



Rep. Mike Smiddy

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LRB098 19276 ZMM 56417 a

1 AMENDMENT TO HOUSE BILL 5699

2 AMENDMENT NO. _____. Amend House Bill 5699 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Lottery Law is amended by changing
5 Sections 2, 9.1, and 20 and by adding Section 21.9 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

1 to the General Assembly and the people of the State through a
2 comprehensive system of regulation, audits, reports, and
3 enduring operational oversight. The Department's ongoing
4 conduct of the Lottery through a management agreement with a
5 private manager shall act to promote and ensure the integrity,
6 security, honesty, and fairness of the Lottery's operation and
7 administration. It is the intent of the General Assembly that
8 the Department shall conduct the Lottery with the assistance of
9 a private manager under a management agreement at all times in
10 a manner consistent with 18 U.S.C. 1307(a)(1), 1307(b)(1),
11 1953(b)(4).

12 (Source: P.A. 95-331, eff. 8-21-07; 95-673, eff. 10-11-07;
13 95-674, eff. 10-11-07; 95-876, eff. 8-21-08; 96-34, eff.
14 7-13-09.)

15 (20 ILCS 1605/9.1)

16 Sec. 9.1. Private manager and management agreement.

17 (a) As used in this Section:

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

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

23 (1) Statements of qualifications.

24 (2) Proposals to enter into a management agreement,
25 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 except
2 as otherwise provided in Section 20 of this Act.

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

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

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

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

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

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

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

1 (E) The implementation of a program by the private
2 manager to curb compulsive gambling by persons playing
3 the Lottery.

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

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

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

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

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

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

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

9 (15) Cash reserves requirements.

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

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

16 (18) Procedures for amendment of the agreement.

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

26 (20) The transition of rights and obligations,

1 including any associated equipment or other assets used in
2 the operation of the Lottery, from the manager to any
3 successor manager of the lottery, including the
4 Department, following the termination of or foreclosure
5 upon the management agreement.

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

12 (22) The disclosure of any information requested by the
13 Department to enable it to comply with the reporting
14 requirements and information requests provided for under
15 subsection (p) of this Section.

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

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

25 (2) the offeror's ability to address the State's
26 concern with the social effects of gambling on those who

1 can least afford to do so;

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

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

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

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

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

1 of the following:

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

3 (2) The subject matter of the hearing.

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

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

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

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

1 objectives of this Section. The Governor shall also sign the
2 management agreement with the private manager.

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

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

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

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

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

26 (n) The private manager shall be subject to a complete

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

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

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

18 Notwithstanding any other provision of this Section to the
19 contrary, the Chief Procurement Officer shall adopt
20 administrative rules, including emergency rules, to establish
21 a procurement process to select a successor private manager if
22 a private management agreement has been terminated. The
23 selection process shall at a minimum take into account the
24 criteria set forth in items (1) through (4) of subsection (e)
25 of this Section and may include provisions consistent with
26 subsections (f), (g), (h), and (i) of this Section. The Chief

1 Procurement Officer shall also implement and administer the
2 adopted selection process upon the termination of a private
3 management agreement. The Department, after the Chief
4 Procurement Officer certifies that the procurement process has
5 been followed in accordance with the rules adopted under this
6 subsection (o), shall select a final offeror as the private
7 manager and sign the management agreement with the private
8 manager.

9 Except as provided in Sections 21.2, 21.5, 21.6, 21.7, ~~and~~
10 21.8, and 21.9, the Department shall distribute all proceeds of
11 lottery tickets and shares sold in the following priority and
12 manner:

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

14 (2) The payment of costs incurred in the operation and
15 administration of the Lottery, including the payment of
16 sums due to the private manager under the management
17 agreement with the Department.

18 (3) On the last day of each month or as soon thereafter
19 as possible, the State Comptroller shall direct and the
20 State Treasurer shall transfer from the State Lottery Fund
21 to the Common School Fund an amount that is equal to the
22 proceeds transferred in the corresponding month of fiscal
23 year 2009, as adjusted for inflation, to the Common School
24 Fund.

25 (4) On or before the last day of each fiscal year,
26 deposit any remaining proceeds, subject to payments under

1 items (1), (2), and (3) into the Capital Projects Fund each
2 fiscal year.

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

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

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

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

23 (Source: P.A. 97-464, eff. 8-19-11; 98-463, eff. 8-16-13.)

24 (20 ILCS 1605/20) (from Ch. 120, par. 1170)
25 Sec. 20. State Lottery Fund.

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

12 (b) The receipt and distribution of moneys under Section
13 21.5 of this Act shall be in accordance with Section 21.5.

14 (c) The receipt and distribution of moneys under Section
15 21.6 of this Act shall be in accordance with Section 21.6.

16 (d) The receipt and distribution of moneys under Section
17 21.7 of this Act shall be in accordance with Section 21.7.

18 (e) The receipt and distribution of moneys under Section
19 21.8 of this Act shall be in accordance with Section 21.8.

20 (f) The receipt and distribution of moneys under Section
21 21.9 of this Act shall be in accordance with Section 21.9.

22 (Source: P.A. 94-120, eff. 7-6-05; 94-585, eff. 8-15-05;
23 95-331, eff. 8-21-07; 95-673, eff. 10-11-07; 95-674, eff.
24 10-11-07; 95-876, eff. 8-21-08.)

1 Sec. 21.9. "Nursing Home Resident Assistance" scratch-off
2 game.

3 (a) The Department shall offer a special instant "Nursing
4 Home Resident Assistance" scratch-off game, which shall
5 commence on January 1, 2015, or as soon thereafter as is, in
6 the view of the Director, reasonably practical. The operation
7 of the game shall be governed by this Act and any rules adopted
8 by the Department. If any provision of this Section is
9 inconsistent with any other provision of this Act, then this
10 Section governs.

11 (b) The Nursing Home Resident Assistance Fund is created as
12 a special fund in the State treasury. The net revenue from the
13 "Nursing Home Resident Assistance" scratch-off game shall be
14 deposited into the Fund for appropriation by the General
15 Assembly solely to the Department of Public Health for the
16 making of grants to licensed nursing homes that are home to
17 Medicare or Medicaid dependent residents.

18 Moneys received for the purposes of this Section,
19 including, without limitation, net revenue from the special
20 instant scratch-off game and from gifts, grants, and awards
21 from any public or private entity, must be deposited into the
22 Fund. Any interest or federal matching funds attributable to
23 moneys in the Fund must be deposited into the Fund.

24 For purposes of this subsection, "net revenue" means the
25 total amount for which tickets have been sold less the sum of
26 the amount paid out in the prizes and the actual administrative

1 expenses of the Department solely related to the scratch-off
2 game under this Section.

3 (c) During the time that tickets are sold for the "Nursing
4 Home Resident Assistance" scratch-off game, the Department
5 shall not unreasonably diminish the efforts devoted to
6 marketing any other instant scratch-off lottery game.

7 (d) The Department may, after consulting with the
8 Department of Public Health, adopt any rules necessary to
9 implement and administer the provisions of this Section.

10 Section 10. The State Finance Act is amended by adding
11 Section 5.855 as follows:

12 (30 ILCS 105/5.855 new)

13 Sec. 5.855. The Nursing Home Resident Assistance Fund.

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