
ENGROSSED SUBSTITUTE SENATE BILL 5942

State of Washington 62nd Legislature 2011 1st Special Session

By Senate Ways & Means (originally sponsored by Senators Hewitt and Zarelli)

READ FIRST TIME 05/19/11.

1 AN ACT Relating to the warehousing and distribution of liquor,
2 including the lease and modernization of the state's liquor warehousing
3 and distribution facilities; amending RCW 66.08.050 and 66.08.070; and
4 adding a new chapter to Title 66 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** FINDINGS. The legislature finds that it is
7 in the public interest to seek revenue opportunities through leasing
8 and modernizing the state's liquor warehousing and distribution
9 facilities and related operations. The legislature finds that it is
10 also in the public interest to conduct a competitive process to select
11 a private sector lessee for this purpose. Nothing in this act is
12 intended to affect the private distribution or sale of beer or wine,
13 the operation by the state of state liquor stores, or the authority of
14 the Washington state liquor control board to oversee, manage, and
15 enforce state liquor sales.

16 NEW SECTION. **Sec. 2.** COMPETITIVE PROCUREMENT. (1) Within one
17 hundred twenty days after the effective date of this section, the
18 office of financial management, in consultation with the Washington

1 state liquor control board and the liquor distribution advisory
2 committee, must establish and conduct a competitive process for the
3 selection of a private sector entity to lease and modernize the state's
4 liquor warehousing and distribution facilities and related operations.
5 The competitive process must assume that the Washington state liquor
6 control board retains its existing exclusive retail spirits sales
7 business, be designed to encourage the participation of private sector
8 entities with previous wholesale distribution experience with a public
9 partner excluding licensees engaged in the manufacture of liquor or the
10 retail sale of liquor in the state, and be designed to encourage
11 competition among such entities.

12 (2)(a) To implement the competitive process required under
13 subsection (1) of this section, the office of financial management
14 must, after consultation with the Washington state liquor control board
15 and the liquor distribution advisory committee, request proposals for:

16 (i) The lease of or other contract for the entire state liquor
17 warehousing and distribution business, including the facilities,
18 operations, and other assets associated with the warehousing of liquor
19 and the distribution of liquor; and

20 (ii) The exclusive right to warehouse spirits and to distribute
21 spirits in the state.

22 (b) The request for proposals must include without limitation:

23 (i) A requirement that proposals demonstrate to the satisfaction of
24 the office of financial management relevant previous experience as well
25 as the financial capacity to perform obligations under the contract;

26 (ii) A requirement that proposals demonstrate to the satisfaction
27 of the office of financial management positive financial benefit to the
28 state and local government over the term of the proposed lease or
29 contract compared to projected financial benefits from liquor
30 warehousing and distribution including, and taking into account without
31 limitation, an initial up-front payment to the state during the 2011-
32 2013 biennium and proposed profit sharing payments to the state during
33 the lease or contract term; and projected business and occupation tax
34 revenues generated as a result of the lease or contract. The office of
35 financial management, in consultation with the liquor distribution
36 advisory committee and interested stakeholders, must develop a
37 definition and criteria on how to determine "positive financial benefit
38 to the state and local government";

1 (iii) A requirement that the prevailing proponent deposit into an
2 escrow account, within fifteen business days after the announcement of
3 selection of that proposal and definitive resolution of any appeals to
4 such selection, the full amount of the initial up-front payment offered
5 in the proponent's response to the request for proposals, pending and
6 subject to successful negotiation of a mutually acceptable lease or
7 other contract;

8 (iv) A requirement that proposals include a quantified commitment
9 to invest in capital improvements to warehousing and distribution
10 facilities and a mechanism to ensure that such investments are timely
11 made, consistent with requirements in a mutually acceptable lease or
12 contract;

13 (v) A requirement that proposals include a commitment to assume
14 responsibility for the costs associated with the operation of liquor
15 warehousing and distribution;

16 (vi) A requirement that proposals demonstrate to the satisfaction
17 of the office of financial management a commitment to improved
18 distribution including without limitation logistics and delivery
19 improvements to improve margins, ensure regularity of deliveries to
20 state or contract liquor stores to reduce out-of-stock problems,
21 improve service to stores located in geographically remote areas of the
22 state, expand liquor selection, provide for bottle rather than minimum
23 case purchasing and stocking of state or contract liquor stores, if
24 practicable, and enable electronic funds transfer of payments;

25 (vii) A requirement that proposals include a commitment to offer
26 employment to the state employees currently in positions relating to
27 the wholesale distribution of liquor and to recognize and bargain with
28 any existing bargaining representative of such employees with respect
29 to terms and conditions of employment;

30 (viii) A requirement that the variety of brands and types of liquor
31 available to licensees, contract liquor stores, and state liquor stores
32 must be equal to or greater than what is being distributed by the
33 Washington state liquor control board; and

34 (ix) Measurable standards for the performance of the contract.

35 (c) Prior to conducting the competitive process outlined in this
36 section, the request for proposal developed by the office of financial
37 management shall be reviewed by the house and senate fiscal committees.

1 Opportunity for public comment regarding the request for proposal shall
2 be provided.

3 (d) The office of financial management must publicly disclose an
4 analysis of the fiscal impacts to state and local government of each of
5 the offers in the procurement process.

6 (e) After consultation with the Washington state liquor control
7 board, local government, and the liquor distribution advisory
8 committee, the office of financial management is authorized to
9 recommend to the Washington state liquor control board the proposal
10 that in the determination of the office of financial management best
11 meets the criteria required under this subsection (2), in the best
12 interests of the state. If, in the determination of the office of
13 financial management, there is no proposals that meet the best interest
14 of the state, the office of financial management must notify the
15 Washington state liquor control board to not accept any of the
16 proposals.

17 NEW SECTION. **Sec. 3.** CONTRACT. (1) Within sixty days after the
18 recommendation of a proposal under section 2 of this act, the
19 Washington state liquor control board may accept that proposal and
20 enter into a long-term contract with that entity for the lease of the
21 business, facilities, and assets associated with the warehousing and
22 distribution of liquor in the state. The contract must grant the
23 exclusive right to distribute spirits in the state for the period of
24 the contract. The contract must include enforceable performance
25 standards and minimum financial returns to the state. The contract
26 must provide a provision that allows the state to terminate the
27 contract should specific performance standards or financial returns to
28 the state not be realized. The contract must provide for a reasonable
29 termination notification process as well as financial terms of
30 termination should termination of contract take place.

31 (2) If the state receives an up-front payment of one hundred
32 million dollars or more as a result of accepting a proposal from the
33 procurement process in section 2 of this act, the contract must provide
34 that the private entity place the up-front payment into irrevocable
35 trust with the state being the beneficiary. The contract must provide
36 that the trust be created in a manner that the state may not receive

1 more than one-sixth of the up-front payment placed into the trust in
2 any fiscal year.

3 (3) The contract must contain provisions that the Washington state
4 liquor control board maintains the exclusive authority to select
5 products and determine which products will be carried in state and
6 contract liquor stores.

7 (4) The contract must contain provisions that the Washington state
8 liquor control board must set the prices of liquor for sales in state
9 and contract liquor stores as well as sales to licensees.

10 (5) The contract must contain a provision that any financial
11 deficiencies or losses of the private entity contracting for the
12 warehousing and distribution of liquor in the state must not be
13 compensated for in any way by the state, contract stores, consumers, or
14 licensees.

15 NEW SECTION. **Sec. 4.** (1) The director of the office of financial
16 management must appoint a liquor distribution advisory committee. The
17 purpose of the committee is to assist and make recommendations to the
18 office of financial management and the Washington state liquor control
19 board regarding the provisions of this act including, but not limited
20 to, setting requirements for the competitive procurement process,
21 selection of a private entity or recommendation that no entity be
22 selected, and creating the terms of a contract with a selected private
23 entity. The advisory committee's recommendations and assistance to the
24 office of financial management and Washington state liquor control
25 board in regards to the provisions of this act are advisory in nature
26 and do not prohibit the office of financial management and Washington
27 state liquor control board from performing their duties under this act
28 as they deem fit.

29 (2) The liquor distribution advisory committee is composed of the
30 Washington state treasurer or his or her designee, a designee from each
31 of the two largest caucuses of the senate determined by the leaders of
32 each caucus, and a designee from each of the two largest caucuses of
33 the house of representatives determined by the leaders of each caucus.

34 NEW SECTION. **Sec. 5.** Pursuant to RCW 41.06.142(3), the
35 competitive procurement process and contract provisions in this chapter

1 are expressly mandated by the legislature and are not subject to the
2 processes of RCW 41.06.142 (1), (4), and (5).

3 NEW SECTION. **Sec. 6.** DEFINITIONS. For the purposes of this
4 chapter, unless the context clearly requires otherwise:

- 5 (1) "Liquor" has the same meaning as provided in RCW 66.04.010.
- 6 (2) "Spirits" has the same meaning as provided in RCW 66.04.010.
- 7 (3) "State liquor stores" includes "stores" and "contract liquor
8 stores" as those terms are defined in RCW 66.04.010.

9 **Sec. 7.** RCW 66.08.050 and 2005 c 151 s 3 are each amended to read
10 as follows:

11 The board, subject to the provisions of this title and the rules,
12 shall:

13 (1) Determine the localities within which state liquor stores shall
14 be established throughout the state, and the number and situation of
15 the stores within each locality;

16 (2) Appoint in cities and towns and other communities, in which no
17 state liquor store is located, contract liquor stores. In addition,
18 the board may appoint, in its discretion, a manufacturer that also
19 manufactures liquor products other than wine under a license under this
20 title, as a contract liquor store for the purpose of sale of liquor
21 products of its own manufacture on the licensed premises only. Such
22 contract liquor stores shall be authorized to sell liquor under the
23 guidelines provided by law, rule, or contract, and such contract liquor
24 stores shall be subject to such additional rules and regulations
25 consistent with this title as the board may require;

26 (3) If a contract under section 3 of this act is not then in
27 effect, establish all necessary warehouses for the storing and
28 bottling, diluting and rectifying of stocks of liquors for the purposes
29 of this title;

30 (4) Provide for the leasing for periods not to exceed ten years of
31 all premises required for the conduct of the business (other than
32 premises subject to a lease or other contract under section 3 of this
33 act); and for remodeling the same, and the procuring of their
34 furnishings, fixtures, and supplies; and for obtaining options of
35 renewal of such leases by the lessee. The terms of such leases in all
36 other respects (~~shall be~~) is subject to the direction of the board;

1 (5) Determine the nature, form and capacity of all packages to be
2 used for containing liquor kept for sale under this title;

3 (6) Execute or cause to be executed, all contracts, papers, and
4 documents in the name of the board, under such regulations as the board
5 may fix;

6 (7) Pay all customs, duties, excises, charges and obligations
7 whatsoever relating to the business of the board (other than
8 obligations assumed by the lessee through a contract under section 3 of
9 this act);

10 (8) Require bonds from all employees in the discretion of the
11 board, and to determine the amount of fidelity bond of each such
12 employee;

13 (9) Perform services for the state lottery commission to such
14 extent, and for such compensation, as may be mutually agreed upon
15 between the board and the commission;

16 (10) Accept and deposit into the general fund-local account and
17 disburse, subject to appropriation, federal grants or other funds or
18 donations from any source for the purpose of improving public awareness
19 of the health risks associated with alcohol consumption by youth and
20 the abuse of alcohol by adults in Washington state. The board's
21 alcohol awareness program shall cooperate with federal and state
22 agencies, interested organizations, and individuals to effect an active
23 public beverage alcohol awareness program;

24 (11) Perform all other matters and things, whether similar to the
25 foregoing or not, to carry out the provisions of this title, and shall
26 have full power to do each and every act necessary to the conduct of
27 its business, including all buying, selling, preparation and approval
28 of forms, and every other function of the business whatsoever, subject
29 only to audit by the state auditor(~~(; PROVIDED, That)~~). However, the
30 board (~~(shall have)~~) has no authority to regulate the content of spoken
31 language on licensed premises where wine and other liquors are served
32 and where there is not a clear and present danger of disorderly conduct
33 being provoked by such language.

34 **Sec. 8.** RCW 66.08.070 and 1985 c 226 s 2 are each amended to read
35 as follows:

36 (1) Every order for the purchase of liquor (~~(shall)~~) must be

1 authorized by the board, and no order for liquor (~~shall be~~) is valid
2 or binding unless it is so authorized and signed by the board or its
3 authorized designee.

4 (2) A duplicate of every such order (~~shall~~) must be kept on file
5 in the office of the board.

6 (3) All cancellations of such orders made by the board (~~shall~~)
7 must be signed in the same manner and duplicates thereof kept on file
8 in the office of the board. Nothing in this title (~~shall~~) may be
9 construed as preventing the board from accepting liquor on consignment.

10 (4) In the purchase of wine or malt beverages the board (~~shall~~)
11 may not require, as a term or condition of purchase, any warranty or
12 affirmation with respect to the relationship of the price charged the
13 board to any price charged any other buyer.

14 (5) This section does not apply to a contract entered into under
15 section 3 of this act.

16 NEW SECTION. Sec. 9. Sections 1 through 6 of this act constitute
17 a new chapter in Title 66 RCW.

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