

HOUSE BILL REPORT

HB 1723

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to the presumption of occupational disease for certain employees at the United States department of energy Hanford site.

Brief Description: Creating the presumption of occupational disease for certain employees at the United States department of energy Hanford site.

Sponsors: Representatives Haler, Riccelli, Sells, Gregerson, Ormsby, Doglio and Pollet.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/9/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Creates a presumption for Hanford nuclear site workers that certain enumerated diseases and conditions are occupational diseases, for the purposes of industrial insurance coverage.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

Minority Report: Do not pass. Signed by 2 members: Representatives Manweller, Ranking Minority Member; Pike.

Minority Report: Without recommendation. Signed by 1 member: Representative McCabe, Assistant Ranking Minority Member.

Staff: Trudes Tango (786-7384).

Background:

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.

Under the state's Industrial Insurance Act (Act), employers must insure through the State Fund administered by the Department of Labor and Industries (L&I) or may self-insure if qualified. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to benefits. Depending on the disability, workers are entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities.

To prove an occupational disease, the worker must show that the disease arose "naturally and proximately" out of employment. For certain firefighters, there is a *prima facie* presumption that the following medical conditions are occupational diseases: respiratory disease; certain heart problems; specified cancers; and infectious diseases.

The presumption of occupational disease for firefighters may be rebutted by a preponderance of evidence, including, but not limited to: use of tobacco products; physical fitness and weight; lifestyle; hereditary factors; and exposure from other employment or nonemployment activities. In addition, the presumption does not apply to a firefighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use.

In occupational disease cases where the worker's exposure may have occurred with multiple employers, the employer covered under industrial insurance at the time of the last injurious exposure to the substance or hazard is the liable employer.

Through a special agreement with the L&I, the United States Department of Energy (DOE) operates as a self-insured employer for the purposes of providing coverage for workers of contractors at the Hanford Nuclear Reservation. In addition, there are federal programs that provide compensation to certain DOE workers.

Summary of Substitute Bill:

A *prima facie* presumption of occupational disease is created for Hanford site workers. A Hanford site worker is any person, including a contractor or subcontractor, who was engaged in the performance of work, either directly or indirectly, for the United States, on projects and contracts at the Hanford nuclear site and worked on the site for at least one eight-hour shift while covered under the state's industrial insurance laws.

The presumption may be rebutted by clear and convincing evidence, including the use of tobacco, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

The *prima facie* presumption applies to the following diseases and conditions:

- respiratory disease;
- acute and chronic beryllium disease;
- heart problems, experienced within 72 hours of exposure to fumes, toxic substances, or chemicals at the site;
- certain cancers specified in the bill; and

- neurological disease.

Regarding cancer, the presumption only applies to a worker who has cancer that develops or manifests and who was given a qualifying medical examination upon becoming a Hanford site worker that showed no evidence of cancer. The presumption applies to the following cancers:

- leukemia;
- primary or secondary lung cancer, including bronchi and trachea, sarcoma of the lung, other than in situ lung cancer discovered during or after a postmortem examination, but not including mesothelioma or pleura cancer;
- primary or secondary bone cancer (including specific forms listed in the bill);
- primary or secondary renal cancer;
- lymphomas, other than Hodgkin's disease;
- Waldenstrom's macroglobulinemia and mycosis fungoides; and
- primary cancer of the:
 - thyroid;
 - male or female breast;
 - esophagus;
 - stomach;
 - pharynx;
 - small intestine;
 - pancreas;
 - bile ducts;
 - gall bladder;
 - salivary gland;
 - urinary bladder;
 - brain (with certain limitations);
 - colon;
 - ovary; and
 - liver (with certain limitations).

The presumption extends to the worker following termination of service for the lifetime of that individual.

A worker, or survivor of a worker who has died from one of the conditions or diseases, whose claim was denied by the L&I, the Board of Industrial Insurance Appeals, or a court, may file a new claim for the same exposure and contended condition or disease. The presumption applies to decisions made after the effective date of the bill, without regard to the date of last injurious exposure or claim filing.

Substitute Bill Compared to Original Bill:

The substitute bill: (a) provides that the presumption of occupational disease may be rebutted by clear and convincing evidence, including the use of tobacco, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities; (b) specifies that the presumption applies to workers who worked at least one eight-hour shift while covered under the Act (rather than who is currently covered under the Act); (c) removes the provision stating that for claims arising from the presumption, the DOE

is the responsible employer and no costs may be borne by the State Fund; (d) provides that a worker, or survivor of a worker who has died from one of the conditions or diseases, whose claim was denied by the L&I, the Board of Industrial Insurance Appeals, or a court, may file a new claim for the same exposure and contended condition or disease; (e) provides that the presumption applies to decisions made after the effective date of the bill, without regard to the date of last injurious exposure or claim filing; and (f) adds acute and chronic beryllium disease to the list.

Appropriation: None.

Fiscal Note: Requested on February 1, 2017.

Effective Date of Substitute 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) The Hanford site is half the size of Rhode Island and facilities occupy about 25 percent of the land. Nuclear weapons were produced there from the 1940s up until the 1980s and the work done there was significant and meaningful. It is now the most contaminated site in the world. The safety culture at Hanford has shifted these days. Although there are grievance procedures in place, the Department of Energy (DOE) favors management, and workers are being denied access to information about chemical exposures. There is a systematic pattern of denying occupational disease claims for Hanford workers. It is a clear violation of the central tenant of workers' compensation, which is swift and certain relief to injured workers. Hanford workers are doing the job of the nation and yet they have to fight and bring law suits in order to get workers' compensation. Workers have experienced symptoms such as nosebleeds and breathing issues. It is difficult for workers to identify a specific incident at work that causes these conditions, rather, it is the daily exposure to chemical vapors. It is difficult to prove what the exposure was when the DOE does not even know what chemicals are involved. There are hundreds of chemicals in the tanks. Workers give up trying to prove their claims. Hanford is not subject to inspections by the state agency that regulates safety in the workplace. It is a self-regulating site and that creates problems. Exposures on the site are not monitored or categorized so it is difficult for workers to prove their claims.

(Opposed) The Legislature is the steward of the workers' compensation program and it needs to balance a fair and sustainable system with the compelling needs of covered workers. As introduced, the bill departs from long established workers' compensation policy. The occupational disease presumption for firefighters was created because there was agreement by everyone that, based on medical science, certain exposures are linked to specific conditions. There are limitations and restrictions on the firefighter presumption that this bill does not have, such as how long the person must have been working as a firefighter before the presumption applies and how long the presumption lasts. The bill is breathtaking in its scope and inclusivity. The bill does not take into account any nexus between conditions and

any particular class of workers or exposures. Establishing a presumption creates a bad precedent. This bill has not been vetted.

Persons Testifying: (In support) Representative Haler, prime sponsor; Jeffery Johnson, Washington State Labor Council; Nickolas Bumpaous, United Association Plumbers and Steamfitters Local 598; Melinda Rouse; Lonnie Rouse; Abelardo Garza; Bertolla Bugarin; Seth Ellingsworth; Don Slaugh, Hanford Atomic Metal Trades Council; Tom Carpenter, Hanford Challenge; Steven Gilbert, Institute of Neurotoxicology and Neurological Disorders; Richard Lipsky, Washington Physicians for Social Responsibility; Michael White, Washington State Council of Fire Fighters; and Arthur West.

(Opposed) Kris Tefft, Washington State Self-Insurers Association; and Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.