

SENATE BILL REPORT

SB 5940

As Reported by Senate Committee On:
Labor & Commerce, January 15, 2018

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. [**Revised for 1st Substitute:** Creating a presumption of occupational disease for certain employees at the United States department of energy Hanford site.]

Sponsors: Senators Keiser, Conway and Palumbo.

Brief History:

Committee Activity: Labor & Commerce: 1/10/18, 1/15/18 [DPS, DNP].

Brief Summary of First 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.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5940 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Hasegawa, Vice Chair; Conway, Kuderer and Saldaña.

Minority Report: Do not pass.

Signed by Senators Braun, King and Wilson.

Staff: Susan Jones (786-7404)

Background: Under the state's Industrial Insurance 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 injury or disability, workers

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are entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities.

Occupational disease means such disease or infection as arises 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 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 Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): For DOE Hanford site workers, who are covered under Washington's industrial insurance laws, there is a prima facie presumption that the following diseases and conditions are occupational diseases:

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

The term "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 two hundred east, two hundred west, three hundred area, environmental restoration disposal facility site, central plateau, or the river corridor locations for at least one eight-hour shift while covered under Washington's industrial insurance laws.

The cancer presumption applies to any active or former DOE Hanford site worker who has cancer that develops or manifests itself and who was given a qualifying medical examination upon becoming a DOE Hanford site worker that showed no evidence of cancer. This 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 that is discovered during or after a postmortem examination, but not including mesothelioma or pleura cancer;
- primary or secondary bone cancer, including the bone form of solitary plasmacytoma, myelodysplastic syndrome, myelofibrosis with myeloid metaplasia, essential thrombocytosis or essential thrombocythemia, primary polycythemia vera—also called polycythemia rubra vera, P. vera, primary polycythemia, proliferative polycythemia, spent-phase polycythemia, or primary erythremia;
- primary or secondary renal/kidney;
- 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 limitations; colon; ovary; and liver, with limitations.

This presumption may be rebutted by clear and convincing evidence, which may include use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

The presumption continues for the lifetime of the 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 L&I, the Board of Industrial Insurance Appeals (BIIA), or a court, can file a new claim for the same exposure and contended condition or disease. This applies to decisions made after the effective date, without regard to the date of last injurious exposure or claim filing.

When a determination involving the presumption is appealed to the BIIA or a court and the final decision allows the claim of benefits, the BIIA or court must order that all reasonable costs of the appeal, including attorneys' fees and witness fees, be paid to the worker or the worker's beneficiary by the opposing party.

Appropriation: None.

Fiscal Note: Requested on January 5, 2018.

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 First Substitute: PRO: We are quite concerned about the state of worker safety at the site. Hanford is one of the most contaminated and dangerous worksites in the U.S. It has a higher rate of diseases than the federal government

has acknowledged. Because of the secrecy surrounding the site and the long history, the types of exposures are not well documented. It is difficult to prove an exposure that happened 30 years ago where there are limited records. A single exposure that can happen on your first shift can result in a disease 50 years later. This bill deals with getting appropriate compensation. Since last session, we have experienced three emergencies on the Hanford site. The extent of those exposures is inaccurate and incomplete but highlights the need for this legislation. The RJ Lee group report notes several vapor incidents. There were several incidents where limits were exceeded. The proposed substitute has addressed some of the other concerns, including the boundaries of who is covered by the legislation. There are about 100 firefighters at the Hanford site, some who may be impacted by this legislation. Firefighters have some presumptive coverage. Washington is on the forefront of coverage. A special recognition of this most toxic site is in order. Someone that gets sick from one of these diseases should not have to worry about getting care and their families should be taken care of.

OTHER: We would like to narrow this a bit. Washington already has presumptions for firefighters and the federal government has them for energy workers. We would like to model those statutes and mirror those standards. This is a significant shift of policy. We would like to see that it is fair and balanced. We appreciate that it narrowed who is covered.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Nickolas Bumpaous, UA Local 598 and Central Washington Building Trades; Tom Carpenter, Executive Director, Hanford Challenge; Michael White, Washington State Council of Fire Fighters.

OTHER: Christine Brewer, Washington Self Insurers Association; Bob Battles, AWB.

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