
HOUSE BILL 1039

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Bailey and Kirby; by request of Department of
Financial Institutions

Prefiled 12/16/10.

1 AN ACT Relating to the subpoena authority of the department of
2 financial institutions; adding a new section to chapter 18.44 RCW;
3 adding a new section to chapter 19.100 RCW; adding a new section to
4 chapter 19.110 RCW; adding a new section to chapter 19.146 RCW; adding
5 a new section to chapter 19.230 RCW; adding a new section to chapter
6 21.20 RCW; adding a new section to chapter 21.30 RCW; adding a new
7 section to chapter 31.04 RCW; adding a new section to chapter 31.45
8 RCW; and creating a new section.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that in the case of
11 *State v. Miles*, the state supreme court held that Article I, section 7
12 of the state Constitution requires judicial review of a subpoena under
13 some circumstances. The legislature intends to provide a process for
14 the department to apply for court approval of an agency investigative
15 subpoena that is authorized under law in cases when the agency seeks
16 approval, or when court approval is required by Article I, section 7 of
17 the state Constitution. The legislature does not intend to require
18 court approval except when otherwise required by law or Article I,
19 section 7 of the state Constitution.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.44 RCW
2 to read as follows:

3 (1) The director or authorized assistants may apply for and obtain
4 a superior court order approving and authorizing a subpoena in advance
5 of its issuance. The application may be made in the county where the
6 subpoenaed person resides or is found, or the county where the
7 subpoenaed documents, records, or evidence are located, or in Thurston
8 county. The application must:

9 (a) State that an order is sought under this section;

10 (b) Adequately specify the documents, records, evidence, or
11 testimony; and

12 (c) Include a declaration made under oath that an investigation is
13 being conducted for a lawfully authorized purpose related to an
14 investigation within the department's authority and that the subpoenaed
15 documents, records, evidence, or testimony are reasonably related to an
16 investigation within the department's authority.

17 (2) When an application under this section is made to the
18 satisfaction of the court, the court must issue an order approving the
19 subpoena. An order under this subsection constitutes authority of law
20 for the agency to subpoena the documents, records, evidence, or
21 testimony.

22 (3) The director or authorized assistants may seek approval and a
23 court may issue an order under this section without prior notice to any
24 person, including the person to whom the subpoena is directed and the
25 person who is the subject of an investigation. An application for
26 court approval is subject to the fee and process set forth in RCW
27 36.18.012(3).

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.100 RCW
29 to read as follows:

30 (1) The director or authorized assistants may apply for and obtain
31 a superior court order approving and authorizing a subpoena in advance
32 of its issuance. The application may be made in the county where the
33 subpoenaed person resides or is found, or the county where the
34 subpoenaed documents, records, or evidence are located, or in Thurston
35 county. The application must:

36 (a) State that an order is sought under this section;

1 (b) Adequately specify the documents, records, evidence, or
2 testimony; and

3 (c) Include a declaration made under oath that an investigation is
4 being conducted for a lawfully authorized purpose related to an
5 investigation within the department's authority and that the subpoenaed
6 documents, records, evidence, or testimony are reasonably related to an
7 investigation within the department's authority.

8 (2) When an application under this section is made to the
9 satisfaction of the court, the court must issue an order approving the
10 subpoena. An order under this subsection constitutes authority of law
11 for the agency to subpoena the documents, records, evidence, or
12 testimony.

13 (3) The director or authorized assistants may seek approval and a
14 court may issue an order under this section without prior notice to any
15 person, including the person to whom the subpoena is directed and the
16 person who is the subject of an investigation. An application for
17 court approval is subject to the fee and process set forth in RCW
18 36.18.012(3).

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.110 RCW
20 to read as follows:

21 (1) The director or authorized assistants may apply for and obtain
22 a superior court order approving and authorizing a subpoena in advance
23 of its issuance. The application may be made in the county where the
24 subpoenaed person resides or is found, or the county where the
25 subpoenaed documents, records, or evidence are located, or in Thurston
26 county. The application must:

27 (a) State that an order is sought under this section;

28 (b) Adequately specify the documents, records, evidence, or
29 testimony; and

30 (c) Include a declaration made under oath that an investigation is
31 being conducted for a lawfully authorized purpose related to an
32 investigation within the department's authority and that the subpoenaed
33 documents, records, evidence, or testimony are reasonably related to an
34 investigation within the department's authority.

35 (2) When an application under this section is made to the
36 satisfaction of the court, the court must issue an order approving the

1 subpoena. An order under this subsection constitutes authority of law
2 for the agency to subpoena the documents, records, evidence, or
3 testimony.

4 (3) The director or authorized assistants may seek approval and a
5 court may issue an order under this section without prior notice to any
6 person, including the person to whom the subpoena is directed and the
7 person who is the subject of an investigation. An application for
8 court approval is subject to the fee and process set forth in RCW
9 36.18.012(3).

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 19.146 RCW
11 to read as follows:

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

18 (a) State that an order is sought under this section;

19 (b) Adequately specify the documents, records, evidence, or
20 testimony; and

21 (c) Include a declaration made under oath that an investigation is
22 being conducted for a lawfully authorized purpose related to an
23 investigation within the department's authority and that the subpoenaed
24 documents, records, evidence, or testimony are reasonably related to an
25 investigation within the department's authority.

26 (2) When an application under this section 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 documents, records, evidence, or
30 testimony.

31 (3) The director or authorized assistants may seek approval and a
32 court may issue an order under this section without prior notice to any
33 person, including the person to whom the subpoena is directed and the
34 person who is the subject of an investigation. An application for
35 court approval is subject to the fee and process set forth in RCW
36 36.18.012(3).

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.230 RCW
2 to read as follows:

3 (1) The director or authorized assistants may apply for and obtain
4 a superior court order approving and authorizing a subpoena in advance
5 of its issuance. The application may be made in the county where the
6 subpoenaed person resides or is found, or the county where the
7 subpoenaed documents, records, or evidence are located, or in Thurston
8 county. The application must:

9 (a) State that an order is sought under this section;

10 (b) Adequately specify the documents, records, evidence, or
11 testimony; and

12 (c) Include a declaration made under oath that an investigation is
13 being conducted for a lawfully authorized purpose related to an
14 investigation within the department's authority and that the subpoenaed
15 documents, records, evidence, or testimony are reasonably related to an
16 investigation within the department's authority.

17 (2) When an application under this section is made to the
18 satisfaction of the court, the court must issue an order approving the
19 subpoena. An order under this subsection constitutes authority of law
20 for the agency to subpoena the documents, records, evidence, or
21 testimony.

22 (3) The director or authorized assistants may seek approval and a
23 court may issue an order under this section without prior notice to any
24 person, including the person to whom the subpoena is directed and the
25 person who is the subject of an investigation. An application for
26 court approval is subject to the fee and process set forth in RCW
27 36.18.012(3).

28 NEW SECTION. **Sec. 7.** A new section is added to chapter 21.20 RCW
29 to read as follows:

30 (1) The director or authorized assistants may apply for and obtain
31 a superior court order approving and authorizing a subpoena in advance
32 of its issuance. The application may be made in the county where the
33 subpoenaed person resides or is found, or the county where the
34 subpoenaed documents, records, or evidence are located, or in Thurston
35 county. The application must:

36 (a) State that an order is sought under this section;

1 (b) Adequately specify the documents, records, evidence, or
2 testimony; and

3 (c) Include a declaration made under oath that an investigation is
4 being conducted for a lawfully authorized purpose related to an
5 investigation within the department's authority and that the subpoenaed
6 documents, records, evidence, or testimony are reasonably related to an
7 investigation within the department's authority.

8 (2) When an application under this section is made to the
9 satisfaction of the court, the court must issue an order approving the
10 subpoena. An order under this subsection constitutes authority of law
11 for the agency to subpoena the documents, records, evidence, or
12 testimony.

13 (3) The director or authorized assistants may seek approval and a
14 court may issue an order under this section without prior notice to any
15 person, including the person to whom the subpoena is directed and the
16 person who is the subject of an investigation. An application for
17 court approval is subject to the fee and process set forth in RCW
18 36.18.012(3).

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 21.30 RCW
20 to read as follows:

21 (1) The director or authorized assistants may apply for and obtain
22 a superior court order approving and authorizing a subpoena in advance
23 of its issuance. The application may be made in the county where the
24 subpoenaed person resides or is found, or the county where the
25 subpoenaed documents, records, or evidence are located, or in Thurston
26 county. The application must:

27 (a) State that an order is sought under this section;

28 (b) Adequately specify the documents, records, evidence, or
29 testimony; and

30 (c) Include a declaration made under oath that an investigation is
31 being conducted for a lawfully authorized purpose related to an
32 investigation within the department's authority and that the subpoenaed
33 documents, records, evidence, or testimony are reasonably related to an
34 investigation within the department's authority.

35 (2) When an application under this section is made to the
36 satisfaction of the court, the court must issue an order approving the

1 subpoena. An order under this subsection constitutes authority of law
2 for the agency to subpoena the documents, records, evidence, or
3 testimony.

4 (3) The director or authorized assistants may seek approval and a
5 court may issue an order under this section without prior notice to any
6 person, including the person to whom the subpoena is directed and the
7 person who is the subject of an investigation. An application for
8 court approval is subject to the fee and process set forth in RCW
9 36.18.012(3).

10 NEW SECTION. **Sec. 9.** A new section is added to chapter 31.04 RCW
11 to read as follows:

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

18 (a) State that an order is sought under this section;

19 (b) Adequately specify the documents, records, evidence, or
20 testimony; and

21 (c) Include a declaration made under oath that an investigation is
22 being conducted for a lawfully authorized purpose related to an
23 investigation within the department's authority and that the subpoenaed
24 documents, records, evidence, or testimony are reasonably related to an
25 investigation within the department's authority.

26 (2) When an application under this section 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 documents, records, evidence, or
30 testimony.

31 (3) The director or authorized assistants may seek approval and a
32 court may issue an order under this section without prior notice to any
33 person, including the person to whom the subpoena is directed and the
34 person who is the subject of an investigation. An application for
35 court approval is subject to the fee and process set forth in RCW
36 36.18.012(3).

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 31.45 RCW
2 to read as follows:

3 (1) The director or authorized assistants may apply for and obtain
4 a superior court order approving and authorizing a subpoena in advance
5 of its issuance. The application may be made in the county where the
6 subpoenaed person resides or is found, or the county where the
7 subpoenaed documents, records, or evidence are located, or in Thurston
8 county. The application must:

9 (a) State that an order is sought under this section;

10 (b) Adequately specify the documents, records, evidence, or
11 testimony; and

12 (c) Include a declaration made under oath that an investigation is
13 being conducted for a lawfully authorized purpose related to an
14 investigation within the department's authority and that the subpoenaed
15 documents, records, evidence, or testimony are reasonably related to an
16 investigation within the department's authority.

17 (2) When an application under this section is made to the
18 satisfaction of the court, the court must issue an order approving the
19 subpoena. An order under this subsection constitutes authority of law
20 for the agency to subpoena the documents, records, evidence, or
21 testimony.

22 (3) The director or authorized assistants may seek approval and a
23 court may issue an order under this section without prior notice to any
24 person, including the person to whom the subpoena is directed and the
25 person who is the subject of an investigation. An application for
26 court approval is subject to the fee and process set forth in RCW
27 36.18.012(3).

--- END ---