

SENATE BILL REPORT

SHB 2789

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 25, 2010

Title: An act relating to authorizing issuance of subpoenas for purposes of agency investigations of underground economic activity.

Brief Description: Authorizing issuance of subpoenas for purposes of agency investigations of underground economic activity.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Chase, Hudgins, Moeller and Simpson).

Brief History: Passed House: 2/15/10, 98-0.

Committee Activity: Labor, Commerce & Consumer Protection: 2/23/10, 2/25/10 [DP, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, King and Kline.

Minority Report: Do not pass.

Signed by Senator Honeyford.

Staff: Kathleen Buchli (786-7488)

Background: The Department of Labor and Industries (L&I) has authority to issue subpoenas for testimony and records in connection with any matters relating to workers' compensation. Likewise, the Employment Security Department (ESD) has authority to issue subpoenas for testimony and records in connection with any dispute related to unemployment compensation. The Department of Revenue (DOR) has similar authority with respect to taxes administered by DOR. In 2007 the Washington State Supreme Court (Court) held that a search of personal banking records by the Department of Financial Institutions (DFI) without a judicially issued warrant or subpoena violated Article I, section 7, of the Washington State Constitution. (*State v. Miles*, 160 Wn. 2d 236). Article I, section 7 states that "[n]o person shall be disturbed in his private affairs ... without authority of law." The Court invalidated DFI's statute to the extent it authorized DFI to issue subpoenas to third parties for otherwise private information not related to the regulated business activities. In

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.

2009 legislation was enacted (SB 5568) establishing a process for DOR to apply to a court for a subpoena for third-party records. The subpoena must be served on the third party.

Summary of Bill: L&I, ESD, and DOR, through their respective agency heads and agents, may apply for and obtain a superior court order authorizing a subpoena in advance of its issuance. The application must state that an order is sought pursuant to the authority granted; specify the records, documents, or testimony; and declare under oath that an investigation is being conducted for a lawfully authorized purpose, and that the documents or testimony are reasonably related to an investigation within the department's authority. Where the application is made to the satisfaction of the court, the court must issue an order approving the subpoena. No prior notice to any person is required.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill will be a useful tool to help fight the underground economy. We appreciate the work of the Task Force and this bill is necessary and needed.

Persons Testifying: PRO: David Johnson, Washington State Building Trades; Chris Van Dyk, BYG Taxi Coop.