



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB6578

by Rep. Jay Hoffman

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 1605/21.10 new	
30 ILCS 105/5.875 new	

Amends the Illinois Lottery Law. Requires the Department of the Lottery to offer a special instant scratch-off game for the treatment, education, and prevention of epilepsy. Requires the net revenue from that game to be deposited into the Overcoming Epilepsy Fund. Provides that moneys deposited into the Overcoming Epilepsy Fund shall be used by the Department of Public Health for the purpose of making grants to organizations in Illinois that participate in the treatment, education, and prevention of epilepsy. Authorizes the Department to adopt rules necessary to implement and administer the game. Amends the State Finance Act to create the Overcoming Epilepsy Fund as a special fund in the State treasury. Effective immediately.

LRB099 21791 AMC 48515 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 21.10 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, 21.8, ~~and 21.9,~~ and 21.10. 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. 98-649, eff. 6-16-14.)

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
24 offeror in performing its obligations under the management
25 agreement.

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

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

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

21 (1) where such contracts contain a provision
22 authorizing termination upon notice, the Department shall
23 provide notice of termination to occur upon the mutually
24 agreed timetable for transfer of functions;

25 (2) upon the expiration of any initial term or renewal
26 term of the current Lottery contracts, the Department shall

1 not renew such contract for a term extending beyond the
2 mutually agreed timetable for transfer of functions; or

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

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

15 (c-5) The Department shall include provisions in the
16 management agreement whereby the private manager shall, for a
17 fee, and pursuant to a contract negotiated with the Department
18 (the "Employee Use Contract"), utilize the services of current
19 Department employees to assist in the administration and
20 operation of the Lottery. The Department shall be the employer
21 of all such bargaining unit employees assigned to perform such
22 work for the private manager, and such employees shall be State
23 employees, as defined by the Personnel Code. Department
24 employees shall operate under the same employment policies,
25 rules, regulations, and procedures, as other employees of the
26 Department. In addition, neither historical representation

1 rights under the Illinois Public Labor Relations Act, nor
2 existing collective bargaining agreements, shall be disturbed
3 by the management agreement with the private manager for the
4 management of the Lottery.

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

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

9 (2) A provision specifying that the Department:

10 (A) shall exercise actual control over all
11 significant business decisions;

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

14 (B) has ready access at any time to information
15 regarding Lottery operations;

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

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

22 (3) A provision imposing an affirmative duty on the
23 private manager to provide the Department with material
24 information and with any information the private manager
25 reasonably believes the Department would want to know to
26 enable the Department to conduct the Lottery.

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

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

16 (6) (Blank).

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

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

22 (8-5) A provision encouraging that at least 20% of the
23 cost of contracts entered into for goods and services by
24 the private manager in connection with its management of
25 the Lottery, other than contracts with sales agents or
26 technical advisors, be awarded to businesses that are a

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

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

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

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

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

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

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

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

1 validity of tickets claimed to be winning tickets,
2 (vii) the basis upon which retailer commissions are
3 established by the manager, and (viii) minimum
4 payouts.

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

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

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

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

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

26 (15) Cash reserves requirements.

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

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

7 (18) Procedures for amendment of the agreement.

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

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

23 (21) Right of use of copyrights, trademarks, and
24 service marks held by the Department in the name of the
25 State. The agreement must provide that any use of them by
26 the manager shall only be for the purpose of fulfilling its

1 obligations under the management agreement during the term
2 of the agreement.

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

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

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

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

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

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

1 a lottery.

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

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

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

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

20 (2) The subject matter of the hearing.

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

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

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

26 (h) At the public hearing, the Department shall (i) provide

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

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

25 (j) The Lottery shall remain, for so long as a private
26 manager manages the Lottery in accordance with provisions of

1 this Act, a Lottery conducted by the State, and the State shall
2 not be authorized to sell or transfer the Lottery to a third
3 party.

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

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

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

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

25 (o) The powers conferred by this Section are in addition
26 and supplemental to the powers conferred by any other law. If

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

18 Upon receipt of a written request from the Chief
19 Procurement Officer, the Department shall provide to the Chief
20 Procurement Officer a complete and un-redacted copy of the
21 management agreement or any contract that is subject to the
22 Department's approval authority under this subsection (o). The
23 Department shall provide a copy of the agreement or contract to
24 the Chief Procurement Officer in the time specified by the
25 Chief Procurement Officer in his or her written request, but no
26 later than 5 business days after the request is received by the

1 Department. The Chief Procurement Officer must retain any
2 portions of the management agreement or of any contract
3 designated by the Department as confidential, proprietary, or
4 trade secret information in complete confidence pursuant to
5 subsection (g) of Section 7 of the Freedom of Information Act.
6 The Department shall also provide the Chief Procurement Officer
7 with reasonable advance written notice of any contract that is
8 pending Department approval.

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

26 Except as provided in Sections 21.2, 21.5, 21.6, 21.7,

1 21.8, ~~and 21.9,~~ and 21.10, the Department shall distribute all
2 proceeds of lottery tickets and shares sold in the following
3 priority and manner:

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

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

9 (3) On the last day of each month or as soon thereafter
10 as possible, the State Comptroller shall direct and the
11 State Treasurer shall transfer from the State Lottery Fund
12 to the Common School Fund an amount that is equal to the
13 proceeds transferred in the corresponding month of fiscal
14 year 2009, as adjusted for inflation, to the Common School
15 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 (p) The Department shall be subject to the following
21 reporting and information request requirements:

22 (1) the Department shall submit written quarterly
23 reports to the Governor and the General Assembly on the
24 activities and actions of the private manager selected
25 under this Section;

26 (2) upon request of the Chief Procurement Officer, the

1 Department shall promptly produce information related to
2 the procurement activities of the Department and the
3 private manager requested by the Chief Procurement
4 Officer; the Chief Procurement Officer must retain
5 confidential, proprietary, or trade secret information
6 designated by the Department in complete confidence
7 pursuant to subsection (g) of Section 7 of the Freedom of
8 Information Act; and

9 (3) at least 30 days prior to the beginning of the
10 Department's fiscal year, the Department shall prepare an
11 annual written report on the activities of the private
12 manager selected under this Section and deliver that report
13 to the Governor and General Assembly.

14 (Source: P.A. 97-464, eff. 8-19-11; 98-463, eff. 8-16-13;
15 98-649, eff. 6-16-14.)

16 (20 ILCS 1605/20) (from Ch. 120, par. 1170)

17 Sec. 20. State Lottery Fund.

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

1 credited or transferred thereto from any other fund or source
2 pursuant to law. Interest earnings of the State Lottery Fund
3 shall be credited to the Common School Fund.

4 (b) The receipt and distribution of moneys under Section
5 21.5 of this Act shall be in accordance with Section 21.5.

6 (c) The receipt and distribution of moneys under Section
7 21.6 of this Act shall be in accordance with Section 21.6.

8 (d) The receipt and distribution of moneys under Section
9 21.7 of this Act shall be in accordance with Section 21.7.

10 (e) The receipt and distribution of moneys under Section
11 21.8 of this Act shall be in accordance with Section 21.8.

12 (f) The receipt and distribution of moneys under Section
13 21.9 of this Act shall be in accordance with Section 21.9.

14 (g) The receipt and distribution of moneys under Section
15 21.10 of this Act shall be in accordance with Section 21.10.

16 (Source: P.A. 98-649, eff. 6-16-14.)

17 (20 ILCS 1605/21.10 new)

18 Sec. 21.10. Overcoming Epilepsy scratch-off game.

19 (a) The Department shall offer a special instant
20 scratch-off game for the treatment, education, and prevention
21 of epilepsy. The game shall commence on January 1, 2017 or as
22 soon thereafter, in the discretion of the Director, as is
23 reasonably practical. The operation of the game shall be
24 governed by this Act and any rules adopted by the Department.
25 If any provision of this Section is inconsistent with any other

1 provision of this Act, then this Section governs.

2 (b) The Overcoming Epilepsy Fund is created as a special
3 fund in the State treasury. The net revenue from the Overcoming
4 Epilepsy scratch-off game created under this Section shall be
5 deposited into the Fund for appropriation by the General
6 Assembly to the Department of Public Health for the purpose of
7 making grants to organizations in Illinois that participate in
8 the treatment, education, and prevention of epilepsy.

9 Moneys received for the purposes of this Section,
10 including, without limitation, net revenue from the special
11 instant scratch-off game and from gifts, grants, and awards
12 from any public or private entity, must be deposited into the
13 Fund. Any interest earned on moneys in the Fund must be
14 deposited into the Fund.

15 For purposes of this subsection (b), "net revenue" means
16 the total amount for which tickets have been sold less the sum
17 of the amount paid out in the prizes and the actual
18 administrative expenses of the Department solely related to the
19 scratch-off game under this Section.

20 (c) During the time that tickets are sold for the
21 Overcoming Epilepsy scratch-off game, the Department shall not
22 unreasonably diminish the efforts devoted to marketing any
23 other instant scratch-off lottery game.

24 (d) The Department may adopt any rules necessary to
25 implement and administer the provisions of this Section.

1 Section 10. The State Finance Act is amended by adding
2 Section 5.875 as follows:

3 (30 ILCS 105/5.875 new)

4 Sec. 5.875. The Overcoming Epilepsy Fund.

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