

HOUSE BILL REPORT

ESHB 1323

As Passed House:
March 1, 2017

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

Brief Description: Concerning loss prevention reviews by state agencies.

Sponsors: House Committee on State Govt, Elections & IT (originally sponsored by Representatives Wylie, Harris, Nealey, McBride, Stanford and Muri; by request of Department of Enterprise Services).

Brief History:

Committee Activity:

State Government, Elections & Information Technology: 1/31/17, 2/14/17 [DPS].

Floor Activity:

Passed House: 3/1/17, 98-0.

Brief Summary of Engrossed Substitute Bill

- Requires state agencies, rather than the Department of Enterprise Systems (DES), to appoint loss prevention review teams.
- Provides an exception for required appointment of review teams when certain investigations are already underway.
- Modifies the size and composition of review teams, and the content of their reports.
- Authorizes the DES rulemaking regarding loss prevention reviews.

HOUSE COMMITTEE ON STATE GOVERNMENT, ELECTIONS & INFORMATION TECHNOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. 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: Megan Palchak (786-7105).

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.

Background:

The Director of the Department of Enterprise Services (DES) appoints loss prevention review teams when the death of a person, serious injury, or other substantial loss is alleged or suspected to be at least partially caused by the actions of a state agency, unless the Director determines the incident does not merit review. 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. The statement must be available on the DES website. The Director's decision to appoint or not appoint a review team shall not be admitted into evidence 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 or risk triggering the review may not be included as a member of a review team, nor may those with testimonial knowledge of the incident to be reviewed. At least one member of a review team must have expertise relevant to the matter under review. Review teams must issue final reports to the Director who, upon receipt, makes the report public.

Review teams must examine incidents and surrounding circumstances, and evaluate causes through a review of relevant documents and interviews with persons who have relevant knowledge. Review teams must report written recommendations regarding steps to reduce risk of future incidents to the Director and the agency involved in the loss or risk of loss.

Final reports must be made public by the Director upon receipt, and must be subject to public disclosure and discovery in civil and administrative hearings. Agencies under review must respond to reports within 120 days. Final reports may not be admitted into evidence or otherwise used in civil or administrative proceedings.

Summary of Engrossed Substitute Bill:

The duty to appoint loss prevention review teams is shifted from the Director of the Department of Enterprise Services (DES) 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 pursuant to federal or state agency requirements. Any review conducted by another agency or under other requirements must contain required elements of a loss prevention review and comply with reporting requirements. State agency responses to review reports are not required.

The DES may direct state agencies to conduct loss prevention reviews after consultation, and also may provide guidance to state agencies as requested. The Director may develop rules for state agency review teams.

Review teams may consist of more than five members. The majority of members must be persons from agencies other than the affected agency with expertise relevant to the matter

under review. Review teams may not include persons directly involved in the loss or risk under review.

Review team reports must be submitted to the directors of the DES and the affected state agency, and also be made public after review. They must: (1) include review findings; (2) analyze the causes and contributing factors; (3) analyze future risk; and (4) include methods to address and mitigate risks identified, which may include changes to policies or procedures and legislative recommendations. Final reports must not disclose documents that are subject to legal privilege or exemption.

"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.

Appropriation: None.

Fiscal Note: Available on original bill. New fiscal note requested on March 6, 2017.

Effective Date: 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 leverages in-house expertise and averts duplication of efforts, while increasing efficiency, accountability, and transparency.

(Opposed) None.

Persons Testifying: Representative Wylie, prime sponsor; and Jason Siems, Washington Department of Enterprise Services.

Persons Signed In To Testify But Not Testifying: None.