

ESSB 5942 - H AMD 850

By Representative Ormsby

ADOPTED 05/24/2011

1 Strike everything after the enacting clause and insert the
2 following:

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

13 NEW SECTION. **Sec. 2.** COMPETITIVE PROCUREMENT. (1) Within one
14 hundred twenty days after the effective date of this section, the
15 office of financial management, in consultation with the Washington
16 state liquor control board and the liquor distribution advisory
17 committee, must establish and conduct a competitive process for the
18 selection of a private sector entity to lease and modernize the state's
19 liquor warehousing and distribution facilities and related operations.
20 The competitive process must assume that the Washington state liquor
21 control board retains its existing exclusive retail spirits sales
22 business, be designed to encourage the participation of private sector
23 entities with previous wholesale distribution experience with a public
24 partner excluding licensees engaged in the manufacture of liquor or the
25 retail sale of liquor in the state, and be designed to encourage
26 competition among such entities.

27 (2)(a) To implement the competitive process required under
28 subsection (1) of this section, the office of financial management

1 must, after consultation with the Washington state liquor control board
2 and the liquor distribution advisory committee, request proposals for:

3 (i) The lease of or other contract for the entire state liquor
4 warehousing and distribution business, including the facilities,
5 operations, and other assets associated with the warehousing of liquor
6 and the distribution of liquor; and

7 (ii) The exclusive right to warehouse spirits and to distribute
8 spirits in the state.

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

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

13 (ii) A requirement that proposals demonstrate, to the satisfaction
14 of the office of financial management, a net positive financial benefit
15 to the state and local government over the term of the proposed lease
16 or contract taking into account: An initial up-front payment to the
17 state during the 2011-2013 biennium; proposed profit sharing payments
18 to the state; projected business and occupation and liquor tax
19 revenues; and changes to retail profits generated as a result of the
20 lease or contract. The office of financial management, in consultation
21 with the liquor distribution advisory committee and interested
22 stakeholders, must develop a definition and criteria on how to
23 determine "positive financial benefit to the state and local
24 government";

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

32 (iv) A requirement that proposals include a quantified commitment
33 to invest in capital improvements to warehousing and distribution
34 facilities and a mechanism to ensure that such investments are timely
35 made, consistent with requirements in a mutually acceptable lease or
36 contract;

37 (v) A requirement that proposals include a commitment to assume

1 responsibility for the costs associated with the operation of liquor
2 warehousing and distribution;

3 (vi) A requirement that proposals demonstrate to the satisfaction
4 of the office of financial management a commitment to improved
5 distribution including without limitation logistics and delivery
6 improvements to improve margins, ensure regularity of deliveries to
7 state or contract liquor stores to reduce out-of-stock problems,
8 improve service to stores located in geographically remote areas of the
9 state, expand liquor selection, provide for bottle rather than minimum
10 case purchasing and stocking of state or contract liquor stores, if
11 practicable, and enable electronic funds transfer of payments;

12 (vii) A requirement that proposals include a commitment to offer
13 employment to the state employees currently in positions relating to
14 the wholesale distribution of liquor and to recognize and bargain with
15 any existing bargaining representative of such employees with respect
16 to terms and conditions of employment;

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

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

22 (c) Prior to conducting the competitive process outlined in this
23 section, the request for proposals developed by the office of financial
24 management must be reviewed by the house and senate fiscal committees.
25 Opportunity for public comment regarding the request for proposal must
26 be provided. The review must be completed within fourteen days of the
27 office of financial management providing the request for proposals to
28 the house and senate fiscal committees.

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

32 (e) After consultation with the Washington state liquor control
33 board, local government, and the liquor distribution advisory
34 committee, the office of financial management is authorized to
35 recommend to the Washington state liquor control board the proposal
36 that in the determination of the office of financial management best
37 meets the criteria required under this subsection (2), in the best
38 interests of the state. If, in the determination of the office of

1 financial management, there is no proposal that meets the best interest
2 of the state, the office of financial management must notify the
3 Washington state liquor control board to not accept any of the
4 proposals.

5 (3) Any challenge to or protest of the recommendation of the office
6 of financial management and the acceptance by the liquor control board
7 of the recommended proposal must be filed by a respondent that
8 submitted a proposal with the office of financial management within
9 five days after such recommendation and acceptance. The grounds for
10 such challenge or protest are limited to claims that the recommendation
11 and acceptance were arbitrary and capricious. The office of financial
12 management must, within five days, render its decision on the protest.
13 The respondent that filed the protest may, within five days after such
14 decision, appeal to the superior court of Thurston county by petition
15 setting forth objections to the decision. A copy of the petition on
16 appeal together with a notice that an appeal has been taken must be
17 served upon the secretary of state, the attorney general, the office of
18 financial management, the liquor control board, and the respondent that
19 submitted the recommended and accepted proposal. The court must accord
20 first priority to examining the objections, may hear arguments, and
21 must, within ten days, render its decision. The decision of the
22 superior court is final.

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

1 (2) If the state receives an up-front payment of one hundred
2 million dollars or more as a result of accepting a proposal from the
3 procurement process in section 2 of this act, the contract must provide
4 that the private entity place the up-front payment into irrevocable
5 trust with the state being the beneficiary. The contract must provide
6 that the trust be created in a manner that the state may not receive
7 more than one-sixth of the up-front payment placed into the trust in
8 any fiscal year.

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

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

16 (5) The contract must contain a provision that any financial
17 deficiencies or losses of the private entity contracting for the
18 warehousing and distribution of liquor in the state must not be
19 compensated for in any way by the state, contract stores, consumers, or
20 licensees.

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

35 (2) The liquor distribution advisory committee is composed of the
36 Washington state treasurer or his or her designee, a designee from each

1 of the two largest caucuses of the senate determined by the leaders of
2 each caucus, and a designee from each of the two largest caucuses of
3 the house of representatives determined by the leaders of each caucus.

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

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

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

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

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

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

14 The board, subject to the provisions of this title and the rules,
15 shall:

16 (1) Determine the localities within which state liquor stores shall
17 be established throughout the state, and the number and situation of
18 the stores within each locality;

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

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

33 (4) Provide for the leasing for periods not to exceed ten years of
34 all premises required for the conduct of the business (other than
35 premises subject to a lease or other contract under section 3 of this

1 act); and for remodeling the same, and the procuring of their
2 furnishings, fixtures, and supplies; and for obtaining options of
3 renewal of such leases by the lessee. The terms of such leases in all
4 other respects (~~shall be~~) is subject to the direction of the board;

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

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

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

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

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

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

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

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

3 (1) Every order for the purchase of liquor (~~shall~~) must be
4 authorized by the board, and no order for liquor (~~shall be~~) is valid
5 or binding unless it is so authorized and signed by the board or its
6 authorized designee.

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

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

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

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

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

21 NEW SECTION. Sec. 10. This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and takes effect
24 immediately."

25 Correct the title.

EFFECT: Allows proposals to include changes in liquor taxes and
retail profits in a demonstration of the net financial benefit of the
proposal.

Requires that challenges or protests of the recommendation of the
Office of Financial Management must be submitted within 5 days of a
decision by respondents that submitted a proposal. The grounds for
challenge are limited to claims that the decision was arbitrary and
capricious. The OFM has 5 days to render a decision. Respondents may

appeal decisions to the Superior Court of Thurston County within 5 days of the decision, and the court has 10 days to render its decision.

Provides that Superior Court decisions on competitive procurement process appeals are final.

Clarifies that contracting for services under the new chapter is not subject to the Personnel System Reform Act's competitive contracting processes.

Adds an emergency clause for the act to take effect immediately.

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