

# HOUSE BILL REPORT

## HB 2789

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**As Reported by House Committee On:**  
Commerce & Labor

**Title:** An act relating to authorizing issuance of subpoenas for purposes of agency investigations of underground economic activity.

**Brief Description:** Authorizing issuance of subpoenas for purposes of agency investigations of underground economy activity.

**Sponsors:** Representatives Conway, Chase, Hudgins, Moeller and Simpson.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 1/22/10, 1/29/10 [DPS].

**Brief Summary of Substitute Bill**

- Creates 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.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green and Williams.

**Staff:** Joan Elgee (786-7106).

**Background:**

The Department of Labor and Industries (L&I) has authority to issue subpoenas for testimony and records in connection with any matters relating to workers' compensation. Likewise, the Employment Security Department (ESD) has authority to issue subpoenas for testimony and records in connection with any dispute related to unemployment compensation. The Department of Revenue (DOR) has similar authority with respect to taxes administered by the DOR.

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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.*

In 2007 the Washington State Supreme Court (Court) held 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. (*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 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 2009 legislation was enacted (SB 5568) establishing a process for the DOR to apply to a court for a subpoena for third party records. The subpoena must be served on the third party.

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**Summary of Substitute Bill:**

Legislative findings are made that underground economy activity in the state results in lost revenue to the state and is unfair to law-abiding businesses. The Legislature further finds that the issuance of subpoenas is a highly useful tool in the investigation of underground economy activity. The Legislature intends to provide a process for the L&I, the ESD, and the DOR to apply for court approval of an agency investigative subpoena where the agency seeks such approval, or where court approval is required by law or Article I, section 7 of the state Constitution. The Legislature does not intend to require court approval except where otherwise required, or to create any new authority to subpoena records or any new rights for any person.

The L&I, the ESD, and the DOR, through their respective agency heads and agents, 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 the records, documents, or testimony; 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 L&I, the ESD, or the DOR's authority, as appropriate. 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.

**Substitute Bill Compared to Original Bill:**

The substitute bill adds language to the intent section referring to current agency authority to collect overpayments, as well as taxes, and to unreported employees as part of the underground economy.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill brings in revenue and is an important tool for the L&I to recover premiums.

(In support with concerns) The L&I typically asks first, but sometimes the person will not give the information and a subpoena is issued. Sometimes the proof is in a third place and this is where the *Miles* case limited agency authority. There is one minor concern in that the fiscal note assumes that claimants working under the table are included in addition to employers, but the intent section refers only to taxes.

(Opposed) None.

**Persons Testifying:** (In support) David Johnson, Washington State Building and Construction Trades Council; and Bob Abbott, Washington and North Idaho District Council of Laborers.

(In support with concerns) Carl Hammersburg, Department of Labor and Industries.

**Persons Signed In To Testify But Not Testifying:** None.