

SENATE BILL REPORT

SB 5890

As Reported by Senate Committee On:
Labor, Commerce & Tribal Affairs, February 2, 2022

Title: An act relating to clarifying eligibility for the presumption for workers' compensation for all personnel working at a radiological hazardous waste facility.

Brief Description: Clarifying eligibility for the presumption for workers' compensation for all personnel working at a radiological hazardous waste facility.

Sponsors: Senators Keiser, Conway, Dhingra, Hasegawa, Kuderer, Lovick, Nobles, Saldaña, Stanford, Wellman and Wilson, C..

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/26/22, 2/02/22 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Replaces the definitions for Hanford nuclear site and United States Department of Energy Hanford site workers with definitions for radiological hazardous waste facility and exposed workers.
- Specifies that the worker's compensation presumption for these workers does not apply to communicable respiratory diseases and communicable neurological diseases.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Majority Report: That Substitute Senate Bill No. 5890 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair, Labor; Stanford, Vice Chair, Commerce & Tribal Affairs; King, Ranking Member; Robinson and Saldaña.

Minority Report: That it be referred without recommendation.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Braun and Rivers.

Staff: Susan Jones (786-7404)

Background: For United States Department of Energy (US DOE) Hanford site workers, there exists a prima facie presumption that certain diseases and conditions listed are occupational diseases for workers' compensation purposes.

This presumption of occupational disease may be rebutted by clear and convincing evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

The prima facie presumption applies to the following:

- respiratory disease;
- any heart problems, experienced within 72 hours of exposure to fumes, toxic substances, or chemicals at the site;
- certain cancer;
- beryllium sensitization, and acute and chronic beryllium disease; and
- neurological disease.

The presumption for cancer only applies to any active or former US DOE Hanford site worker who:

- has cancer that develops or manifests itself; and
- either was given a qualifying medical exam upon becoming a US DOE Hanford site worker that showed no evidence of cancer or was not given a qualifying medical exam because an exam was not required.

The presumption applies to the following cancers:

- leukemia;
- certain primary or secondary lung cancers;
- certain primary or secondary bone cancers;
- primary or secondary renal (kidney) cancer;
- Lymphomas, other than Hodgkin's disease;
- Waldenstrom's macroglobulinemia and mycosis fungoides; and
- primary cancer of the thyroid, breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain—with limitations, colon, ovary, and liver—with limitations.

The presumption extends to an applicable US DOE site worker following termination of service for the lifetime of that individual. A worker or the survivor of a worker who has died as a result of one of these conditions or diseases, and whose claim was denied by order of the Department of Labor and Industries (L&I), the Board of Industrial Insurance Appeals, or a court, can file a new claim for the same exposure and contended condition or

disease. These provisions apply to decisions made after June 7, 2018, without regard to the date of last injurious exposure or claim filing.

Provisions regarding attorneys' fees and costs on appeal are provided.

"Hanford nuclear site" and "Hanford site" and "site" means the approximately 560 square miles in southeastern Washington State, excluding leased land, state-owned lands, and lands owned by the Bonneville Power Administration, which is owned by the United States and which is commonly known as the Hanford reservation.

"United States Department of Energy Hanford site workers" and "Hanford site worker" means any person, including a contractor or subcontractor, who was engaged in the performance of work, either directly or indirectly, for the United States, regarding projects and contracts at the Hanford nuclear site and who worked on the site at the 200 east, 200 west, 300 area, environmental restoration disposal facility site, central plateau, or the river corridor locations for at least one eight-hour shift while covered under the workers' compensation provisions.

WAC 173-303-040 defines "mixed waste" as a dangerous, extremely hazardous, or acutely hazardous waste that contains both a nonradioactive hazardous component and, as defined by 10 C.F.R. 20.1003, source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"High-level radioactive waste," as defined in 33 U.S.C. Section 1402, is the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

The United States filed suit in the U.S. District Court for the Ninth Circuit against Washington State and related parties regarding these provisions. The court granted summary judgment in favor of the state, which was affirmed by a panel of the court of appeals. The United States has appealed the case to the United States Supreme Court. On January 10, 2022, the court agreed to review the judgment of the Ninth Circuit in this case.

Summary of Bill (First Substitute): The definitions for "Hanford nuclear site" and "United States Department of Energy Hanford site workers" are replaced with definitions for "radiological hazardous waste facility" and "exposed worker(s)."

The presumption that certain diseases are occupational diseases for workers' compensation for these workers is removed for communicable respiratory and neurological diseases.

"Exposed worker(s)" means a worker working at a radiological hazardous waste facility for at least an eight hour shift covered under this title, including conducting an inspection of the facility.

"Radiological hazardous waste facility" means any structure and its lands where high-level radioactive waste or mixed waste as defined above is stored or disposed of, except certain military installations.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & TRIBAL AFFAIRS COMMITTEE (First Substitute):

- Removes certain military installations from the definition of radiological hazardous waste facility.
- Removes the occupational disease presumption for liver, kidney, and reproduction system funds problems.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is a follow up, technical clean up bill that provided a presumptive coverage for workers working at Hanford. This expands the population slightly and harmonizes the provisions.

In 2018, the Legislature made the reasonable, responsible, and ethical decisions to provide a presumption to help so many workers. This bi-partisan bill was a great victory for workers in this state, offering support and resources for so many workers. This helped workers who helped build the facility, produce plutonium, and provide clean up. One exposure can cause a lifetime of illness. The intent was to include all workers in this situation. Unfortunately, some workers were left out. The bill makes sure those workers are included, such as inspectors. Those working around radiological hazards are doing extremely important work. We should match their commitment with our own. This corrects the unintended issue of leaving our certain workers. Whether they are involved in or oversee the clean up, they should be included.

The Attorney General's Office has been working for years to protect these workers exposed to radiological risk. The Legislature took an important step to pass the law. Unfortunately, the federal government sued the state and that has been ongoing. This bill makes important clarifications to existing law, expands the bill to cover all workers at radiological sites and the illnesses to align with the best current science.

OTHER: L&I was available for questions.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; AJ Fouts, Plumbers & Steamfitters UA Local 598; Noah Guzzo Purcell, WA State Attorney General's Office; Larry Brown, Washington State Labor Council, AFL-CIO; Mark Riker, Washington State Building and Construction Trades Council.

OTHER: Mike Ratko, Labor & Industries; Tammy Fellin, Labor & Industries.

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