

# HOUSE BILL REPORT

## SSB 5890

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**As Passed House:**

March 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:** Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Keiser, Conway, Dhingra, Hasegawa, Kuderer, Lovick, Nobles, Saldaña, Stanford, Wellman and Wilson, C.).

**Brief History:**

**Committee Activity:**

Labor & Workplace Standards: 2/18/22, 2/22/22 [DP].

**Floor Activity:**

Passed House: 3/2/22, 68-27.

**Brief Summary of Substitute Bill**

- Removes references to "Hanford nuclear site" and "Hanford site worker" and instead applies the rebuttable presumption, for workers' compensation purposes, to "exposed workers" working at a "radiological hazardous waste facility."
- Specifies that the presumption does not apply to communicable respiratory diseases and communicable neurological diseases.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 5 members: Representatives Sells, Chair; Berry, Vice Chair; Mosbrucker, Assistant Ranking Minority Member; Bronoske and Ortiz-Self.

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*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.*

**Minority Report:** Do not pass. Signed by 2 members: Representatives Hoff, Ranking Minority Member; Harris.

**Staff:** Trudes Tango (786-7384).

**Background:**

Rebuttable Presumption for Hanford Site Workers.

For United States Department of Energy Hanford site workers, there is a rebuttable presumption that certain diseases and conditions are occupational diseases for workers' compensation purposes. A Hanford site worker is any person, including a contractor or subcontractor, who was engaged in the direct and indirect performance of work for the United States on projects and contracts at the Hanford nuclear site and who worked on the site at the 200 east, 300 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 state's workers' compensation laws.

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

The presumption applies to the following diseases and conditions: (1) respiratory disease; (2) beryllium sensitization and acute and chronic beryllium disease; (3) heart problems, experienced within 72 hours of exposure to fumes, toxic substances, or chemicals at the site; (4) certain specified cancers; and (5) neurological disease.

The presumption may be rebutted by clear and convincing evidence. The presumption extends to the worker following termination of service for the lifetime of that individual. A worker, or survivor of a worker, whose claim was denied may file a new claim for the same exposure and condition or disease.

Recently, the United States sued Washington state, alleging that the statute violates the Supremacy Clause because it impermissibly imposes state regulations on the federal government and those with whom the federal government deals. The lower courts found in favor of the state and the United States appealed. This January, the United States Supreme Court accepted review of the case.

Federal and State Definitions.

The Department of Ecology's administrative rule, WAC 173-303-040, defines "mixed waste" as dangerous, extremely hazardous, or acutely hazardous waste that contains both a nonradiative 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 under 33 U.S. Code Section 1402, means 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.

**Summary of Bill:**

References to "Hanford nuclear site" and "United States Department of Energy Hanford site worker" are removed and replaced. The presumption applies to "exposed workers" covered under the workers compensation statutes working at a "radiological hazardous waste facility" for at least one eight-hour shift, including conducting inspections of the facility.

"Radiological hazardous waste facility" means any structure and its lands where high-level radioactive waste as defined by 33 U.S.C. Sec. 1402 or mixed waste as defined by WAC 173-303-040 is stored or disposed of, except for military installations as defined in 31 C.F.R. Part 802.227 and listed in Appendix A to 31 C.F.R. Part 802.

The presumption does not apply to communicable respiratory diseases and communicable neurological diseases.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill extends coverage to workers who were unintentionally left out of the previous legislation that created the presumption. Workers who handle radioactive waste, work in similar facilities, and do the same kind of work as Hanford site workers need the same protections. The state has been sued in court over this statute and this bill is an important clarification that will have a positive impact on the litigation.

(Opposed) None.

(Other) The bill has good intent but unnecessarily extends the presumption to workers employed with facilities regulated by the Nuclear Regulatory Commission. Those facilities are different than Hanford and should be exempt. Expanding the presumption will increase costs and be passed to ratepayers. This bill blurs the line between the special challenges of Hanford and other facilities that work with nuclear power. The definition of radiological hazardous waste facility is too broad and will sweep in others not intended to be covered

under the original legislation. It will be a deterrent for energy facilities and make it hard to meet the state's future energy needs.

**Persons Testifying:** (In support) Noah Guzzo Purcell, Washington State Attorney General's Office; AJ Fouts, Plumbers and Steamfitters Local Union 598; Erin Frasier, Washington State Building and Construction Trades Council; and Joe Kendo, Washington State Labor Council.

(Other) Bob Schuetz, Energy Northwest; and Peter Godlewski, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.