDINGS			
	<u>New</u>	<u>Repeat</u>	<u>Total</u>	<u>Repeated Since</u>	<u>Category 1</u>	<u>Category 2</u>	<u>Category 3</u>
<b>Category 1:</b>	<b>1</b>	<b>1</b>	<b>2</b>	2020		21-02	
<b>Category 2:</b>	<b>4</b>	<b>7</b>	<b>11</b>	2019		21-04, 21-08, 21-09, 21-11	
<b>Category 3:</b>	<b>1</b>	<b>0</b>	<b>1</b>	2017	<b>21-01</b>	21-03	
<b>TOTAL</b>	<b>6</b>	<b>8</b>	<b>14</b>	2013		21-10	
<b>FINDINGS LAST AUDIT: 14</b>							

**INTRODUCTION**

This digest covers the Department’s compliance examination for the two years ended June 30, 2021. A separate digest covers the State Lottery Fund’s financial audit as of and for the year ended June 30, 2021. In total, this report includes 14 findings, 6 of which were reported in the financial audit.

**SYNOPSIS**

- **(21-07)** The Department has not implemented the Lottery Sports Wagering Pilot Program as mandated by the Sports Wagering Act.
- **(21-10)** The Department did not comply with statutory reporting responsibilities.

**Category 1:** Findings that are **material weaknesses** in internal control and/or a **qualification** on compliance with State laws and regulations (material noncompliance).  
**Category 2:** Findings that are **significant deficiencies** in internal control and **noncompliance** with State laws and regulations.  
**Category 3:** Findings that have **no internal control issues but are in noncompliance** with State laws and regulations.

**DEPARTMENT OF THE LOTTERY  
STATE COMPLIANCE EXAMINATION  
For the Two Years Ended June 30, 2021**

<b>EXPENDITURE STATISTICS</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>
<b>Total Expenditures.....</b>	<b>\$ 721,010,741</b>	<b>\$ 495,468,981</b>	<b>\$ 688,531,498</b>
OPERATIONS TOTAL.....	\$ 158,115,121	\$ 157,432,428	\$ 210,253,952
% of Total Expenditures.....	21.9%	31.8%	30.5%
Personal Services.....	4,311,899	3,952,295	4,539,432
Other Payroll Costs (FICA, Retirement).....	4,046,662	3,567,094	3,520,536
All Other Operating Expenditures.....	149,756,560	149,913,039	202,193,984
AWARDS AND GRANTS.....	\$ 562,869,743	\$ 338,015,532	\$ 459,763,790
% of Total Expenditures.....	78.1%	68.2%	66.8%
DEPOSITS, CAPITAL PROJECTS FUND.....	\$ -	\$ -	\$ 18,503,860
% of Total Expenditures.....	0.0%	0.0%	2.7%
REFUNDS.....	\$ 25,877	\$ 21,021	\$ 9,896
% of Total Expenditures.....	0.0%	0.0%	0.0%
<b>Total Receipts.....</b>	<b>\$ 1,551,921,233</b>	<b>\$ 1,206,573,825</b>	<b>\$ 1,352,757,422</b>
<b>Average Number of Employees.....</b>	<b>146</b>	<b>147</b>	<b>151</b>

**DEPARTMENT DIRECTOR**

During Examination Period: Mr. Harold Mays

Currently: Mr. Harold Mays

**FINDINGS, CONCLUSIONS, AND  
RECOMMENDATIONS**

**FAILURE TO IMPLEMENT LOTTERY SPORTS  
WAGERING**

The Department of the Lottery (Department) has not implemented the Lottery Sports Wagering Pilot Program (SWP) as mandated by the Sports Wagering Act (Act) (230 ILCS 45/25-70).

**Unimplemented SWP was to fund vertical capital projects**

**Department must competitively issue one license for a \$20 million fee**

**Emergency declared by the General Assembly to get the SWP operational as soon as possible**

**SWP sunsets on January 1, 2024**

Public Act 101-0031, effective on June 28, 2019, created the Act and the Department’s SWP for parlay wagers and fixed odds parlay wagers as part of a funding mechanism for vertical capital projects. Under § 25-70, the Department is mandated to issue one SWP central system provider license for a fee of \$20 million following an open and competitive bidding process for 2,500 retail locations through June 22, 2020, which then increased to 5,000 retail locations thereafter. Further, after the General Assembly found an emergency existed and it was necessary to the public interest, safety, and welfare for the Department to promulgate emergency rules to get the SWP operational as soon as possible, § 25-70(i) authorized the adoption of emergency rules to administer the SWP. Finally, § 25-70(k) sunsets the SWP on January 1, 2024.

In response, the Department took the following actions during the examination period:

**RFI posted three months after the SWP’s law was effective**

**Department sought five major changes to the SWP’s law during the Fall 2019 Veto Session**

Date(s)	Event
September 27, 2019	The Department posted a Request for Information (RFI) on three gaming industry websites.
October 1-11, 2019	The Department received 10 replies from various gaming entities to its RFI.
October 28-30, 2019 November 12-14, 2019	During the General Assembly’s Fall 2019 Veto Session, the Department sought an amendment to § 25-70 in the trailer bill. This bill, like subsequently introduced bills, attempted to (1) allow for integration between the SWP’s independent central system and the Department’s system, (2) allow debit and credit card transactions, (3) reduce the \$20 million fee paid by the successful SWP, (4) change the flow of funds received by the Department from SWP, and (5) extend the sunset date of the SWP.

**Draft administrative rules sent for review were written assuming the General Assembly adopted changes sought by Department management**

**Department management is notified its draft rules were not supported by the SWP’s statutory text, which was not corrected by management by the end of the examination period**

**Request for proposals drafted by the Department’s management assumed their proposed changes would be adopted by the General Assembly**

<b>Date(s)</b>	<b>Event</b>
Spring 2020 Session	The Department sought an amendment to § 25-70 similar to the amendment sought during the Fall 2019 Veto Session.
June 8, 2020	The Department sent pre-draft administrative rules to the Joint Committee on Administrative Rules (JCAR), which were written assuming the Department’s changes would be approved by the General Assembly.
June 18, 2020	JCAR sent a letter of comments to the Department about the pre-draft administrative rules, noting the Department had several proposed rules which were not supported by the current statutory text of § 25-70. As of June 30, 2021, the Department had not yet cleared JCAR’s comments.
Fall 2020 Veto Session	The Department continued to seek an amendment to § 25-70 similar to the amendment sought during the General Assembly’s Fall 2019 Veto Session.
Spring 2021 Session	The Department sought an amendment to § 25-70 similar to the amendment sought during the General Assembly’s Fall 2019 Veto Session.
March 2021	The Department completed a draft Request for Proposals (RFP) to issue the SWP’s Central System Provider, who will serve as the private manager overseeing the SWP’s terminals, which was written assuming the Department’s changes would be approved by the General Assembly.

During testing, we noted the following:

**SWP has not been implemented**

- The Department has not implemented the SWP by issuing an RFP or adopting administrative rules under current law, which was effective over two years ago.

Department officials indicated they believe the General Assembly did not set a time frame for when the Department was required to fully implement the SWP.

**RFI not posted on BidBuy**

- The Department did not post the RFI in the State’s online procurement bulletin, BidBuy.

Department officials indicated the Chief Procurement Officer did not give the Department authorization to post the RFI on BidBuy.

**Auditors acknowledge an RFP issued under current law may not result in any responses**

While it is possible an RFP issued under current law may fail to yield any responses, failure to adopt administrative rules and issue an RFP as soon as possible after Public Act 101-0031 passed and implement the SWP guaranteed the Department (1) would not collect the \$20 million license fee and (2) forewent potential revenues from wagers not placed which support both the Capital Projects Fund and Lottery retailers wanting to participate in the SWP. In addition, failure to post the RFI on BidBuy reduced public exposure of the Department's RFI. (Finding 7, pages 26-29)

**However, not implementing the SWP guaranteed the State and Lottery retailers would not realize revenue**

**Accountant's recommendations**

We recommended the Department issue an RFP to implement the SWP. Further, the Department should work with the Chief Procurement Officer to implement controls so future RFIs are posted on BidBuy in strict adherence with the provisions of the Illinois Administrative Code (IAC).

**Department officials rejected our recommendations**

Department officials stated the following:

The Department accepts the finding. Public Act 101-0031, effective on June 28, 2019, created the Act. Section 25-70 of the Act created the SWP. Prior to its passage the Department sanctioned Illinois-specific research to assess the impact and opportunity of legalized sports betting in the lottery environment. The Department also identified the initial concerns it had regarding the language included in the bills which later became Public Act 101-0031 and unsuccessfully lobbied for changes. Upon passage of the Act, the Department continued its due diligence for the purpose of implementing the SWP. The Department began project planning, conducted additional research and analysis, and initiated the development of a RFI for the purpose of determining the feasibility of the SWP under the current law.

The Department compiled and released the RFI on the Department's website as well as reputable gaming websites used by vendors that support the lottery industry domestically and abroad. The RFI was also forwarded to all interested parties listed on Bid Buy, the state's online procurement bulletin, but as noted in the finding, the RFI was not posted on Bid Buy itself. The Department considered posting the RFI on Bid Buy, but after consultation with the state's CPO, agreed the RFI should be part of the central system provider license bid process which the Department had statutory authority to complete outside of the state's procurement process. Even without the use of Bid Buy, the RFI elicited 10 responses.

The preliminary research conducted by the Department and the results from the RFI indicated the SWP was not feasible in

its current form. These results supported the Department's initial assessment. Additional research and consultation with other states who have implemented similar programs, validated the Department's assessment. Despite those results, the Department continues implementation efforts by further developing its plan, finalizing an RFP for the central system provider, increasing authorized headcount, and drafting administrative rules. The Department continues these efforts while concurrently identifying modifications to Public Act 101-0031 and lobbying for their passage.

The Department believes it is in the best interest of the State to apply the results of the RFI and research conducted in making modifications to the law that have been found critical in order to stand up a viable SWP program. The Department remains vigilant in its efforts to create the best program it can in accordance with the law.

### **Accountant's Comment**

In an accountant's comment, we noted, at this time, despite the Department's repeated efforts to seek a legislative change, the General Assembly, as is their exclusive right, has chosen not to adopt the Department's proposals and change § 25-70 of the Act. This fact – when considered in light of both (1) the ever diminishing likelihood an RFP issued under current law would yield any responses due to the approaching sunset date on January 1, 2024, and (2) the General Assembly's determination that time was of the essence by authorizing the adoption of emergency rules to get the SWP operational as soon as possible – strongly supports our recommendation Department management should issue an RFP to implement the SWP.

Further, as requested by us during the exit conference, Department management has not provided documentation which supports its assertion the SWP is not subject to the State's procurement process, including the provisions of the Illinois Procurement Code (Code) and related administrative rules within the IAC. Unlike the procurement process for the Department's Private Manager which is explicitly exempted from the provisions of the Code unless specifically required by the management agreement entered into by the Department and the Private Manager by the Illinois Lottery Law (Law) (20 ILCS 1605/9.1(e)), the Code is not even mentioned in the Act nor is the Act mentioned in the Code. Like the Law, the Code (30 ILCS 500/1-10(d)) explicitly only exempts the procurement process for the Private Manager under § 9.1 of the Law. As such, we continue to believe the SWP is subject to the State's procurement process, including the requirements for publishing RFIs within the IAC. If Department management continues to disagree with our recommendation, we recommend they seek a formal, written opinion from the Attorney General on the applicability of the State's procurement process to the SWP.

## INADEQUATE CONTROLS OVER REPORTING REQUIREMENTS

The Department did not comply with statutory reporting responsibilities.

During testing, some of the more significant issues we noted included the following:

### Reports submitted to the Governor and Secretary of State were not complete and accurate

- We continued to note the Department did not submit a complete and accurate Agency Workforce Report (Report) to the Office of the Governor and the Office of the Secretary of State during both fiscal years examined.

### Reports not submitted to the Illinois State Library

- The Department's controls over the submission of its reports and publications to the Illinois State Library (Library) were not operating effectively. Of the reports we were aware of and which should have been submitted to the Library, we noted the following:
  - The quarterly report on the private manager's actions and activities required by the Illinois Lottery Law (Law) was not submitted for the first quarter of Fiscal Year 2020 and the last three quarters of Fiscal Year 2021.
  - The Fiscal Year 2021 annual report on the private manager's activities as required by the Law was not submitted to the Library.
  - The eight quarterly reports on prize payments up to \$25,000 from a locally held fund and the costs associated with the locally held fund as required by the Law during the examination period were not submitted to the Library.
  - The *Game Rules: Pick 3, Pick 4, Lotto/Extra Shot®*, *Lucky Day Lotto® with EZmatch™*, *MegaMillions®/Megaplier®*, and *Powerball®/Power Play®* publication was not submitted to the Library.

### Department officials have not implemented corrective actions in the past eight years

In addition, this finding was originally noted during the Department's compliance examination for the two years ended June 30, 2013, eight years ago. As such, Department management has been unsuccessful in implementing a corrective action plan to remedy these deficiencies. (Finding 10, pages 36-38) **This finding has been repeated since 2013.**

### Accountant's recommendations

We recommended the Department prepare and submit a corrected Fiscal Year 2019 and Fiscal Year 2020 Report with the Office of the Governor and the Office of the Secretary of State within 30 days from the release of this report, as required by the

Illinois State Auditing Act. Further, the Department should ensure its annual Report is properly prepared from its underlying records, with the final Report reviewed by a supervisor to help ensure the accuracy and reliability of the Report.

In addition, the Department should ensure its controls which are designed to submit all of its reports and publications to the Library operate effectively and that each person responsible for the Department's publications are timely disclosed to the Government Documents Section of the Library.

**Department officials agree**

Department officials accepted the finding.

### **OTHER FINDINGS**

The remaining findings pertain to weaknesses with disaster recovery and cybersecurity programs and practices, an insufficient number of members on the Lottery Control Board, and inadequate controls over personal services, State vehicles, and remote access. We will review the Department's progress towards the implementation of our recommendations in our next State compliance examination.

### **ACCOUNTANT'S OPINION**

The accountants conducted a State compliance examination of the Department for the two years ended June 30, 2021, as required by the Illinois State Auditing Act. The accountants qualified their report on State compliance for Finding 2021-001 and Finding 2021-007. Except for the noncompliance described in these findings, the accountants stated the Department complied, in all material respects, with the requirements described in the report.

This State compliance examination was conducted by Sikich, LLP.

**SIGNED ORIGINAL ON FILE**

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JANE CLARK  
Division Director

This report is transmitted in accordance with Section 3-14 of the Illinois State Auditing Act.

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FRANK J. MAUTINO  
Auditor General

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