

# SENATE BILL REPORT

## HB 1039

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As Reported by Senate Committee On:  
Financial Institutions, Housing & Insurance, March 9, 2011

**Title:** An act relating to the subpoena authority of the department of financial institutions.

**Brief Description:** Addressing the subpoena authority of the department of financial institutions.

**Sponsors:** Representatives Bailey and Kirby; by request of Department of Financial Institutions.

**Brief History:** Passed House: 2/07/11, 92-0.

**Committee Activity:** Financial Institutions, Housing & Insurance: 3/08/11, 3/09/11 [DP].

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Majority Report:** Do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Fain, Keiser and Litzow.

**Staff:** Alison Mendiola (786-7483)

**Background:** In 2007 the Washington State Supreme Court (Court) held that a search of personal banking records by the Department of Financial Institutions (Department) without a judicially issued warrant or subpoena violated Article I, section 7 of the Washington 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 the Department's statute to the extent it authorized the Department to issue subpoenas to third parties for otherwise private information not related to the regulated business activities.

In 2010 legislation was enacted (SHB 2789) establishing a process for the Department of Labor & Industries, the Employment Security Department, and the Department of Revenue to seek judicial approval of a subpoena in advance of its issuance.

**Summary of Bill:** The Legislature intends to provide a process for the Department to apply for court approval of an agency investigative subpoena where the agency seeks approval, or where court approval is required by law or Article I, section 7 of the state Constitution.

The Director, or authorized assistants, of the Department may apply for and obtain a superior court order authorizing a subpoena in advance of its issuance. The application must state that

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an order is sought pursuant to the authority granted; specify documents, records, evidence, or testimony; and include a declaration under oath that an investigation is being conducted for a lawfully authorized purpose and that the documents, records, evidence, 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.

This authority is granted under the following regulatory programs of the Department: franchise investment protection, business opportunities, mortgage brokers, securities, money transmitters, commodity transactions, consumer loan companies, and check cashers and sellers.

**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: As a result of a court case, the Department of Financial Institutions needs this change, which provides the same authority that the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries already have in their ability to seek a judicial subpoena when necessary.

OTHER: This bill is an attempt to fix a constitutional program but the language proposed doesn't really fix the problem. Does the bill provide enough authority? The language should be changed to avoid further litigation as our Constitution has a high standard of privacy.

**Persons Testifying:** PRO: Representative Bailey, prime sponsor; Deb Bortner, Bill Beatty, Department of Financial Institutions.

OTHER: Shankar Narayan, American Civil Liberties Union; Bob Cooper, Washington Defenders Associations and Washington Association of Criminal Defense Lawyers.