

1 SENATE JOINT MEMORIAL 40

2 46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

3 INTRODUCED BY

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10 A JOINT MEMORIAL

11 REQUESTING THE STATE'S CONGRESSIONAL DELEGATION TO SUPPORT
12 REFORMS TO THE FEDERAL ENERGY EMPLOYEES OCCUPATIONAL ILLNESS
13 COMPENSATION PROGRAM ACT OF 2000.

14
15 WHEREAS, the federal Energy Employees Occupational Illness
16 Compensation Program Act of 2000 was enacted to provide
17 compensation to those veterans of the cold war who were
18 employed by the United States department of energy and who were
19 made ill from exposure to radiation, beryllium and other toxic
20 substances; and

21 WHEREAS, the number of New Mexicans who have received
22 benefits pursuant to that act is small compared to the number
23 of recipients in other states; and

24 WHEREAS, on August 14, 2002, the United States department
25 of energy issued regulations to implement a portion of that act

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1 to provide physician-panel determinations on occupational
2 illnesses for contractor employees exposed to toxic substances
3 at department of energy facilities; and

4 WHEREAS, the United States department of energy is
5 encountering significant delays in securing physician-panel
6 review of claims and, at the current rate of implementation,
7 claimants will wait one hundred sixty-six years to receive
8 findings on their claims; and

9 WHEREAS, families filing claims have experienced delays in
10 access to medical and exposure records, incident reports and
11 confirmations of job histories; and

12 WHEREAS, the contractor performing radiation dose
13 reconstructions for the national institute for occupational
14 safety and health has reportedly admitted conflicts of
15 interest; and

16 WHEREAS, the federal act restrains contractors who operate
17 United States department of energy facilities from contesting
18 state workers' compensation claims for illnesses induced by
19 toxic chemicals, claims that have been found by physician
20 panels to be meritorious; and

21 WHEREAS, the United States department of energy has
22 conceded it may not have a willing payor through state workers'
23 compensation programs for claims that are deemed meritorious by
24 physician panels; and

25 WHEREAS, legislation was introduced in the one hundred

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1 seventh congress, with bipartisan support, that established
2 deadlines for the administration of claims and that provided
3 for a federal willing payor to equitably administer disability
4 payments and meritorious medical claims; and

5 WHEREAS, some New Mexicans with meritorious claims were
6 unfairly denied state workers' compensation in the years prior
7 to passage of the federal act, and these individuals and their
8 survivors should not be left behind without a willing payor;
9 and

10 WHEREAS, special exposure cohort status is awarded to a
11 worker who proves that, within a minimum of two hundred fifty
12 days of employment and with a doctor's confirmation of exposure
13 to beryllium, he has developed cancer or silicosis and is
14 automatically qualified for the federal energy employees
15 occupational illness compensation program; and

16 WHEREAS, workers at facilities in other states who were
17 exposed to types of radiation and toxic substances similar to
18 those to which Los Alamos national laboratory workers were
19 exposed were awarded special exposure cohort status, while Los
20 Alamos national laboratory workers were not; and

21 WHEREAS, New Mexico's large population of potentially
22 eligible claimants should not have to wait another generation
23 or more to be compensated for their occupational illnesses; and

24 WHEREAS, the thousands of New Mexicans who risked their
25 lives and good health in the service of their country should be

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1 compensated before they die;

2 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
3 STATE OF NEW MEXICO that the state's congressional delegation
4 be requested to report on their efforts in the past year and
5 continue to pursue legislation to amend the federal Energy
6 Employees Occupational Illness Compensation Program Act of 2000
7 to ensure that:

8 A. there is a willing payor for every meritorious
9 claim, including those claims that were previously denied under
10 state workers' compensation programs;

11 B. the United States department of energy concludes
12 its reviews of claims within one hundred eighty days;

13 C. a non-adversarial forum be established to
14 resolve claims independent of state workers' compensation
15 programs;

16 D. those employees who are unable to obtain records
17 establishing past exposures and employees whose claims of
18 radiation exposure are in jeopardy of being denied due to
19 scientific uncertainty in causation determinations should
20 receive the benefit of the doubt and be compensated under the
21 federal act;

22 E. chronic renal disease in workers exposed to
23 uranium be recognized as a compensable illness;

24 F. special exposure cohorts be established for
25 employees in area G and the linear accelerator at Los Alamos

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1 national laboratory, and for security guards and all
2 construction workers, due to the impossibility of accurately
3 reconstructing past radiation doses;

4 G. a program of technical assistance grants be
5 created to enable community- and labor-based organizations to
6 assist claimants; and

7 H. congressional oversight hearings be held to
8 investigate whether the energy employees occupational illness
9 compensation program is meeting the needs of claimants in New
10 Mexico; and

11 BE IT FURTHER RESOLVED that each member of the New Mexico
12 congressional delegation report in writing to the legislature
13 on individual progress to amend the federal Energy Employees
14 Occupational Illness Compensation Program Act of 2000 with
15 specific efforts to qualify Los Alamos national laboratory
16 workers for special exposure cohort status; and

17 BE IT FURTHER RESOLVED that the federal secretary of
18 energy, the federal secretary of health and human services and
19 the federal secretary of labor, each of whom shares
20 responsibilities for implementing the energy employees
21 occupational illness compensation program, be requested to
22 redouble their efforts to ensure that the program achieve its
23 intended purpose of providing benefits to the people of New
24 Mexico who were made ill while employed at federal department
25 of energy facilities and that each department provide an annual

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1 written report to the legislature on the progress of the
2 memorial resolutions since 2000, when the federal Energy
3 Employees Occupational Illness Compensation Program Act of 2000
4 was enacted; and

5 BE IT FURTHER RESOLVED that copies of this memorial be
6 transmitted to the members of the New Mexico congressional
7 delegation and to the cabinet secretaries of the departments of
8 energy, health and human services and labor.

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