

# SENATE BILL REPORT

## SB 5076

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As Passed Senate, February 2, 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:** Senators Hobbs, Benton, Prentice, Keiser, Haugen, Tom, Shin, Kline and Roach; by request of Department of Financial Institutions.

**Brief History:**

**Committee Activity:** Financial Institutions, Housing & Insurance: 1/19/11 [DP].  
Passed Senate: 2/02/11, 47-0.

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

**Majority Report:** Do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen, 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.

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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.*

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 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: It was always the practice of the agency to get personal bank records through administrative subpoenas but the State Supreme Court held that such subpoenas were a violation of Art. 1, Sec. 7 of the state Constitution. Since this case, other agencies have been granted the authority to seek judicial subpoenas and that is what the Department of Financial Institutions (DFI) is asking for. This process will protect the subjects under investigation; it's a win-win situation. The stakeholders have been contacted and there is no opposition, with some remaining parties remaining neutral but not opposing.

**Persons Testifying:** PRO: Deborah Bortner, Bill Beatty, DFI.