

HOUSE BILL REPORT

ESSB 5173

As Reported by House Committee On:
State Government, Elections & Information Technology

Title: An act relating to loss prevention reviews by state agencies.

Brief Description: Concerning loss prevention reviews by state agencies.

Sponsors: Senate Committee on State Government (originally sponsored by Senators Chase, Miloscia, Hunt and Hobbs; by request of Department of Enterprise Services).

Brief History:

Committee Activity:

State Government, Elections & Information Technology: 3/14/17, 3/22/17 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Provides for state agencies, rather than the Department of Enterprise Services, to appoint loss prevention review teams.
- Provides an exemption from the review team requirement when another federal or state agency, or the affected agency, is investigating the loss under other requirements.
- Modifies the size and composition of review teams.

HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Hudgins, Chair; Dolan, Vice Chair; Koster, Ranking Minority Member; Volz, Assistant Ranking Minority Member; Appleton, Gregerson, Irwin, Kraft and Pellicciotti.

Staff: Joan Elgee (786-7106).

Background:

Loss Prevention Review Teams.

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.

State agencies must notify the Department of Enterprise Services (DES) of a death of a person, serious injury, or other substantial loss alleged or suspected to be at least partially caused by the actions of the agency. The Director of the DES (Director) must appoint a loss prevention review team to review the loss unless the Director determines no review is merited. Review teams may also be appointed when any other substantial loss occurs as a result of agency policies, litigation or defense practices, or other management practices. When a review team is not appointed, the Director must issue a statement of the reasons for the decision and make the statement available on the DES website. The Director's decision to appoint or not appoint a review team is not admissible in a civil or administrative proceeding.

Review teams must consist of at least three and no more than five persons and may include independent consultants, contractors, or state employees. Persons employed by the agency involved in the loss and those with testimonial knowledge may not be on the team. At least one member of a review team must have expertise relevant to the matter under review.

Review teams must examine the incident and surrounding circumstances and evaluate incident causes through a review of relevant documents and interviews with persons who have relevant knowledge. Review teams must submit a written report, to include recommendations regarding steps to reduce the risk of future incidents, to the Director and the involved agency. The involved agency has 120 days to issue a response, which becomes part of a final report.

Review team final reports must be made public by the Director upon receipt and are subject to public disclosure and discovery in civil and administrative proceedings. However, final reports are not admissible in a civil or administrative proceeding, except to impeach a witness. Final reports may also not disclose documents required to be kept confidential.

Other Loss Investigations.

Other state and federal laws require investigations and reporting. For example, when an adverse event occurs in a medical facility, state law requires the facility to notify and submit a report to the Department of Health. The report must include a root cause analysis and corrective action plan. Certain documents related to the report are confidential and are not subject to public disclosure.

Summary of Amended Bill:

The responsibility to appoint loss prevention review teams is shifted from the Director to state agencies in consultation with the DES and upon delegation. State agencies are not required to appoint a review team if a death, injury, or substantial loss is already being investigated by another federal or state agency, or by the affected agency, under federal or state agency requirements.

After consultation with the affected agency, the DES may direct a state agency to conduct loss prevention reviews and also may provide guidance to a state agency as requested. The Director may develop rules for state agency review teams.

Review teams may consist of more than five members. The prohibition on employees of the agency involved in the loss serving on the review team is changed to persons directly involved in the loss. No more than half the review team members may be employees of the affected agency.

Review team reports must be submitted to the Director and the head of the affected state agency, and also be made public after review. The review team reports must: (1) include review findings; (2) analyze the causes and contributing factors; (3) analyze future risk; (4) include methods the agency will use to address and mitigate risks identified; and (5) include any legislative recommendations and other specified matters. Final reports must not disclose documents that are subject to legal privilege or exemption, in addition to confidential documents. Any review conducted by another agency or by the affected agency, under other requirements, must contain the report elements, and is subject to the review team provisions regarding making reports public, public disclosure, discovery, and admissibility to the extent those provisions do not conflict with statutes or rules governing those reviews.

Provisions allowing the DES to appoint a review team when any other substantial loss occurs, addressing the Director's decision not to appoint a review team, and provisions for agencies to respond to reviews are repealed. Cross-references are corrected.

"State agency" is defined as every state agency, office, officer, board, commission, institution, and institution of higher education, including all state universities, regional universities, The Evergreen State College, and community and technical colleges.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment:

- adds the requirement that a review conducted by another agency or by the affected agency, under other requirements, must contain the elements required by a review team report and is subject to review team provisions regarding making reports public, public disclosure, discovery, and admissibility to the extent those provisions do not conflict with statutes or rules governing those reviews;
- strikes the specific exception for adverse event reporting for medical facilities;
- strikes provisions stating that adverse event investigations continue to be subject to adverse event requirements and that adverse event reports continue to be subject to confidentiality, privilege, and exemptions in relevant laws, and must be provided to the Department of Health;
- adds the requirement that no more than half the members of the review team may be employees of the affected agency; and
- strikes the annual report requirement.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) We need to know why an accident happened and prevent a reoccurrence. This bill updates procedures and makes loss prevention more efficient and effective. Work on the amendments with the sponsors is taking place. The medical facility adverse event process should be kept intact while improving the review team process.

(Opposed) The bill streamlines the review process, provides flexibility, and makes the reviews more useful. The House bill is preferred. The review teams were established to make loss prevention more transparent, but the Senate version takes medical facility reviews back into the dark.

Persons Testifying: (In support) Senator Chase, prime sponsor; Ann Larson, Department of Enterprise Services; and Jillian Kilby, University of Washington Medicine.

(Opposed) Larry Shannon, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: Jason Siems, Department of Enterprise Services.