

SENATE BILL REPORT

SB 6574

As of January 26, 2010

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

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

Sponsors: Senators Kohl-Welles, Keiser, Kline, Franklin and McDermott.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/25/10.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

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 the 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 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

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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: The subpoena bill is necessary and it has support because it is not an administrative subpoena but has higher standards. The department requesting the subpoena must go before a judge and demonstrate that the investigation is valid. The fiscal note shows that this bill will help to recoup taxes that are lost and it allows the departments to recover those lost costs.

OTHER: The intent section states that the subpoenas would be connected to the underground economy and uses the word taxes, however the bill provides that the departments would have this authority over claimants as well. The intent section should be modified to reflect this. The remainder of the bill works as written.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Dave Johnson, Washington Building and Construction Trades Council; Rick Slunaker, Associated General Contractors.

OTHER: Carl Hammersburg, L&I.