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## Judiciary Committee

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### HB 2353

**Title:** An act relating to state agency loss prevention.

**Brief Description:** Providing for loss prevention review teams.

**Sponsors:** Representatives Alexander, Lantz, Miloscia and Esser; by request of Governor Locke and Attorney General.

#### Brief Summary of Bill

- Requires the Office of Financial Management to form a loss prevention review team to review a death, serious injury or other substantial loss that allegedly involves a state agency.
- Makes the final report and any documents prepared by or for a loss prevention review team inadmissible in a civil or administrative proceeding, except for impeaching a witness.
- Prevents a member of a loss prevention review team from testifying in a civil or administrative proceeding as to the work of the review team or the incident under review.
- Prevents a person who has provided statements to a loss prevention review team from being examined in a civil or administrative proceeding regarding those statements, except for impeachment purposes.

**Hearing Date:** 1/24/02

**Staff:** Edie Adams (786-7180).

#### Background:

During the 2001 interim, the Governor and Attorney General sponsored a Risk Management Task Force in response to increasing attention to incidents of severe harm to citizens and the increasing liability of the state for injuries and losses. The purpose of the task force was to

identify how the state can deliver its difficult and risky programs and services in a way that better protects citizens of the state from harm or injury and that engages in the most effective risk management possible. The task force was comprised of a number of groups, including; the Attorney General, legislators, agency directors and budget officials, risk managers, attorneys, and advisors from the University of Washington.

The Risk Management Task Force issued a number of recommendations in its final report. One of the recommendations of the task force was to require agencies to conduct post-incident reviews that would provide recommendations on how to avoid or reduce losses in the future. The recommendation states that these reviews should be made available to the public and the Legislature, but should not be admissible as evidence in civil proceedings, so as to encourage open and frank discussions of the problems that led to the loss and how improvements may be made to reduce further losses.

Under state evidence laws, all relevant evidence is admissible unless specifically barred by some other rule of evidence. One such exclusion of potentially relevant evidence is Evidence Rule 407, which prohibits evidence of subsequent remedial measures to be admitted for the purpose of proving negligence or culpable conduct relating to the incident. Evidence of subsequent remedial measures may be introduced for other purposes, however, such as to prove ownership, control or feasibility of precautionary measures or for impeachment purposes. This rule is limited to remedial measures and does not address the issue of accident investigations or reviews.

### **Summary of Bill:**

Whenever the death or serious injury of a person, or other substantial loss, is alleged or suspected to be caused in part by the actions of a state agency, the director of the Office of Financial Management must appoint a loss prevention review team, unless the director determines the incident does not merit review. The director's decision to appoint or not appoint a loss prevention review team is not admissible in a civil or administrative proceeding.

A loss prevention review team must consist of between three and five members and may include independent consultants, contractors, or state employees. A loss prevention review team may not include any person employed by the agency involved in the loss or risk of loss giving rise to the review nor any person with testimonial knowledge of the incident.

The loss prevention review team must review the incident, evaluate its causes, and recommend steps to reduce the risks of such incidents recurring by reviewing relevant documents and interviewing people with relevant knowledge. The final report of the team may not disclose the contents of any documents required by law to be kept confidential.

The final report of a loss prevention review team must be made public by the director and is subject to public disclosure. The final report is subject to discovery in a civil or administrative proceeding. However, the final report, and any documents prepared by of for the loss prevention review team, are not admissible in a civil or administrative proceeding except for the purpose of impeaching a witness.

Excerpts from the final report or any documents prepared by or for the team may only be used to impeach a witness if the party wishing to use the excerpts for impeachment purposes shows by clear and convincing evidence that the witness has contradicted a previous statement to the team on an issue of fact that is material to the present proceeding. The party may only introduce the portions of the final report or documents that are necessary to prove the contradiction.

A member of a loss prevention review team may not be examined in a civil or administrative proceeding as to the work of the team, the incident reviewed by the team, or the thoughts, deliberations, statements or analysis of the member, any other member of the team or any person who provided information to the team, that relates to the work of the team or the incident under review.

A document that is available prior to the creation of a loss prevention review team or that is created independently of a team does not become inadmissible as a result of the team's consideration of the document. Similarly, a person who provides testimony or statements to a loss prevention review team does not become unavailable as a witness as a result. However, a person who has provided testimony or statements to a loss prevention review team may not be examined in a civil or administrative proceeding regarding the testimony or statements except for the purpose of impeachment.

The restrictions of the act do not apply to a licensing or disciplinary proceeding in which an agency is attempting to revoke or suspend the license of a person for alleged wrongdoing in connection with an incident reviewed by a loss prevention review team.

A statement is made that nothing in the act is intended to limit the scope of a legislative inquiry into or review of an incident that is the subject of a loss prevention review.

**Appropriation:** None.

**Fiscal Note:** Requested on January 23, 2002.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.