

SB3531



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3531

Introduced 2/16/2018, by Sen. Steve Stadelman

SYNOPSIS AS INTRODUCED:

20 ILCS 1605/9.1

Amends the Illinois Lottery Law. Requires the Department of the Lottery to deposit any estimated remaining proceeds from the prior fiscal year (rather than any remaining proceeds) after certain payments and transfers are made, into the Capital Projects Fund, on or before September 30 of each fiscal year (rather than on the last day of each fiscal year). Provides that, beginning in fiscal year 2019, the amount deposited shall be increased or decreased each year by the amount the estimated payment differs from the amount determined from each year-end financial audit. Provides that only remaining net deficits from prior fiscal years may reduce the requirement to deposit the funds, as determined by the annual financial audit. Effective immediately.

LRB100 18248 SMS 33451 b

A BILL FOR

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 vendors
17 that the offeror intends to initially engage to assist the
18 offeror in performing its obligations under the management
19 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) By September 15, 2010, the Governor shall select a
7 private manager for the total management of the Lottery with
8 integrated functions, such as lottery game design, supply of
9 goods and services, and advertising and as specified in this
10 Section.

11 (c) 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 the
14 effective date of this amendatory Act of the 96th General
15 Assembly in connection with the selection of the private
16 manager. As part of its obligation to terminate these contracts
17 and select the private manager, the Department shall establish
18 a mutually agreeable timetable to transfer the functions of
19 existing contractors to the private manager so that existing
20 Lottery operations are not materially diminished or impaired
21 during 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 shall
3 not renew such contract for a term extending beyond the
4 mutually agreed timetable for transfer of functions; or

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

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

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

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

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

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

11 (2) A provision specifying that the Department:

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

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

16 (B) has ready access at any time to information
17 regarding Lottery operations;

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

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

24 (3) A provision imposing an affirmative duty on the
25 private manager to provide the Department with material
26 information and with any information the private manager

1 reasonably believes the Department would want to know to
2 enable the Department to conduct the Lottery.

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

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

18 (6) (Blank).

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

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

24 (8-5) A provision encouraging that at least 20% of the
25 cost of contracts entered into for goods and services by
26 the private manager in connection with its management of

1 the Lottery, other than contracts with sales agents or
2 technical advisors, be awarded to businesses that are a
3 minority-owned business, a women-owned business, or a
4 business owned by a person with disability, as those terms
5 are defined in the Business Enterprise for Minorities,
6 Women, and Persons with Disabilities Act.

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

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

14 (B) The rights and obligations under contracts
15 with retailers and vendors.

16 (C) The implementation of a comprehensive security
17 program by the private manager.

18 (D) The implementation of a comprehensive system
19 of internal audits.

20 (E) The implementation of a program by the private
21 manager to curb compulsive gambling by persons playing
22 the Lottery.

23 (F) A system for determining (i) the type of
24 Lottery games, (ii) the method of selecting winning
25 tickets, (iii) the manner of payment of prizes to
26 holders of winning tickets, (iv) the frequency of

1 drawings of winning tickets, (v) the method to be used
2 in selling tickets, (vi) a system for verifying the
3 validity of tickets claimed to be winning tickets,
4 (vii) the basis upon which retailer commissions are
5 established by the manager, and (viii) minimum
6 payouts.

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

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

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

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

24 (14) A provision requiring the private manager to
25 periodically file, at least on an annual basis, appropriate
26 financial statements in a form and manner acceptable to the

1 Department.

2 (15) Cash reserves requirements.

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

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

9 (18) Procedures for amendment of the agreement.

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

19 (20) The transition of rights and obligations,
20 including any associated equipment or other assets used in
21 the operation of the Lottery, from the manager to any
22 successor manager of the lottery, including the
23 Department, following the termination of or foreclosure
24 upon the management agreement.

25 (21) Right of use of copyrights, trademarks, and
26 service marks held by the Department in the name of the

1 State. The agreement must provide that any use of them by
2 the manager shall only be for the purpose of fulfilling its
3 obligations under the management agreement during the term
4 of the agreement.

5 (22) The disclosure of any information requested by the
6 Department to enable it to comply with the reporting
7 requirements and information requests provided for under
8 subsection (p) of this Section.

9 (e) Notwithstanding any other law to the contrary, the
10 Department shall select a private manager through a competitive
11 request for qualifications process consistent with Section
12 20-35 of the Illinois Procurement Code, which shall take into
13 account:

14 (1) the offeror's ability to market the Lottery to
15 those residents who are new, infrequent, or lapsed players
16 of the Lottery, especially those who are most likely to
17 make regular purchases on the Internet;

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

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

25 (4) the offeror's poor or inadequate past performance
26 in servicing, equipping, operating or managing a lottery on

1 behalf of Illinois, another State or foreign government and
2 attracting persons who are not currently regular players of
3 a lottery.

4 (f) The Department may retain the services of an advisor or
5 advisors with significant experience in financial services or
6 the management, operation, and procurement of goods, services,
7 and equipment for a government-run lottery to assist in the
8 preparation of the terms of the request for qualifications and
9 selection of the private manager. Any prospective advisor
10 seeking to provide services under this subsection (f) shall
11 disclose any material business or financial relationship
12 during the past 3 years with any potential offeror, or with a
13 contractor or subcontractor presently providing goods,
14 services, or equipment to the Department to support the
15 Lottery. The Department shall evaluate the material business or
16 financial relationship of each prospective advisor. The
17 Department shall not select any prospective advisor with a
18 substantial business or financial relationship that the
19 Department deems to impair the objectivity of the services to
20 be provided by the prospective advisor. During the course of
21 the advisor's engagement by the Department, and for a period of
22 one year thereafter, the advisor shall not enter into any
23 business or financial relationship with any offeror or any
24 vendor identified to assist an offeror in performing its
25 obligations under the management agreement. Any advisor
26 retained by the Department shall be disqualified from being an

1 offeror. The Department shall not include terms in the request
2 for qualifications that provide a material advantage whether
3 directly or indirectly to any potential offeror, or any
4 contractor or subcontractor presently providing goods,
5 services, or equipment to the Department to support the
6 Lottery, including terms contained in previous responses to
7 requests for proposals or qualifications submitted to
8 Illinois, another State or foreign government when those terms
9 are uniquely associated with a particular potential offeror,
10 contractor, or subcontractor. The request for proposals
11 offered by the Department on December 22, 2008 as
12 "LOT08GAMESYS" and reference number "22016176" is declared
13 void.

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

21 (1) The date, time, and place of the hearing.

22 (2) The subject matter of the hearing.

23 (3) A brief description of the management agreement to
24 be awarded.

25 (4) The identity of the offerors that have been
26 selected as finalists to serve as the private manager.

1 (5) The address and telephone number of the Department.

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

22 (i) Any action to contest the private manager selected by
23 the Governor under this Section must be brought within 7
24 calendar days after the publication of the notice of the
25 designation of the private manager as provided in subsection
26 (h) of this Section.

1 (j) The Lottery shall remain, for so long as a private
2 manager manages the Lottery in accordance with provisions of
3 this Act, a Lottery conducted by the State, and the State shall
4 not be authorized to sell or transfer the Lottery to a third
5 party.

6 (k) Any tangible personal property used exclusively in
7 connection with the lottery that is owned by the Department and
8 leased to the private manager shall be owned by the Department
9 in the name of the State and shall be considered to be public
10 property devoted to an essential public and governmental
11 function.

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

15 (m) Neither this Section nor any management agreement
16 entered into under this Section prohibits the General Assembly
17 from authorizing forms of gambling that are not in direct
18 competition with the Lottery.

19 (n) The private manager shall be subject to a complete
20 investigation in the third, seventh, and tenth years of the
21 agreement (if the agreement is for a 10-year term) by the
22 Department in cooperation with the Auditor General to determine
23 whether the private manager has complied with this Section and
24 the management agreement. The private manager shall bear the
25 cost of an investigation or reinvestigation of the private
26 manager under this subsection.

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

20 Upon receipt of a written request from the Chief
21 Procurement Officer, the Department shall provide to the Chief
22 Procurement Officer a complete and un-redacted copy of the
23 management agreement or any contract that is subject to the
24 Department's approval authority under this subsection (o). The
25 Department shall provide a copy of the agreement or contract to
26 the Chief Procurement Officer in the time specified by the

1 Chief Procurement Officer in his or her written request, but no
2 later than 5 business days after the request is received by the
3 Department. The Chief Procurement Officer must retain any
4 portions of the management agreement or of any contract
5 designated by the Department as confidential, proprietary, or
6 trade secret information in complete confidence pursuant to
7 subsection (g) of Section 7 of the Freedom of Information Act.
8 The Department shall also provide the Chief Procurement Officer
9 with reasonable advance written notice of any contract that is
10 pending Department approval.

11 Notwithstanding any other provision of this Section to the
12 contrary, the Chief Procurement Officer shall adopt
13 administrative rules, including emergency rules, to establish
14 a procurement process to select a successor private manager if
15 a private management agreement has been terminated. The
16 selection process shall at a minimum take into account the
17 criteria set forth in items (1) through (4) of subsection (e)
18 of this Section and may include provisions consistent with
19 subsections (f), (g), (h), and (i) of this Section. The Chief
20 Procurement Officer shall also implement and administer the
21 adopted selection process upon the termination of a private
22 management agreement. The Department, after the Chief
23 Procurement Officer certifies that the procurement process has
24 been followed in accordance with the rules adopted under this
25 subsection (o), shall select a final offeror as the private
26 manager and sign the management agreement with the private

1 manager.

2 Except as provided in Sections 21.5, 21.6, 21.7, 21.8, and
3 21.9, the Department shall distribute all proceeds of lottery
4 tickets and shares sold in the following priority and manner:

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

6 (2) The payment of costs incurred in the operation and
7 administration of the Lottery, including the payment of
8 sums due to the private manager under the management
9 agreement with the Department.

10 (3) On the last day of each month or as soon thereafter
11 as possible, the State Comptroller shall direct and the
12 State Treasurer shall transfer from the State Lottery Fund
13 to the Common School Fund an amount that is equal to the
14 proceeds transferred in the corresponding month of fiscal
15 year 2009, as adjusted for inflation, to the Common School
16 Fund.

17 (4) On or before September 30 ~~the last day~~ of each
18 fiscal year, deposit any estimated remaining proceeds from
19 the prior fiscal year, subject to payments under items (1),
20 (2), and (3) into the Capital Projects Fund ~~each fiscal~~
21 ~~year~~. Beginning in fiscal year 2019, the amount deposited
22 shall be increased or decreased each year by the amount the
23 estimated payment differs from the amount determined from
24 each year-end financial audit. Only remaining net deficits
25 from prior fiscal years may reduce the requirement to
26 deposit these funds, as determined by the annual financial

1 audit.

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

4 (1) the Department shall submit written quarterly
5 reports to the Governor and the General Assembly on the
6 activities and actions of the private manager selected
7 under this Section;

8 (2) upon request of the Chief Procurement Officer, the
9 Department shall promptly produce information related to
10 the procurement activities of the Department and the
11 private manager requested by the Chief Procurement
12 Officer; the Chief Procurement Officer must retain
13 confidential, proprietary, or trade secret information
14 designated by the Department in complete confidence
15 pursuant to subsection (g) of Section 7 of the Freedom of
16 Information Act; and

17 (3) at least 30 days prior to the beginning of the
18 Department's fiscal year, the Department shall prepare an
19 annual written report on the activities of the private
20 manager selected under this Section and deliver that report
21 to the Governor and General Assembly.

22 (Source: P.A. 99-933, eff. 1-27-17; 100-391, eff. 8-25-17.)

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