

1 **SHB 2353 - H AMD 162 WITHDRAWN 2/16/02**

2 By Representatives Alexander and Lantz

3 Strike everything after the enacting clause and insert the
4 following:

5 "NEW SECTION. **Sec. 1.** The legislature intends that when the
6 death of a person, serious injury to a person, or other substantial
7 loss is alleged or suspected to be caused at least in part by the
8 actions of a state agency, a loss prevention review shall be conducted.
9 The legislature recognizes the tension inherent in a loss prevention
10 review and the need to balance the prevention of harm to the public
11 with state agencies' accountability to the public. The legislature
12 intends to minimize this tension and to foster open and frank
13 discussions by granting members of the loss prevention review teams
14 protection from having to testify, and by declaring a general rule that
15 the work product of these teams is inadmissible in civil actions or
16 administrative proceedings.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.41 RCW
18 to read as follows:

19 (1) The director of financial management shall appoint a loss
20 prevention review team when the death of a person, serious injury to a
21 person, or other substantial loss is alleged or suspected to be caused
22 at least in part by the actions of a state agency, unless the director
23 in his or her discretion determines that the incident does not merit
24 review. A loss prevention review team may also be appointed when any
25 other substantial loss occurs as a result of agency policies,
26 litigation or defense practices, or other management practices. When
27 the director decides not to appoint a loss prevention review team he or
28 she shall issue a statement of the reasons for the director's decision.
29 The statement shall be made available on the web site of the office of
30 financial management. The director's decision pursuant to this section
31 to appoint or not appoint a loss prevention review team shall not be
32 admitted into evidence in a civil or administrative proceeding.

33 (2) A loss prevention review team shall consist of at least three
34 but no more than five persons, and may include independent consultants,
35 contractors, or state employees, but it shall not include any person
36 employed by the agency involved in the loss or risk of loss giving rise

1 to the review, nor any person with testimonial knowledge of the
2 incident to be reviewed. At least one member of the review team shall
3 have expertise relevant to the matter under review.

4 (3) The loss prevention review team shall review the death,
5 serious injury, or other incident and the circumstances surrounding it,
6 evaluate its causes, and recommend steps to reduce the risk of such
7 incidents occurring in the future. The loss prevention review team
8 shall accomplish these tasks by reviewing relevant documents,
9 interviewing persons with relevant knowledge, and reporting its
10 recommendations in writing to the director of financial management and
11 the director of the agency involved in the loss or risk of loss within
12 the time requested by the director of financial management. The final
13 report shall not disclose the contents of any documents required by law
14 to be kept confidential.

15 (4) Pursuant to guidelines established by the director, state
16 agencies must notify the office of financial management immediately
17 upon becoming aware of a death, serious injury, or other substantial
18 loss that is alleged or suspected to be caused at least in part by the
19 actions of the state agency. State agencies shall provide the loss
20 prevention review team ready access to relevant documents in their
21 possession and ready access to their employees.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.41 RCW
23 to read as follows:

24 (1) The final report from a loss prevention review team to the
25 director of financial management shall be made public by the director
26 promptly upon receipt, and shall be subject to public disclosure. The
27 final report shall be subject to discovery in a civil or administrative
28 proceeding. However, the final report shall not be admitted into
29 evidence or otherwise used in a civil or administrative proceeding
30 except pursuant to subsection (2) of this section.

31 (2) The relevant excerpt or excerpts from the final report of a
32 loss prevention review team may be used to impeach a fact witness in a
33 civil or administrative proceeding only if the party wishing to use the
34 excerpt or excerpts from the report first shows the court by clear and
35 convincing evidence that the witness, in testimony provided in
36 deposition or at trial in the present proceeding, has contradicted his
37 or her previous statements to the loss prevention review team on an
38 issue of fact material to the present proceeding. In that case, the
39 party may use only the excerpt or excerpts necessary to demonstrate the

1 contradiction. This section shall not be interpreted as expanding the
2 scope of material that may be used to impeach a witness.

3 (3) No member of a loss prevention review team may be examined in
4 a civil or administrative proceeding as to (a) the work of the loss
5 prevention review team, (b) the incident under review, (c) his or her
6 statements, deliberations, thoughts, analyses, or impressions relating
7 to the work of the loss prevention review team or the incident under
8 review, or (d) the statements, deliberations, thoughts, analyses, or
9 impressions of any other member of the loss prevention review team, or
10 any person who provided information to it, relating to the work of the
11 loss prevention review team or the incident under review.

12 (4) Any document that exists prior to the appointment of a loss
13 prevention review team, or that is created independently of such a
14 team, does not become inadmissible merely because it is reviewed or
15 used by the loss prevention review team. A person does not become
16 unavailable as a witness merely because the person has been interviewed
17 by or has provided a statement to a loss prevention review team.
18 However, if called as a witness, the person may not be examined
19 regarding the person's interactions with the loss prevention review
20 team, including without limitation whether the loss prevention review
21 team interviewed the person, what questions the loss prevention review
22 team asked, and what answers the person provided to the loss prevention
23 review team. This section shall not be construed as restricting the
24 person from testifying fully in any proceeding regarding his or her
25 knowledge of the incident under review.

26 (5) Documents prepared by or for the loss prevention review team
27 are inadmissible and may not be used in a civil or administrative
28 proceeding, except that excerpts may be used to impeach the credibility
29 of a witness under the same circumstances that excerpts of the final
30 report may be used pursuant to subsection (2) of this section.

31 (6) The restrictions set forth in this section shall not apply in
32 a licensing or disciplinary proceeding arising from an agency's effort
33 to revoke or suspend the license of any licensed professional based in
34 whole or in part upon allegations of wrongdoing in connection with the
35 death, injury, or other incident reviewed by the loss prevention review
36 team.

37 (7) Within one hundred twenty days after completion of the final
38 report of a loss prevention review team, the agency under review shall
39 issue to the office of financial management a response to the report.

1 The response will indicate (a) which of the report's recommendations
2 the agency hopes to implement, (b) whether implementation of those
3 recommendations will require additional funding or legislation, and (c)
4 whatever other information the director may require. This response
5 shall be considered part of the final report and shall be subject to
6 all provisions of this section that apply to the final report,
7 including without limitation the restrictions on admissibility and use
8 in civil or administrative proceedings and the obligation of the
9 director to make the final report public.

10 (8) Nothing in section 2 of this act or this section is intended
11 to limit the scope of a legislative inquiry into or review of an
12 incident that is the subject of a loss prevention review."

EFFECT: Amends the intent section to conform the language regarding when a review team should be conducted to that contained in the bill. (See section 1).

Allows a loss prevention review team to also be appointed when a substantial loss occurs as a result of agency policies, litigation or defense practices, or other management practices. (See section 2(1)).

Amends the requirement for an agency to immediately report a loss to OFM to provide that such notification will be pursuant to guidelines established by the director. (See section 2(4)).

Clarifies the provision on availability of a witness to testify in a proceeding when the person has been interviewed by a loss prevention team by: specifying that the person may not be asked questions regarding interactions with the review team, and specifically stating that the section does not prevent the person from testifying about his or her knowledge of the incident under review. (See section 3(4)).