

Sen. Antonio Muñoz

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LRB100 04956 MJP 27801 a

1 AMENDMENT TO SENATE BILL 210

2 AMENDMENT NO. _____. Amend Senate Bill 210 by replacing

3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Lottery Law is amended by changing

5 Sections 2, 9.1, and 20 and by adding Section 21.10 as follows:

6 (20 ILCS 1605/2) (from Ch. 120, par. 1152)

Sec. 2. This Act is enacted to implement and establish within the State a lottery to be conducted by the State through the Department. The entire net proceeds of the Lottery are to be used for the support of the State's Common School Fund, except as provided in subsection (o) of Section 9.1 and Sections 21.5, 21.6, 21.7, 21.8, and 21.9, and 21.10. The General Assembly finds that it is in the public interest for the Department to conduct the functions of the Lottery with the assistance of a private manager under a management agreement

overseen by the Department. The Department shall be accountable

- 1 to the General Assembly and the people of the State through a
- comprehensive system of regulation, audits, reports, and 2
- 3 enduring operational oversight. The Department's ongoing
- 4 conduct of the Lottery through a management agreement with a
- 5 private manager shall act to promote and ensure the integrity,
- 6 security, honesty, and fairness of the Lottery's operation and
- administration. It is the intent of the General Assembly that 7
- 8 the Department shall conduct the Lottery with the assistance of
- 9 a private manager under a management agreement at all times in
- 10 a manner consistent with 18 U.S.C. 1307(a)(1), 1307(b)(1),
- 11 1953 (b) (4).
- (Source: P.A. 98-649, eff. 6-16-14; 99-933, eff. 1-27-17.) 12
- 13 (20 ILCS 1605/9.1)
- 14 Sec. 9.1. Private manager and management agreement.
- 15 (a) As used in this Section:
- "Offeror" means a person or group of persons that responds 16
- 17 to a request for qualifications under this Section.
- "Request for qualifications" means all materials and 18
- 19 documents prepared by the Department to solicit the following
- from offerors: 2.0
- 21 (1) Statements of qualifications.
- 22 (2) Proposals to enter into a management agreement,
- 23 including the identity of any prospective vendor or vendors
- 24 that the offeror intends to initially engage to assist the
- 25 offeror in performing its obligations under the management

1 agreement.

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"Final offer" means the last proposal submitted by an offeror in response to the request for qualifications, including the identity of any prospective vendor or vendors that the offeror intends to initially engage to assist the offeror in performing its obligations under the management agreement.

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

- (b) By September 15, 2010, the Governor shall select a private manager for the total management of the Lottery with integrated functions, such as lottery game design, supply of goods and services, and advertising and as specified in this Section.
- 16 (c) Pursuant to the terms of this subsection, the Department shall endeavor to expeditiously terminate the 17 existing contracts in support of the Lottery in effect on the 18 effective date of this amendatory Act of the 96th General 19 20 Assembly in connection with the selection of the private 2.1 manager. As part of its obligation to terminate these contracts 22 and select the private manager, the Department shall establish 23 a mutually agreeable timetable to transfer the functions of 24 existing contractors to the private manager so that existing 25 Lottery operations are not materially diminished or impaired 26 during the transition. To that end, the Department shall do the

following:

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- (1) where such contracts contain a provision authorizing termination upon notice, the Department shall provide notice of termination to occur upon the mutually agreed timetable for transfer of functions;
- (2) upon the expiration of any initial term or renewal term of the current Lottery contracts, the Department shall not renew such contract for a term extending beyond the mutually agreed timetable for transfer of functions; or
- (3) in the event any current contract provides for termination of that contract upon the implementation of a contract with the private manager, the Department shall perform all necessary actions to terminate the contract on the date that coincides with the mutually agreed timetable for transfer of functions.

If the contracts to support the current operation of the Lottery in effect on the effective date of this amendatory Act of the 96th General Assembly are not subject to termination as provided for in this subsection (c), then the Department may include a provision in the contract with the private manager specifying a mutually agreeable methodology for incorporation.

(c-5) The Department shall include provisions in the management agreement whereby the private manager shall, for a fee, and pursuant to a contract negotiated with the Department (the "Employee Use Contract"), utilize the services of current Department employees to assist in the administration and

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operation of the Lottery. The Department shall be the employer
of all such bargaining unit employees assigned to perform such
work for the private manager, and such employees shall be State
employees, as defined by the Personnel Code. Department
employees shall operate under the same employment policies,
rules, regulations, and procedures, as other employees of the
Department. In addition, neither historical representation
rights under the Illinois Public Labor Relations Act, nor
existing collective bargaining agreements, shall be disturbed
by the management agreement with the private manager for the
management of the Lottery.

- (d) The management agreement with the private manager shall include all of the following:
- 14 (1) A term not to exceed 10 years, including any 15 renewals.
 - (2) A provision specifying that the Department:
 - shall exercise actual control over all significant business decisions;
 - (A-5) has the authority to direct or countermand operating decisions by the private manager at any time;
 - (B) has ready access at any time to information regarding Lottery operations;
 - (C) has the right to demand and receive information from the private manager concerning any aspect of the Lottery operations at any time; and
 - (D) retains ownership of all trade names,

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trademarks, and intellectual property associated with the Lottery.

- (3) A provision imposing an affirmative duty on the private manager to provide the Department with material information and with any information the private manager reasonably believes the Department would want to know to enable the Department to conduct the Lottery.
- (4) A provision requiring the private manager to provide the Department with advance notice of any operating decision that bears significantly on the public interest, including, but not limited to, decisions on the kinds of games to be offered to the public and decisions affecting the relative risk and reward of the games being offered, so the Department has a reasonable opportunity to evaluate and countermand that decision.
- (5) A provision providing for compensation of the private manager that may consist of, among other things, 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.
 - (6) (Blank).
- (7) A provision requiring the deposit of all Lottery proceeds to be deposited into the State Lottery Fund except as otherwise provided in Section 20 of this Act.

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	(8)	A prov	vision	requiri	ng the	e private	manager	to	locate
its	prin	cipal	office	within	the S	tate.			

- (8-5) A provision encouraging that at least 20% of the cost of contracts entered into for goods and services by the private manager in connection with its management of the Lottery, other than contracts with sales agents or technical advisors, be awarded to businesses that are a minority owned business, a female owned business, or a business owned by a person with disability, as those terms are defined in the Business Enterprise for Minorities, Females, and Persons with Disabilities Act.
- (9) A requirement that so long as the private manager complies with all the conditions of the agreement under the oversight of the Department, the private manager shall have the following duties and obligations with respect to the management of the Lottery:
 - (A) The right to use equipment and other assets used in the operation of the Lottery.
 - (B) The rights and obligations under contracts with retailers and vendors.
 - (C) The implementation of a comprehensive security program by the private manager.
 - (D) The implementation of a comprehensive system of internal audits.
 - (E) The implementation of a program by the private manager to curb compulsive gambling by persons playing

1 the Lottery.

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- (F) A system for determining (i) the type of Lottery games, (ii) the method of selecting winning tickets, (iii) the manner of payment of prizes to holders of winning tickets, (iv) the frequency of drawings of winning tickets, (v) the method to be used in selling tickets, (vi) a system for verifying the validity of tickets claimed to be winning tickets, (vii) the basis upon which retailer commissions are established by the manager, and (viii) minimum payouts.
 - (10) A requirement that advertising and promotion must be consistent with Section 7.8a of this Act.
 - (11) A requirement that the private manager market the Lottery to those residents who are new, infrequent, or lapsed players of the Lottery, especially those who are most likely to make regular purchases on the Internet as permitted by law.
 - (12) A code of ethics for the private manager's officers and employees.
 - (13) A requirement that the Department monitor and oversee the private manager's practices and take action that the Department considers appropriate to ensure that the private manager is in compliance with the terms of the management agreement, while allowing the manager, unless specifically prohibited by law or the management

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agreement, to negotiate and sign its own contracts with vendors.

- (14) A provision requiring the private manager to periodically file, at least on an annual basis, appropriate financial statements in a form and manner acceptable to the Department.
 - (15) Cash reserves requirements.
- (16) Procedural requirements for obtaining the prior approval of the Department when a management agreement or an interest in a management agreement is sold, assigned, transferred, or pledged as collateral to secure financing.
- (17) Grounds for the termination of the management agreement by the Department or the private manager.
 - (18) Procedures for amendment of the agreement.
- (19) A provision requiring the private manager to engage in an open and competitive bidding process for any procurement having a cost in excess of \$50,000 that is not a part of the private manager's final offer. The process shall favor the selection of a vendor deemed to have submitted a proposal that provides the Lottery with the best overall value. The process shall not be subject to the provisions of the Illinois Procurement Code, unless specifically required by the management agreement.
- (20) The transition of rights and obligations, including any associated equipment or other assets used in the operation of the Lottery, from the manager to any

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- 1 manager of the lottery, including successor Department, following the termination of or foreclosure 2 3 upon the management agreement.
 - (21) Right of use of copyrights, trademarks, service marks held by the Department in the name of the State. The agreement must provide that any use of them by the manager shall only be for the purpose of fulfilling its obligations under the management agreement during the term of the agreement.
 - (22) The disclosure of any information requested by the Department to enable it to comply with the reporting requirements and information requests provided for under subsection (p) of this Section.
 - (e) Notwithstanding any other law to the contrary, the Department shall select a private manager through a competitive request for qualifications process consistent with Section 20-35 of the Illinois Procurement Code, which shall take into account:
 - (1) the offeror's ability to market the Lottery to those residents who are new, infrequent, or lapsed players of the Lottery, especially those who are most likely to make regular purchases on the Internet;
 - (2) the offeror's ability to address the State's concern with the social effects of gambling on those who can least afford to do so;
 - the offeror's ability to provide the (3)

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successful management of the Lottery for the benefit of the people of the State based on current and past business practices or plans of the offeror; and

- (4) the offeror's poor or inadequate past performance in servicing, equipping, operating or managing a lottery on behalf of Illinois, another State or foreign government and attracting persons who are not currently regular players of a lottery.
- (f) The Department may retain the services of an advisor or advisors with significant experience in financial services or the management, operation, and procurement of goods, services, and equipment for a government-run lottery to assist in the preparation of the terms of the request for qualifications and selection of the private manager. Any prospective advisor seeking to provide services under this subsection (f) shall disclose any material business or financial relationship during the past 3 years with any potential offeror, or with a subcontractor presently providing contractor or services, or equipment to the Department to support the Lottery. The Department shall evaluate the material business or financial relationship of each prospective advisor. Department shall not select any prospective advisor with a substantial business or financial relationship that Department deems to impair the objectivity of the services to be provided by the prospective advisor. During the course of the advisor's engagement by the Department, and for a period of

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one year thereafter, the advisor shall not enter into any business or financial relationship with any offeror or any vendor identified to assist an offeror in performing its obligations under the management agreement. Any advisor retained by the Department shall be disqualified from being an offeror. The Department shall not include terms in the request for qualifications that provide a material advantage whether directly or indirectly to any potential offeror, or any contractor or subcontractor presently providing goods, services, or equipment to the Department to support the Lottery, including terms contained in previous responses to qualifications submitted requests for proposals or Illinois, another State or foreign government when those terms are uniquely associated with a particular potential offeror, contractor, or subcontractor. The request for proposals Department on December 22, offered by the 2008 "LOT08GAMESYS" and reference number "22016176" is declared void.

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

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

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- 1 (i) Any action to contest the private manager selected by the Governor under this Section must be brought within 7 2 calendar days after the publication of the notice of the 3 4 designation of the private manager as provided in subsection 5 (h) of this Section.
 - (j) The Lottery shall remain, for so long as a private manager manages the Lottery in accordance with provisions of this Act, a Lottery conducted by the State, and the State shall not be authorized to sell or transfer the Lottery to a third party.
 - (k) Any tangible personal property used exclusively in connection with the lottery that is owned by the Department and leased to the private manager shall be owned by the Department in the name of the State and shall be considered to be public property devoted to an essential public and governmental function.
 - (1) The Department may exercise any of its powers under this Section or any other law as necessary or desirable for the execution of the Department's powers under this Section.
 - (m) Neither this Section nor any management agreement entered into under this Section prohibits the General Assembly from authorizing forms of gambling that are not in direct competition with the Lottery.
 - (n) The private manager shall be subject to a complete investigation in the third, seventh, and tenth years of the agreement (if the agreement is for a 10-year term) by the

manager under this subsection.

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- 1 Department in cooperation with the Auditor General to determine whether the private manager has complied with this Section and 2 3 the management agreement. The private manager shall bear the 4 cost of an investigation or reinvestigation of the private
- 6 (o) The powers conferred by this Section are in addition and supplemental to the powers conferred by any other law. If 7 any other law or rule is inconsistent with this Section, 8 including, but not limited to, provisions of the Illinois 9 10 Procurement Code, then this Section controls as to any 11 management agreement entered into under this Section. This Section and any rules adopted under this Section contain full 12 13 and complete authority for a management agreement between the 14 Department and a private manager. No law, procedure, 15 proceeding, publication, notice, consent, approval, order, or 16 act by the Department or any other officer, Department, agency, or instrumentality of the State or any political subdivision is 17 18 required for the Department to enter into a management agreement under this Section. This Section contains full and 19 20 complete authority for the Department to approve any contracts 2.1 entered into by a private manager with a vendor providing 22 goods, services, or both goods and services to the private 23 manager under the terms of the management agreement, including 24 subcontractors of such vendors.
 - Upon receipt of a written request from the Procurement Officer, the Department shall provide to the Chief

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

Notwithstanding any other provision of this Section to the Chief contrary, the Procurement Officer shall administrative rules, including emergency rules, to establish a procurement process to select a successor private manager if a private management agreement has been terminated. selection process shall at a minimum take into account the criteria set forth in items (1) through (4) of subsection (e) of this Section and may include provisions consistent with subsections (f), (q), (h), and (i) of this Section. The Chief Procurement Officer shall also implement and administer the adopted selection process upon the termination of a private

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manager.

- 1 agreement. The Department, after management the Chief 2 Procurement Officer certifies that the procurement process has 3 been followed in accordance with the rules adopted under this 4 subsection (o), shall select a final offeror as the private 5 manager and sign the management agreement with the private
- 7 Except as provided in Sections 21.5, 21.6, 21.7, 21.8, and 8 21.9, and 21.10, the Department shall distribute all proceeds 9 of lottery tickets and shares sold in the following priority 10 and manner:
 - (1) The payment of prizes and retailer bonuses.
 - (2) The payment of costs incurred in the operation and administration of the Lottery, including the payment of sums due to the private manager under the management agreement with the Department.
 - (3) On the last day of each month or as soon thereafter as possible, the State Comptroller shall direct and the State Treasurer shall transfer from the State Lottery Fund to the Common School Fund an amount that is equal to the proceeds transferred in the corresponding month of fiscal year 2009, as adjusted for inflation, to the Common School Fund.
 - (4) On or before the last day of each fiscal year, deposit any remaining proceeds, subject to payments under items (1), (2), and (3) into the Capital Projects Fund each fiscal year.

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- 1 (p) The Department shall be subject to the following 2 reporting and information request requirements:
 - (1) the Department shall submit written quarterly reports to the Governor and the General Assembly on the activities and actions of the private manager selected under this Section;
 - (2) upon request of the Chief Procurement Officer, the Department shall promptly produce information related to the procurement activities of the Department and the private manager requested by the Chief Procurement Officer; the Chief Procurement Officer must retain confidential, proprietary, or trade secret information designated by the Department in complete confidence pursuant to subsection (q) of Section 7 of the Freedom of Information Act: and
 - (3) at least 30 days prior to the beginning of the Department's fiscal year, the Department shall prepare an annual written report on the activities of the private manager selected under this Section and deliver that report to the Governor and General Assembly.
- (Source: P.A. 98-463, eff. 8-16-13; 98-649, eff. 6-16-14; 2.1 22 99-933, eff. 1-27-17.)
- 23 (20 ILCS 1605/20) (from Ch. 120, par. 1170)
- 24 Sec. 20. State Lottery Fund.
- 25 (a) There is created in the State Treasury a special fund

- 1 to be known as the "State Lottery Fund". Such fund shall
- consist of all revenues received from (1) the sale of lottery 2
- tickets or shares, (net of commissions, fees representing those 3
- 4 expenses that are directly proportionate to the sale of tickets
- 5 or shares at the agent location, and prizes of less than \$600
- 6 which have been validly paid at the agent level), (2)
- application fees, and (3) all other sources including moneys 7
- 8 credited or transferred thereto from any other fund or source
- 9 pursuant to law. Interest earnings of the State Lottery Fund
- 10 shall be credited to the Common School Fund.
- 11 (b) The receipt and distribution of moneys under Section
- 21.5 of this Act shall be in accordance with Section 21.5. 12
- 13 (c) The receipt and distribution of moneys under Section
- 21.6 of this Act shall be in accordance with Section 21.6. 14
- 15 (d) The receipt and distribution of moneys under Section
- 16 21.7 of this Act shall be in accordance with Section 21.7.
- (e) The receipt and distribution of moneys under Section 17
- 21.8 of this Act shall be in accordance with Section 21.8. 18
- (f) The receipt and distribution of moneys under Section 19
- 20 21.9 of this Act shall be in accordance with Section 21.9.
- (g) The receipt and distribution of moneys under Section 2.1
- 22 21.10 of this Act shall be in accordance with Section 21.10.
- (Source: P.A. 98-649, eff. 6-16-14.) 23
- 24 (20 ILCS 1605/21.10 new)
- 25 Sec. 21.10. Scratch-off for State police memorials.

then this Section governs.

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- 1 The Department shall offer a special instant (a) 2 scratch-off game for the benefit of State police memorials. The game shall commence on January 1, 2018 or as soon thereafter, 3 4 at the discretion of the Director, as is reasonably practical. 5 The operation of the game shall be governed by this Act and any 6 rules adopted by the Department. If any provision of this 7 Section is inconsistent with any other provision of this Act,
 - (b) The net revenue from the State police memorials scratch-off game shall be deposited into the Criminal Justice Information Projects Fund and distributed equally, as soon as practical but at least on a monthly basis, to the Chicago Police Memorial Foundation Fund, the Police Memorial Committee Fund, and the Illinois State Police Memorial Fund. Moneys transferred to the funds under this Section shall be used, subject to appropriation, to fund grants for building and maintaining memorials and parks; holding annual memorial commemorations; giving scholarships to children of officers killed or catastrophically injured in the line of duty, or those interested in pursuing a career in law enforcement; and providing financial assistance to police officers and their families when a police officer is killed or injured in the line of duty.

Moneys collected from the State police memorials special instant scratch-off game shall be used only as a supplemental financial resource and shall not supplant existing moneys that

- 1 may be appropriated under Section 9.1 of the Illinois Criminal
- 2 Justice Information Act.
- For purposes of this subsection, "net revenue" means the 3
- 4 total amount for which tickets have been sold less the sum of
- 5 the amount paid out in the prizes and the actual administrative
- expenses of the Department solely related to the scratch-off 6
- 7 game under this Section.
- (c) During the time that tickets are sold for the State 8
- 9 police memorials scratch-off game, the Department shall not
- 10 unreasonably diminish the efforts devoted to marketing any
- 11 other instant scratch-off lottery game.
- (d) The Department may adopt any rules necessary to 12
- 13 implement and administer the provisions of this Section.
- 14 Section 10. The Illinois Criminal Justice Information Act
- is amended by changing Section 9.1 as follows: 15
- 16 (20 ILCS 3930/9.1)
- Sec. 9.1. Criminal Justice Information Projects Fund. The 17
- 18 Criminal Justice Information Projects Fund is hereby created as
- a special fund in the State Treasury. Grants and other moneys 19
- 20 obtained by the Authority from governmental entities (other
- 21 government), private sources, than the federal
- 22 not-for-profit organizations for use in investigating criminal
- justice issues or undertaking other criminal 23
- 24 information projects, or pursuant to the uses identified in

- Section 21.10 of the Illinois Lottery Law, shall be deposited 1
- 2 into the Fund. Moneys in the Fund may be used by the Authority,
- 3 subject to appropriation, for undertaking such projects and for
- 4 the operating and other expenses of the Authority incidental to
- 5 those projects. Any interest earned on moneys in the Fund must
- 6 be deposited into the Fund.
- 7 (Source: P.A. 88-538.)
- 8 Section 99. Effective date. This Act takes effect upon
- 9 becoming law.".