
SENATE BILL 5942

State of Washington

62nd Legislature

2011 Regular Session

By Senators Hewitt and Zarelli

Read first time 04/14/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to the warehousing and distribution of spirits,
2 including the lease and modernization of the state's spirits
3 warehousing and distribution facilities and related operations;
4 amending RCW 66.08.050 and 66.08.070; adding a new chapter to Title 66
5 RCW; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

17 NEW SECTION. **Sec. 2.** COMPETITIVE PROCUREMENT. (1) Within one
18 hundred eighty days after the effective date of this section, the

1 office of financial management, in consultation with the Washington
2 state liquor control board and the spirits distribution advisory
3 committee, must establish and conduct a competitive process for the
4 selection of a private sector entity to lease and modernize the state's
5 spirits warehousing and distribution facilities and related operations.
6 The competitive process must assume that the Washington state liquor
7 control board retains its existing exclusive retail spirits sales
8 business, be designed to encourage the participation of private sector
9 entities with previous wholesale distribution experience with a public
10 partner excluding licensees engaged in the manufacture of alcohol or
11 the retail sale of alcohol in the state, and be designed to encourage
12 competition among such entities.

13 (2)(a) To implement the competitive process required under
14 subsection (1) of this section, the office of financial management
15 must, after consultation with the Washington state liquor control board
16 and the spirits distribution advisory committee, request proposals for:

17 (i) The lease of or other contract for the entire state spirits
18 warehousing and distribution business, including the facilities,
19 operations, and other assets associated with the warehousing of spirits
20 and the distribution of spirits; and

21 (ii) The exclusive right to warehouse spirits and to distribute
22 spirits in the state.

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

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

27 (ii) A requirement that proposals demonstrate to the satisfaction
28 of the office of financial management positive financial benefit to the
29 state over the term of the proposed lease or contract compared to
30 current financial benefits to the state from spirits warehousing and
31 distribution including, and taking into account without limitation, an
32 initial up-front payment to the state during the 2011-2013 biennium and
33 proposed profit sharing payments to the state during the lease or
34 contract term; and projected business and occupation tax revenues
35 generated as a result of the lease or contract. The office of
36 financial management, in consultation with the spirits distribution
37 advisory committee, must develop a definition and criteria on how to
38 determine "positive financial benefit to the state";

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 spirits
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 retail stores to reduce out-of-stock problems, improve service to
21 stores located in geographically remote areas of the state, expand
22 spirits selection, provide for bottle rather than minimum case
23 purchasing and stocking of retail stores, if practicable, and enable
24 electronic funds transfer of payments;

25 (vii) A requirement that the variety of brands and types of spirits
26 available to licensees, contract stores, and state liquor stores must
27 be equal to or greater than what is being distributed by the Washington
28 state liquor control board; and

29 (viii) Measurable standards for the performance of the contract.

30 (c) After consultation with the Washington state liquor control
31 board and the spirits distribution advisory committee, the office of
32 financial management is authorized to recommend to the Washington state
33 liquor control board the proposal that in the determination of the
34 office of financial management best meets the criteria required under
35 this subsection (2), in the best interests of the state. If, in the
36 determination of the office of financial management, there is no
37 proposals that meet the best interest of the state, the office of

1 financial management must notify the Washington state liquor control
2 board to not accept any of the proposals.

3 NEW SECTION. **Sec. 3.** CONTRACT. (1) Within sixty days after the
4 recommendation of a proposal under section 2 of this act, the
5 Washington state liquor control board may accept that proposal and
6 enter into a long-term contract with that entity for the lease of the
7 business, facilities, and assets associated with the warehousing of
8 spirits and the distribution of spirits in the state. The contract
9 must grant the exclusive right to distribute spirits in the state for
10 the period of the contract. The contract must include enforceable
11 performance standards and minimum financial returns to the state. The
12 contract must provide a provision that allows the state to terminate
13 the contract should specific performance standards or financial returns
14 to the state not be realized. The contract shall provide for a
15 reasonable termination notification process as well as financial terms
16 of termination should termination of contract take place.

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

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

1 and do not prohibit the office of financial management and Washington
2 state liquor control board from performing their duties under this act
3 as they deem fit.

4 (2) The spirits distribution advisory committee is composed of the
5 Washington state treasurer or his or her designee, a designee from each
6 of the two largest caucuses of the senate determined by the leaders of
7 each caucus, and a designee from each of the two largest caucuses of
8 the house of representatives determined by the leaders of each caucus.

9 NEW SECTION. **Sec. 5.** DEFINITIONS. For the purposes of this
10 chapter, unless the context clearly requires otherwise:

11 (1) "Spirits" has the same meaning as provided in RCW 66.04.010.

12 (2) "State liquor stores" includes "stores" and "contract liquor
13 stores" as those terms are defined in RCW 66.04.010.

14 **Sec. 6.** RCW 66.08.050 and 2005 c 151 s 3 are each amended to read
15 as follows:

16 The board, subject to the provisions of this title and the rules,
17 shall:

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

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

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

35 (4) Provide for the leasing for periods not to exceed ten years of
36 all premises required for the conduct of the business (other than

1 premises subject to a lease or other contract under section 3 of this
2 act); and for remodeling the same, and the procuring of their
3 furnishings, fixtures, and supplies; and for obtaining options of
4 renewal of such leases by the lessee. The terms of such leases in all
5 other respects shall be subject to the direction of the board;

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

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

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

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

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

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

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

1 **Sec. 7.** 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. For the purposes of this subsection, "spirits"
19 has the same meaning as provided in RCW 66.04.010.

20 NEW SECTION. **Sec. 8.** Sections 1 through 5 of this act constitute
21 a new chapter in Title 66 RCW.

22 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
23 preservation of the public peace, health, or safety, or support of the
24 state government and its existing public institutions, and takes effect
25 immediately.

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