Judiciary Committee

SB 5446

Title: An act relating to state auditor applications for investigative subpoenas.

Brief Description: Providing a process for the state auditor's office to apply for investigative subpoenas.

Sponsors: Senators Hobbs, Schoesler, Hatfield and Tom; by request of State Auditor.

Brief Summary of Bill

- Authorizes the State Auditor to seek judicial approval of a subpoena in advance of its issuance.

Hearing Date: 3/19/13

Staff: Cece Clynch (786-7195).

Background:

The State Auditor (Auditor) has the following general duties:

- audit the accounts of all collectors of the revenue and other holders of public money required by law to pay the same into the treasury;
- inspect the books of any person charged with the receipt, safekeeping, and disbursement of public moneys;
- investigate improper governmental activity;
- provide information to the Attorney General regarding delinquencies in assessment, collection, and payment of the revenue;
- provide information to the Legislature, when required; and
- report to the Director of the Office of Financial Management regarding persons who have received moneys belonging to the state and have not accounted therefore.

The Auditor also has authority to conduct an audit of financial and legal compliance of any entity that receives public moneys through contract or grant.

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.

Statutory authority is given to the Auditor to issue subpoenas and compulsory process to compel attendance of witnesses and the production of books and papers. When any person so summoned to appear or produce neglects or refuses to do so, the Auditor may apply to the superior court to issue a subpoena.

In 2007 the Washington State Supreme Court (Court) held in *State v. Miles, 160 Wn. 2d 236,* that a search of personal banking records by the Department of Financial Institutions (DFI) without a judicially issued warrant or subpoena violated Article I, section 7, of the Washington Constitution. Article I, section 7 states that "[n]o person shall be disturbed in his private affairs . . . without authority of law." The Court invalidated the DFI's statute to the extent it authorized the DFI to issue subpoenas to third parties for otherwise private information not related to the regulated business activities.

In 2010 legislation was enacted establishing a process for the Department of Labor and Industries, the Employment Security Department, and the Department of Revenue to seek judicial approval of a subpoena in advance of its issuance. In 2011 similar statutory process was provided to the Department of Financial Institutions.

Summary of Bill:

The Legislature intends to provide a process for the Auditor to apply for court approval of an investigative subpoena which is authorized under current law in such cases where the Auditor seeks such court approval, or where court approval is required by law or Article I, section 7 of the state Constitution. It is explicitly stated that it is not the Legislature's intent to require court approval except where otherwise required by law or by Article I, section 7, or to create any new authority to subpoena records or any new rights for any person.

The Auditor, and his or her authorized assistants, 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 and indicate the statutory authority; adequately specify the records, documents, or testimony sought; and declare under oath that an investigation is being conducted for a lawfully authorized purpose and that the documents or testimony are reasonably related to an investigation within the Auditor'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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.