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**SUBSTITUTE HOUSE BILL 2789**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Commerce & Labor (originally sponsored by Representatives Conway, Chase, Hudgins, Moeller, and Simpson)

READ FIRST TIME 02/02/10.

1            AN ACT Relating to authorizing issuance of subpoenas for purposes  
2 of agency investigations of underground economic activity; amending RCW  
3 51.04.040 and 50.12.130; adding a new section to chapter 82.32 RCW; and  
4 creating a new section.

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

6            NEW SECTION.    **Sec. 1.**    (1) The legislature finds that underground  
7 economy activity in this state results in lost revenue to the state and  
8 is unfair to law-abiding businesses.    The legislature further finds  
9 that agencies that collect taxes and overpayments on behalf of the  
10 state have authority under current law to issue subpoenas and that the  
11 issuance of subpoenas is a highly useful tool in the investigation of  
12 underground activity of businesses and the unreported employees who  
13 work for them.    The legislature further finds that in the case of *State*  
14 *v. Miles*, the Washington supreme court held that Article 1, section 7  
15 of the state Constitution requires judicial review of a subpoena under  
16 some circumstances.

17            (2) The legislature therefore intends to provide a process for the  
18 department of revenue, the department of labor and industries, and the  
19 employment security department to apply for court approval of an agency

1 investigative subpoena which is authorized under current law in cases  
2 where the agency seeks such approval, or where court approval is  
3 required by Article 1, section 7. The legislature does not intend to  
4 require court approval except where otherwise required by law or  
5 Article 1, section 7. The legislature does not intend to create any  
6 new authority to subpoena records or create any new rights for any  
7 person.

8 **Sec. 2.** RCW 51.04.040 and 1987 c 316 s 1 are each amended to read  
9 as follows:

10 (1) The director and his or her authorized assistants (~~shall~~)  
11 have power to issue subpoenas to enforce the attendance and testimony  
12 of witnesses and the production and examination of books, papers,  
13 photographs, tapes, and records before the department in connection  
14 with any claim made to the department, any billing submitted to the  
15 department, or the assessment or collection of premiums. The superior  
16 court (~~shall have~~) has the power to enforce any such subpoena by  
17 proper proceedings.

18 (2)(a) The director and his or her authorized assistants may apply  
19 for and obtain a superior court order approving and authorizing a  
20 subpoena in advance of its issuance. The application may be made in  
21 the county where the subpoenaed person resides or is found, or the  
22 county where the subpoenaed records or documents are located, or in  
23 Thurston county. The application must (i) state that an order is  
24 sought pursuant to this subsection; (ii) adequately specify the  
25 records, documents, or testimony; and (iii) declare under oath that an  
26 investigation is being conducted for a lawfully authorized purpose  
27 related to an investigation within the department's authority and that  
28 the subpoenaed documents or testimony are reasonably related to an  
29 investigation within the department's authority.

30 (b) Where the application under this subsection is made to the  
31 satisfaction of the court, the court must issue an order approving the  
32 subpoena. An order under this subsection constitutes authority of law  
33 for the agency to subpoena the records or testimony.

34 (c) The director and his or her authorized assistants may seek  
35 approval and a court may issue an order under this subsection without  
36 prior notice to any person, including the person to whom the subpoena  
37 is directed and the person who is the subject of an investigation.

1       **Sec. 3.** RCW 50.12.130 and 1945 c 35 s 52 are each amended to read  
2 as follows:

3       (1) In the discharge of the duties imposed by this title, the  
4 appeal tribunal and any duly authorized representative of the  
5 commissioner shall have power to administer oaths and affirmations,  
6 take depositions, certify to official acts and issue subpoenas to  
7 compel the attendance of witnesses and the production of books, papers,  
8 correspondence, memoranda, and other records deemed to be necessary as  
9 evidence in connection with any dispute or the administration of this  
10 title. It shall be unlawful for any person, without just cause, to  
11 fail to comply with subpoenas issued pursuant to the provisions of this  
12 section.

13       (2)(a) Any authorized representative of the commissioner may apply  
14 for and obtain a superior court order approving and authorizing a  
15 subpoena in advance of its issuance. The application may be made in  
16 the county where the subpoenaed person resides or is found, or the  
17 county where the subpoenaed records or documents are located, or in  
18 Thurston county. The application must:

19       (i) State that an order is sought pursuant to this subsection;  
20       (ii) Adequately specify the records, documents, or testimony; and  
21       (iii) Declare under oath that an investigation is being conducted  
22 for a lawfully authorized purpose related to an investigation within  
23 the department's authority and that the subpoenaed documents or  
24 testimony are reasonably related to an investigation within the  
25 department's authority.

26       (b) Where the application under this subsection is made to the  
27 satisfaction of the court, the court must issue an order approving the  
28 subpoena. An order under this subsection constitutes authority of law  
29 for the agency to subpoena the records or testimony.

30       (c) Any authorized representative of the commissioner may seek  
31 approval and a court may issue an order under this subsection without  
32 prior notice to any person, including the person to whom the subpoena  
33 is directed and the person who is the subject of an investigation.

34       NEW SECTION. Sec. 4. A new section is added to chapter 82.32 RCW  
35 to read as follows:

36       (1) The department or its duly authorized agent may apply for and  
37 obtain a superior court order approving and authorizing a subpoena in

1 advance of its issuance. The application may be made in the county  
2 where the subpoenaed person resides or is found, or the county where  
3 the subpoenaed records or documents are located, or in Thurston county.

4 The application must:

5 (a) State that an order is sought pursuant to this subsection;

6 (b) Adequately specify the records, documents, or testimony; and

7 (c) Declare under oath that an investigation is being conducted for  
8 a lawfully authorized purpose related to an investigation within the  
9 department's authority and that the subpoenaed documents or testimony  
10 are reasonably related to an investigation within the department's  
11 authority.

12 (2) Where the application under this subsection is made to the  
13 satisfaction of the court, the court must issue an order approving the  
14 subpoena. An order under this subsection constitutes authority of law  
15 for the agency to subpoena the records or testimony.

16 (3) The department or its duly authorized agent may seek approval  
17 and a court may issue an order under this subsection without prior  
18 notice to any person, including the person to whom the subpoena is  
19 directed and the person who is the subject of an investigation.

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