To establish a presumption of occupational disease for certain employees at the Department of Energy, to refine the definition of compensable illnesses, to establish a research program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. MURRAY (for herself and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To establish a presumption of occupational disease for certain employees at the Department of Energy, to refine the definition of compensable illnesses, to establish a research program, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Toxic Exposure Safety
5 Act of 2021”.

2

SEC. 2. ESTABLISHING A TOXIC SPECIAL EXPOSURE COHORT.

(a) Expansion of Covered Employees and Definition of Covered Illnesses Under Subtitle E.—

Section 3671 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s) is amended—

(1) in paragraph (1)—

(A) by striking “employee determined under” and inserting the following: “employee determined—

“(A) under”;

(B) by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(B) to have contracted a covered illness and be a member of the Toxie Special Exposure Cohort established under section 3671A.”; and

(2) by striking paragraph (2) and inserting the following:

“(2) The term ‘covered illness’ means an occupational illness or death resulting from exposure to a toxic substance, including—

“(A) all forms of cancer;

“(B) malignant mesothelioma;
“(C) pneumoconiosis, including silicosis, asbestosis, and other pneumoconiosis, and other asbestos-related diseases, including asbestos-related pleural disease;

“(D) any illness identified in a health studies report under section 5(f)(4) of the Toxic Exposure Safety Act of 2021 or a report under section 3615(f)(2)(D); and

“(E) any additional illness that the Secretary of Health and Human Services designates by regulation, as such Secretary determines appropriate based on—

“(i) the results of the report under section 3671A(c); and

“(ii) the determinations made by such Secretary in establishing a Toxic Special Exposure Cohort under section 3671A.”.

(b) Designation of Toxic Special Exposure Cohort.—Subtitle E of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s et seq.) is amended by inserting after section 3671 the following:


"SEC. 3671A. ESTABLISHMENT OF THE TOXIC SPECIAL EXPOSURE COHORT.

“(a) CERTAIN DESIGNATIONS.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention—

“(1) shall establish a Toxic Special Exposure Cohort; and

“(2) as the Secretary determines appropriate in accordance with the rules promulgated under subsection (b), may designate classes of Department of Energy employees, Department of Energy contractor employees, or atomic weapons employees as members of the Toxic Special Exposure Cohort.

“(b) PROMULGATION OF RULES.—Not later than 1 year after the date of enactment of the Toxic Exposure Safety Act of 2021, the Secretary of Health and Human Services shall promulgate rules—

“(1) establishing a process to determine whether there are classes of Department of Energy employees, Department of Energy contractor employees, or other classes of employees employed at any Department of Energy facility—

“(A) who were at least as likely as not exposed to toxic substances at a Department of Energy facility; and
“(B) for whom the Secretary of Health and Human Services has determined, after taking into consideration the recommendations of the Advisory Board on Toxic Substances and Worker Health on the matter, that it is not feasible to estimate with sufficient accuracy the frequency, intensity, and duration of exposure they received; and

“(2) regarding how the Secretary of Health and Human Services will designate employees, or classes of employees, described in paragraph (1) as members of the Toxic Special Exposure Cohort established under subsection (a)(1), which shall include a requirement that the Secretary shall make initial determinations regarding such designations.

“(c) REPORT TO CONGRESS.—

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Toxic Exposure Safety Act of 2021, the Secretary of Health and Human Services shall submit to the relevant committees of Congress a report that identifies each of the following:

“(A) A list of cancers and other illnesses associated with toxic substances that pose, or
posed, a hazard in the work environment at any Department of Energy facility.

“(B) The minimum duration of work required to qualify for the Toxic Special Exposure Cohort established under subsection (a)(1).

“(C) The class of employees that are designated as members in the Toxic Special Exposure Cohort.

“(2) RELEVANT COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term ‘relevant committees of Congress’ means—

“(A) the Committee on Armed Services, Committee on Appropriations, Committee on Energy and Natural Resources, and the Committee on Health, Education, Labor, and Pensions of the Senate; and

“(B) the Committee on Armed Services, Committee on Appropriations, Committee on Energy and Commerce, and the Committee on Education and Labor of the House of Representatives.’’.

(c) ALLOWING SUBTITLE B CLAIMS FOR ELIGIBLE EMPLOYEES WHO ARE MEMBERS OF THE TOXIC SPECIAL EXPOSURE COHORT.—Section 3621(1) of the Energy Employees Occupational Illness Compensation Program
Act of 2000 (42 U.S.C. 7384l(1)) is amended by adding at the end the following:

“(D) A Department of Energy employee or atomic weapons employee who—

“(i) has contracted a covered illness (as defined in section 3671); and

“(ii) satisfies the requirements established by the Secretary of Health and Human Services for the Toxic Special Exposure Cohort under section 3671A.”.

(d) CLARIFICATION OF TOXIC SUBSTANCE EXPOSURE FOR COVERED ILLNESSES.—Section 3675(c)(1) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s–4(e)(1)) is amended by inserting “(including chemicals or combinations or mixtures of a toxic substance, including heavy metals, and radiation)” after “toxic substance” each place such term appears.

SEC. 3. PROVIDING INFORMATION REGARDING DEPARTMENT OF ENERGY FACILITIES.

Subtitle E of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s et seq.) is amended by inserting after section 3681 the following:
“SEC. 3681A. COMPLETION AND UPDATES OF SITE EXPOSURE MATRICES.

“(a) DEFINITION.—In this section, the term ‘site exposure matrices’ means an exposure assessment of a Department of Energy facility that identifies the toxic substances or processes that were used in each building or process of the facility, including the trade name (if any) of the substance.

“(b) IN GENERAL.—Not later than 180 days after the date of enactment of the Toxic Exposure Safety Act of 2021, the Secretary of Labor shall, in coordination with the Secretary of Energy, create or update site exposure matrices for each Department of Energy facility based on the records, files, and other data provided by the Secretary of Energy and such other information as is available, including information available from the former worker medical screening programs of the Department of Energy.

“(c) PERIODIC UPDATE.—Beginning 90 days after the initial creation or update described in subsection (b), and each 90 days thereafter, the Secretary shall update the site exposure matrices with all information available as of such time from the Secretary of Energy.

“(d) INFORMATION.—The Secretary of Energy shall furnish to the Secretary of Labor any information that the Secretary of Labor finds necessary or useful for the production of the site exposure matrices under this sec-
tion, including records from the Department of Energy former worker medical screening program.

“(e) PUBLIC AVAILABILITY.—The Secretary of Labor shall make available to the public, on the primary website of the Department of Labor—

“(1) the site exposure matrices, as periodically updated under subsections (b) and (e);

“(2) each site profile prepared under section 3633(a);

“(3) any other database used by the Secretary of Labor to evaluate claims for compensation under this title; and

“(4) statistical data, in the aggregate and disaggregated by each Department of Energy facility, regarding—

“(A) the number of claims filed under this subtitle and the number of claims filed by members of the Toxic Special Exposure Cohort who are covered under subtitle B;

“(B) the types of illnesses claimed;

“(C) the number of claims filed for each type of illness and, for each claim, whether the claim was approved or denied;

“(D) the number of claimants receiving compensation; and
“(E) the length of time required to process each claim, as measured from the date on which the claim is filed to the final disposition of the claim.

“(f) FUNDING.—There is authorized and hereby appropriated to the Secretary of Energy, for fiscal year 2021 and each succeeding year, such sums as may be necessary to support the Secretary of Labor in creating or updating the site exposure matrices.”.

SEC. 4. ASSISTING CURRENT AND FORMER EMPLOYEES UNDER THE EEOICPA.

(a) PROVIDING INFORMATION AND OUTREACH.—

Subtitle A of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384d et seq.) is amended—

(1) by redesignating section 3614 as section 3616; and

(2) by inserting after section 3613 the following:

“SEC. 3614. INFORMATION AND OUTREACH.

“(a) ESTABLISHMENT OF TOLL-FREE INFORMATION PHONE NUMBER.—By not later than January 1, 2022, the Secretary of Labor shall establish a toll-free phone number that current or former employees of the Department of Energy, or current or former Department of En-
ergy contractor employees, may use in order to receive in-
formation regarding—

“(1) the compensation program under subtitle
B or E;

“(2) information regarding the process of sub-
mitting a claim under either compensation program;

“(3) assistance in completing the occupational
health questionnaire required as part of a claim
under subtitle B or E;

“(4) the next steps to take if a claim under
subtitle B or E is accepted or denied; and

“(5) such other information as the Secretary
determines necessary to further the purposes of this
title.

“(b) Establishment of Resource and Advocacy
Centers.—

“(1) In general.—By not later than January
1, 2023, the Secretary of Energy, in coordination
with the Secretary of Labor, shall establish a re-
source and advocacy center at each Department of
Energy facility where cleanup operations are being
carried out, or have been carried out, under the en-
vironmental management program of the Depart-
ment of Energy. Each such resource and advocacy
center shall assist current or former Department of
Energy employees and current or former Department of Energy contractor employees, by enabling the employees and contractor employees to—

“(A) receive information regarding all related programs available to them relating to potential claims under this title, including—

“(i) programs under subtitles B and E; and

“(ii) the former worker medical screening program of the Department of Energy; and

“(B) navigate all such related programs.

“(2) COORDINATION.—The Secretary of Energy shall integrate other programs available to current and former employees, and current or former Department of Energy contractor employees, which are related to the purposes of this title, with the resource and advocacy centers established under paragraph (1), as appropriate.

“(c) INFORMATION.—The Secretary of Labor shall develop and distribute, through the resource and advocacy centers established under subsection (b) and other means, information (which may include responses to frequently asked questions) for current or former employees or current or former Department of Energy contractor employ-
ees about the programs under subtitles B and E and the
claims process under such programs.

“(d) COPY OF EMPLOYEE'S CLAIMS RECORDS.—

“(1) IN GENERAL.—The Secretary of Labor shall, upon the request of a current or former em-
ployee or Department of Energy contractor em-
ployee, provide the employee with a complete copy of
all records or other materials held by the Depart-
ment of Labor relating to the employee’s claim
under subtitle B or E.

“(2) CHOICE OF FORMAT.—The Secretary of Labor shall provide the copy of records described in
paragraph (1) to an employee in electronic or paper
form, as selected by the employee.

“(e) CONTACT OF EMPLOYEES BY INDUSTRIAL HY-
GIENISTS.—The Secretary of Labor shall allow industrial
hygienists to contact and interview current or former em-
ployees or Department of Energy contractor employees re-
grading the employee’s claim under subtitle B or E.”.

(b) EXTENDING APPEAL PERIOD.—Section 3677(a)
of the Energy Employees Occupational Illness Compensa-
tion Program Act of 2000 (42 U.S.C. 7385s–6(a)) is
amended by striking “60 days” and inserting “180 days”.
Funding.—Section 3684 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s–13) is amended—

(1) by striking “There is authorized” and inserting the following:

“(a) IN GENERAL.—There is authorized’’;

(2) by inserting before the period at the end the following: ‘‘, including the amounts necessary to carry out the requirements of section 3681A’’; and

(3) by adding at the end the following:

“(b) ADMINISTRATIVE COSTS FOR DEPARTMENT OF ENERGY.—There is authorized and hereby appropriated to the Secretary of Energy for fiscal year 2021 and each succeeding year such sums as may be necessary to support the Secretary in carrying out the requirements of this title, including section 3681A.’’.

(d) ADVISORY BOARD ON TOXIC SUBSTANCES AND WORKER HEALTH.—Section 3687 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s–16) is amended—

(1) in subsection (b)—

(A) in paragraph (1)(F), by striking “and” after the semicolon;

(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and
(C) by adding at the end the following:

“(3) develop recommendations for the Secretary of Health and Human Services regarding—

“(A) whether there is a class of Department of Energy employees, Department of Energy contractor employees, or other employees at any Department of Energy facility who were at least as likely as not exposed to toxic substances at that facility but for whom it is not feasible to estimate with sufficient accuracy the dose they received; and

“(B) the conditions or requirements that should be met in order for an individual to be designated as a member of the Special Exposure Cohort under section 3671A; and

“(4) review all existing, as of the date of the review, rules and guidelines issued by the Secretary regarding presumption of causation and provide the Secretary with recommendations for new rules and guidelines regarding presumption of causation.”;

(2) in subsection (c)(3), by inserting “or the Board” after “The Secretary”;

(3) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and
(4) by inserting after subsection (g) the following:

“(h) REQUIRED RESPONSES TO BOARD RECOMMENDATIONS.—Not later than 90 days after the date on which the Secretary of Labor and the Secretary of Health and Human Services receives recommendations in accordance with paragraph (1), (3), or (4) of subsection (b), such Secretary shall submit formal responses to each recommendation to the Board and Congress.”

SEC. 5. RESEARCH PROGRAM ON EPIDEMIOLOGICAL IMPACTS OF TOXIC EXPOSURES.

(a) DEFINITIONS.—In this section—

(1) the term “Department of Energy facility” has the meaning given the term in section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l);

(2) the term “institution of higher education” has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001); and

(3) the term “Secretary” means the Secretary of Health and Human Services.

(b) ESTABLISHMENT.—The Secretary, acting through the Director of the National Institute of Environmental Health Sciences and in collaboration with the Di-
rector of the Centers for Disease Control and Prevention, shall conduct or support research on the epidemiological impacts of exposures to toxic substances at Department of Energy facilities.

(c) USE OF FUNDS.—Research under subsection (b) may include research on the epidemiological, clinical, or health impacts on individuals who were exposed to toxic substances in or near the tank or other storage farms and other relevant Department of Energy facilities through their work at such sites.

(d) ELIGIBILITY AND APPLICATION.—Any institution of higher education or the National Academy of Sciences may apply for funding under this section by submitting to the Secretary an application at such time, in such manner, and containing or accompanied by such information as the Secretary may require.

(e) RESEARCH COORDINATION.—The Secretary shall coordinate activities under this section with similar activities conducted by the Department of Health and Human Services to the extent that other agencies have responsibilities that are related to the study of epidemiological, clinical, or health impacts of exposures to toxic substances.

(f) HEALTH STUDIES REPORT TO SECRETARY.—Not later than 1 year after the end of the funding period for
research under this section, the funding recipient shall
prepare and submit to the Secretary a final report that—

(1) summarizes the findings of the research;

(2) includes recommendations for any additional studies;

(3) describes any classes of employees that, based on the results of the study and in accordance with the rules promulgated by the Secretary under section 3671A(b) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (as added by this Act), qualify for inclusion in the Toxic Special Exposure Cohort under such section 3671A; and

(4) describes any illnesses to be included as covered illnesses under section 3671(2)(D) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s(2)(D)).

(g) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 120 days after the date on which the reports under subsection (f) are due, the Secretary shall—

(A) designate all classes of employees described in the report under subsection (f)(3) as members of the Toxic Special Exposure Cohort under section 3671A of the Energy Employees
Occupational Illness Compensation Program Act of 2000 (as added by this Act);

(B) prepare and submit to the relevant committees of Congress a report—

(i) summarizing the findings from the reports required under subsection (f);

(ii) identifying the classes of employees designated under subparagraph (A);

(iii) identifying any new illnesses that, as a result of the study, will be included as covered illnesses, pursuant to subsection (f)(4) and section 3671(2)(D) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s(2)(D)); and

(iv) including the Secretary’s recommendations for additional health studies relating to toxic substances, if the Secretary determines it necessary.

(2) RELEVANT COMMITTEES OF CONGRESS DEFINED.—In this subsection, the term “relevant committees of Congress” means—

(A) the Committee on Armed Services, Committee on Appropriations, Committee on Energy and Natural Resources, and Committee
on Health, Education, Labor, and Pensions of
the Senate; and

(B) the Committee on Armed Services,
Committee on Appropriations, Committee on
Energy and Commerce, and Committee on Edu-
cation and Labor of the House of Representa-
tives.

(h) AUTHORIZATION OF APPROPRIATIONS.—There
are authorized to be appropriated to carry out this section
$3,000,000 for each of fiscal years 2022 through 2026.

SEC. 6. NATIONAL ACADEMY OF SCIENCES REVIEW.

Subtitle A of the Energy Employees Occupational Ill-
ess Compensation Program Act of 2000 (42 U.S.C.
7384d et seq.), as amended by section 4, is further amend-
ed by inserting after section 3614 the following:

“SEC. 3615. NATIONAL ACADEMY OF SCIENCES REVIEW.

“(a) PURPOSE.—The purpose of this section is to en-
able the National Academy of Sciences, a non-Federal en-
tity with appropriate expertise, to review and evaluate the
available scientific evidence regarding associations be-
tween diseases and exposure to toxic substances found at
Department of Energy cleanup sites.

“(b) DEFINITIONS.—In this section:

“(1) DEPARTMENT OF ENERGY CLEANUP
SITE.—The term ‘Department of Energy cleanup
site’ means a Department of Energy facility where cleanup operations are being carried out, or have been carried out, under the environmental management program of the Department of Energy.

“(2) HEALTH STUDIES REPORT.—The term ‘health studies report’ means the report submitted under section 5(f) of the Toxic Exposure Safety Act of 2021.

“(c) AGREEMENT.—Not later than 60 days after the issuance of the health studies report, the Secretary of Health and Human Services shall enter into an agreement with the National Academy of Sciences to carry out the requirements of this section.

“(d) REVIEW OF SCIENTIFIC AND MEDICAL EVIDENCE.—

“(1) IN GENERAL.—Under the agreement described in subsection (c), the National Academy of Sciences shall, for the period of the agreement—

“(A) for each area recommended for additional study under the health studies report under section 5(f)(2) of the Toxic Exposure Safety Act of 2021, review and summarize the scientific evidence relating to the area, including—
“(i) studies by the Department of Energy and Department of Labor; and

“(ii) any other available and relevant scientific studies, to the extent that such studies are relevant to the occupational exposures that have occurred at Department of Energy cleanup sites; and

“(B) review and summarize the scientific and medical evidence concerning the association between exposure to toxic substances found at Department of Energy cleanup sites and resultant diseases.

“(2) SCIENTIFIC DETERMINATIONS CONCERNING DISEASES.—In conducting each review of scientific evidence under subparagraphs (A) and (B) of paragraph (1), the National Academy of Sciences shall—

“(A) assess the strength of such evidence;

“(B) assess whether a statistical association between exposure to a toxic substance and a disease exists, taking into account the strength of the scientific evidence and the appropriateness of the statistical and epidemiological methods used to detect an association;
“(C) assess the increased risk of disease among those exposed to the toxic substance during service during the production and clean-
up eras of the Department of Energy cleanup sites;

“(D) survey the impact to health of the toxic substance, focusing on hematologic, renal, urologic, hepatic, gastrointestinal, neurologic, dermatologic, respiratory, endocrine, ocular, ear, nasal, and oropharyngeal diseases, including dementia, leukemia, chemical sensitivities, and chronic obstructive pulmonary disease; and

“(E) determine whether a plausible biological mechanism or other evidence of a causal relationship exists between exposure to the toxic substance and disease.

“(e) ADDITIONAL SCIENTIFIC STUDIES.—If the Na-
tional Academy of Sciences determines, in the course of conducting the studies under subsection (d), that addi-
tional studies are needed to resolve areas of continuing scientific uncertainty relating to toxic exposure at Depart-
ment of Energy cleanup sites, the National Academy of Sciencees shall include, in the next report submitted under subsection (f), recommendations for areas of additional study, consisting of—
“(1) a list of diseases and toxins that require further evaluation and study;

“(2) a review the current information available, as of the date of the report, relating to such diseases and toxins;

“(3) the value of the information that would result from the additional studies; and

“(4) the cost and feasibility of carrying out additional studies.

“(f) Reports.—

“(1) In general.—By not later than 18 months after the date of the agreement under subsection (c), and every 2 years thereafter, the National Academy of Sciences shall prepare and submit a report to—

“(A) the Secretary;

“(B) the Committee on Health, Education, Labor, and Pensions and the Committee on Energy and Natural Resources of the Senate; and

“(C) the Committee on Natural Resources, the Committee on Education and Labor, and the Committee on Energy and Commerce of the House of Representatives.
“(2) CONTENTS.—Each report submitted under paragraph (1) shall include, for the 18-month or 2-year period covered by the report—

“(A) a description of—

“(i) the reviews and studies conducted under this section;

“(ii) the determinations and conclusions of the National Academy of Sciences with respect to such reviews and studies; and

“(iii) the scientific evidence and reasoning that led to such conclusions;

“(B) the recommendations for further areas of study made under subsection (e) for the reporting period;

“(C) a description of any classes of employees that, based on the results of the reviews and studies and in accordance with the rules promulgated by the Secretary under section 3671A(b), qualify for inclusion in the Toxic Special Exposure Cohort under such section 3671A; and

“(D) the identification of any illness that the National Academy of Sciences has determined, as a result of the reviews and studies,
should be a covered illness under section
3671(2)(D).

“(g) LIMITATION ON AUTHORITY.—The authority to
enter into agreements under this section shall be effective
for a fiscal year to the extent that appropriations are
available.

“(h) SUNSET.—This section shall cease to be effec-
tive 10 years after the last day of the fiscal year in which
the National Academy of Sciences transmits to the Sec-
retary the first report under subsection (f).”.

SEC. 7. CONFORMING AMENDMENTS.

The Energy Employees Occupational Illness Com-
pensation Program Act of 2000 (42 U.S.C. 7384 et seq.)
is amended—

(1) in the table of contents—

(A) by redesignating the item relating to
section 3614 as the item relating to section
3616;

(B) by inserting after the item relating to
section 3613 the following:

“Sec. 3614. Information and outreach.
“Sec. 3615. National Academy of Sciences review.”;

(C) by inserting after the item relating to
section 3671 the following:

“Sec. 3671A. Establishment of the Toxic Special Exposure Cohort.”;

and
(D) by inserting after the item relating to section 3681 the following:

“Sec. 3681A. Completion and updates of site exposure matrices.”

and

(2) in each of subsections (b)(1) and (c) of section 3612, by striking “3614(b)” and inserting “3616(b)”.