



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5229

Introduced 2/9/2024, by Rep. Margaret Croke

SYNOPSIS AS INTRODUCED:

20 ILCS 1605/9.1

Amends the Illinois Lottery Law. Removes a provision requiring the Governor to select a private manager for the total management of the Lottery by September 15, 2010 and provisions requiring the Department of Lottery to endeavor to expeditiously terminate the existing contracts in support of the lottery in effect on July 13, 2009 and transfer those functions to the private manager. Removes a provision allowing the compensation of the private manager to consist of a fee for services and a performance-based bonus as consideration for managing the lottery, including terms that may provide the private manager with an increase in compensation if lottery revenues grow by a specified percentage in a given year. Removes language voiding specified requests for proposal offered by the Department on December 22, 2008. Makes other changes.

LRB103 38855 AWJ 68992 b

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Lottery Law is amended by changing
5 Section 9.1 as follows:

6 (20 ILCS 1605/9.1)

7 Sec. 9.1. Private manager and management agreement.

8 (a) As used in this Section:

9 "Offeror" means a person or group of persons that responds
10 to a request for qualifications under this Section.

11 "Request for qualifications" means all materials and
12 documents prepared by the Department to solicit the following
13 from offerors:

14 (1) Statements of qualifications.

15 (2) Proposals to enter into a management agreement,
16 including the identity of any prospective vendor or
17 vendors that the offeror intends to initially engage to
18 assist the offeror in performing its obligations under the
19 management agreement.

20 "Final offer" means the last proposal submitted by an
21 offeror in response to the request for qualifications,
22 including the identity of any prospective vendor or vendors
23 that the offeror intends to initially engage to assist the

1 offeror in performing its obligations under the management
2 agreement.

3 "Final offeror" means the offeror ultimately selected by
4 the Governor to be the private manager for the Lottery under
5 subsection (h) of this Section.

6 (b) (Blank). ~~By September 15, 2010, the Governor shall~~
7 ~~select a private manager for the total management of the~~
8 ~~Lottery with integrated functions, such as lottery game~~
9 ~~design, supply of goods and services, and advertising and as~~
10 ~~specified in this Section.~~

11 (c) (Blank). ~~Pursuant to the terms of this subsection, the~~
12 ~~Department shall endeavor to expeditiously terminate the~~
13 ~~existing contracts in support of the Lottery in effect on July~~
14 ~~13, 2009 (the effective date of Public Act 96-37) in~~
15 ~~connection with the selection of the private manager. As part~~
16 ~~of its obligation to terminate these contracts and select the~~
17 ~~private manager, the Department shall establish a mutually~~
18 ~~agreeable timetable to transfer the functions of existing~~
19 ~~contractors to the private manager so that existing Lottery~~
20 ~~operations are not materially diminished or impaired during~~
21 ~~the transition. To that end, the Department shall do the~~
22 ~~following:~~

23 ~~(1) where such contracts contain a provision~~
24 ~~authorizing termination upon notice, the Department shall~~
25 ~~provide notice of termination to occur upon the mutually~~
26 ~~agreed timetable for transfer of functions;~~

1 ~~(2) upon the expiration of any initial term or renewal~~
2 ~~term of the current Lottery contracts, the Department~~
3 ~~shall not renew such contract for a term extending beyond~~
4 ~~the mutually agreed timetable for transfer of functions;~~
5 ~~or~~

6 ~~(3) in the event any current contract provides for~~
7 ~~termination of that contract upon the implementation of a~~
8 ~~contract with the private manager, the Department shall~~
9 ~~perform all necessary actions to terminate the contract on~~
10 ~~the date that coincides with the mutually agreed timetable~~
11 ~~for transfer of functions.~~

12 ~~If the contracts to support the current operation of the~~
13 ~~Lottery in effect on July 13, 2009 (the effective date of~~
14 ~~Public Act 96-34) are not subject to termination as provided~~
15 ~~for in this subsection (c), then the Department may include a~~
16 ~~provision in the contract with the private manager specifying~~
17 ~~a mutually agreeable methodology for incorporation.~~

18 (c-5) The Department shall include provisions in the
19 management agreement whereby the private manager shall, for a
20 fee, and pursuant to a contract negotiated with the Department
21 (the "Employee Use Contract"), utilize the services of current
22 Department employees to assist in the administration and
23 operation of the Lottery. The Department shall be the employer
24 of all such bargaining unit employees assigned to perform such
25 work for the private manager, and such employees shall be
26 State employees, as defined by the Personnel Code. Department

1 employees shall operate under the same employment policies,
2 rules, regulations, and procedures, as other employees of the
3 Department. In addition, neither historical representation
4 rights under the Illinois Public Labor Relations Act, nor
5 existing collective bargaining agreements, shall be disturbed
6 by the management agreement with the private manager for the
7 management of the Lottery.

8 (d) The management agreement with the private manager
9 shall include all of the following:

10 (1) A term not to exceed 10 years, including any
11 renewals.

12 (2) A provision specifying that the Department:

13 (A) shall exercise actual control over all
14 significant business decisions;

15 (A-5) has the authority to direct or countermand
16 operating decisions by the private manager at any
17 time;

18 (B) has ready access at any time to information
19 regarding Lottery operations;

20 (C) has the right to demand and receive
21 information from the private manager concerning any
22 aspect of the Lottery operations at any time; and

23 (D) retains ownership of all trade names,
24 trademarks, and intellectual property associated with
25 the Lottery.

26 (3) A provision imposing an affirmative duty on the

1 private manager to provide the Department with material
2 information and with any information the private manager
3 reasonably believes the Department would want to know to
4 enable the Department to conduct the Lottery.

5 (4) A provision requiring the private manager to
6 provide the Department with advance notice of any
7 operating decision that bears significantly on the public
8 interest, including, but not limited to, decisions on the
9 kinds of games to be offered to the public and decisions
10 affecting the relative risk and reward of the games being
11 offered, so the Department has a reasonable opportunity to
12 evaluate and countermand that decision.

13 (5) A provision providing for compensation of the
14 private manager ~~that may consist of, among other things, a~~
15 ~~fee for services and a performance based bonus as~~
16 ~~consideration for managing the Lottery, including terms~~
17 ~~that may provide the private manager with an increase in~~
18 ~~compensation if Lottery revenues grow by a specified~~
19 ~~percentage in a given year.~~

20 (6) (Blank).

21 (7) A provision requiring the deposit of all Lottery
22 proceeds to be deposited into the State Lottery Fund
23 except as otherwise provided in Section 20 of this Act.

24 (8) A provision requiring the private manager to
25 locate its principal office within the State.

26 (8-5) A provision encouraging that, pursuant to

1 Section 4 of the Business Enterprise for Minorities,
2 Women, and Persons with Disabilities Act, at least 20% of
3 ~~the cost of~~ contracts entered into for goods and services
4 by the private manager in connection with its management
5 of the Lottery, other than contracts with sales agents or
6 technical advisors, be awarded to businesses that are a
7 minority-owned business, a women-owned business, or a
8 business owned by a person with disability, as those terms
9 are defined in the Business Enterprise for Minorities,
10 Women, and Persons with Disabilities Act.

11 (9) A requirement that so long as the private manager
12 complies with all the conditions of the agreement under
13 the oversight of the Department, the private manager shall
14 have the following duties and obligations with respect to
15 the management of the Lottery:

16 (A) The right to use equipment and other assets
17 used in the operation of the Lottery.

18 (B) The rights and obligations under contracts
19 with retailers and vendors.

20 (C) The implementation of a comprehensive security
21 program by the private manager.

22 (D) The implementation of a comprehensive system
23 of internal audits.

24 (E) The implementation of a program by the private
25 manager to curb compulsive gambling by persons playing
26 the Lottery.

1 (F) A system for determining (i) the type of
2 Lottery games, (ii) the method of selecting winning
3 tickets, (iii) the manner of payment of prizes to
4 holders of winning tickets, (iv) the frequency of
5 drawings of winning tickets, (v) the method to be used
6 in selling tickets, (vi) a system for verifying the
7 validity of tickets claimed to be winning tickets,
8 (vii) the basis upon which retailer commissions are
9 established by the manager, and (viii) minimum
10 payouts.

11 (10) A requirement that advertising and promotion must
12 be consistent with Section 7.8a of this Act.

13 (11) A requirement that the private manager market the
14 Lottery to those residents who are new, infrequent, or
15 lapsed players of the Lottery, especially those who are
16 most likely to make regular purchases on the Internet as
17 permitted by law.

18 (12) A code of ethics for the private manager's
19 officers and employees.

20 (13) A requirement that the Department monitor and
21 oversee the private manager's practices and take action
22 that the Department considers appropriate to ensure that
23 the private manager is in compliance with the terms of the
24 management agreement, while allowing the manager, unless
25 specifically prohibited by law or the management
26 agreement, to negotiate and sign its own contracts with

1 vendors.

2 (14) A provision requiring the private manager to
3 periodically file, at least on an annual basis,
4 appropriate financial statements in a form and manner
5 acceptable to the Department.

6 (15) Cash reserves requirements.

7 (16) Procedural requirements for obtaining the prior
8 approval of the Department when a management agreement or
9 an interest in a management agreement is sold, assigned,
10 transferred, or pledged as collateral to secure financing.

11 (17) Grounds for the termination of the management
12 agreement by the Department or the private manager.

13 (18) Procedures for amendment of the agreement.

14 (19) A provision requiring the private manager to
15 engage in an open and competitive bidding process for any
16 procurement having a cost in excess of the small purchase
17 limits under Section 20-20 of the Illinois Procurement
18 Code ~~\$50,000~~ that is not a part of the private manager's
19 final offer. The process shall favor the selection of a
20 vendor deemed to have submitted a proposal that provides
21 the Lottery with the best overall value. The process shall
22 not be subject to the provisions of the Illinois
23 Procurement Code, unless specifically required by the
24 management agreement.

25 (20) The transition of rights and obligations,
26 including any associated equipment or other assets used in

1 the operation of the Lottery, from the manager to any
2 successor manager of the lottery, including the
3 Department, following the termination of or foreclosure
4 upon the management agreement.

5 (21) Right of use of copyrights, trademarks, and
6 service marks held by the Department in the name of the
7 State. The agreement must provide that any use of them by
8 the manager shall only be for the purpose of fulfilling
9 its obligations under the management agreement during the
10 term of the agreement.

11 (22) The disclosure of any information requested by
12 the Department to enable it to comply with the reporting
13 requirements and information requests provided for under
14 subsection (p) of this Section.

15 (e) Notwithstanding any other law to the contrary, the
16 Department shall select a private manager through a
17 competitive request for qualifications process consistent with
18 Section 20-35 of the Illinois Procurement Code, which shall
19 take into account:

20 (1) the offeror's ability to market the Lottery to
21 those residents who are new, infrequent, or lapsed players
22 of the Lottery, especially those who are most likely to
23 make regular purchases on the Internet;

24 (2) the offeror's ability to address the State's
25 concern with the social effects of gambling on those who
26 can least afford to do so;

1 (3) the offeror's ability to provide the most
2 successful management of the Lottery for the benefit of
3 the people of the State based on current and past business
4 practices or plans of the offeror; and

5 (4) the offeror's poor or inadequate past performance
6 in servicing, equipping, operating or managing a lottery
7 on behalf of Illinois, another State or foreign government
8 and attracting persons who are not currently regular
9 players of a lottery.

10 (f) The Department may retain the services of an advisor
11 or advisors with significant experience in financial services
12 or the management, operation, and procurement of goods,
13 services, and equipment for a government-run lottery to assist
14 in the preparation of the terms of the request for
15 qualifications and selection of the private manager. Any
16 prospective advisor seeking to provide services under this
17 subsection (f) shall disclose any material business or
18 financial relationship during the past 3 years with any
19 potential offeror, or with a contractor or subcontractor
20 presently providing goods, services, or equipment to the
21 Department to support the Lottery. The Department shall
22 evaluate the material business or financial relationship of
23 each prospective advisor. The Department shall not select any
24 prospective advisor with a substantial business or financial
25 relationship that the Department deems to impair the
26 objectivity of the services to be provided by the prospective

1 advisor. During the course of the advisor's engagement by the
2 Department, and for a period of one year thereafter, the
3 advisor shall not enter into any business or financial
4 relationship with any offeror or any vendor identified to
5 assist an offeror in performing its obligations under the
6 management agreement. Any advisor retained by the Department
7 shall be disqualified from being an offeror. The Department
8 shall not include terms in the request for qualifications that
9 provide a material advantage whether directly or indirectly to
10 any potential offeror, or any contractor or subcontractor
11 presently providing goods, services, or equipment to the
12 Department to support the Lottery, including terms contained
13 in previous responses to requests for proposals or
14 qualifications submitted to Illinois, another State or foreign
15 government when those terms are uniquely associated with a
16 particular potential offeror, contractor, or subcontractor.
17 ~~The request for proposals offered by the Department on~~
18 ~~December 22, 2008 as "LOT08GAMESYS" and reference number~~
19 ~~"22016176" is declared void.~~

20 (g) The Department shall select at least 2 offerors as
21 finalists to potentially serve as the private manager no later
22 than August 9, 2010. Upon making preliminary selections, the
23 Department shall schedule a public hearing on the finalists'
24 proposals and provide public notice of the hearing at least 7
25 calendar days before the hearing. The notice must include all
26 of the following:

- 1 (1) The date, time, and place of the hearing.
- 2 (2) The subject matter of the hearing.
- 3 (3) A brief description of the management agreement to
4 be awarded.
- 5 (4) The identity of the offerors that have been
6 selected as finalists to serve as the private manager.
- 7 (5) The address and telephone number of the
8 Department.
- 9 (h) At the public hearing, the Department shall (i)
10 provide sufficient time for each finalist to present and
11 explain its proposal to the Department and the Governor or the
12 Governor's designee, including an opportunity to respond to
13 questions posed by the Department, Governor, or designee and
14 (ii) allow the public and non-selected offerors to comment on
15 the presentations. The Governor or a designee shall attend the
16 public hearing. After the public hearing, the Department shall
17 have 14 calendar days to recommend to the Governor whether a
18 management agreement should be entered into with a particular
19 finalist. After reviewing the Department's recommendation, the
20 Governor may accept or reject the Department's recommendation,
21 and shall select a final offeror as the private manager by
22 publication of a notice in the Illinois Procurement Bulletin
23 on or before September 15, 2010. The Governor shall include in
24 the notice a detailed explanation and the reasons why the
25 final offeror is superior to other offerors and will provide
26 management services in a manner that best achieves the

1 objectives of this Section. The Governor shall also sign the
2 management agreement with the private manager.

3 (i) Any action to contest the private manager selected by
4 the Governor under this Section must be brought within 7
5 calendar days after the publication of the notice of the
6 designation of the private manager as provided in subsection
7 (h) of this Section.

8 (j) The Lottery shall remain, for so long as a private
9 manager manages the Lottery in accordance with provisions of
10 this Act, a Lottery conducted by the State, and the State shall
11 not be authorized to sell or transfer the Lottery to a third
12 party.

13 (k) Any tangible personal property used exclusively in
14 connection with the lottery that is owned by the Department
15 and leased to the private manager shall be owned by the
16 Department in the name of the State and shall be considered to
17 be public property devoted to an essential public and
18 governmental function.

19 (l) The Department may exercise any of its powers under
20 this Section or any other law as necessary or desirable for the
21 execution of the Department's powers under this Section.

22 (m) Neither this Section nor any management agreement
23 entered into under this Section prohibits the General Assembly
24 from authorizing forms of gambling that are not in direct
25 competition with the Lottery. The forms of gambling authorized
26 by Public Act 101-31 constitute authorized forms of gambling

1 that are not in direct competition with the Lottery.

2 (n) The private manager shall be subject to a complete
3 investigation in the third, seventh, and tenth years of the
4 agreement (if the agreement is for a 10-year term) by the
5 Department in cooperation with the Auditor General to
6 determine whether the private manager has complied with this
7 Section and the management agreement. The private manager
8 shall bear the cost of an investigation or reinvestigation of
9 the private manager under this subsection.

10 (o) The powers conferred by this Section are in addition
11 and supplemental to the powers conferred by any other law. If
12 any other law or rule is inconsistent with this Section,
13 including, but not limited to, provisions of the Illinois
14 Procurement Code, then this Section controls as to any
15 management agreement entered into under this Section. This
16 Section and any rules adopted under this Section contain full
17 and complete authority for a management agreement between the
18 Department and a private manager. No law, procedure,
19 proceeding, publication, notice, consent, approval, order, or
20 act by the Department or any other officer, Department,
21 agency, or instrumentality of the State or any political
22 subdivision is required for the Department to enter into a
23 management agreement under this Section. This Section contains
24 full and complete authority for the Department to approve any
25 contracts entered into by a private manager with a vendor
26 providing goods, services, or both goods and services to the

1 private manager under the terms of the management agreement,
2 including subcontractors of such vendors.

3 Upon receipt of a written request from the Chief
4 Procurement Officer, the Department shall provide to the Chief
5 Procurement Officer a complete and un-redacted copy of the
6 management agreement or any contract that is subject to the
7 Department's approval authority under this subsection (o). The
8 Department shall provide a copy of the agreement or contract
9 to the Chief Procurement Officer in the time specified by the
10 Chief Procurement Officer in his or her written request, but
11 no later than 5 business days after the request is received by
12 the Department. The Chief Procurement Officer must retain any
13 portions of the management agreement or of any contract
14 designated by the Department as confidential, proprietary, or
15 trade secret information in complete confidence pursuant to
16 subsection (g) of Section 7 of the Freedom of Information Act.
17 The Department shall also provide the Chief Procurement
18 Officer with reasonable advance written notice of any contract
19 that is pending Department approval.

20 Notwithstanding any other provision of this Section to the
21 contrary, the Chief Procurement Officer shall adopt
22 administrative rules, including emergency rules, to establish
23 a procurement process to select a successor private manager if
24 a private management agreement has been terminated. The
25 selection process shall at a minimum take into account the
26 criteria set forth in items (1) through (4) of subsection (e)

1 of this Section and may include provisions consistent with
2 subsections (f), (g), (h), and (i) of this Section. The Chief
3 Procurement Officer shall also implement and administer the
4 adopted selection process upon the termination of a private
5 management agreement. The Department, after the Chief
6 Procurement Officer certifies that the procurement process has
7 been followed in accordance with the rules adopted under this
8 subsection (o), shall select a final offeror as the private
9 manager and sign the management agreement with the private
10 manager.

11 Through June 30, 2022, except as provided in Sections
12 21.5, 21.6, 21.7, 21.8, 21.9, 21.10, 21.11, 21.12, and 21.13
13 of this Act and Section 25-70 of the Sports Wagering Act, the
14 Department shall distribute all proceeds of lottery tickets
15 and shares sold in the following priority and manner:

16 (1) The payment of prizes and retailer bonuses.

17 (2) The payment of costs incurred in the operation and
18 administration of the Lottery, including the payment of
19 sums due to the private manager under the management
20 agreement with the Department.

21 (3) On the last day of each month or as soon thereafter
22 as possible, the State Comptroller shall direct and the
23 State Treasurer shall transfer from the State Lottery Fund
24 to the Common School Fund an amount that is equal to the
25 proceeds transferred in the corresponding month of fiscal
26 year 2009, as adjusted for inflation, to the Common School

1 Fund.

2 (4) On or before September 30 of each fiscal year,
3 deposit any estimated remaining proceeds from the prior
4 fiscal year, subject to payments under items (1), (2), and
5 (3), into the Capital Projects Fund. Beginning in fiscal
6 year 2019, the amount deposited shall be increased or
7 decreased each year by the amount the estimated payment
8 differs from the amount determined from each year-end
9 financial audit. Only remaining net deficits from prior
10 fiscal years may reduce the requirement to deposit these
11 funds, as determined by the annual financial audit.

12 Beginning July 1, 2022, the Department shall distribute
13 all proceeds of lottery tickets and shares sold in the manner
14 and priority described in Section 9.3 of this Act, except that
15 the Department shall make the deposit into the Capital
16 Projects Fund that would have occurred under item (4) of this
17 subsection (o) on or before September 30, 2022, but for the
18 changes made to this subsection by Public Act 102-699.

19 (p) The Department shall be subject to the following
20 reporting and information request requirements:

21 (1) the Department shall submit written quarterly
22 reports to the Governor and the General Assembly on the
23 activities and actions of the private manager selected
24 under this Section;

25 (2) upon request of the Chief Procurement Officer, the
26 Department shall promptly produce information related to

1 the procurement activities of the Department and the
2 private manager requested by the Chief Procurement
3 Officer; the Chief Procurement Officer must retain
4 confidential, proprietary, or trade secret information
5 designated by the Department in complete confidence
6 pursuant to subsection (g) of Section 7 of the Freedom of
7 Information Act; and

8 (3) at least 30 days prior to the beginning of the
9 Department's fiscal year, the Department shall prepare an
10 annual written report on the activities of the private
11 manager selected under this Section and deliver that
12 report to the Governor and General Assembly.

13 (Source: P.A. 101-31, eff. 6-28-19; 101-81, eff. 7-12-19;
14 101-561, eff. 8-23-19; 102-558, eff. 8-20-21; 102-699, eff.
15 4-19-22; 102-1115, eff. 1-9-23.)