



Rep. Marlow H. Colvin

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LRB097 03921 ASK 51716 a

1 AMENDMENT TO HOUSE BILL 414

2 AMENDMENT NO. _____. Amend House Bill 414 by replacing
3 everything after the enacting clause with the following:

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

1 that the offeror intends to initially engage to assist the
2 offeror in performing its obligations under the management
3 agreement.

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

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

13 (b) By September 15, 2010, the Governor shall select a
14 private manager for the total management of the Lottery with
15 integrated functions, such as lottery game design, supply of
16 goods and services, and advertising and as specified in this
17 Section.

18 (c) Pursuant to the terms of this subsection, the
19 Department shall endeavor to expeditiously terminate the
20 existing contracts in support of the Lottery in effect on the
21 effective date of this amendatory Act of the 96th General
22 Assembly in connection with the selection of the private
23 manager. As part of its obligation to terminate these contracts
24 and select the private manager, the Department shall establish
25 a mutually agreeable timetable to transfer the functions of
26 existing contractors to the private manager so that existing

1 Lottery operations are not materially diminished or impaired
2 during the transition. To that end, the Department shall do the
3 following:

4 (1) where such contracts contain a provision
5 authorizing termination upon notice, the Department shall
6 provide notice of termination to occur upon the mutually
7 agreed timetable for transfer of functions;

8 (2) upon the expiration of any initial term or renewal
9 term of the current Lottery contracts, the Department shall
10 not renew such contract for a term extending beyond the
11 mutually agreed timetable for transfer of functions; or

12 (3) in the event any current contract provides for
13 termination of that contract upon the implementation of a
14 contract with the private manager, the Department shall
15 perform all necessary actions to terminate the contract on
16 the date that coincides with the mutually agreed timetable
17 for transfer of functions.

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

24 (c-5) The Department shall include provisions in the
25 management agreement whereby the private manager shall, for a
26 fee, and pursuant to a contract negotiated with the Department

1 (the "Employee Use Contract"), utilize the services of current
2 Department employees to assist in the administration and
3 operation of the Lottery. The Department shall be the employer
4 of all such bargaining unit employees assigned to perform such
5 work for the private manager, and such employees shall be State
6 employees, as defined by the Personnel Code. Department
7 employees shall operate under the same employment policies,
8 rules, regulations, and procedures, as other employees of the
9 Department. In addition, neither historical representation
10 rights under the Illinois Public Labor Relations Act, nor
11 existing collective bargaining agreements, shall be disturbed
12 by the management agreement with the private manager for the
13 management of the Lottery.

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

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

18 (2) A provision specifying that the Department:

19 (A) shall exercise actual control over all
20 significant business decisions;

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

23 (B) has ready access at any time to information
24 regarding Lottery operations;

25 (C) has the right to demand and receive information
26 from the private manager concerning any aspect of the

1 Lottery operations at any time; and

2 (D) retains ownership of all trade names,
3 trademarks, and intellectual property associated with
4 the Lottery.

5 (3) A provision imposing an affirmative duty on the
6 private manager to provide the Department with material
7 information and with any information the private manager
8 reasonably believes the Department would want to know to
9 enable the Department to conduct the Lottery.

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

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

25 (6) (Blank).

26 (7) A provision requiring the deposit of all Lottery

1 proceeds to be deposited into the State Lottery Fund.

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

4 (8-5) A provision encouraging that at least 20% of the
5 cost of contracts entered into for goods and services by
6 the private manager in connection with its management of
7 the Lottery, other than contracts with sales agents or
8 technical advisors, be awarded to businesses that are a
9 minority owned business, a female owned business, or a
10 business owned by a person with disability, as those terms
11 are defined in the Business Enterprise for Minorities,
12 Females, and Persons with Disabilities Act.

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

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

20 (B) The rights and obligations under contracts
21 with retailers and vendors.

22 (C) The implementation of a comprehensive security
23 program by the private manager.

24 (D) The implementation of a comprehensive system
25 of internal audits.

26 (E) The implementation of a program by the private

1 manager to curb compulsive gambling by persons playing
2 the Lottery.

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

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

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

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

22 (13) A requirement that the Department monitor and
23 oversee the private manager's practices and take action
24 that the Department considers appropriate to ensure that
25 the private manager is in compliance with the terms of the
26 management agreement, while allowing the manager, unless

1 specifically prohibited by law or the management
2 agreement, to negotiate and sign its own contracts with
3 vendors.

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

8 (15) Cash reserves requirements.

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

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

15 (18) Procedures for amendment of the agreement.

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

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

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

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

11 (22) Beginning on January 1, 2012, a requirement that
12 each retail location must have a device that allows the
13 purchaser of a lottery ticket to determine if that ticket
14 can be redeemed for a prize.

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

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

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

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

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

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

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

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

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

2 (2) The subject matter of the hearing.

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

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

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

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

1 management agreement with the private manager.

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

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

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

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

21 (m) Neither this Section nor any management agreement
22 entered into under this Section prohibits the General Assembly
23 from authorizing forms of gambling that are not in direct
24 competition with the Lottery.

25 (n) The private manager shall be subject to a complete
26 investigation in the third, seventh, and tenth years of the

1 agreement (if the agreement is for a 10-year term) by the
2 Department in cooperation with the Auditor General to determine
3 whether the private manager has complied with this Section and
4 the management agreement. The private manager shall bear the
5 cost of an investigation or reinvestigation of the private
6 manager under this subsection.

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

25 Except as provided in Sections 21.2, 21.5, 21.6, 21.7, and
26 21.8, the Department shall distribute all proceeds of lottery

1 tickets and shares sold in the following priority and manner:

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

3 (2) The payment of costs incurred in the operation and
4 administration of the Lottery, including the payment of
5 sums due to the private manager under the management
6 agreement with the Department and payment of sums due to
7 the private vendor for lottery tickets and shares sold on
8 the Internet via the pilot program as compensation under
9 its contract 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 Lottery Fund to the
13 Common School Fund an amount that is equal to the proceeds
14 transferred in the corresponding month of fiscal year 2009,
15 as adjusted for inflation, to the Common School Fund.

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

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

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