

# HOUSE BILL REPORT

## SB 5568

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### As Reported by House Committee On: Finance

**Title:** An act relating to enhancing tax collection tools for the department of revenue in order to promote fairness and administrative efficiency.

**Brief Description:** Enhancing tax collection tools for the department of revenue in order to promote fairness and administrative efficiency.

**Sponsors:** Senators Tom, Rockefeller and Shin; by request of Department of Revenue.

#### **Brief History:**

##### **Committee Activity:**

Finance: 3/20/09, 3/26/09 [DP].

#### **Brief Summary of Bill**

- Allows the Department of Revenue (DOR) to seek a court authorized subpoena to obtain records in the possession of a third party that may aid the DOR in its tax-related duties.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, Santos and Springer.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Condotta.

**Staff:** Jeffrey Mitchell (786-7139)

#### **Background:**

The Department of Revenue (DOR) currently has the authority to request information from third parties by way of an administrative summons. This is used to provide information for audits, collection activities, and other types of investigations.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

In a recent Washington Supreme Court decision (*State v. Miles*, 160 Wn. 2d 236), the Court ruled that certain information obtained through an administrative summons was not allowed in court. The issuance of an administrative summons does not include review by a court. The case involved the Department of Financial Institutions (DFI), but could impact the DOR. The court's decision was based on Article I, section 7 of the Washington Constitution, which states that "[n]o person shall be disturbed in his private affairs...without authority of law." As part of the fact pattern in the case, the DFI had requested that Washington Mutual provide the DFI with all banking records for the individual under investigation, and some of this information was not directly related to the individual's regulated business activities. The court concluded that administrative subpoenas are unconstitutional to the extent that these subpoenas seek private information not directly related to the individual's regulated activities.

A surety bond is a bond issued by an entity on behalf of a second party, which guarantees that the second party will fulfill an obligation or a series of obligations to a third party. In the event that the obligations are not met, the third party will recover its losses via the bond. Washington law requires general and specialty contractors to provide a contractor's surety bond. Surety bonds are available through a bonding company or insurance agency. Premiums vary with each company, as do the requirements for being bonded.

As a general rule, tax returns and tax information are confidential and the DOR is prohibited from disclosing this information. However, there are a number of exceptions to this general rule.

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### **Summary of Bill:**

The Department of Revenue (DOR) may apply for a subpoena to a superior court or district court to obtain third party information if there is probable cause to believe that records in the possession of the third party will aid the DOR in connection with its official duties relating to an audit, collection activity, or a civil or criminal investigation. The court issuing the subpoena may require the DOR to reimburse the third party for reasonable costs incurred in producing the records specified in the subpoena. The third party may not be held civilly liable for any harm resulting from compliance with the subpoena. The DOR may disclose otherwise confidential tax information to the court as part of the subpoena process.

The DOR may disclose return and tax information related to a judicial or administrative hearing as part of a contractor surety bond action.

The Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury is added to the list of federal agencies to which the DOR may release otherwise confidential information.

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**Appropriation:** None.

**Fiscal Note:** Available.

**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) This is the DOR request legislation and the same as House Bill 1931. It is best described as a due process bill. Currently, the DOR does have summons authority that does not require them to go to court. However, with a recent Supreme Court ruling, bank statements and records were found to be outside of the DOR's authority to request without court approval. This bill would allow the DOR to obtain court approval to subpoena bank records.

(Opposed) None.

**Persons Testifying:** Drew Shirk, Department of Revenue.

**Persons Signed In To Testify But Not Testifying:** None.