HOUSE BILL REPORT
ESSB 5942

As Reported by House Committee On:
Ways & Means

Title: An act relating to the warehousing and distribution of liquor, including the lease and modernization of the state's liquor warehousing and distribution facilities.

Brief Description: Concerning the warehousing and distribution of liquor, including the lease and modernization of the state's liquor warehousing and distribution facilities.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hewitt and Zarelli).

Brief History:
Committee Activity:
Ways & Means: 5/23/11 [DP].

Brief Summary of Engrossed Substitute Bill

- Directs the Office of Financial Management (OFM) to conduct a competitive process for the selection of a private sector entity to lease and modernize the state's spirits warehousing and distribution facilities and related operations.
- Authorizes the Liquor Control Board to enter into a long-term contract for the lease of the warehousing and distribution of liquor within 60 days after the recommendation of a proposal by the OFM.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass. Signed by 19 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Carlyle, Chandler, Cody, Dickerson, Haigh, Haler, Hudgins, Hunt, Kagi, Kenney, Ormsby, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 7 members: Representatives Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Hinkle, Parker, Ross, Schmick and Wilcox.

Staff: Jeff Olsen (786-7175).

Background:

Liquor Control Board.
Washington is one of 18 liquor control states, in which the state has a monopoly over the distribution and sale of specified types of liquor. The Liquor Control Board (Board) determines the localities where state liquor stores are established and the number of stores within each locality. The Board must also appoint contract liquor stores in cities and towns and other communities where no state liquor store is located. There are approximately 165 state liquor stores and 160 contract liquor stores in the state.

The Board operates a liquor distribution center located in Seattle from which they distribute liquor to state and contract liquor stores. In Washington, spirits may be sold only in state liquor stores and contract liquor stores. An exception allows limited sales of spirits by craft distilleries. The liquor stores are responsible for supplying spirits to the various types of licensees such as restaurants, taverns, and bars.

Purchasing Services by Contract.
A state agency or institution of higher education may contract out for services, including services traditionally and historically provided by state employees, if certain conditions are met. The agency or institution must inform the affected classified employees 90 days prior to sending out bids for contracts; the employees then have 60 days to offer alternatives to purchasing the services by contract. If employees decide to compete for the contract, they must form an employee business unit to submit the bid. An employee business unit is defined as a group of employees who performs services to be contracted, and who submits a competitive bid for the performance of those services.

Summary of Bill:

Liquor Distribution Advisory Committee.
The Director of the Office of Financial Management (OFM) must appoint a Spirits Distribution Advisory Committee (Committee) to assist and make recommendations to the OFM regarding setting the requirements for the procurement process, selection of a private entity or recommendation that no entity be selected, and creation of the terms of a contract with a selected private entity. The Committee's recommendations are advisory only. The Committee is composed of the Washington State Treasurer or designee, and a designee from each of the two largest caucuses of the Senate and House of Representatives.

Competitive Procurement Process for Liquor Warehousing and Distribution.
Within 120 days, the OFM must conduct a competitive process for the selection of a private sector entity to lease and modernize the state's spirits warehousing and distribution facilities and related operations.

The proposals must be for the lease of or other contract for the entire state spirits warehousing and distribution business, including the facilities, operations, and other assets associated with the warehousing of spirits and the distribution of spirits, and the exclusive right to warehouse and distribute spirits. The request for proposals must include:

- a requirement that the proposals demonstrate relevant previous experience as well as the financial capacity to perform the obligations;
- a requirement that the proposals demonstrate a positive financial benefit to the state and local government over the term of the proposed contract compared to projected financial benefits from warehousing and distribution. The OFM must take into account an initial up-front payment, proposed profit-sharing payments, and projected business and occupation tax revenues. The OFM, in consultation with the Committee and interested stakeholders, must develop a definition and criteria on how to determine "positive financial benefit to the state and local government;"
- a requirement that the prevailing proponent deposit into an escrow account within 15 days the full amount of the up-front payment, subject to successful negotiation of a lease or contract;
- a requirement that proposals include a quantified commitment to invest in capital improvements to warehousing and distribution facilities;
- a requirement that proposals include a commitment to assume responsibility for the costs associated with the operation of spirits warehousing and distribution;
- a requirement that proposals demonstrate to the satisfaction of the OFM a commitment to improved distribution to improve margins, ensure regularity of deliveries to retail stores, improve service to stores in remote areas, provide for bottle rather than minimum case purchasing and stocking if practicable, and expanded spirits selection;
- a requirement that proposals include a commitment to offer employment to current state employees and to recognize and bargain with any existing bargaining representative with respect to the terms and conditions of employment;
- a requirement that the variety of brands and types of liquor available be equal to or greater than currently offered; and
- a requirement that measurable standards for the performance of the contract be established.

The OFM must publicly disclose an analysis of the fiscal impacts to state and local governments of each offer. After consultation with the Committee, the OFM may recommend to the Board the proposal that in the determination of the OFM best meets the specified criteria in the best interests of the state. If there are no proposals that meet the best interests of the state, the OFM must notify the Board to not accept any of the proposals.

<u>Contract to Operation Liquor Warehousing and Distribution</u>.
Within 60 days after a recommendation of a proposal, the Board may accept that proposal and enter into a long-term contract with that entity for the lease of the business, facilities, and assets associated with the warehousing and distribution of spirits in the state, and the exclusive right to distribute spirits. The contract must include enforceable performance standards and minimum financial returns to the state. The contract must allow termination by the state should specific performance standards or financial returns not be realized, and include a reasonable termination notification process as well as financial terms of termination.

<u>Additional Provisions</u>.
If the up-front payment is $100 million or more, the payment must be placed into trust and the state may not receive more than one-sixth of the payment in any fiscal year.

The Board continues to select products and set prices for sales in state and contract liquor stores.

The competitive procurement process and contract provisions are not subject to certain contracting out provisions with respect to an opportunity for employees to offer alternatives to and compete for the contract.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on May 23, 2011.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Contracting out will enhance the business to the public's benefit and create new job opportunities. This bill addresses privatization without the pitfalls of recent initiatives. There are safeguards with an advisory committee that includes legislators, a legislative fiscal committee review, and the ability to accept or reject a proposal. The companies that transport liquor now are in support and feel that this may provide opportunities for growth. Contract liquor stores consist of approximately 14 percent of total sales, and exist mainly in rural areas. This is a reasonable step but do keep in mind the improvements that contract liquor stores have made.

(With concerns) The state should be cautious. When Maine adopted a similar model, it acted too quickly. Prices had to be raised and Maine left some money on the table. Also, 20 years was too long for the lease. The bill is preferable to any of the other proposals. An emergency clause is okay. Amendments added in the Senate to include local government should be kept. Liquor generates $34 million for cities.

(Opposed) The state's liquor business is a billion dollar business. The only ways to enhance value are to raise taxes, increase consumption, or cut costs. The distribution center is highly efficient. A transfer to the private sector will cost more. Profit-sharing is risky. Going from one monopoly to another is not privatization. Retailers cannot bid. There should be a thoughtful process. A plan should be put in place for the entire system. Keep the Senate changes that eliminate the emergency clause and include a legislative review of the proposal.

Persons Testifying: (In support) Bill Stauffacher, Washington Beverage Company; Heather Werner, Teamsters; and Michael Transue, Washington Contract Liquor Store Advisory Committee.

(With concerns) Dave Ducharme, Distilled Spirits Council of the United States; Ron Main, Washington Beer and Wine Wholesaler's Association; and Victoria Lincoln, Association of Washington Cities.

(Opposed) Seamus Walsh, Washington Public Employees Association; Holly Chisa, Northwest Grocery Association; and Carolyn Logue, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: None.