SENATE BILL REPORT
ESSB 5942

As Passed Senate, May 21, 2011

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: 5/03/11, 5/16/11, 5/18/11 [DPS, DNP, w/oRec].
First Special Session: Passed Senate: 5/21/11, 31-14.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5942 be substituted therefor, and the substitute bill do pass.
Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Baxter, Brown, Conway, Hatfield, Hewitt, Honeyford, Keiser, Kohl-Welles, Pflug, Regala, Rockefeller and Schoesler.

Minority Report: Do not pass.
Signed by Senators Fraser, Kastama, Pridemore and Tom.

Minority Report: That it be referred without recommendation.
Signed by Senator Parlette, Ranking Minority Member Capital.

Staff: Dean Carlson (786-7305)

Background: 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 the 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.

Summary of Engrossed Substitute Bill: Within 120 days, the Office of Financial Management (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 lease must include a 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.

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, local government, and interested stakeholders over the term of the proposed contract compared to projected financial benefits to the states from warehousing and distribution. OFM must take into account an initial up front payment, proposed profit sharing payments and projected business and occupation tax revenues.
- OFM, in consultation with the spirits distribution advisory committee, must develop a definition and criteria on how to determine "positive financial benefit to the state."
- A requirement that the prevailing proponent deposit into an escrow account within 15 days the full amount of the initial up-front payment, subject to successful negotiation of a mutually acceptable 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 OFM a commitment to improved distribution to improve margins, ensure regularity of deliveries to retail stores, improve service to stores in remote areas, and expanded sprits selection.
- A requirement that measurable standards for the performance of the contract be established.
- A proposal must require a commitment to offer state employees currently in positions effected by the act to be offered employment and that their bargaining unit is recognized.
- OFM must publicly disclose the analysis of the fiscal impacts of each offer.

After consultation with the Board and the Spirits Distribution Advisory Council, OFM is authorized to recommend to the Board the proposal that in the determination of OFM best meets the criteria and the best interest of the state. If there are no proposals that meet the best interest of the state, OFM must notify the Board to not accept any of the proposals.

Once all the parameters are set for the request for proposal process that each proposal will be measured against, the fiscal committees of the House and Senate will review and have the opportunity to hear public input on the parameters.

Within 60 days after the 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. The contract must include enforceable performance standards and minimum financial returns to the state. The contract must provide a provision that allows the state to terminate should specific performance standards or financial returns not be realized. The contract must provide for a reasonable termination notification process as well as financial terms of termination should termination of contract take place. The contract must contain a provision that any losses by the private entity must not be compensated for by the state, contract stores, consumers, or licensees. The Liquor Control Board will make the product selections and set the prices of the products.

The director of OFM must appoint a spirits distribution advisory committee to assist and make recommendations to 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 recommendations of the spirits distribution advisory committee are advisory in nature and do not prohibit OFM and the Board from performing their duties under the act. The spirits distribution advisory 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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This is a nonbinding proposal to see what a private entity would be willing to pay for the distribution businesses.

CON: This puts the state in the position of getting short-term money for long-term debt. Retailers are excluded from this legislation. It does little to address the system as a whole. The restaurants are the largest customer for liquor sales. Currently we may only purchase from the state. This does not increase competition. It does not have protections for the customers. We have the highest cost liquor in the nation, and we do not want the costs to go higher. We don't believe it makes sense to exchange one monopoly with another monopoly. We would like the distribution to be competitive. There is no protection for the workers in this bill. There is no protection or guarantee for increased state revenue.

OTHER: We would like to have employee protections in the bill for distribution center employees. The counties have a financial interest in this bill as well as public safety so we would like to add local governments to the bill to be consulted with in the process. The

Teamsters have worked hard with the proponents to preserve the jobs in the bill. We would like to have this language in the bill. The bill should address worker retention, and we believe efficiencies could be made using the workers that know the system. We are glad this is an open competitive process. This is an asset for the state so care and caution must be taken. Cities received $54 million in liquor profits and taxes; so, we ask you keep that in mind. MRSC receives most of its funding from liquor sales, and we would like to see this maintained. The spirits industry is very price conscious. We would like to make sure there is not an impact on the price. The spirits industry would like to be included as a stakeholder. We have not taken a formal position, but we like that this does not gut the current system. Any proposal must protect the public interest.

Persons Testifying: PRO: Bill Stauffacher, Washington Beverage Company.

CON: Bruce Becket, Washington Restaurant Association; Carolyn Logue, Washington Food Industry Association; Mark Johnson, Washington Retail Association; Seamus Walsh, Washington Public Employees Association.

OTHER: Rick Garza, Liquor Control Board; Scott Merriman, Association of Washington Counties; Heather Weiner, Teamsters; Wolfgang Opitz, Treasurers Office; Victoria Lincoln, Association of Washington Cities; Dave Ducharme, Distilled Spirits Council of the United States; Ron Main, Washington Beer and Wine Wholesalers Association.