



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1212

Introduced 02/08/11, by Rep. LaShawn K. Ford

SYNOPSIS AS INTRODUCED:

20 ILCS 1605/2	from Ch. 120, par. 1152
20 ILCS 1605/9.1	
20 ILCS 1605/20	from Ch. 120, par. 1170
20 ILCS 1605/21.9 new	
30 ILCS 105/5.786 new	

Amends the Illinois Lottery Law. Requires the Department of Revenue, beginning on January 1, 2012 or as soon thereafter as is practical, to offer a special instant "After-School Rescue" scratch-off game. Requires the net revenue from that game to be deposited into the After-School Rescue Fund for appropriation by the General Assembly solely to the Illinois State Board of Education for the making of grants to at-risk schools for the promotion of extracurricular and after-school programs. Authorizes the Department, after consulting with the Illinois State Board of Education, to adopt rules necessary to implement and administer the game. Defines "net revenue". Amends the State Finance Act to create the After-School Rescue Fund. Effective immediately.

LRB097 08193 JDS 48318 b

FISCAL NOTE ACT
MAY APPLY

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 Sections 2, 9.1, and 20 and by adding Section 21.9 as follows:

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

7 Sec. 2. This Act is enacted to implement and establish
8 within the State a lottery to be conducted by the State through
9 the Department. The entire net proceeds of the Lottery are to
10 be used for the support of the State's Common School Fund,
11 except as provided in subsection (o) of Section 9.1 and
12 Sections 21.2, 21.5, 21.6, 21.7, ~~and~~ 21.8, and 21.9. The
13 General Assembly finds that it is in the public interest for
14 the Department to conduct the functions of the Lottery with the
15 assistance of a private manager under a management agreement
16 overseen by the Department. The Department shall be accountable
17 to the General Assembly and the people of the State through a
18 comprehensive system of regulation, audits, reports, and
19 enduring operational oversight. The Department's ongoing
20 conduct of the Lottery through a management agreement with a
21 private manager shall act to promote and ensure the integrity,
22 security, honesty, and fairness of the Lottery's operation and
23 administration. It is the intent of the General Assembly that

1 the Department shall conduct the Lottery with the assistance of
2 a private manager under a management agreement at all times in
3 a manner consistent with 18 U.S.C. 1307(a)(1), 1307(b)(1),
4 1953(b)(4).

5 (Source: P.A. 95-331, eff. 8-21-07; 95-673, eff. 10-11-07;
6 95-674, eff. 10-11-07; 95-876, eff. 8-21-08; 96-34, eff.
7 7-13-09.)

8 (20 ILCS 1605/9.1)

9 Sec. 9.1. Private manager and management agreement.

10 (a) As used in this Section:

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

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

16 (1) Statements of qualifications.

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

22 "Final offer" means the last proposal submitted by an
23 offeror in response to the request for qualifications,
24 including the identity of any prospective vendor or vendors
25 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.

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

23 (8-5) A provision encouraging that at least 20% of the
24 cost of contracts entered into for goods and services by
25 the private manager in connection with its management of
26 the Lottery, other than contracts with sales agents or

1 technical advisors, be awarded to businesses that are a
2 minority owned business, a female owned business, or a
3 business owned by a person with disability, as those terms
4 are defined in the Business Enterprise for Minorities,
5 Females, and Persons with Disabilities Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (15) Cash reserves requirements.

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

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

8 (18) Procedures for amendment of the agreement.

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

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

24 (21) Right of use of copyrights, trademarks, and
25 service marks held by the Department in the name of the
26 State. The agreement must provide that any use of them by

1 the manager shall only be for the purpose of fulfilling its
2 obligations under the management agreement during the term
3 of the agreement.

4 (e) Notwithstanding any other law to the contrary, the
5 Department shall select a private manager through a competitive
6 request for qualifications process consistent with Section
7 20-35 of the Illinois Procurement Code, which shall take into
8 account:

9 (1) the offeror's ability to market the Lottery to
10 those residents who are new, infrequent, or lapsed players
11 of the Lottery, especially those who are most likely to
12 make regular purchases on the Internet;

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

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

20 (4) the offeror's poor or inadequate past performance
21 in servicing, equipping, operating or managing a lottery on
22 behalf of Illinois, another State or foreign government and
23 attracting persons who are not currently regular players of
24 a lottery.

25 (f) The Department may retain the services of an advisor or
26 advisors with significant experience in financial services or

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

1 Lottery, including terms contained in previous responses to
2 requests for proposals or qualifications submitted to
3 Illinois, another State or foreign government when those terms
4 are uniquely associated with a particular potential offeror,
5 contractor, or subcontractor. The request for proposals
6 offered by the Department on December 22, 2008 as
7 "LOT08GAMESYS" and reference number "22016176" is declared
8 void.

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

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

17 (2) The subject matter of the hearing.

18 (3) A brief description of the management agreement to
19 be awarded.

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

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

23 (h) At the public hearing, the Department shall (i) provide
24 sufficient time for each finalist to present and explain its
25 proposal to the Department and the Governor or the Governor's
26 designee, including an opportunity to respond to questions

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

17 (i) Any action to contest the private manager selected by
18 the Governor under this Section must be brought within 7
19 calendar days after the publication of the notice of the
20 designation of the private manager as provided in subsection
21 (h) of this Section.

22 (j) The Lottery shall remain, for so long as a private
23 manager manages the Lottery in accordance with provisions of
24 this Act, a Lottery conducted by the State, and the State shall
25 not be authorized to sell or transfer the Lottery to a third
26 party.

1 (k) Any tangible personal property used exclusively in
2 connection with the lottery that is owned by the Department and
3 leased to the private manager shall be owned by the Department
4 in the name of the State and shall be considered to be public
5 property devoted to an essential public and governmental
6 function.

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

10 (m) Neither this Section nor any management agreement
11 entered into under this Section prohibits the General Assembly
12 from authorizing forms of gambling that are not in direct
13 competition with the Lottery.

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

22 (o) The powers conferred by this Section are in addition
23 and supplemental to the powers conferred by any other law. If
24 any other law or rule is inconsistent with this Section,
25 including, but not limited to, provisions of the Illinois
26 Procurement Code, then this Section controls as to any

1 management agreement entered into under this Section. This
2 Section and any rules adopted under this Section contain full
3 and complete authority for a management agreement between the
4 Department and a private manager. No law, procedure,
5 proceeding, publication, notice, consent, approval, order, or
6 act by the Department or any other officer, Department, agency,
7 or instrumentality of the State or any political subdivision is
8 required for the Department to enter into a management
9 agreement under this Section. This Section contains full and
10 complete authority for the Department to approve any contracts
11 entered into by a private manager with a vendor providing
12 goods, services, or both goods and services to the private
13 manager under the terms of the management agreement.

14 Except as provided in Sections 21.2, 21.5, 21.6, 21.7, ~~and~~
15 21.8, and 21.9, the Department shall distribute all proceeds of
16 lottery tickets and shares sold in the following priority and
17 manner:

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

19 (2) The payment of costs incurred in the operation and
20 administration of the Lottery, including the payment of
21 sums due to the private manager under the management
22 agreement with the Department and payment of sums due to
23 the private vendor for lottery tickets and shares sold on
24 the Internet via the pilot program as compensation under
25 its contract with the Department.

26 (3) On the last day of each month or as soon thereafter

1 as possible, the State Comptroller shall direct and the
2 State Treasurer shall transfer from the Lottery Fund to the
3 Common School Fund an amount that is equal to the proceeds
4 transferred in the corresponding month of fiscal year 2009,
5 as adjusted for inflation, to the Common School Fund.

6 (4) On or before the last day of each fiscal year,
7 deposit any remaining proceeds, subject to payments under
8 items (1), (2), and (3) into the Capital Projects Fund each
9 fiscal year.

10 (Source: P.A. 96-34, eff. 7-13-09; 96-37, eff. 7-13-09; 96-840,
11 eff. 12-23-09.)

12 (20 ILCS 1605/20) (from Ch. 120, par. 1170)

13 Sec. 20. State Lottery Fund.

14 (a) There is created in the State Treasury a special fund
15 to be known as the "State Lottery Fund". Such fund shall
16 consist of all revenues received from (1) the sale of lottery
17 tickets or shares, (net of commissions, fees representing those
18 expenses that are directly proportionate to the sale of tickets
19 or shares at the agent location, and prizes of less than \$600
20 which have been validly paid at the agent level), (2)
21 application fees, and (3) all other sources including moneys
22 credited or transferred thereto from any other fund or source
23 pursuant to law. Interest earnings of the State Lottery Fund
24 shall be credited to the Common School Fund.

25 (b) The receipt and distribution of moneys under Section

1 21.5 of this Act shall be in accordance with Section 21.5.

2 (c) The receipt and distribution of moneys under Section
3 21.6 of this Act shall be in accordance with Section 21.6.

4 (d) The receipt and distribution of moneys under Section
5 21.7 of this Act shall be in accordance with Section 21.7.

6 (e) The receipt and distribution of moneys under Section
7 21.8 of this Act shall be in accordance with Section 21.8.

8 (f) The receipt and distribution of moneys under Section
9 21.9 of this Act shall be in accordance with Section 21.9.

10 (Source: P.A. 94-120, eff. 7-6-05; 94-585, eff. 8-15-05;
11 95-331, eff. 8-21-07; 95-673, eff. 10-11-07; 95-674, eff.
12 10-11-07; 95-876, eff. 8-21-08.)

13 (20 ILCS 1605/21.9 new)

14 Sec. 21.9. "After-School Rescue" scratch-off game.

15 (a) The Department shall offer a special instant
16 "After-School Rescue" scratch-off game, which shall commence
17 on January 1, 2012, or as soon thereafter as is, in the view of
18 the Director, reasonably practical. The operation of the game
19 shall be governed by this Act and any rules adopted by the
20 Department. If any provision of this Section is inconsistent
21 with any other provision of this Act, then this Section
22 governs.

23 (b) The After-School Rescue Fund is created as a special
24 fund in the State treasury. The net revenue from the
25 "After-School Rescue" scratch-off game shall be deposited into

1 the Fund for appropriation by the General Assembly solely to
2 the Illinois State Board of Education for the making of grants
3 to at-risk schools for the promotion of extracurricular and
4 after-school programs.

5 Moneys received for the purposes of this Section,
6 including, without limitation, net revenue from the special
7 instant scratch-off game and from gifts, grants, and awards
8 from any public or private entity, must be deposited into the
9 Fund. Any interest attributable to moneys in the Fund must be
10 deposited into the Fund.

11 For purposes of this subsection, "net revenue" means the
12 total amount for which tickets have been sold less the sum of
13 the amount paid out in the prizes and the actual administrative
14 expenses of the Department solely related to the scratch-off
15 game under this Section.

16 (c) During the time that tickets are sold for the
17 "After-School Rescue" scratch-off game, the Department shall
18 not unreasonably diminish the efforts devoted to marketing any
19 other instant scratch-off lottery game.

20 (d) The Department may, after consulting with the Illinois
21 State Board of Education, adopt any rules necessary to
22 implement and administer the provisions of this Section.

23 Section 10. The State Finance Act is amended by adding
24 Section 5.786 as follows:

1 (30 ILCS 105/5.786 new)

2 Sec. 5.786. The After-School Rescue Fund.

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