

AN ACT concerning State government.

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

Section 5. The Illinois Lottery Law is amended by changing Sections 3, 7.12, 7.15, and 9.1 as follows:

(20 ILCS 1605/3) (from Ch. 120, par. 1153)

Sec. 3. For the purposes of this Act:

a. "Lottery" or "State Lottery" means the lottery or lotteries established and operated pursuant to this Act.

b. "Board" means the Lottery Control Board created by this Act.

c. "Department" means the Department of Revenue.

d. "Director" means the Director of Revenue.

e. "Chairman" means the Chairman of the Lottery Control Board.

f. "Multi-state game directors" means such persons, including the Superintendent, as may be designated by an agreement between the Division and one or more additional lotteries operated under the laws of another state or states.

g. "Division" means the Division of the State Lottery of the Department of Revenue.

h. "Superintendent" means the Superintendent of the Division of the State Lottery of the Department of Revenue.

i. "Management agreement" means an agreement or contract between the Department on behalf of the State with a private manager, as an independent contractor, whereby the private manager provides management services to the Lottery in exchange for compensation that may consist of, among other things, a fee for services and a performance-based bonus of ~~the receipt of~~ no more than 5% of Lottery profits so long as the Department continues to exercise actual control over all significant business decisions made by the private manager as set forth in Section 9.1.

j. "Person" means any individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, or other legal entity, group, or combination.

k. "Private manager" means a person that provides management services to the Lottery on behalf of the Department under a management agreement.

l. "Profits" means total revenues accruing from the sale of lottery tickets or shares and related proceeds minus (1) the payment of prizes and retailer bonuses and (2) the payment of costs incurred in the operation and administration of the lottery, excluding costs of services directly rendered by a private manager.

(Source: P.A. 96-34, eff. 7-13-09; 96-37, eff. 7-13-09.)

(20 ILCS 1605/7.12)

Sec. 7.12. Internet pilot program. The General Assembly

finds that:

(1) the consumer market in Illinois has changed since the creation of the Illinois State Lottery in 1974;

(2) the Internet has become an integral part of everyday life for a significant number of Illinois residents not only in regards to their professional life, but also in regards to personal business and communication; and

(3) the current practices of selling lottery tickets does not appeal to the new form of market participants who prefer to make purchases on the internet at their own convenience.

It is the intent of the General Assembly to create an Internet pilot program for the sale of lottery tickets to capture this new form of market participant.

The Department shall create a pilot program that allows an individual 18 years of age or older to purchase lottery tickets or shares on the Internet without using a Lottery retailer with on-line status, as those terms are defined by rule. The Department shall restrict the sale of lottery tickets on the Internet to transactions initiated and received or otherwise made exclusively within the State of Illinois. The Department shall adopt rules necessary for the administration of this program. These rules shall include requirements for marketing of the Lottery to infrequent players. The provisions of this Act and the rules adopted under this Act shall apply to the

sale of lottery tickets or shares under this program.

Before beginning the pilot program, the Department of Revenue must submit a request to the United States Department of Justice for review of the State's plan to implement a pilot program for the sale of lottery tickets on the Internet and its propriety under federal law. The Department shall implement the Internet pilot program only if the Department of Justice does not object to the implementation of the program within a reasonable period of time after its review. ~~seek a clarifying memorandum from the federal Department of Justice that it is legal for Illinois residents and non-Illinois residents to purchase and the private company to sell lottery tickets on the Internet on behalf of the State of Illinois under the federal Unlawful Internet Gambling Enforcement Act of 2006.~~

~~The Department shall limit the individuals authorized to purchase lottery tickets on the Internet to individuals who are 18 years of age or older and Illinois residents, unless the clarifying memorandum from the federal Department of Justice indicates that it is legal for non-Illinois residents to purchase lottery tickets on the Internet, and shall set a limitation on the monthly purchases that may be made through any one individual's lottery account.~~ The Department is obligated to implement the pilot program set forth in this Section and Sections 7.15 and~~7~~, 7.16~~,~~ and ~~7.17~~ only at such time, and to such extent, that the Department of Justice does not object to the implementation of the program within a

reasonable period of time after its review. While the Illinois Lottery may only offer Lotto and Mega Millions games through the pilot program, the Department shall request review from the federal Department of Justice for the Illinois Lottery to sell lottery tickets on the Internet on behalf of the State of Illinois that are not limited to just these games ~~issues a clarifying memorandum finding such program to be permitted under federal law. Only Lotto and Mega Million games offered by the Illinois Lottery may be offered through the pilot program.~~

The Department shall authorize the private manager to implement and administer the program pursuant to the management agreement entered into under Section 9.1 and in a manner consistent with the provisions of this Section. If a private manager has not been selected pursuant to Section 9.1 at the time the Department is obligated to implement the pilot program, then the Department shall not proceed with the pilot program until after the selection of the private manager, at which time the Department shall authorize the private manager to implement and administer the program pursuant to the management agreement entered into under Section 9.1 and in a manner consistent with the provisions of this Section. ~~The pilot program must be conducted pursuant to a contract with a private vendor that has the expertise, technical capability, and knowledge of the Illinois lottery marketplace to conduct the program. The Department of the Lottery must seek cooperation from existing vendors for the program.~~

The pilot program shall last for not less than 36 months, but not more than 48 months from the date of its initial operation.

Nothing in this Section shall be construed as prohibiting the Department from implementing and operating a website portal whereby individuals who are 18 years of age or older with an Illinois mailing address may apply to purchase lottery tickets via subscription.

(Source: P.A. 96-34, eff. 7-13-09; 96-37, eff. 7-13-09.)

(20 ILCS 1605/7.15)

Sec. 7.15. Verification ~~of age and residency~~ for Internet program; security for Internet lottery accounts. The Department must establish a procedure to verify that an individual is 18 years of age or older and that the sale of lottery tickets on the Internet is limited to transactions that are initiated and received or otherwise made exclusively within the State of Illinois, unless the federal Department of Justice indicates that it is legal for the transactions to originate in states other than Illinois. An individual must satisfy the verification procedure before he or she ~~an Illinois resident before he or she~~ may establish one Internet lottery account and purchase lottery tickets or shares through the Internet pilot program. ~~Non-residents of Illinois shall only be allowed to participate in the pilot program if the federal Department of Justice indicates that it is legal for non residents to do so.~~

By rule, the Department shall establish funding procedures for Internet lottery accounts and shall provide a mechanism ~~for~~ each Internet lottery account to have a personal identification ~~number~~ to prevent the unauthorized use of Internet lottery accounts. If any participant in the pilot program violates any provisions of this amendatory Act of the 96th General Assembly or rule established by the Department, the participant's all ~~such~~ winnings shall be forfeited. Such forfeited winnings shall be deposited in the Common School Fund.

(Source: P.A. 96-34, eff. 7-13-09.)

(20 ILCS 1605/9.1)

Sec. 9.1. Private manager and management agreement.

(a) As used in this Section:

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

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

(1) Statements of qualifications.

(2) Proposals to enter into a management agreement, 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 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 ~~March 1, 2010~~, the Governor ~~Department~~ shall select ~~enter into a management agreement with~~ 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.

(c) Pursuant to the terms of this subsection, the Department shall endeavor to expeditiously terminate the existing contracts in support of the Lottery in effect on the effective date of this amendatory Act of the 96th General Assembly in connection with the selection of the private manager. As part of its obligation to terminate these contracts and select the private manager, the Department shall establish a mutually agreeable timetable to transfer the functions of existing contractors to the private manager so that existing Lottery operations are not materially diminished or impaired during the transition. To that end, the Department shall do the following:

(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 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:

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

(2) A provision specifying that the Department:

(A) 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, 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 ~~with a percentage, not to exceed 5%, of Lottery profits in~~ 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.

(8) A provision requiring the private manager to locate

its principal office within the State.

(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 the Lottery.

(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 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.

~~(Blank).~~

(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

successor manager of the lottery, including the Department, following the termination of or foreclosure upon the management agreement.

(21) Right of use of copyrights, trademarks, and 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.

(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;

(3) the offeror's ability to provide the most 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 contractor or subcontractor presently providing goods, services, or equipment to the Department to support the Lottery. The Department shall evaluate the material business or financial relationship of each prospective advisor. The Department shall not select any prospective advisor with a substantial business or financial relationship that the 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 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. ~~No advisor or advisors retained may have any prior or present affiliation with any potential offeror, or with a contractor or subcontractor presently providing goods, services or equipment to the Department to support the Lottery.~~ The Department shall not include terms in the request for qualifications that provide a material ~~provides an~~ 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 ~~a contractor or subcontractor's~~ responses to requests for proposals or qualifications submitted to Illinois, another State or foreign government when those terms are uniquely associated with a particular potential offeror, contractor, or subcontractor. The request for proposals offered by the Department on December 22, 2008 as "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 ~~February 1, 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.

(2) The subject matter of the hearing.

(3) A brief description of the management agreement to 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 the objectives of this Section. ~~The Governor shall designate a final offeror as the private manager with sufficient time for~~

~~the Department to enter into a management agreement on or before March 1, 2010.~~ The Governor shall also sign the management agreement with the private manager.

(i) Any action to contest the private manager selected by the Governor ~~validity of a management agreement entered into~~ under this Section must be brought within 7 ~~14~~ calendar days after the publication of the notice of the designation of the private manager as provided in subsection (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.

(l) 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 Department in cooperation with the Auditor General to determine whether the private manager has complied with this Section and the management agreement. The private manager shall bear the cost of an investigation or reinvestigation of the private manager under this subsection.

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

Except as provided in Sections 21.2, 21.5, 21.6, 21.7, and 21.8, the Department shall distribute all proceeds of lottery tickets and shares sold in the following priority 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 and payment of sums due to the private vendor for lottery tickets and shares sold on the Internet via the pilot program as compensation under its contract 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 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.

(Source: P.A. 96-34, eff. 7-13-09; 96-37, eff. 7-13-09.)

Section 10. The Illinois Procurement Code is amended by changing Section 1-10 as follows:

(30 ILCS 500/1-10)

Sec. 1-10. Application.

(a) This Code applies only to procurements for which contractors were first solicited on or after July 1, 1998. This Code shall not be construed to affect or impair any contract, or any provision of a contract, entered into based on a solicitation prior to the implementation date of this Code as described in Article 99, including but not limited to any covenant entered into with respect to any revenue bonds or similar instruments. All procurements for which contracts are solicited between the effective date of Articles 50 and 99 and July 1, 1998 shall be substantially in accordance with this Code and its intent.

(b) This Code shall apply regardless of the source of the funds with which the contracts are paid, including federal assistance moneys. This Code shall not apply to:

(1) Contracts between the State and its political subdivisions or other governments, or between State governmental bodies except as specifically provided in this Code.

(2) Grants, except for the filing requirements of Section 20-80.

(3) Purchase of care.

(4) Hiring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that

individual.

(5) Collective bargaining contracts.

(6) Purchase of real estate, except that notice of this type of contract with a value of more than \$25,000 must be published in the Procurement Bulletin within 7 days after the deed is recorded in the county of jurisdiction. The notice shall identify the real estate purchased, the names of all parties to the contract, the value of the contract, and the effective date of the contract.

(7) Contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the chief legal counsel to the Governor shall give his or her prior approval when the procuring agency is one subject to the jurisdiction of the Governor, and provided that the chief legal counsel of any other procuring entity subject to this Code shall give his or her prior approval when the procuring entity is not one subject to the jurisdiction of the Governor.

(8) Contracts for services to Northern Illinois University by a person, acting as an independent contractor, who is qualified by education, experience, and technical ability and is selected by negotiation for the purpose of providing non-credit educational service activities or products by means of specialized programs offered by the university.

(9) Procurement expenditures by the Illinois

Conservation Foundation when only private funds are used.

(c) This Code does not apply to the electric power procurement process provided for under Section 1-75 of the Illinois Power Agency Act and Section 16-111.5 of the Public Utilities Act.

(d) Except for Section 20-160 and Article 50 of this Code, and as expressly required by Section 9.1 of the Illinois Lottery Law, the provisions of this Code do not apply to the procurement process provided for under Section 9.1 of the Illinois Lottery Law.

(Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07; 95-876, eff. 8-21-08.)

(20 ILCS 1605/7.17 rep.)

Section 15. The Illinois Lottery Law is amended by repealing Section 7.17.

Section 99. Effective date. This Act takes effect upon becoming law.