

SENATE BILL REPORT

ESSB 5173

As Amended by House, April 5, 2017

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: 1/27/17, 2/08/17 [DPS].

Floor Activity:

Passed Senate: 3/01/17, 49-0.

Passed House: 4/05/17, 97-0.

Brief Summary of Engrossed First Substitute Bill

- Allows for state agencies to develop loss prevention review teams in consultation with and upon the delegation of Department of Enterprise Services (DES).
- Requires agency loss prevention teams to submit reports to the head of their agency and the director of DES.
- DES may adopt rules and provide guidance for state agency loss prevention review teams, if requested.
- Requires the DES Director to report to the Legislature annually.

SENATE COMMITTEE ON STATE GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5173 be substituted therefor, and the substitute bill do pass.

Signed by Senators Miloscia, Chair; Zeiger, Vice Chair; Hunt, Ranking Minority Member; Kuderer and Pearson.

Staff: Melissa Van Gorkom (786-7491)

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: State Loss Prevention Review Team (LPRT) in General. The Legislature created the LPRT program in 2002.

Agencies are required to immediately report to DES any death, serious injury, or other substantial loss that is alleged or suspected to be caused at least in part by the actions of the agency.

The DES Director must appoint a team of three to five people, including independent consultants, contractors, or state agency employees not involved in the incident to LPRT when the death of a person, serious injury to a person, or other substantial loss is alleged or suspected to be caused at least in part by the actions of a state agency. The director may determine that the incident does not merit review in which case a statement of the reason for the director's decision must be issued and posted on the DES website.

The LPRT must:

- review the circumstances and causes of the incident;
- evaluate its causes; and
- recommend steps an agency should take to reduce the risk of similar incidents.

The LPRT must report its recommendations to the DES Director and the director of the agency involved and will not disclose the contents of any document required by law to be kept confidential.

Final LPRT Report. The final report is subject to discovery in a civil or administrative proceeding. However, the final report, and any documents prepared by or for the LPRT, are not admissible in a civil proceeding except for the purpose of impeaching a witness.

A member of a LPRT may not be examined in a civil proceeding as to the work of the team or the incidents reviewed by the team. A person may testify in a separate civil proceeding even if the person has testified before a review team. However, the person may not be examined as to their interactions with the review team.

An agency must respond to a final report of the loss prevention review team, within 120 days, indicating which of the report's recommendations the agency hopes to implement, whether implementation requires additional funding or legislation, and other information the director may require.

Summary of Engrossed First Substitute Bill: State agencies are given authority to create loss prevention review teams in consultation with and upon the delegation of DES except when the death, injury, or substantial loss is already being investigated by another federal or state agency or by the affected state agency pursuant to federal or state requirements, including an investigation of an adverse health event and incident report required under Chapter 70.56 RCW. DES may also direct agencies to conduct a review after consultation with the agency as to the purpose, scope, necessary resources, and intended outcomes of the loss prevention review.

An LPRT must consist of at least three persons. The LPRT must submit a report to the DES director and the head of the state agency involved which must include:

- the team's findings;
- analysis of the causes, contributing factors, and future risks;
- methods that the agency will use to address and mitigate the risks identified, which may include changes to policies or procedures; and
- any legislative recommendations necessary to address and carry out the risk treatment strategies identified in the report and the manner in which the agency will measure effectiveness of its changes.

Reports made by medical facilities under Chapter 70.56 RCW must be provided to the Department of Health.

The report will not disclose the contents of any documents required by law or regulation to be kept private or confidential, or that are subject to legal privilege or exemption. The report must be made public by the director of DES after review.

DES may develop and enact rules that apply to all state agency loss prevention rule teams and may provide guidance to the state agency conducting a loss prevention review, if requested.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This procedure needs to be updated to reduce the duplication of efforts across government. The goal is to create a more efficient and effective tool for DES to review these incidents in the state of Washington. This bill would maintain the transparency and collect the reports from the agencies to allow for DES to track incidents and spot trends over time which will help focus the loss prevention efforts going forward.

OTHER: As drafted, University of Washington (UW) would be required to have two separate processes because the current process required by DOH and the Joint Commission requires inclusion of the care providers involved in the incident, which would not be allowed under the legislation. This bill needs an amendment to allow for UW to maintain its current review process which would include employees. UW would still provide a report to DES.

Persons Testifying: PRO: Senator Maralyn Chase, Prime Sponsor; Jason Siems, State Risk Manager.

OTHER: Jillian Kilby, University of Washington/Associate Director of State Relations; Elizabeth Cherry, University of Washington/Associate Provost for Compliance and Risk Services; Marcia Rhodes, University of Washington/Director of Health Sciences and UW Risk Management.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- 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.