

HB 1177

2009

1 A bill to be entitled
2 An act relating to operation of the Florida Lottery;
3 amending s. 20.317, F.S.; clarifying provisions concerning
4 regional offices; amending s. 24.101, F.S.; revising a
5 reference; amending s. 24.102, F.S.; revising provisions
6 relating to legislative intent to provide for operation of
7 the lottery under a management agreement; amending s.
8 24.103, F.S.; providing and revising definitions; amending
9 s. 24.104, F.S.; revising language concerning the purpose
10 of the Department of the Lottery to permit contracting
11 with a manager; amending s. 24.105, F.S.; revising
12 provisions concerning the powers and duties of the
13 department to allow for possible contracting with a
14 manager; providing that specified provisions apply
15 regardless of whether the department contracts with a
16 manager; deleting obsolete language; amending s. 24.107,
17 F.S.; revising provisions concerning advertising and
18 promotion of lottery games to conform to the possibility
19 of contracting with a manager; amending ss. 24.108 and
20 24.111, F.S.; revising provisions relating to security and
21 contracts for goods or services to conform to the
22 possibility of contracting with a manager; creating s.
23 24.1115, F.S.; providing for a management agreement under
24 which the lottery may be operated; providing intent;
25 providing definitions; limiting the duration of such an
26 agreement; providing limits on the games that may be
27 offered under such an agreement; providing for an initial
28 payment to the department by a manager; providing for a

29 | minimum amount to be retained annually by the state after
30 | payment of prizes and expenses; providing for payments by
31 | a manager; providing for collection of funds in excess of
32 | a specified baseline growth percentage to ensure that the
33 | manager does not earn excess revenue; providing
34 | requirements for the contents of a management agreement;
35 | requiring periodic investigations of the performance by a
36 | manager; providing for a request for qualifications
37 | process to select a manager; providing for the public
38 | records status of specified materials under existing
39 | exemptions; providing for negotiations between one or more
40 | offerors and the department; providing selection
41 | procedures; requiring a public hearing; providing for
42 | designation of a manager by the Governor; providing for
43 | status of debt offering by the manager; providing for a
44 | time period for challenges to designation of a manager;
45 | providing department powers; prohibiting the department
46 | from selling the authorization to manage the lottery;
47 | providing that there is no prohibition on additional
48 | legislative authorization of other forms of gambling;
49 | amending s. 24.112, F.S.; revising provisions concerning
50 | retailers of lottery tickets to conform to the possibility
51 | of contracting with a manager; amending s. 24.113, F.S.;
52 | providing that provisions concerning minority
53 | participation also apply if the lottery contracts with a
54 | manager; amending s. 24.114, F.S.; correcting a reference;
55 | amending ss. 24.115, 24.1153, 24.117, 24.118, and 24.120,
56 | F.S.; revising provisions relating to bank deposits and

57 control of lottery transactions, payment of prizes,
 58 assignment of prizes payable in installments, penalties
 59 for unlawful sale of lottery tickets, breach of
 60 confidentiality, and unlawful representation, and
 61 financial matters to conform to the possibility of
 62 contracting with a manager; amending s. 24.121, F.S.;
 63 revising provisions relating to allocation of revenues and
 64 expenditure of funds for public education to conform to
 65 the possibility of contracting with a manager; providing
 66 for a minimum allocation of proceeds received under a
 67 management agreement to the Florida Bright Futures
 68 Scholarship Program; amending ss. 24.122, 24.123, and
 69 24.124, F.S.; revising provisions relating to exemption
 70 from taxation, state preemption, inapplicability of other
 71 laws, annual audit of financial records and reports,
 72 responsibility for ticket accuracy, and liability to
 73 conform to the possibility of contracting with a manager;
 74 providing an effective date.

75
 76 Be It Enacted by the Legislature of the State of Florida:

77
 78 Section 1. Subsection (3) of section 20.317, Florida
 79 Statutes, is amended to read:

80 20.317 Department of the Lottery.--There is created a
 81 Department of the Lottery.

82 (3) The headquarters of the department shall be located in
 83 Tallahassee. However, the department may establish such regional
 84 offices throughout the state as the secretary deems necessary to

85 perform its duties concerning the efficient operation of the
 86 state lottery.

87 Section 2. Section 24.101, Florida Statutes, is amended to
 88 read:

89 24.101 Short title.--This chapter ~~act~~ may be cited as the
 90 "Florida Public Education Lottery Act."

91 Section 3. Section 24.102, Florida Statutes, is amended to
 92 read:

93 24.102 Purpose and intent.--

94 (1) The purpose of this chapter ~~act~~ is to implement s. 15,
 95 Art. X of the State Constitution in a manner that enables the
 96 people of the state to benefit from significant additional
 97 moneys for education and also enables the people of the state to
 98 play the best lottery games available.

99 (2) The intent of the Legislature is:

100 (a) That the net proceeds of lottery games conducted
 101 pursuant to this chapter ~~act~~ be used to support improvements in
 102 public education and that such proceeds not be used as a
 103 substitute for existing resources for public education.

104 (b) That the lottery games be operated by a department of
 105 state government that functions as much as possible in the
 106 manner of an entrepreneurial business enterprise or with the
 107 assistance of an entrepreneurial business enterprise under a
 108 management agreement overseen by the department. The Legislature
 109 recognizes that the operation of a lottery is a unique activity
 110 for state government and that structures and procedures
 111 appropriate to the performance of other governmental functions

HB 1177

2009

112 are not necessarily appropriate to the operation of a state
 113 lottery.

114 (c) That the lottery games be operated by a self-
 115 supporting, revenue-producing department or with the assistance
 116 of an entrepreneurial business enterprise under a management
 117 agreement with government oversight.

118 (d) That the department be accountable to the Legislature
 119 and the people of the state through a system of audits and
 120 reports and through compliance with financial disclosure, open
 121 meetings, and public records laws and that any entity contracted
 122 with under a management agreement must also be accountable to
 123 the Legislature and the people of the state.

124 Section 4. Section 24.103, Florida Statutes, is amended to
 125 read:

126 24.103 Definitions.--As used in this chapter ~~act~~:

127 (1) "Department" means the Department of the Lottery.

128 (2)~~(4)~~ "Major procurement" means a procurement for a
 129 contract for the printing of tickets for use in any lottery
 130 game, consultation services for the startup of the lottery, any
 131 goods or services involving the official recording for lottery
 132 game play purposes of a player's selections in any lottery game
 133 involving player selections, any goods or services involving the
 134 receiving of a player's selection directly from a player in any
 135 lottery game involving player selections, any goods or services
 136 involving the drawing, determination, or generation of winners
 137 in any lottery game, the security report services provided for
 138 in this chapter ~~act~~, or any goods and services relating to
 139 marketing and promotion that ~~which~~ exceed a value of \$25,000.

140 (3) "Management agreement" means that agreement entered
 141 into pursuant to which the state may contract with a manager to
 142 provide management services to the lottery, although under such
 143 an agreement the department shall continue to manage and operate
 144 the lottery, and further pursuant to which the manager may
 145 receive certain lottery ticket or share sales and related
 146 proceeds in consideration of the payment of a fee or fees to the
 147 state.

148 (4) "Manager" means an entity that provides management
 149 services to the lottery on behalf of the department under a
 150 management agreement.

151 (5)~~(3)~~ "Person" means any individual, firm, association,
 152 joint adventure, partnership, estate, trust, syndicate,
 153 fiduciary, corporation, or other group or combination and shall
 154 include any agency or political subdivision of the state.

155 (6)~~(5)~~ "Retailer" means a person who sells lottery tickets
 156 on behalf of the department or the manager pursuant to a
 157 contract.

158 (7)~~(2)~~ "Secretary" means the secretary of the department.

159 (8)~~(6)~~ "Vendor" means a person who provides or proposes to
 160 provide goods or services to the department, but does not
 161 include an employee of the department, a retailer, or a state
 162 agency.

163 Section 5. Section 24.104, Florida Statutes, is amended to
 164 read:

165 24.104 Department; purpose.--The purpose of the department
 166 is to operate the state lottery as authorized by s. 15, Art. X
 167 of the State Constitution with or without a manager so as to

HB 1177

2009

168 maximize revenues in a manner consonant with the dignity of the
 169 state and the welfare of its citizens.

170 Section 6. Subsections (2), (4), (6), (7), (8), (9), (11),
 171 (15), (17), (18), and (19) of section 24.105, Florida Statutes,
 172 are amended to read:

173 24.105 Powers and duties of department.--The department
 174 shall:

175 (2) Supervise and administer the operation of the lottery
 176 with or without a manager in accordance with the provisions of
 177 this chapter ~~act~~ and rules adopted pursuant thereto.

178 (4) Submit monthly and annual reports to the Governor, the
 179 Chief Financial Officer, the President of the Senate, and the
 180 Speaker of the House of Representatives disclosing the total
 181 lottery revenues, prize disbursements, and other expenses of the
 182 department during the preceding month or, if the lottery has
 183 entered into a management agreement, comparable information
 184 provided by the manager. The annual report shall additionally
 185 describe the organizational structure of the department,
 186 including its hierarchical structure, and shall identify the
 187 divisions and bureaus created by the secretary and summarize the
 188 departmental functions performed by each.

189 (6) Maintain weekly or more frequent records of lottery
 190 transactions, including the distribution of tickets to
 191 retailers, revenues received, claims for prizes, prizes paid,
 192 and other financial transactions of the department. If the
 193 department has entered into a management agreement, the
 194 agreement shall require the manager to maintain comparable
 195 information.

196 (7) Make a continuing study of the lottery to ascertain
 197 any defects of this chapter ~~act~~ or rules adopted thereunder
 198 which could result in abuses in the administration of the
 199 lottery; make a continuing study of the operation and the
 200 administration of similar laws in other states and of federal
 201 laws that ~~which~~ may affect the lottery; and, if the department
 202 has not entered into a management agreement, make a continuing
 203 study of the reaction of the public to existing and potential
 204 features of the lottery.

205 (8) If the department does not enter into a management
 206 agreement, conduct such market research as is necessary or
 207 appropriate, which may include an analysis of the demographic
 208 characteristics of the players of each lottery game and an
 209 analysis of advertising, promotion, public relations,
 210 incentives, and other aspects of communications.

211 (9) Adopt rules governing the establishment and operation
 212 of the state lottery, including:

213 (a) 1. If the department does not enter into a management
 214 agreement, the type of lottery games to be conducted.

215 2. Regardless of whether the department has entered into a
 216 management agreement, ~~except that:~~

217 a.1. No name of an elected official shall appear on the
 218 ticket or play slip of any lottery game or on any prize or on
 219 any instrument used for the payment of prizes, unless such prize
 220 is in the form of a state warrant.

221 b.2. No coins or currency shall be dispensed from any
 222 electronic computer terminal or device used in any lottery game.

HB 1177

2009

223 c.3. Other than as provided in sub-subparagraph d.
 224 ~~subparagraph 4.~~, no terminal or device may be used for any
 225 lottery game that ~~which~~ may be operated solely by the player
 226 without the assistance of the retailer.

227 d.4. The only player-activated machine that ~~which~~ may be
 228 utilized is a machine that ~~which~~ dispenses instant lottery game
 229 tickets following the insertion of a coin or currency by a
 230 ticket purchaser. To be authorized a machine must ~~÷~~ be under the
 231 supervision and within the direct line of sight of the lottery
 232 retailer to ensure that the machine is monitored and only
 233 operated by persons at least 18 years of age and ~~÷~~ be capable of
 234 being electronically deactivated by the retailer to prohibit use
 235 by persons less than 18 years of age through the use of a
 236 lockout device that maintains the machine's deactivation for a
 237 period of no less than 5 minutes unless the machine uses a
 238 method of verifying the age of an operator that the department
 239 certifies is equivalent or superior to line-of-sight monitoring
 240 and lockout by the retailer. Such a machine must also ~~÷ and~~ be
 241 designed to prevent its use or conversion for use in any manner
 242 other than the dispensing of instant lottery tickets. Authorized
 243 machines may dispense change to players purchasing tickets but
 244 may not be utilized for paying the holders of winning tickets of
 245 any kind. At least one clerk must be on duty at the lottery
 246 retailer while the machine is in operation. However, at least
 247 two clerks must be on duty at any lottery location that ~~which~~
 248 has violated s. 24.1055.

249 (b) If the department does not enter into a management
 250 agreement, the sales price of tickets.

HB 1177

2009

251 (c) If the department does not enter into a management
252 agreement, the number and sizes of prizes.

253 (d) If the department does not enter into a management
254 agreement, the method of selecting winning tickets. However,
255 regardless of whether the department has entered into a
256 management agreement, if a lottery game involves a drawing, the
257 drawing shall be public and witnessed by an accountant employed
258 by an independent certified public accounting firm. The
259 equipment used in the drawing shall be inspected before and
260 after the drawing.

261 (e) If the department does not enter into a management
262 agreement, the manner of payment of prizes to holders of winning
263 tickets.

264 (f) If the department does not enter into a management
265 agreement, the frequency of drawings or selections of winning
266 tickets.

267 (g) If the department does not enter into a management
268 agreement, the number and type of locations at which tickets may
269 be purchased.

270 (h) If the department does not enter into a management
271 agreement, the method to be used in selling tickets.

272 (i) If the department does not enter into a management
273 agreement, the manner and amount of compensation of retailers.

274 (j) Such other matters necessary or desirable for the
275 efficient or economical operation of the lottery or for the
276 convenience of the public.

277 (11) In the selection of games and method of selecting
278 winning tickets, be sensitive to the impact of the lottery upon

HB 1177

2009

279 | the pari-mutuel industry and, accordingly, the department or the
 280 | manager, if any, may use for any game the theme of horseracing,
 281 | dogracing, or jai alai and may allow a lottery game to be based
 282 | upon a horserace, dograce, or jai alai activity so long as the
 283 | outcome of such lottery game is determined entirely by chance.

284 | (15) Or the manager, if any, shall have the authority to
 285 | charge fees to persons applying for contracts as vendors or
 286 | retailers, which fees are reasonably calculated to cover the
 287 | costs of investigations and other activities related to the
 288 | processing of the application.

289 | (17) Or the manager, if any, shall, in accordance with the
 290 | provisions of this chapter ~~act~~, enter into contracts with
 291 | retailers so as to provide adequate and convenient availability
 292 | of tickets to the public for each game.

293 | (18) Or the manager, if any, shall have the authority to
 294 | enter into agreements with other states for the operation and
 295 | promotion of a multistate lottery if such agreements are in the
 296 | best interest of the state lottery. ~~The authority conferred by~~
 297 | ~~this subsection is not effective until 1 year after the first~~
 298 | ~~day of lottery ticket sales.~~

299 | (19) Employ division directors and other staff as may be
 300 | necessary to carry out the provisions of this chapter ~~act~~;
 301 | however:

302 | (a) No person shall be employed by the department who has
 303 | been convicted of, or entered a plea of guilty or nolo
 304 | contendere to, a felony committed in the preceding 10 years,
 305 | regardless of adjudication, unless the department determines
 306 | that:

307 1. The person has been pardoned or his or her civil rights
308 have been restored; or

309 2. Subsequent to such conviction or entry of plea the
310 person has engaged in the kind of law-abiding commerce and good
311 citizenship that would reflect well upon the integrity of the
312 lottery.

313 (b) No officer or employee of the department having
314 decisionmaking authority shall participate in any decision
315 involving any vendor or retailer with whom the officer or
316 employee has a financial interest. No such officer or employee
317 may participate in any decision involving any vendor or retailer
318 with whom the officer or employee has discussed employment
319 opportunities without the approval of the secretary or, if such
320 officer is the secretary, without the approval of the Governor.
321 Any officer or employee of the department shall notify the
322 secretary of any such discussion or, if such officer is the
323 secretary, he or she shall notify the Governor. A violation of
324 this paragraph is punishable in accordance with s. 112.317.

325 (c) No officer or employee of the department who leaves
326 the employ of the department shall represent any vendor or
327 retailer or the manager, if any, before the department regarding
328 any specific matter in which the officer or employee was
329 involved while employed by the department, for a period of 1
330 year following cessation of employment with the department. A
331 violation of this paragraph is punishable in accordance with s.
332 112.317.

333 (d) The department shall establish and maintain a
334 personnel program for its employees, including a personnel

HB 1177

2009

335 classification and pay plan which may provide any or all of the
336 benefits provided in the Senior Management Service or Selected
337 Exempt Service. Each officer or employee of the department shall
338 be a member of the Florida Retirement System. The retirement
339 class of each officer or employee shall be the same as other
340 persons performing comparable functions for other agencies.
341 Employees of the department shall serve at the pleasure of the
342 secretary and shall be subject to suspension, dismissal,
343 reduction in pay, demotion, transfer, or other personnel action
344 at the discretion of the secretary. Such personnel actions are
345 exempt from the provisions of chapter 120. All employees of the
346 department are exempt from the Career Service System provided in
347 chapter 110 and, notwithstanding the provisions of s.
348 110.205(5), are not included in either the Senior Management
349 Service or the Selected Exempt Service. However, all employees
350 of the department are subject to all standards of conduct
351 adopted by rule for career service and senior management
352 employees pursuant to chapter 110. In the event of a conflict
353 between standards of conduct applicable to employees of the
354 Department of the Lottery the more restrictive standard shall
355 apply. Interpretations as to the more restrictive standard may
356 be provided by the Commission on Ethics upon request of an
357 advisory opinion pursuant to s. 112.322(3)(a), for purposes of
358 this subsection the opinion shall be considered final action.

359 (e) If the department enters into a management agreement,
360 no employee or contractor of the manager shall receive
361 membership in the Florida Retirement System or any other state

362 retirement or other state employee benefits on the basis of such
 363 employment or contract.

364 Section 7. Section 24.107, Florida Statutes, is amended to
 365 read:

366 24.107 Advertising and promotion of lottery games.--

367 (1) The Legislature recognizes the need for extensive and
 368 effective advertising and promotion of lottery games. It is the
 369 intent of the Legislature that such advertising and promotion be
 370 consistent with the dignity and integrity of the state. In
 371 advertising the value of a prize that will be paid over a period
 372 of years, the department or the manager, if any, may refer to
 373 the sum of all prize payments over the period.

374 (2) The department or the manager, if any, may act as a
 375 retailer and may conduct promotions that ~~which~~ involve the
 376 dispensing of lottery tickets free of charge.

377 Section 8. Subsections (2), (5), (6), and (7) of section
 378 24.108, Florida Statutes, are amended to read:

379 24.108 Division of Security; duties; security report.--

380 (2) The director and all investigators employed by the
 381 division shall meet the requirements for employment and
 382 appointment provided by s. 943.13 and shall satisfy the
 383 requirements for certification established by the Criminal
 384 Justice Standards and Training Commission pursuant to chapter
 385 943. The director and such investigators shall be designated law
 386 enforcement officers and shall have the power to investigate and
 387 arrest for any alleged violation of this chapter ~~act~~ or any rule
 388 adopted pursuant thereto, or any law of this state. Such law
 389 enforcement officers may enter upon any premises in which

HB 1177

2009

390 lottery tickets are sold, manufactured, printed, or stored
391 within the state for the performance of their lawful duties and
392 may take with them any necessary equipment, and such entry shall
393 not constitute a trespass. In any instance in which there is
394 reason to believe that a violation has occurred, such officers
395 have the authority, without warrant, to search and inspect any
396 premises where the violation is alleged to have occurred or is
397 occurring. Any such officer may, consistent with the United
398 States and Florida Constitutions, seize or take possession of
399 any papers, records, tickets, currency, or other items related
400 to any alleged violation.

401 (5) The Department of Law Enforcement shall provide
402 assistance in obtaining criminal history information relevant to
403 investigations required for honest, secure, and exemplary
404 lottery operations, and such other assistance as may be
405 requested by the secretary and agreed to by the executive
406 director of the Department of Law Enforcement. Any other state
407 agency, including the Department of Business and Professional
408 Regulation and the Department of Revenue, shall, upon request,
409 provide the Department of the Lottery with any information
410 relevant to any investigation conducted pursuant to this chapter
411 ~~act~~. The Department of the Lottery shall maintain the
412 confidentiality of any confidential information it receives from
413 any other agency. The Department of the Lottery shall reimburse
414 any agency for the actual cost of providing any assistance
415 pursuant to this subsection.

HB 1177

2009

416 (6) If the department does not enter into a management
417 agreement, the division shall monitor ticket validation and
418 lottery drawings.

419 (7) (a) If the department does not enter into a management
420 agreement ~~After the first full year of sales of tickets to the~~
421 ~~public, or sooner if the secretary deems necessary,~~ the
422 department shall, as it deems appropriate, but at least once
423 every 2 years engage an independent firm experienced in security
424 procedures, including, but not limited to, computer security and
425 systems security, to conduct a comprehensive study and
426 evaluation of all aspects of security in the operation of the
427 department.

428 (b) The portion of the security report containing the
429 overall evaluation of the department in terms of each aspect of
430 security shall be presented to the Governor, the President of
431 the Senate, and the Speaker of the House of Representatives. The
432 portion of the security report containing specific
433 recommendations shall be confidential and shall be presented
434 only to the secretary, the Governor, and the Auditor General;
435 however, upon certification that such information is necessary
436 for the purpose of effecting legislative changes, such
437 information shall be disclosed to the President of the Senate
438 and the Speaker of the House of Representatives, who may
439 disclose such information to members of the Legislature and
440 legislative staff as necessary to effect such purpose. However,
441 any person who receives a copy of such information or other
442 information that ~~which~~ is confidential pursuant to this chapter
443 ~~act~~ or rule of the department shall maintain its

444 confidentiality. The confidential portion of the report is
 445 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 446 of the State Constitution.

447 ~~(c) Thereafter, similar studies of security shall be~~
 448 ~~conducted as the department deems appropriate but at least once~~
 449 ~~every 2 years.~~

450 Section 9. Subsection (1) and paragraph (h) of subsection
 451 (2) of section 24.111, Florida Statutes, are amended to read:

452 24.111 Vendors; disclosure and contract requirements.--

453 (1) The department may enter into contracts for the
 454 purchase, lease, or lease-purchase of such goods or services as
 455 are necessary for effectuating the purposes of this chapter act.
 456 The department may ~~not~~ contract with any person or entity for
 457 the total operation and administration of the state lottery
 458 established by this chapter as provided in s. 24.1115 or act ~~but~~
 459 may make procurements that ~~which~~ integrate functions such as
 460 lottery game design, supply of goods and services, and
 461 advertising. In all procurement decisions, the department shall
 462 take into account the particularly sensitive nature of the state
 463 lottery and shall consider the competence, quality of product,
 464 experience, and timely performance of the vendors in order to
 465 promote and ensure security, honesty, fairness, and integrity in
 466 the operation and administration of the lottery and the
 467 objective of raising net revenues for the benefit of the public
 468 purpose described in this chapter act.

469 (2) The department shall investigate the financial
 470 responsibility, security, and integrity of each vendor with
 471 which it intends to negotiate a contract for major procurement.

472 Such investigation may include an investigation of the financial
 473 responsibility, security, and integrity of any or all persons
 474 whose names and addresses are required to be disclosed pursuant
 475 to paragraph (a). Any person who submits a bid, proposal, or
 476 offer as part of a major procurement must, at the time of
 477 submitting such bid, proposal, or offer, provide the following:

478 (h) If the department does not enter into a management
 479 agreement, it ~~The department~~ shall lease all instant ticket
 480 vending machines.

481
 482 The department shall not contract with any vendor who fails to
 483 make the disclosures required by this subsection, and any
 484 contract with a vendor who has failed to make the required
 485 disclosures shall be unenforceable. Any contract with any vendor
 486 who does not comply with such requirements for periodically
 487 updating such disclosures during the tenure of such contract as
 488 may be specified in such contract may be terminated by the
 489 department. This subsection shall be construed broadly and
 490 liberally to achieve the ends of full disclosure of all
 491 information necessary to allow for a full and complete
 492 evaluation by the department of the competence, integrity,
 493 background, and character of vendors for major procurements.

494 Section 10. Section 24.1115, Florida Statutes, is created
 495 to read:

496 24.1115 Management agreement.--

497 (1) In construing this section, it is the intent of the
 498 Legislature that the manager be accountable to the Legislature
 499 and the people of this state through a system of audits and

HB 1177

2009

500 reports and by complying with the financial disclosure
501 requirements of this section. The powers conferred by this
502 section are in addition and supplemental to the powers conferred
503 by any other law. If any other law or rule is inconsistent with
504 this section, this section is controlling as to any management
505 agreement entered into under this section.

506 (2) As used in this section, the term:

507 (a) "Offeror" means a person or group of persons that
508 responds to a request for qualifications under this section.

509 (b) "Request for qualifications" means all materials and
510 documents prepared by the department to solicit the following
511 from offerors:

512 1. Statements of qualifications.

513 2. Proposals to enter into a management agreement.

514 (c) "Selected offer" means the final offer of an offeror
515 that is the preliminary selection to be the manager for the
516 lottery under subsection (12).

517 (3) (a) This section contains full and complete authority
518 for a management agreement between the department and a manager
519 and any rules adopted thereunder. No law, procedure, proceeding,
520 publication, notice, consent, approval, order, or act by the
521 department or any other officer, department, agency, or
522 instrumentality of the state or any political subdivision is
523 required for the department to enter into a management agreement
524 under this section.

525 (b) This section contains full and complete authority for
526 the department to approve any subcontracts entered into by a
527 manager under the terms of a management agreement.

HB 1177

2009

528 (4) Subject to the other provisions of this section, the
529 department may enter into a management agreement with a manager
530 for a term not to exceed 30 years.

531 (5) The department may not enter into a management
532 agreement that authorizes a manager to operate any of the
533 following games or a game simulating any of the following games:

534 (a) Video lottery games.

535 (b) Pari-mutuel wagering on any form of racing.

536 (c) A game in which winners are selected on the results of
537 a race or sporting event.

538 (d) Any other game commonly considered to be a form of
539 gambling that is not a game or a variation of a game that the
540 department operated before the management agreement is executed
541 or is operating on the date the management agreement is
542 executed.

543 (6) (a) The management agreement must establish a
544 substantial benchmark amount. The management agreement must
545 require the manager to make an initial payment to the department
546 on the effective date of the management agreement in an amount
547 that exceeds the benchmark amount established in the management
548 agreement.

549 (b) The initial payment required under paragraph (a) shall
550 be deposited as provided in s. 24.121.

551 (c) If the manager fails to make any payment under this
552 section by the due date of the payment, the management agreement
553 is terminated.

554 (7) (a) The management agreement must require that all
555 lottery proceeds initially be directly deposited with the state.

HB 1177

2009

556 The state shall provide sums due to the manager under the
557 agreement only after the state annuity requirement in paragraph
558 (b) has been satisfied.

559 (b) The state shall retain an annual amount at least equal
560 to the lottery proceeds for the last fiscal year preceding the
561 agreement beginning on a date that is specified in the
562 management agreement and that occurs during the first year after
563 the execution of the management agreement. For the purposes of
564 this subsection, this annual amount is referred to as the "state
565 annuity." The state annuity received under this subsection shall
566 be deposited as provided in s. 24.121.

567 (c) The management agreement must include the following
568 provisions to ensure that the manager does not earn excess
569 revenue under the management agreement:

570 1. The Office of Policy and Budget in the Executive Office
571 of the Governor shall calculate the percentage rate of average
572 annual growth in gross revenue earned by the department during
573 the last 5 full state fiscal years preceding the commencement of
574 the management agreement. For purposes of this subsection, this
575 percentage is referred to as the "baseline growth percentage."

576 2. Beginning with the second full state fiscal year after
577 the execution of the management agreement, the Office of Policy
578 and Budget in the Executive Office of the Governor shall for
579 each state fiscal year calculate the growth, expressed as a
580 percentage, in gross revenue earned by the manager under the
581 management agreement, as compared to the preceding state fiscal
582 year.

HB 1177

2009

583 3. The department shall establish an excess payments
584 account for purposes of this paragraph. Any earnings from money
585 in the excess payments account accrue to the account. Money in
586 the excess payments account may be used only to make payments to
587 a manager as required by this paragraph and to receive payments
588 from a manager as required by this paragraph.

589 4. If the percentage calculated by the Office of Policy
590 and Budget in the Executive Office of the Governor under
591 subparagraph 2. for a particular state fiscal year exceeds the
592 baseline growth percentage, the manager must make an additional
593 payment to the department. The amount of the additional payment
594 for the state fiscal year is equal to the gross revenue earned
595 by the manager from lottery tickets in the previous state fiscal
596 year multiplied by one-half the difference between the
597 percentage calculated by the Office of Policy and Budget in the
598 Executive Office of the Governor under subparagraph 2. for the
599 state fiscal year and the baseline growth percentage. The
600 department shall deposit any additional payment made by the
601 manager under this subparagraph into the excess payments
602 account.

603 5. If the baseline growth percentage exceeds the
604 percentage calculated by the Office of Policy and Budget in the
605 Executive Office of the Governor under subparagraph 2. for a
606 particular state fiscal year, the department must make a payment
607 to the manager from the excess payments account. However, the
608 department is required to make a payment to the manager only if
609 the excess payments account has a positive balance. The amount

HB 1177

2009

610 of the payment by the department for the state fiscal year is
611 equal to the lesser of:

612 a. The result of the gross revenue earned by the manager
613 from lottery tickets in the previous state fiscal year
614 multiplied by one-half the difference between the baseline
615 growth percentage and the percentage calculated by the Office of
616 Policy and Budget in the Executive Office of the Governor under
617 subparagraph 2. for the state fiscal year; or

618 b. The balance in the excess payments account.

619 6. The management agreement must specify the time by which
620 a payment required under this paragraph shall be made.

621 7. If at the expiration or termination of the management
622 agreement there is money remaining in the excess payments
623 account, it shall be retained by the department and deposited as
624 provided in s. 24.121.

625 (8) A management agreement must contain the following:

626 (a) The original term of the management agreement.

627 (b) A requirement that the manager locate its principal
628 office within this state.

629 (c) A requirement that so long as manager complies with
630 all the conditions of the agreement under the oversight of the
631 department, the manager shall perform its duties and obligations
632 with respect to management of the operation of the lottery,
633 including the following:

634 1. The right to use equipment and other assets used in the
635 operation of the lottery.

636 2. The rights and obligations under contracts with
637 retailers and vendors.

HB 1177

2009

638 3. The implementation of a comprehensive security program
639 by the manager.

640 4. The implementation of a comprehensive system of
641 internal audits.

642 5. The implementation of a program by the manager to curb
643 compulsive gambling by persons playing the lottery.

644 6. A system for determining the following:

645 a. The type of lottery games to be conducted.

646 b. The method of selecting winning tickets.

647 c. The manner of payment of prizes to holders of winning
648 tickets.

649 d. The frequency of drawings of winning tickets.

650 e. The method to be used in selling tickets.

651 f. A system for verifying the validity of tickets claimed
652 to be winning tickets.

653 g. The basis upon which retailer commissions are
654 established by the manager.

655 h. Minimum payouts.

656 (d) A requirement that advertising and promotion must be
657 consistent with the dignity and integrity of the state.

658 (e) Guidelines to ensure that advertising and promoting of
659 the lottery by the manager are not misleading and fairly balance
660 the potential benefits and the potential costs and risks of
661 playing lottery games.

662 (f) A code of ethics for the manager's officers and
663 employees.

664 (g) A requirement for the department to monitor and
665 oversee the manager's practices and take action that the

HB 1177

2009

666 department considers appropriate to ensure that the manager is
667 in compliance with the terms of the management agreement, while
668 allowing the manager, unless specifically prohibited by law or
669 the management agreement, to negotiate and sign its own
670 contracts with vendors.

671 (h) A provision requiring the manager to periodically file
672 appropriate financial statements in a form and manner acceptable
673 to the department.

674 (i) Cash reserve requirements.

675 (j) Procedural requirements for obtaining approval by the
676 department when a management agreement or an interest in a
677 management agreement is sold, assigned, transferred, or pledged
678 as collateral to secure financing. A management agreement or an
679 interest in a management agreement may not be sold, assigned,
680 transferred, or pledged as collateral to secure financing
681 without the approval of the department.

682 (k) Grounds for termination of the management agreement by
683 the department or the manager.

684 (l) Procedures for amendment of the agreement.

685 (m) A provision prohibiting the department from entering
686 into another management agreement under this section as long as
687 the original management agreement has not been terminated.

688 (n) The transition of rights and obligations, including
689 any associated equipment or other assets used in the operation
690 of the lottery, from the manager to any successor manager of the
691 lottery, including the department, following the termination of
692 or foreclosure upon the management agreement.

HB 1177

2009

693 (o) Right of use of copyrights, trademarks, and service
694 marks held by the department in the name of the state. The
695 agreement must provide that any use of them by the manager shall
696 only be for the purpose of fulfilling its obligations under the
697 management agreement during the term of the agreement.

698 (p) Minority participation as provided in s. 24.113.

699 (9) (a) The manager shall undergo a complete investigation
700 every 3 years by the department to determine whether the manager
701 remains in compliance with this chapter and the management
702 agreement.

703 (b) The manager shall bear the cost of an investigation or
704 reinvestigation of the manager under this subsection.

705 (10) (a) Before the department enters into a management
706 agreement pursuant to this section, the secretary, as provided
707 in subsection (17), may retain an advisor or advisors to the
708 assess fiscal feasibility of such an agreement and help
709 determine whether to proceed. Such an advisor may also be
710 retained by the department to represent the department in the
711 request for qualifications process, if one is commenced. If the
712 secretary decides to pursue the possibility of a management
713 agreement, a request for manager qualifications must be issued
714 as set forth in this section. A request for qualifications for a
715 management agreement may be issued in one or more phases.

716 (b) A request for qualifications must include the
717 following:

718 1. The factors or criteria that will be used in evaluating
719 an offeror's statement of qualifications and proposal.

HB 1177

2009

720 2. A statement that a proposal must be accompanied by
721 evidence of the offeror's financial responsibility.

722 3. A statement concerning whether discussions may be
723 conducted with the offerors for the purpose of clarification to
724 ensure full understanding of and responsiveness to the
725 solicitation requirements.

726 4. A statement concerning any other information to be
727 considered in evaluating the offeror's qualifications and
728 proposal.

729 (c) Notice of a request for qualifications shall be
730 published twice at least 7 calendar days apart, with the second
731 publication made at least 7 days before any initial submission
732 is due.

733 (d) As provided in a request for qualifications,
734 discussions may be conducted with the offerors for the purpose
735 of clarification to ensure full understanding of and
736 responsiveness to the solicitation requirements.

737 (11) The contents of proposals are competitive sealed
738 replies in response to an invitation to negotiate for purposes
739 of s. 119.071(1)(b) and are exempt from s. 119.07(1) and s.
740 24(a), Art. I of the State Constitution until disclosure of the
741 contents that are not otherwise exempt under s. 119.071 or other
742 law is required under s. 119.071(1)(b).

743 (12)(a) The department may negotiate with one or more
744 offerors the department determines are responsible and
745 reasonably capable of managing the lottery and may seek to
746 obtain a final offer from one or more of those offerors.

HB 1177

2009

747 (b) The department shall consider the statement of
748 qualifications and the proposals to enter into a management
749 agreement that are submitted in response to a request for
750 qualifications in making a determination under this section,
751 including the following as they apply to the offeror and its
752 partners, if any:

753 1. Expertise, qualifications, competence, skills, and plan
754 to perform obligations under the management agreement in
755 accordance with the management agreement.

756 2. Financial strength, including capitalization and
757 available financial resources.

758 3. Experience in operating government-authorized lotteries
759 and gaming and other similar projects and the quality of any
760 past or present performance on similar or equivalent
761 engagements.

762 4. Integrity, background, and reputation.

763 (c) The requirements set forth in paragraph (b) also apply
764 to the approval of any successor manager.

765 (13) (a) After the final offers from offerors have been
766 negotiated under subsection (12), the department shall:

767 1. Make a preliminary selection of an offeror as the
768 manager for the lottery; or

769 2. Terminate the request for qualifications process.

770 (b) If the department makes a preliminary selection of the
771 manager under this subsection, the department shall schedule a
772 public hearing on the preliminary selection and provide public
773 notice of the hearing at least 7 days before the hearing. The
774 notice must include the following:

HB 1177

2009

775 1. The date, time, and place of the hearing.

776 2. The subject matter of the hearing.

777 3. A brief description of the management agreement to be
778 awarded.

779 4. The identity of the offeror that has been preliminarily
780 selected as the manager.

781 5. The address and telephone number of the department.

782 6. A statement indicating that, subject to subsection
783 (11), and except for those parts that are confidential under s.
784 s. 119.071 or other applicable law, the selected offer and an
785 explanation of the basis upon which the preliminary selection
786 was made are available for public inspection and copying at the
787 principal office of the department during regular business hours
788 and, to the extent feasible, on the Internet.

789 (c) Subject to subsection (11), and except for those parts
790 that are confidential under s. 119.071 or other applicable law,
791 the selected offer and a written explanation of the basis upon
792 which the preliminary selection was made shall be made available
793 for inspection and copying in accordance with s. 119.07 and, to
794 the extent feasible, on the Internet at least 7 calendar days
795 before the hearing scheduled under this section.

796 (d) At the hearing, the department shall allow the public
797 to be heard on the preliminary selection.

798 (14)(a) After the hearing required under subsection (13),
799 the department shall determine if a management agreement should
800 be entered into with the offeror that submitted the selected
801 offer. If the department makes a favorable determination, the
802 department shall submit the determination to the Governor.

HB 1177

2009

803 (b) After review of the department's determination, the
804 Governor may accept or reject the department's determination. If
805 the Governor accepts the department's determination, the
806 Governor shall designate the offeror who submitted the selected
807 offer as the manager for the lottery.

808 (c) After the Governor designates the manager, the
809 department may execute a management agreement with the
810 designated manager.

811 (15) The manager may finance its obligations with respect
812 to the lottery and the management agreement in the amounts and
813 upon the terms and conditions determined by the manager.
814 However, any bonds, debt, other securities, or other financing
815 issued for the purposes of this section shall not be considered
816 to constitute a debt of the state or any political subdivision
817 of the state or a pledge of the faith and credit of the state or
818 any political subdivision of the state.

819 (16) An action to contest the validity of a management
820 agreement entered into under this section may not be brought
821 after the 15th day after the publication of the notice of the
822 designation of the manager under the management agreement as
823 provided in subsection (14).

824 (17) (a) The department must use appropriate experts and
825 professionals needed to conduct a competitive bidding proceeding
826 as required under this section and may use the services of
827 outside professionals to the extent necessary to carry out its
828 obligations under this section.

829 (b) The department may exercise any powers provided under
830 this section in participation or cooperation with any other

HB 1177

2009

831 governmental entity and enter into any contracts to facilitate
832 that participation or cooperation without compliance with any
833 other statute.

834 (c) The department may make and enter into all contracts
835 and agreements necessary or incidental to the performance of the
836 department's duties under this section and the execution of the
837 department's powers under this section. These contracts or
838 agreements are not subject to any approval by any other
839 governmental entity and may be for any term of years within the
840 time period of the management agreement under subsection (4) and
841 contain any terms that are considered reasonable by the
842 department.

843 (d) The department may make and enter into all contracts
844 and agreements with a state agency necessary or incidental to
845 the performance of the duties and the execution of the powers
846 granted to the department or the state agency in accordance with
847 this section or the management agreement. These contracts or
848 agreements are not subject to approval by any other governmental
849 entity and may be for any term of years and contain any terms
850 that are considered reasonable by the department or the state
851 agency.

852 (18) (a) The department may not sell the authorization to
853 operate the lottery.

854 (b) Any tangible personal property used exclusively in
855 connection with the lottery that is owned by the department and
856 leased to the manager shall be owned by the department in the
857 name of the state and shall be considered to be public property
858 devoted to an essential public and governmental function.

HB 1177

2009

859 (19) The department may exercise any of its powers under
860 this chapter or any other law as necessary or desirable for the
861 execution of the department's powers under this section.

862 (20) Neither this section nor any management agreement
863 entered into under this section prohibits the Legislature from
864 authorizing forms of gambling that are not in direct competition
865 with the lottery.

866 Section 11. Section 24.112, Florida Statutes, is amended
867 to read:

868 24.112 Retailers of lottery tickets.--

869 (1) If the department does not enter into a management
870 agreement, the department shall promulgate rules specifying the
871 terms and conditions for contracting with retailers who will
872 best serve the public interest and promote the sale of lottery
873 tickets.

874 (2) If the department does not enter into a management
875 agreement, in the selection of retailers, the department shall
876 consider factors such as financial responsibility, integrity,
877 reputation, accessibility of the place of business or activity
878 to the public, security of the premises, the sufficiency of
879 existing retailers to serve the public convenience, and the
880 projected volume of the sales for the lottery game involved. In
881 the consideration of these factors, the department may require
882 the information it deems necessary of any person applying for
883 authority to act as a retailer. However, the department may not
884 establish a limitation upon the number of retailers and shall
885 make every effort to allow small business participation as
886 retailers. It is the intent of the Legislature that retailer

HB 1177

2009

887 selections be based on business considerations and the public
888 convenience and that retailers be selected without regard to
889 political affiliation.

890 (3) If the department does not enter into a management
891 agreement, the department shall not contract with any person as
892 a retailer who:

893 (a) Is less than 18 years of age.

894 (b) Is engaged exclusively in the business of selling
895 lottery tickets; however, this paragraph shall not preclude the
896 department from selling lottery tickets.

897 (c) Has been convicted of, or entered a plea of guilty or
898 nolo contendere to, a felony committed in the preceding 10
899 years, regardless of adjudication, unless the department
900 determines that:

901 1. The person has been pardoned or the person's civil
902 rights have been restored;

903 2. Subsequent to such conviction or entry of plea the
904 person has engaged in the kind of law-abiding commerce and good
905 citizenship that would reflect well upon the integrity of the
906 lottery; or

907 3. If the person is a firm, association, partnership,
908 trust, corporation, or other entity, the person has terminated
909 its relationship with the individual whose actions directly
910 contributed to the person's conviction or entry of plea.

911 (4) If the department does not enter into a management
912 agreement, the department shall issue a certificate of authority
913 to each person with whom it contracts as a retailer for purposes
914 of display pursuant to subsection (6). The issuance of the

915 certificate shall not confer upon the retailer any right apart
 916 from that specifically granted in the contract. The authority to
 917 act as a retailer shall not be assignable or transferable.

918 (5) Any contract executed by the department under ~~pursuant~~
 919 ~~to~~ this section shall specify the reasons for any suspension or
 920 termination of the contract by the department, including, but
 921 not limited to:

922 (a) Commission of a violation of this chapter ~~act~~ or rule
 923 adopted pursuant thereto.

924 (b) Failure to accurately account for lottery tickets,
 925 revenues, or prizes as required by the department.

926 (c) Commission of any fraud, deceit, or misrepresentation.

927 (d) Insufficient sale of tickets.

928 (e) Conduct prejudicial to public confidence in the
 929 lottery.

930 (f) Any material change in any matter considered by the
 931 department in executing the contract with the retailer.

932 (6) Every retailer shall post and keep conspicuously
 933 displayed in a location on the premises accessible to the public
 934 its certificate of authority and, with respect to each game, a
 935 statement supplied by the department or the manager of the
 936 estimated odds of winning some prize for the game.

937 (7) No contract with a retailer shall authorize the sale
 938 of lottery tickets at more than one location, and a retailer may
 939 sell lottery tickets only at the location stated on the
 940 certificate of authority.

941 (8) If the department does not enter into a management
 942 agreement, with respect to any retailer whose rental payments

HB 1177

2009

943 | for premises are contractually computed, in whole or in part, on
 944 | the basis of a percentage of retail sales, and where such
 945 | computation of retail sales is not explicitly defined to include
 946 | sales of tickets in a state-operated lottery, the compensation
 947 | received by the retailer from the department shall be deemed to
 948 | be the amount of the retail sale for the purposes of such
 949 | contractual compensation.

950 | (9) If the department does not enter into a management
 951 | agreement:

952 | (a) The department may require every retailer to post an
 953 | appropriate bond as determined by the department, using an
 954 | insurance company acceptable to the department, in an amount not
 955 | to exceed twice the average lottery ticket sales of the retailer
 956 | for the period within which the retailer is required to remit
 957 | lottery funds to the department. For the first 90 days of sales
 958 | of a new retailer, the amount of the bond may not exceed twice
 959 | the average estimated lottery ticket sales for the period within
 960 | which the retailer is required to remit lottery funds to the
 961 | department. This paragraph shall not apply to lottery tickets
 962 | that ~~which~~ are prepaid by the retailer.

963 | (b) In lieu of such bond, the department may purchase
 964 | blanket bonds covering all or selected retailers or may allow a
 965 | retailer to deposit and maintain with the Chief Financial
 966 | Officer securities that are interest bearing or accruing and
 967 | that, with the exception of those specified in subparagraphs 1.
 968 | and 2., are rated in one of the four highest classifications by
 969 | an established nationally recognized investment rating service.
 970 | Securities eligible under this paragraph shall be limited to:

971 1. Certificates of deposit issued by solvent banks or
 972 savings associations organized and existing under the laws of
 973 this state or under the laws of the United States and having
 974 their principal place of business in this state.

975 2. United States bonds, notes, and bills for which the
 976 full faith and credit of the government of the United States is
 977 pledged for the payment of principal and interest.

978 3. General obligation bonds and notes of any political
 979 subdivision of the state.

980 4. Corporate bonds of any corporation that is not an
 981 affiliate or subsidiary of the depositor.

982

983 Such securities shall be held in trust and shall have at all
 984 times a market value at least equal to an amount required by the
 985 department.

986 (10) Every contract entered into by the department
 987 pursuant to this section shall contain a provision for payment
 988 of liquidated damages to the department for any breach of
 989 contract by the retailer.

990 (11) If the department does not enter into a management
 991 agreement, the department shall establish procedures by which
 992 each retailer shall account for all tickets sold by the retailer
 993 and account for all funds received by the retailer from such
 994 sales. The contract with each retailer shall include provisions
 995 relating to the sale of tickets, payment of moneys to the
 996 department, reports, service charges, and interest and
 997 penalties, if necessary, as the department shall deem
 998 appropriate.

999 (12) No payment by a retailer to the department for
 1000 tickets shall be in cash. All such payments shall be in the form
 1001 of a check, bank draft, electronic fund transfer, or other
 1002 financial instrument authorized by the secretary.

1003 (13) Each retailer shall provide accessibility for
 1004 disabled persons on habitable grade levels. This subsection does
 1005 not apply to a retail location that ~~which~~ has an entrance door
 1006 threshold more than 12 inches above ground level. As used herein
 1007 and for purposes of this subsection only, the term
 1008 "accessibility for disabled persons on habitable grade levels"
 1009 means that retailers shall provide ramps, platforms, aisles and
 1010 pathway widths, turnaround areas, and parking spaces to the
 1011 extent these are required for the retailer's premises by the
 1012 particular jurisdiction where the retailer is located.
 1013 Accessibility shall be required to only one point of sale of
 1014 lottery tickets for each lottery retailer location. The
 1015 requirements of this subsection shall be deemed to have been met
 1016 if, in lieu of the foregoing, disabled persons can purchase
 1017 tickets from the retail location by means of a drive-up window,
 1018 provided the hours of access at the drive-up window are not less
 1019 than those provided at any other entrance at that lottery
 1020 retailer location. Inspections for compliance with this
 1021 subsection shall be performed by those enforcement authorities
 1022 responsible for enforcement pursuant to s. 553.80 in accordance
 1023 with procedures established by those authorities. Those
 1024 enforcement authorities shall provide to the Department of the
 1025 Lottery a certification of noncompliance for any lottery
 1026 retailer not meeting such requirements.

1027 (14) If the department does not enter into a management
 1028 agreement, the secretary may, after filing with the Department
 1029 of State his or her manual signature certified by the secretary
 1030 under oath, execute or cause to be executed contracts between
 1031 the department and retailers by means of engraving, imprinting,
 1032 stamping, or other facsimile signature.

1033 Section 12. Section 24.113, Florida Statutes, is amended
 1034 to read:

1035 24.113 Minority participation.--

1036 (1) It is the intent of the Legislature that the
 1037 department or the manager, if any, encourage participation by
 1038 minority business enterprises as defined in s. 288.703.
 1039 Accordingly, 15 percent of the retailers shall be minority
 1040 business enterprises as defined in s. 288.703(2); however, no
 1041 more than 35 percent of such retailers shall be owned by the
 1042 same type of minority person, as defined in s. 288.703(3). The
 1043 department or the manager, if any, is encouraged to meet the
 1044 minority business enterprise procurement goals set forth in s.
 1045 287.09451 in the procurement of commodities, contractual
 1046 services, construction, and architectural and engineering
 1047 services. This section shall not preclude or prohibit a minority
 1048 person from competing for any other retailing or vending
 1049 agreement awarded by the department or the manager.

1050 (2) The department or the manager, if any, shall ~~is~~
 1051 ~~directed to~~ undertake training programs and other educational
 1052 activities to enable minority persons to compete for such
 1053 contracts on an equal basis.

HB 1177

2009

1054 Section 13. Subsection (1) of section 24.114, Florida
 1055 Statutes, is amended to read:

1056 24.114 Bank deposits and control of lottery
 1057 transactions.--

1058 (1) All moneys received by each retailer from the
 1059 operation of the state lottery, including, but not limited to,
 1060 all ticket sales, interest, gifts, and donations, less the
 1061 amount retained as compensation for the sale of the tickets and
 1062 the amount paid out as prizes, shall be remitted to the
 1063 department or deposited in a qualified public depository, as
 1064 defined in s. 280.02, as directed by the department. The
 1065 department shall have the responsibility for all administrative
 1066 functions related to the receipt of funds. The department may
 1067 also require each retailer to file with the department reports
 1068 of the retailer's receipts and transactions in the sale of
 1069 lottery tickets in such form and containing such information as
 1070 the department may require. The department may require any
 1071 person, including a qualified public depository, to perform any
 1072 function, activity, or service in connection with the operation
 1073 of the lottery as it may deem advisable pursuant to this chapter
 1074 ~~act~~ and rules of the department, and such functions, activities,
 1075 or services shall constitute lawful functions, activities, and
 1076 services of such person.

1077 Section 14. Section 24.115, Florida Statutes, is amended
 1078 to read:

1079 24.115 Payment of prizes.--

1080 (1) If the department does not enter into a management
 1081 agreement, the department shall promulgate rules to establish a

HB 1177

2009

1082 system of verifying the validity of tickets claimed to win
1083 prizes and to effect payment of such prizes; however, the
1084 following shall apply whether the department does or does not
1085 enter into a management agreement:

1086 (a) The right of any person to a prize, other than a prize
1087 that is payable in installments over time, is not assignable.
1088 However, any prize, to the extent that it has not been assigned
1089 or encumbered pursuant to s. 24.1153, may be paid to the estate
1090 of a deceased prize winner or to a person designated pursuant to
1091 an appropriate court order. A prize that is payable in
1092 installments over time is assignable, but only pursuant to an
1093 appropriate court order as provided in s. 24.1153.

1094 (b) No prize shall be paid to any person under the age of
1095 18 years unless the winning ticket was lawfully purchased and
1096 made a gift to the minor. In such case, the department or the
1097 manager, if a management agreement is in force, shall direct
1098 payment to an adult member of the minor's family or the legal
1099 guardian of the minor as custodian for the minor. The person
1100 named as custodian shall have the same powers and duties as
1101 prescribed for a custodian pursuant to chapter 710, the Florida
1102 Uniform Transfers to Minors Act.

1103 (c) No prize may be paid arising from claimed tickets that
1104 are stolen, counterfeit, altered, fraudulent, unissued, produced
1105 or issued in error, unreadable, not received or not recorded by
1106 the department or the manager, if a management agreement is in
1107 force, by applicable deadlines, lacking in captions that confirm
1108 and agree with the lottery play symbols as appropriate to the
1109 lottery game involved, or not in compliance with such additional

HB 1177

2009

1110 specific rules and public or confidential validation and
 1111 security tests of the department or the manager, if a management
 1112 agreement is in force, appropriate to the particular lottery
 1113 game involved.

1114 (d) No particular prize in any lottery game may be paid
 1115 more than once, and in the event of a binding determination that
 1116 more than one claimant is entitled to a particular prize, the
 1117 sole remedy of such claimants is the award to each of them of an
 1118 equal share in the prize.

1119 (e) For the convenience of the public, retailers may be
 1120 authorized to pay winners amounts less than \$600 after
 1121 performing validation procedures on their premises appropriate
 1122 to the lottery game involved.

1123 (f) Holders of tickets shall have the right to claim
 1124 prizes for 180 days after the drawing or the end of the lottery
 1125 game or play in which the prize was won; except that with
 1126 respect to any game in which the player may determine instantly
 1127 if he or she has won or lost, such right shall exist for 60 days
 1128 after the end of the lottery game. If a valid claim is not made
 1129 for a prize within the applicable period, the prize shall
 1130 constitute an unclaimed prize for purposes of subsection (2).

1131 (g) No prize shall be paid upon a ticket purchased or sold
 1132 in violation of this chapter ~~act~~ or to any person who is
 1133 prohibited from purchasing a lottery ticket pursuant to this
 1134 chapter ~~act~~. Any such prize shall constitute an unclaimed prize
 1135 for purposes of subsection (2).

1136 (2) (a) If the department does not enter into a management
 1137 agreement, 80 ~~eighty~~ percent of all unclaimed prize money shall

1138 be deposited in the Educational Enhancement Trust Fund
 1139 consistent with the provisions of s. 24.121(2). Subject to
 1140 appropriations provided in the General Appropriations Act, these
 1141 funds may be used to match private contributions received under
 1142 the postsecondary matching grant programs established in ss.
 1143 1011.32, 1011.85, 1011.94, and 1013.79.

1144 (b) The remaining 20 percent of unclaimed prize money
 1145 shall be added to the pool from which future prizes are to be
 1146 awarded or used for special prize promotions.

1147 (3) The department or the manager, if a management
 1148 agreement is in force, shall be discharged of all liability upon
 1149 payment of a prize.

1150 (4) It is the responsibility of the appropriate state
 1151 agency and of the judicial branch to identify to the department
 1152 or the manager, if a management agreement is in force, in the
 1153 form and format prescribed by the department or the manager,
 1154 persons owing an outstanding debt to any state agency or owing
 1155 child support collected through a court, including spousal
 1156 support or alimony for the spouse or former spouse of the
 1157 obligor if the child support obligation is being enforced by the
 1158 Department of Revenue. Prior to the payment of a prize of \$600
 1159 or more to any claimant having such an outstanding obligation,
 1160 the department or the manager shall transmit the amount of the
 1161 debt to the agency claiming the debt and shall authorize payment
 1162 of the balance to the prize winner after deduction of the debt.
 1163 If a prize winner owes multiple debts subject to offset under
 1164 this subsection and the prize is insufficient to cover all such
 1165 debts, the amount of the prize shall be transmitted first to the

HB 1177

2009

1166 agency claiming that past due child support is owed. If a
 1167 balance of lottery prize remains after payment of past due child
 1168 support, the remaining lottery prize amount shall be transmitted
 1169 to other agencies claiming debts owed to the state, pro rata,
 1170 based upon the ratio of the individual debt to the remaining
 1171 debt owed to the state.

1172 Section 15. Section 24.1153, Florida Statutes, is amended
 1173 to read:

1174 24.1153 Assignment of prizes payable in installments.--

1175 (1) The right of any person to receive payments under a
 1176 prize that is paid in installments over time by the department
 1177 or the manager, if a management agreement is in force, may be
 1178 voluntarily assigned, in whole or in part, if the assignment is
 1179 made to a person or entity designated pursuant to an order of a
 1180 court of competent jurisdiction located in the judicial district
 1181 where the assigning prize winner resides or where the
 1182 headquarters of the department is located or where in the state
 1183 the headquarters of the manager is located, if a management
 1184 agreement is in force. A court may issue an order approving a
 1185 voluntary assignment and directing the department or the manager
 1186 to make prize payments in whole or in part to the designated
 1187 assignee, if the court finds that all of the following
 1188 conditions have been met:

1189 (a) The assignment is in writing, is executed by the
 1190 assignor, and is, by its terms, subject to the laws of this
 1191 state.

1192 (b) The purchase price being paid for the payments being
 1193 assigned represents a present value of the payments being

HB 1177

2009

1194 assigned, discounted at an annual rate that does not exceed the
1195 state's usury limit for loans.

1196 (c) The assignor provides a sworn affidavit attesting that
1197 he or she:

1198 1. Is of sound mind, is in full command of his or her
1199 faculties, and is not acting under duress;

1200 2. Has been advised regarding the assignment by his or her
1201 own independent legal counsel, who is unrelated to and is not
1202 being compensated by the assignee or any of the assignee's
1203 affiliates, and has received independent financial or tax advice
1204 concerning the effects of the assignment from a lawyer or other
1205 professional who is unrelated to and is not being compensated by
1206 the assignee or any of the assignee's affiliates;

1207 3. Understands that he or she will not receive the prize
1208 payments or portions thereof for the years assigned;

1209 4. Understands and agrees that with regard to the assigned
1210 payments the department or the manager and its officials and
1211 employees will have no further liability or responsibility to
1212 make the assigned payments to him or her;

1213 5. Has been provided with a one-page written disclosure
1214 statement setting forth, in bold type of not less than 14
1215 points, the payments being assigned, by amounts and payment
1216 dates; the purchase price being paid; the rate of discount to
1217 present value, assuming daily compounding and funding on the
1218 contract date; and the amount, if any, of any origination or
1219 closing fees that will be charged to him or her; and

1220 6. Was advised in writing, at the time he or she signed
1221 the assignment contract, that he or she had the right to cancel

HB 1177

2009

1222 the contract, without any further obligation, within 3 business
1223 days following the date on which the contract was signed.

1224 (d) Written notice of the proposed assignment and any
1225 court hearing concerning the proposed assignment is provided to
1226 the department's or the manager's counsel at least 10 days prior
1227 to any court hearing. The department or the manager is not
1228 required to appear in or be named as a party to any such action
1229 seeking judicial confirmation of an assignment under this
1230 section, but may intervene as of right in any such proceeding.

1231 (2) A certified copy of a court order approving a
1232 voluntary assignment must be provided to the department or the
1233 manager no later than 14 days before the date on which the
1234 payment is to be made.

1235 (3) In accordance with the provisions of s. 24.115(4), a
1236 voluntary assignment may not include or cover payments or
1237 portions of payments that are subject to offset on account of a
1238 defaulted or delinquent child support obligation or on account
1239 of a debt owed to a state agency. Each court order issued under
1240 subsection (1) shall provide that any delinquent child support
1241 obligations of the assigning prize winner and any debts owed to
1242 a state agency by the assigning prize winner, as of the date of
1243 the court order, shall be offset by the department or the
1244 manager first against remaining payments or portions thereof due
1245 the prize winner and then against payments due the assignee.

1246 (4) The department or the manager, and its respective
1247 officials and employees, shall be discharged of all liability
1248 upon payment of an assigned prize under this section.

HB 1177

2009

1249 (5) The department or the manager may establish a
 1250 reasonable fee to defray any administrative expenses associated
 1251 with assignments made under this section, including the cost to
 1252 the department or the manager of any processing fee that may be
 1253 imposed by a private annuity provider. The fee amount shall
 1254 reflect the direct and indirect costs associated with processing
 1255 such assignments.

1256 (6) If at any time the Internal Revenue Service or a court
 1257 of competent jurisdiction issues a determination letter, revenue
 1258 ruling, other public ruling of the Internal Revenue Service, or
 1259 published decision to any state lottery or prize winner of any
 1260 state lottery declaring that the voluntary assignment of prizes
 1261 will affect the federal income tax treatment of prize winners
 1262 who do not assign their prizes, the secretary of the department
 1263 shall immediately file a copy of that letter, ruling, or
 1264 published decision with the Secretary of State and the Office of
 1265 the State Courts Administrator. A court may not issue an order
 1266 authorizing a voluntary assignment under this section after the
 1267 date any such ruling, letter, or published decision is filed.

1268 Section 16. Section 24.117, Florida Statutes, is amended
 1269 to read:

1270 24.117 Unlawful sale of lottery tickets; penalty.--Any
 1271 person who knowingly:

1272 (1) Sells a state lottery ticket when not authorized by
 1273 the department or this chapter ~~act~~ to engage in such sale;

1274 (2) Sells a state lottery ticket to a minor; or

1275 (3) If the department does not enter into a management
 1276 agreement, sells a state lottery ticket at any price other than
 1277 that established by the department;

1278
 1279 commits ~~is guilty of~~ a misdemeanor of the first degree,
 1280 punishable as provided in s. 775.082 or s. 775.083.

1281 Section 17. Subsections (4) and (5) of section 24.118,
 1282 Florida Statutes, are amended to read:

1283 24.118 Other prohibited acts; penalties.--

1284 (4) BREACH OF CONFIDENTIALITY.--Any person who, with
 1285 intent to defraud or with intent to provide a financial or other
 1286 advantage to himself, herself, or another, knowingly and
 1287 willfully discloses any information relating to the lottery
 1288 designated as confidential and exempt from the provisions of s.
 1289 119.07(1) pursuant to this chapter commits ~~act is guilty of~~ a
 1290 felony of the first degree, punishable as provided in s.
 1291 775.082, s. 775.083, or s. 775.084.

1292 (5) UNLAWFUL REPRESENTATION.--

1293 (a) Any person who uses point-of-sale materials issued by
 1294 the department or the manager or otherwise holds himself or
 1295 herself out as a retailer without being authorized by the
 1296 department or the manager to act as a retailer commits ~~is guilty~~
 1297 ~~of~~ a misdemeanor of the first degree, punishable as provided in
 1298 s. 775.082 or s. 775.083.

1299 (b) Any person who without being authorized by the
 1300 department or the manager in writing uses the term "Florida
 1301 Lottery," "State Lottery," "Florida State Lottery," or any
 1302 similar term in the title or name of any charitable or

HB 1177

2009

1303 commercial enterprise, product, or service commits ~~is guilty of~~
 1304 a misdemeanor of the first degree, punishable as provided in s.
 1305 775.082 or s. 775.083.

1306 Section 18. Subsections (1) and (2) of section 24.120,
 1307 Florida Statutes, are amended to read:

1308 24.120 Financial matters; Operating Trust Fund;
 1309 interagency cooperation.--

1310 (1) There is hereby created in the State Treasury an
 1311 Operating Trust Fund to be administered in accordance with
 1312 chapters 215 and 216 by the department. If the department does
 1313 not enter into a management agreement, all money received by the
 1314 department which remains after payment of prizes and initial
 1315 compensation paid to retailers shall be deposited into the
 1316 Operating Trust Fund. All moneys in the trust fund are
 1317 appropriated to the department for the purposes specified in
 1318 this chapter act.

1319 (2) Moneys available for the payment of prizes awarded by
 1320 the department, if the department does not enter into a
 1321 management agreement, on a deferred basis shall be invested by
 1322 the State Board of Administration in accordance with a trust
 1323 agreement approved by the secretary and entered into between the
 1324 department and the State Board of Administration in accordance
 1325 with ss. 215.44-215.53. The investments authorized by this
 1326 subsection shall be done in a manner designed to preserve
 1327 capital and to ensure the integrity of the lottery disbursement
 1328 system by eliminating the risk of payment of funds when due and
 1329 to produce equal annual sums of money over the required term of
 1330 the investments.

HB 1177

2009

1331 Section 19. Subsections (1), (2), and (3) of section
1332 24.121, Florida Statutes, are amended to read:

1333 24.121 Allocation of revenues and expenditure of funds for
1334 public education.--

1335 (1) If the department does not enter into a management
1336 agreement, variable percentages of the gross revenue from the
1337 sale of online and instant lottery tickets shall be returned to
1338 the public in the form of prizes paid by the department or
1339 retailers as authorized by this chapter ~~act~~. The variable
1340 percentages of gross revenue from the sale of online and instant
1341 lottery tickets returned to the public in the form of prizes
1342 shall be established by the department in a manner designed to
1343 maximize the amount of funds deposited under subsection (2).

1344 (2) Each fiscal year, variable percentages of the gross
1345 revenue from the sale of online and instant lottery tickets as
1346 determined by the department or the manager, if any, consistent
1347 with subsection (1), and other earned revenue up to the state
1348 annuity requirement, excluding application processing fees,
1349 shall be deposited in the Educational Enhancement Trust Fund,
1350 which is hereby created in the State Treasury to be administered
1351 by the Department of Education. If the department enters into a
1352 management agreement, the proceeds received by the department
1353 from the management agreement under s. 24.1115(7) (b) and (c)
1354 shall be deposited in the Educational Enhancement Trust Fund,
1355 with, at minimum, the greater of \$400 million or one-third of
1356 the funds deposited into the trust fund to be allocated the
1357 Florida Bright Futures Scholarship Program. The Department of
1358 the Lottery shall transfer moneys to the Educational Enhancement

HB 1177

2009

1359 Trust Fund at least once each quarter. Funds in the Educational
 1360 Enhancement Trust Fund shall be used to the benefit of public
 1361 education in accordance with the provisions of this chapter ~~act~~.
 1362 Notwithstanding any other provision of law, lottery revenues
 1363 transferred to the Educational Enhancement Trust Fund shall be
 1364 reserved as needed and used to meet the requirements of the
 1365 documents authorizing the bonds issued by the state pursuant to
 1366 s. 1013.68, s. 1013.70, or s. 1013.737 or distributed to school
 1367 districts for the Classrooms First Program as provided in s.
 1368 1013.68. Such lottery revenues are hereby pledged to the payment
 1369 of debt service on bonds issued by the state pursuant to s.
 1370 1013.68, s. 1013.70, or s. 1013.737. Debt service payable on
 1371 bonds issued by the state pursuant to s. 1013.68, s. 1013.70, or
 1372 s. 1013.737 shall be payable from, and is secured by a first
 1373 lien on, the first lottery revenues transferred to the
 1374 Educational Enhancement Trust Fund in each fiscal year. Amounts
 1375 distributable to school districts that request the issuance of
 1376 bonds pursuant to s. 1013.68(3) are hereby pledged to such bonds
 1377 pursuant to s. 11(d), Art. VII of the State Constitution.

1378 (3) The funds remaining in the Operating Trust Fund after
 1379 transfers to the Educational Enhancement Trust Fund shall be
 1380 used for the payment of administrative expenses of the
 1381 department. These expenses shall include all costs incurred in
 1382 the department's direct operation and administration of the
 1383 lottery or the management agreement and all costs resulting from
 1384 any contracts entered into for the purchase or lease of goods or
 1385 services required by the lottery, including, but not limited to:

1386 (a) The compensation paid to retailers;

1387 (b) The costs of supplies, materials, tickets, independent
 1388 audit services, independent studies, data transmission,
 1389 advertising, promotion, incentives, public relations,
 1390 communications, security, bonding for retailers, printing,
 1391 distribution of tickets, and reimbursing other governmental
 1392 entities for services provided to the lottery; and

1393 (c) The costs of any other goods and services necessary
 1394 for effectuating the purposes of this chapter act.

1395 Section 20. Section 24.122, Florida Statutes, is amended
 1396 to read:

1397 24.122 Exemption from taxation; state preemption;
 1398 inapplicability of other laws.--

1399 (1) This chapter act shall not be construed to authorize
 1400 any lottery except the lottery operated by the department or the
 1401 manager under pursuant to this chapter act.

1402 (2) No state or local tax shall be imposed upon any prize
 1403 paid or payable under this chapter act or upon the sale of any
 1404 lottery ticket pursuant to this chapter act.

1405 (3) All matters relating to the operation of the state
 1406 lottery are preempted to the state, and no county, municipality,
 1407 or other political subdivision of the state shall enact any
 1408 ordinance relating to the operation of the lottery authorized by
 1409 this chapter act. However, this subsection shall not prohibit a
 1410 political subdivision of the state from requiring a retailer to
 1411 obtain an occupational license for any business unrelated to the
 1412 sale of lottery tickets.

1413 (4) Any state or local law providing any penalty,
 1414 disability, restriction, or prohibition for the possession,

HB 1177

2009

1415 manufacture, transportation, distribution, advertising, or sale
1416 of any lottery ticket, including chapter 849, shall not apply to
1417 the tickets of the state lottery operated pursuant to this
1418 chapter ~~act~~; nor shall any such law apply to the possession of a
1419 ticket issued by any other government-operated lottery. In
1420 addition, activities of the department under this chapter ~~act~~
1421 are exempt from the provisions of:

1422 (a) Chapter 616, relating to public fairs and expositions.

1423 (b) Chapter 946, relating to correctional work programs.

1424 (c) Chapter 282, relating to communications and data
1425 processing.

1426 (d) Section 110.131, relating to other personal services.

1427 Section 21. Section 24.123, Florida Statutes, is amended
1428 to read:

1429 24.123 Annual audit of financial records and reports.--

1430 (1) The Legislative Auditing Committee shall contract with
1431 a certified public accountant licensed pursuant to chapter 473
1432 for an annual financial audit of the department. The certified
1433 public accountant shall have no financial interest in any vendor
1434 or manager with whom the department is under contract. The
1435 certified public accountant shall present an audit report no
1436 later than 7 months after the end of the fiscal year and shall
1437 make recommendations to enhance the earning capability of the
1438 state lottery or the management agreement and to improve the
1439 efficiency of department operations. The certified public
1440 accountant shall also perform a study and evaluation of internal
1441 accounting controls and shall express an opinion on those

HB 1177

2009

1442 controls in effect during the audit period. The cost of the
 1443 annual financial audit shall be paid by the department.

1444 (2) The Auditor General may at any time conduct an audit
 1445 of any phase of the operations of the state lottery or the
 1446 management agreement and shall receive a copy of the yearly
 1447 independent financial audit and any security report prepared
 1448 pursuant to s. 24.108.

1449 (3) A copy of any audit performed pursuant to this section
 1450 shall be submitted to the secretary, the Governor, the President
 1451 of the Senate, the Speaker of the House of Representatives, and
 1452 members of the Legislative Auditing Committee.

1453 Section 22. Section 24.124, Florida Statutes, is amended
 1454 to read:

1455 24.124 Responsibility for ticket accuracy; department,
 1456 retailer, and vendor liability.--

1457 (1) If the department does not enter into a management
 1458 agreement, purchasers of online games tickets shall be
 1459 responsible for verifying the accuracy of their tickets,
 1460 including the number or numbers printed on the tickets. In the
 1461 event of an error, the ticket may be canceled and a replacement
 1462 ticket issued pursuant to rules promulgated by the department ~~of~~
 1463 ~~the Lottery.~~

1464 (2) If the department does not enter into a management
 1465 agreement, other than the issuance of a replacement ticket,
 1466 there shall be no right or cause of action and no liability on
 1467 the part of the department, retailer, vendor, or any other
 1468 person associated with selling an online games ticket, with

HB 1177

2009

1469 | respect to errors or inaccuracies contained in the ticket,
1470 | including errors in the number or numbers printed on the ticket.
1471 | Section 23. This act shall take effect January 1, 2010.