

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5942**

62nd Legislature  
2011 1st Special Session

Passed by the Senate May 25, 2011  
YEAS 26 NAYS 19

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**President of the Senate**

Passed by the House May 24, 2011  
YEAS 52 NAYS 42

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5942** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5942**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2011 1st Special Session

**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;  
4 adding a new chapter to Title 66 RCW; and declaring an emergency.

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, a net positive financial benefit  
28 to the state and local government over the term of the proposed lease  
29 or contract taking into account: An initial up-front payment to the  
30 state during the 2011-2013 biennium; proposed profit sharing payments  
31 to the state; projected business and occupation and liquor tax  
32 revenues; and changes to retail profits generated as a result of the  
33 lease or contract. The office of financial management, in consultation  
34 with the liquor distribution advisory committee and interested  
35 stakeholders, must develop a definition and criteria on how to  
36 determine "positive financial benefit to the state and local  
37 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 proposals developed by the office of financial  
37 management must be reviewed by the house and senate fiscal committees.  
38 Opportunity for public comment regarding the request for proposal must

1 be provided. The review must be completed within fourteen days of the  
2 office of financial management providing the request for proposals to  
3 the house and senate fiscal committees.

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

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

18 (3) Any challenge to or protest of the recommendation of the office  
19 of financial management and the acceptance by the liquor control board  
20 of the recommended proposal must be filed by a respondent that  
21 submitted a proposal with the office of financial management within  
22 five days after such recommendation and acceptance. The grounds for  
23 such challenge or protest are limited to claims that the recommendation  
24 and acceptance were arbitrary and capricious. The office of financial  
25 management must, within five days, render its decision on the protest.  
26 The respondent that filed the protest may, within five days after such  
27 decision, appeal to the superior court of Thurston county by petition  
28 setting forth objections to the decision. A copy of the petition on  
29 appeal together with a notice that an appeal has been taken must be  
30 served upon the secretary of state, the attorney general, the office of  
31 financial management, the liquor control board, and the respondent that  
32 submitted the recommended and accepted proposal. The court must accord  
33 first priority to examining the objections, may hear arguments, and  
34 must, within ten days, render its decision. The decision of the  
35 superior court is final.

36 NEW SECTION. **Sec. 3.** CONTRACT. (1) Within sixty days after the  
37 recommendation of a proposal under section 2 of this act, the

1 Washington state liquor control board may accept that proposal and  
2 enter into a long-term contract with that entity for the lease of the  
3 business, facilities, and assets associated with the warehousing and  
4 distribution of liquor in the state. The contract must grant the  
5 exclusive right to distribute spirits in the state for the period of  
6 the contract. The contract must include enforceable performance  
7 standards and minimum financial returns to the state. The contract  
8 must provide a provision that allows the state to terminate the  
9 contract should specific performance standards or financial returns to  
10 the state not be realized. The contract must provide for a reasonable  
11 termination notification process as well as financial terms of  
12 termination should termination of contract take place.

13 (2) If the state receives an up-front payment of one hundred  
14 million dollars or more as a result of accepting a proposal from the  
15 procurement process in section 2 of this act, the contract must provide  
16 that the private entity place the up-front payment into irrevocable  
17 trust with the state being the beneficiary. The contract must provide  
18 that the trust be created in a manner that the state may not receive  
19 more than one-sixth of the up-front payment placed into the trust in  
20 any fiscal year.

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

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

28 (5) The contract must contain a provision that any financial  
29 deficiencies or losses of the private entity contracting for the  
30 warehousing and distribution of liquor in the state must not be  
31 compensated for in any way by the state, contract stores, consumers, or  
32 licensees.

33 NEW SECTION. **Sec. 4.** (1) The director of the office of financial  
34 management must appoint a liquor distribution advisory committee. The  
35 purpose of the committee is to assist and make recommendations to the  
36 office of financial management and the Washington state liquor control  
37 board regarding the provisions of this act including, but not limited

1 to, setting requirements for the competitive procurement process,  
2 selection of a private entity or recommendation that no entity be  
3 selected, and creating the terms of a contract with a selected private  
4 entity. The advisory committee's recommendations and assistance to the  
5 office of financial management and Washington state liquor control  
6 board in regards to the provisions of this act are advisory in nature  
7 and do not prohibit the office of financial management and Washington  
8 state liquor control board from performing their duties under this act  
9 as they deem fit.

10 (2) The liquor distribution advisory committee is composed of the  
11 Washington state treasurer or his or her designee, a designee from each  
12 of the two largest caucuses of the senate determined by the leaders of  
13 each caucus, and a designee from each of the two largest caucuses of  
14 the house of representatives determined by the leaders of each caucus.

15 NEW SECTION. **Sec. 5.** Contracting for services under this chapter  
16 is not subject to the processes of RCW 41.06.142 (1), (4), and (5).

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

19 (1) "Liquor" has the same meaning as provided in RCW 66.04.010.

20 (2) "Spirits" has the same meaning as provided in RCW 66.04.010.

21 (3) "State liquor stores" includes "stores" and "contract liquor  
22 stores" as those terms are defined in RCW 66.04.010.

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

25 The board, subject to the provisions of this title and the rules,  
26 shall:

27 (1) Determine the localities within which state liquor stores shall  
28 be established throughout the state, and the number and situation of  
29 the stores within each locality;

30 (2) Appoint in cities and towns and other communities, in which no  
31 state liquor store is located, contract liquor stores. In addition,  
32 the board may appoint, in its discretion, a manufacturer that also  
33 manufactures liquor products other than wine under a license under this  
34 title, as a contract liquor store for the purpose of sale of liquor  
35 products of its own manufacture on the licensed premises only. Such

1 contract liquor stores shall be authorized to sell liquor under the  
2 guidelines provided by law, rule, or contract, and such contract liquor  
3 stores shall be subject to such additional rules and regulations  
4 consistent with this title as the board may require;

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

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

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

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

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

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

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

31 (10) Accept and deposit into the general fund-local account and  
32 disburse, subject to appropriation, federal grants or other funds or  
33 donations from any source for the purpose of improving public awareness  
34 of the health risks associated with alcohol consumption by youth and  
35 the abuse of alcohol by adults in Washington state. The board's  
36 alcohol awareness program shall cooperate with federal and state  
37 agencies, interested organizations, and individuals to effect an active  
38 public beverage alcohol awareness program;



1 (11) Perform all other matters and things, whether similar to the  
2 foregoing or not, to carry out the provisions of this title, and shall  
3 have full power to do each and every act necessary to the conduct of  
4 its business, including all buying, selling, preparation and approval  
5 of forms, and every other function of the business whatsoever, subject  
6 only to audit by the state auditor(~~(:—PROVIDED, That)~~). However, the  
7 board (~~(shall have)~~) has no authority to regulate the content of spoken  
8 language on licensed premises where wine and other liquors are served  
9 and where there is not a clear and present danger of disorderly conduct  
10 being provoked by such language.

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

13 (1) Every order for the purchase of liquor (~~(shall)~~) must be  
14 authorized by the board, and no order for liquor (~~(shall be)~~) is valid  
15 or binding unless it is so authorized and signed by the board or its  
16 authorized designee.

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

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

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

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

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

31 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
32 preservation of the public peace, health, or safety, or support of the  
33 state government and its existing public institutions, and takes effect

1 immediately.

--- END ---