

FINAL BILL REPORT

ESSB 5942

C 45 L 11 E 1

Synopsis as Enacted

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).

Senate Committee on Ways & Means
House Committee on Ways & Means

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, 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: 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 (RFP) 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

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distribution. OFM must take into account an initial up front payment, proposed profit sharing payments, liquor taxes, retail profit, 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 spirits 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 affected 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 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 RFP 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. The fiscal committees have 14 days to review the RFP and to gather public input.

Requires that challenges or protests of the recommendation of the OFM must be submitted within five 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 five days to render a decision.

Respondents may appeal decisions to the Superior Court of Thurston County within five days of the decision, and the court has ten days to render its decision. Superior Court decisions on competitive procurement process appeals are final.

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 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.

Votes on Final Passage:

First Special Session

Senate	31	14	
House	52	42	(House amended)
Senate	26	19	(Senate concurred)

Effective: June 15, 2011.