

# SENATE BILL REPORT

## SHB 1723

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As of January 23, 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.

**Sponsors:** House Committee on Labor & Workplace Standards (originally sponsored by Representatives Haler, Riccelli, Sells, Gregerson, Ormsby, Doglio and Pollet).

**Brief History:** Passed House: 3/02/17, 69-29.

**Committee Activity:** Commerce, Labor & Sports: 3/22/17.

### Brief Summary of 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.

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### SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

**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 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

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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 Bill:** For DOE Hanford site workers, who are covered under Washington's industrial insurance laws, there exists 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;
- 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 for at least one eight-hour shift while covered under Washington's industrial insurance laws.

The presumption for cancer only 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. 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 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, myelobibrosis 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, 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 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 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 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 February 17, 2017.

**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:** PRO: There are 13 to 15 thousand workers doing remediation as well as handling the tank waste. The Hanford site met 79% of the US plutonium needs. The bill is trying to remedy where DOE is refusing to take care of injured workers. The intermediary prevents workers from getting help. Gases are coming out of very old tanks that were only guaranteed to hold for 20 years. The bill is to help the workers impacted by gases leaking out of the tanks, causing them to have cancers and breathing problems. Workers are exposed to a toxic soup of chemicals.

I worked at the Hanford site for 35 years. I have vocal chord dysfunction, asthma, scarred lungs heavy metal poisoning, chronic bronchitis, possible asbestos in my lungs, and other issues. My husband has severe memory and processing issues. He was a healthy, active person until 7 years ago, when he has been hospitalized a number of times. L&I and Hanford said it was just asthma. He was exposed to 8,000 pounds of fumes. Hardly any doctors will cover L&I issues but L&I denies the claim.

I worked at Hanford for over 20 years and have been diagnosed with toxic encephalopathy, dementia, and neurological damage. We have had the biggest battle of our lives with DOE's private company.

CON: The system is already set up for these workers to bring the claim. They have to show some sort of connection to the disease and the job. With the 8 hour work requirement, the worker can make a claim and the burden is on the employer. It sounds like there was some problem with the person handling the claims. I believe that person has been removed recently. The Congressional delegation is involved in these issues. The idea of high denials

is an red herring. This has been researched and investigated over a number of years. The law is broad and vague.

**Persons Testifying:** PRO: Representative Larry Haler, Prime Sponsor; Kelly Wood, Attorney General Of Washington/Asst. Attorney General; Lonnie & Melinda Rouse, Sick Workers; Abe & Barttola Garza, Sick Worker.

CON: Bob Battles, AWB; Natalee Fillinger, WSIA & Holmes Weddle & Barcott.

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