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SENATE BILL 5076

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Hobbs, Benton, Prentice, Keiser, Haugen, Tom, Shin, Kline, and Roach; by request of Department of Financial Institutions

Read first time 01/12/11. Referred to Committee on Financial Institutions, Housing & Insurance.

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).

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