
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 471 Session of
2013

INTRODUCED BY COSTA, BREWSTER, KASUNIC, STACK, YUDICHAK, SMITH,
WASHINGTON, FONTANA, SOLOBAY, HUGHES, FERLO, BLAKE,
TARTAGLIONE AND FARNESE, FEBRUARY 13, 2013

REFERRED TO FINANCE, FEBRUARY 13, 2013

AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled,
2 as amended, "An act relating to the finances of the State
3 government; providing for the settlement, assessment,
4 collection, and lien of taxes, bonus, and all other accounts
5 due the Commonwealth, the collection and recovery of fees and
6 other money or property due or belonging to the Commonwealth,
7 or any agency thereof, including escheated property and the
8 proceeds of its sale, the custody and disbursement or other
9 disposition of funds and securities belonging to or in the
10 possession of the Commonwealth, and the settlement of claims
11 against the Commonwealth, the resettlement of accounts and
12 appeals to the courts, refunds of moneys erroneously paid to
13 the Commonwealth, auditing the accounts of the Commonwealth
14 and all agencies thereof, of all public officers collecting
15 moneys payable to the Commonwealth, or any agency thereof,
16 and all receipts of appropriations from the Commonwealth,
17 authorizing the Commonwealth to issue tax anticipation notes
18 to defray current expenses, implementing the provisions of
19 section 7(a) of Article VIII of the Constitution of
20 Pennsylvania authorizing and restricting the incurring of
21 certain debt and imposing penalties; affecting every
22 department, board, commission, and officer of the State
23 government, every political subdivision of the State, and
24 certain officers of such subdivisions, every person,
25 association, and corporation required to pay, assess, or
26 collect taxes, or to make returns or reports under the laws
27 imposing taxes for State purposes, or to pay license fees or
28 other moneys to the Commonwealth, or any agency thereof,
29 every State depository and every debtor or creditor of the
30 Commonwealth," providing for private management agreements.

31 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. The act of April 9, 1929 (P.L.343, No.176), known
3 as The Fiscal Code, is amended by adding a section to read:

4 Section 215. State Lottery.

5 (a) Private management agreements.--

6 (1) Notwithstanding any other law, the Secretary of
7 Revenue shall be prohibited from entering into any agreement
8 or contract for the administration, management or operation
9 of the State Lottery by a private entity unless the agreement
10 or contract for the private administration, management or
11 operation conforms to the requirements of this subsection.

12 (2) On or after July 1, 2013, the Secretary of Revenue
13 may select a private manager for the total management of the
14 State Lottery with integrated functions and advertising and
15 as specified under this subsection.

16 (3) The department shall expeditiously, as provided by
17 law or the contract, terminate any current contract necessary
18 to fulfill the private management agreement. As part of its
19 obligation to terminate the contracts and select the private
20 manager, the department shall establish a mutually agreeable
21 timetable to transfer the functions of existing contractors
22 to the private manager so that existing State Lottery
23 operations are not materially diminished or impaired during
24 the transition. The department shall do the following:

25 (i) if a current contract contains a provision
26 authorizing termination upon notice, the department shall
27 provide notice of termination to occur upon the mutually
28 agreed timetable for transfer of functions;

29 (ii) upon the expiration of any initial term or
30 renewal term of a current contract, the department may

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

4 (iii) if a current contract provides for termination
5 of the current contract upon the implementation of a
6 contract with the private manager, the department shall
7 perform all necessary actions to terminate the current
8 contract on the date that coincides with the mutually
9 agreed timetable for transfer of functions. If a current
10 contract is not subject to termination under this
11 section, the department may include a provision in the
12 current contract with the private manager specifying a
13 mutually agreeable methodology for incorporation.

14 (4) The department shall include provisions in the
15 private management agreement requiring the private manager,
16 for a fee and pursuant to a contract negotiated with the
17 department, to utilize the services of current department
18 employees to assist in the administration and operation of
19 the State Lottery. The department shall be the employer of
20 all bargaining unit employees assigned to perform the work
21 for the private manager and the employees shall be
22 Commonwealth employees. Department employees shall operate
23 under the same employment policies, rules, regulations and
24 procedures as other employees of the department; and neither
25 historical representation rights under any law, nor existing
26 collective bargaining agreements shall be disturbed by the
27 private management agreement with the private manager for the
28 management of the State Lottery.

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

1 (i) A term not to exceed five years, including any
2 renewals.

3 (ii) A provision specifying that the department:

4 (A) exercise actual control over all significant
5 business decisions;

6 (B) have the authority to direct or countermand
7 operating decisions by the private manager at any
8 time;

9 (C) have ready access at any time to information
10 regarding State Lottery operations;

11 (D) have the right to demand and receive
12 information from the private manager concerning any
13 aspect of the State Lottery operations at any time;
14 and

15 (E) retain ownership of all trade names,
16 trademarks and intellectual property associated with
17 the State Lottery.

18 (iii) A provision imposing an affirmative duty on
19 the private manager to provide the department with
20 material information and with any information the private
21 manager reasonably believes the department would want to
22 know to enable the department to conduct the State
23 Lottery.

24 (iv) A provision requiring the private manager to
25 provide the department with advance notice of any
26 operating decision that bears significantly on the public
27 interest, including decisions on the kinds of games to be
28 offered to the public and decisions affecting the
29 relative risk and reward of the games being offered, to
30 allow the department a reasonable opportunity to evaluate

1 and countermand the decision.

2 (v) A provision providing for compensation of the
3 private manager that may consist of a fee for services
4 and a performance-based bonus as consideration for
5 managing the State Lottery, including terms that may
6 provide the private manager with an increase in
7 compensation if State Lottery revenues grow by a
8 specified percentage in a given year.

9 (vi) A provision requiring the deposit of all
10 lottery proceeds to be deposited into the State Lottery
11 Fund.

12 (vii) A provision requiring the private manager to
13 locate its principal office within this Commonwealth.

14 (viii) A provision encouraging that at least 20% of
15 the cost of contracts entered into for goods and services
16 by the private manager in connection with its management
17 of the State Lottery, other than contracts with sales
18 agents or technical advisors, be awarded to businesses
19 that are a minority-owned business, a woman-owned
20 business or a business owned by a person with a
21 disability.

22 (ix) A requirement that if the private manager
23 complies with all the conditions of the private
24 management agreement under the oversight of the
25 department, the private manager shall have the following
26 duties and obligations with respect to the management of
27 the State Lottery:

28 (A) The right to use equipment and other assets
29 used in the operation of the State Lottery.

30 (B) The rights and obligations under contracts

1 with retailers and vendors.

2 (C) The implementation of a comprehensive
3 security program by the private manager.

4 (D) The implementation of a comprehensive system
5 of internal audits.

6 (E) The implementation of a program by the
7 private manager to curb compulsive gambling by
8 persons playing the State Lottery.

9 (F) A system for determining or verifying:

10 (I) the type of State Lottery games;

11 (II) the method of selecting winning
12 tickets;

13 (III) the manner of payment of prizes to
14 holders of winning tickets;

15 (IV) the frequency of drawings of winning
16 tickets;

17 (V) the method to be used in selling
18 tickets;

19 (VI) the validity of tickets claimed to be
20 winning tickets;

21 (VII) the basis upon which retailer
22 commissions are established by the manager; and

23 (VIII) minimum payouts.

24 (x) A requirement that advertising and promotion
25 must be consistent with this subsection and the State
26 Lottery Law.

27 (xi) A requirement that the private manager market
28 the State Lottery to those residents who are new,
29 infrequent or lapsed players of the State Lottery,
30 especially those who are most likely to make regular

1 purchases on the Internet if permitted by law.

2 (xii) A code of ethics for the private manager's
3 officers and employees that is approved by the department
4 and published annually in the Pennsylvania Bulletin.

5 (xiii) A requirement that the department monitor and
6 oversee the private manager's practices and take action
7 that the department considers appropriate to ensure that
8 the private manager is in compliance with the terms of
9 the private management agreement, while allowing the
10 manager, unless specifically prohibited by law or the
11 private management agreement, to negotiate and sign its
12 own contracts with vendors.

13 (xiv) A provision requiring the private manager to
14 periodically file, at least on an annual basis,
15 appropriate financial statements in a form and manner
16 acceptable to the department.

17 (xv) Cash reserves requirements.

18 (xvi) Procedural requirements for obtaining the
19 prior approval of the department when a private
20 management agreement or an interest in a private
21 management agreement is sold, assigned, transferred or
22 pledged as collateral to secure financing.

23 (xvii) Grounds for the termination of the private
24 management agreement by the department or the private
25 manager.

26 (xviii) Procedures for amendment of the private
27 management agreement.

28 (xix) A provision requiring the private manager to
29 engage in an open and competitive bidding process in
30 accordance with 62 Pa.C.S. Pt. I (relating to

1 Commonwealth Procurement Code) and any other applicable
2 law. The process shall favor the selection of a vendor
3 deemed to have submitted a proposal that provides the
4 State Lottery with the best overall value.

5 (xx) The transition of rights and obligations,
6 including any associated equipment or other assets used
7 in the operation of the State Lottery, from the manager
8 to any successor manager of the State Lottery, including
9 the department, following the termination of or
10 foreclosure upon the private management agreement.

11 (xxi) Right of use of copyrights, trademarks and
12 service marks held by the department in the name of the
13 Commonwealth. The private management agreement must
14 provide that any use of the copyrights, trademarks and
15 service marks by the manager may only be for the purpose
16 of fulfilling its obligations under the private
17 management agreement during the term of the private
18 management agreement.

19 (xxii) The disclosure of any information requested
20 by the department to enable it to comply with the
21 reporting requirements and information requests provided
22 for under this subsection.

23 (6) Notwithstanding any other law, the department shall
24 select a private manager through a competitive request for
25 qualifications process consistent with 62 Pa.C.S. Pt. I,
26 which shall take into account:

27 (i) the offeror's ability to market the State
28 Lottery to those residents who are new, infrequent or
29 lapsed players of the State Lottery, especially those who
30 are most likely to make regular purchases on the Internet

1 if permitted by law;

2 (ii) the offeror's ability to address the
3 Commonwealth's concern with the social effects of
4 gambling on those who can least afford to gamble;

5 (iii) the offeror's ability to provide the most
6 successful management of the State Lottery for the
7 benefit of the people of this Commonwealth based on
8 current and past business practices or plans of the
9 offeror; and

10 (iv) the offeror's poor or inadequate past
11 performance in servicing, equipping, operating or
12 managing a lottery on behalf of another state or foreign
13 government and attracting persons who are not currently
14 regular players of a lottery.

15 (7) The following shall apply:

16 (i) The department may retain the services of an
17 advisor with significant experience in financial services
18 or the management, operation and procurement of goods,
19 services and equipment for a government-run lottery to
20 assist in the preparation of the terms of the request for
21 qualifications and selection of the private manager.

22 (ii) Any prospective advisor seeking to provide
23 services under this paragraph must disclose any material
24 business or financial relationship during the past three
25 years with any potential offeror, or with a contractor or
26 subcontractor presently providing goods, services or
27 equipment to the department to support the State Lottery.

28 (iii) The department shall evaluate the material
29 business or financial relationship of each prospective
30 advisor. The department may not select any prospective

1 advisor with a substantial business or financial
2 relationship that the department deems to impair the
3 objectivity of the services to be provided by the
4 prospective advisor.

5 (iv) During the course of the advisor's engagement
6 by the department, and for a period of one year
7 thereafter, the advisor may not enter into any business
8 or financial relationship with any offeror or any vendor
9 identified to assist an offeror in performing its
10 obligations under the private management agreement.

11 (v) Any advisor retained by the department shall be
12 disqualified from being an offeror.

13 (vi) The department may not include terms in the
14 request for qualifications that provide a material
15 advantage whether directly or indirectly to any potential
16 offeror, or any contractor or subcontractor presently
17 providing goods, services or equipment to the department
18 to support the State Lottery, including terms contained
19 in previous responses to requests for proposals or
20 qualifications submitted to the Commonwealth, another
21 state or foreign government when those terms are uniquely
22 associated with a particular potential offeror,
23 contractor or subcontractor.

24 (vii) The request for proposals offered by the
25 department on April 2, 2013, as Request for
26 Qualifications Pennsylvania Lottery Private Management
27 Agreement is void if it is inconsistent with the
28 provisions of this act.

29 (8) The department shall select at least two offerors as
30 finalists to potentially serve as the private manager no

1 later than September 1, 2013. Upon making preliminary
2 selections, the department shall schedule a public hearing on
3 the finalists' proposals and provide public notice of the
4 hearing at least seven calendar days before the hearing. In
5 addition to any other requirements under 65 Pa.C.S. Ch. 7
6 (relating to open meetings), the notice must include all of
7 the following:

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

9 (ii) The subject matter of the hearing.

10 (iii) A brief description of the private management
11 agreement to be awarded.

12 (iv) The identity of the offerors that have been
13 selected as finalists to serve as the private manager.

14 (v) The address and telephone number of the
15 department.

16 (9) At the public hearing, the department shall:

17 (i) provide sufficient time for each finalist to
18 present and explain its proposal to the department and
19 the Secretary of Revenue or his designee, including an
20 opportunity to respond to questions posed by the
21 department, the Secretary of Revenue or his designee; and

22 (ii) allow the public and nonselected offerors to
23 comment on the presentations. The Governor or his
24 designee shall attend the public hearing. After the
25 public hearing, the department shall have 14 calendar
26 days to recommend to the Governor whether a private
27 management agreement should be entered into with a
28 particular finalist. After reviewing the department's
29 recommendation, the Governor may accept or reject the
30 department's recommendation and shall select a final

1 offeror as the private manager by publication of a notice
2 in the Pennsylvania Bulletin on or before November 1,
3 2012. The Secretary of Revenue shall include in the
4 notice a detailed explanation and the reasons why the
5 final offeror is superior to other offerors and will
6 provide management services in a manner that best
7 achieves the objectives of this subsection. The Governor
8 shall sign the private management agreement with the
9 private manager.

10 (10) Any action to contest the private manager selected
11 by the Secretary of Revenue under this subsection must be
12 brought within seven calendar days after the publication of
13 the notice of the designation of the private manager as
14 provided under this subsection.

15 (11) The State Lottery shall remain, for the period
16 during which a private manager manages the State Lottery in
17 accordance with this subsection and any private management
18 agreement entered into with the department, a State Lottery
19 conducted by the Commonwealth, and the Commonwealth may not
20 sell or transfer the State Lottery to a third party.

21 (12) Any tangible personal property used exclusively in
22 connection with the State Lottery that is owned by the
23 department and leased to the private manager shall be owned
24 by the department in the name of the Commonwealth and shall
25 be considered to be public property devoted to an essential
26 public and governmental function.

27 (13) The department may exercise any of its powers under
28 this subsection or any other law as necessary or desirable
29 for the execution of the department's powers under this
30 subsection.

1 (14) Nothing under this subsection nor any private
2 management agreement entered into under this subsection shall
3 prohibit the General Assembly from authorizing forms of
4 gambling that are not in direct competition with the State
5 Lottery.

6 (15) The private manager shall be subject to a complete
7 investigation in the third and fifth years of the private
8 management agreement, if the private management agreement is
9 for a five-year term, by the department in cooperation with
10 the Auditor General to determine whether the private manager
11 has complied with this subsection and the private management
12 agreement. The private manager shall bear the cost of an
13 investigation or reinvestigation of the private manager under
14 this paragraph.

15 (16) The following shall apply:

16 (i) The powers conferred under this subsection shall
17 be in addition to and supplemental to the powers
18 conferred by any other law. If any other law or rule is
19 inconsistent with this subsection, this subsection shall
20 control as to any private management agreement entered
21 into under this subsection. This subsection and any rules
22 adopted under this subsection contain full and complete
23 authority for a private management agreement between the
24 department and a private manager. No law, procedure,
25 proceeding, publication, notice, consent, approval, order
26 or act by the department or any other officer,
27 department, agency or instrumentality of the Commonwealth
28 or any of its political subdivision shall be required for
29 the department to enter into a private management
30 agreement under this subsection. This subsection contains

1 full and complete authority for the department to approve
2 any contracts entered into by a private manager with a
3 vendor providing goods, services or both goods and
4 services to the private manager under the terms of the
5 private management agreement, including subcontractors of
6 the vendors.

7 (ii) The department shall distribute all proceeds of
8 State Lottery tickets and shares sold as provided in the
9 State Lottery Law for:

10 (A) The payment of prizes and retailer bonuses.

11 (B) The payment of costs incurred in the
12 operation and administration of the State Lottery,
13 including the payment of sums due to the private
14 manager under the private management agreement with
15 the department.

16 (C) The funding of the programs as provided in
17 the State Lottery Law.

18 (17) The department shall be subject to the following
19 reporting and information request requirements:

20 (i) the department shall submit written quarterly
21 reports to the Governor and the General Assembly on the
22 activities and actions of the private manager selected
23 under this subsection;

24 (ii) upon request of the Chief Procurement Officer,
25 the department shall promptly produce information related
26 to the procurement activities of the department and the
27 private manager requested by the Chief Procurement
28 Officer;

29 (iii) the Chief Procurement Officer must retain
30 confidential, proprietary or trade secret information

1 designated by the department under the Right-to-Know Law;

2 and

3 (iv) at least 60 days prior to the beginning of the
4 department's fiscal year, the department shall prepare
5 and submit an annual written report on the activities of
6 the private manager selected under this subsection to the
7 Governor and General Assembly.

8 (18) The following words and phrases when used in this
9 subsection shall have the meanings given to them in this
10 paragraph unless the context clearly indicates otherwise:

11 "Current contract." A contract in support of the
12 State Lottery that is:

13 (A) in effect on the effective date of this
14 subsection; and

15 (B) is necessary to the performance of the
16 agreement for private management of the State Lottery
17 in connection with the selection of the private
18 manager.

19 "Department." The Department of Revenue of the
20 Commonwealth.

21 "Final offer." The last proposal submitted by an
22 offeror in response to the request for qualifications,
23 including the identity of any prospective vendor or
24 vendors that the offeror intends to initially engage to
25 assist the offeror in performing its obligations under
26 the private management agreement.

27 "Final offeror." The offeror ultimately selected by
28 the Secretary of Revenue to be the private manager for
29 the State Lottery under this subsection or section 303 of
30 the State Lottery Law.

1 "Offeror." A person or group of persons that
2 responds to a request for qualifications under this
3 subsection.

4 "Private management agreement." An agreement or
5 contract providing for the administration, management or
6 operation of the State Lottery by a private entity
7 entered into under this section.

8 "Request for qualifications." All materials and
9 documents prepared by the department to solicit the
10 following from offerors:

11 (A) Statements of qualifications.

12 (B) Proposals to enter into a private management
13 agreement, including the identity of any prospective
14 vendor or vendors that the offeror intends to
15 initially engage to assist the offeror in performing
16 its obligations under the private management
17 agreement.

18 "State Lottery Law." The act of August 26, 1971
19 (P.L.351, No.91), known as the State Lottery Law.

20 (b) (Reserved).

21 Section 2. This act shall take effect July 1, 2013, or
22 immediately, whichever is later.