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Legislative Leaders Say Delay Of Dynamex Decision Will Not Be Considered This Session

Businesses that rely on the gig economy have been urging state lawmakers to overturn a California Supreme Court ruling that limits them from classifying workers as independent contractors. But, legislative leaders declared that effort dead on Wednesday. In April, the Supreme Court unanimously ruled that a package and document delivery company called Dynamex had incorrectly classified its delivery drivers as independent contractors, instead of employees. That is crucial because companies must offer their workers benefits and follow labor laws.

Companies want the Legislature to act before adjourning for the year at the end of this month in order for the state’s laws adapt to keep up with the changing economy. But, Assembly Speaker Anthony Rendon (Dem-Paramount) said lawmakers will not act on the issue this year, stating, “Ultimately, this Decision is about the future of the way work looks. And that requires us to be thoughtful and deliberate. And there is no way we can be thoughtful and deliberate in three weeks.” Senate President pro Tempore Toni Atkins (Dem-San Diego) concurred.

Despite the legislative leaders’ statements, an industry-sponsored bill to delay compliance with the Decision for 2 years so the Legislature could consider testimony about its implications across business sectors, the California Chamber of Commerce will continue to lobby legislators to achieve such a delay. This lobbying will occur up to the August 31 legislative adjournment deadline. The CalChamber is in the process of drafting bill language to implement the 2 year delay and no author has been decided upon. The coalition (imindependent.co) opposing the Decision will still hold its August 15 rally at the State Capitol.

Replacement Cost Insurance Coverage Estimate Bill Before Governor

Yesterday, the Senate concurred in Assembly amendments and delivered [AB 1797](#) to Governor Jerry Brown. This bill, authored by Assembly Member Marc Levine (Dem-Marin) requires an insurer that provides residential property insurance to provide to the policyholder, every other year at the time of the offer to renew the policy, an estimate of the

cost necessary to rebuild or replace the insured structure. It provides that an insurer does not have to comply if the policyholder, within the past 2 years prior to the offer to renew has provided coverage limits greater than the limits that were previously selected by the policyholder.

According to the author, this bill address underinsurance by consumers in the aftermath of firestorm disasters. Current regulations establish an approach on home replacement cost estimate furnishing, but that regulation did not mandate insurers to produce or update a replacement cost calculation.

The bill is supported by the California Association of Realtors, Department of Insurance, Mendocino County Board of Supervisors, Napa County Board of Supervisors, and Sonoma County Board of Supervisors. There was no registered to AB 1797.

Wildfire Preparedness Conference Committee Holds 2nd Hearing; Takes Testimony From PUC & IOUs

In the midst of the most extensive wildfire in California history, the Mendocino Complex Fire, the Assembly-Senate Wildfire Preparedness and Response Conference Committee convened to take testimony from the Public Utilities Commission (PUC) and high level electric utility executives on Tuesday. The following is an account of hearing proceedings.

Public Utilities Commission

Public Utilities Commission President Michael Picker reiterated the content of Governor Jerry Brown's proposal to address wildfire preparedness. Among the elements of the Governor's proposal is essentially eliminating existing electric utility financial liability laws. Other components, outlined by Public Utilities Commission Safety and Enforcement Division Director Elizaveta Malashenko, of the Governor's plan and already initiated by the Commission where regulatorily possible address vegetation management around electric lines; hardening transmission infrastructure to reduce powerline colliding and sparking during high wind periods; overall management of distribution lines to minimize failure; and, weather preparedness. Also, wildfire mapping requirements are in place. Deenergizing lines is the measure of last resort. While telecommunications facilities do not frequently cause fires, companies cannot overload power poles which is established in regulation.

Vegetation management is a manual process that utilities across the world utilize, as there is no more efficient process. Now, utilities divide their service territory in sections and hire contractors to map and schedule inspection of electric line right of way. The next step is for crews to cut vegetation and provide utilities a plan for maintenance between the time of corridor reinspection. While this is essential, there is no solution to branches during high winds flying long distances into power lines. Going forward, more granular modeling of wind patterns needs to be incorporated into the current paradigm. Risk assessment costs are now part of the ratemaking process. Rate requests must be justified through risk modeling. Via Public Utilities Commission (PUC) order, enforcement of utility-required risk assessment measures takes place. The PUC has doubled to 60 staff in its electric and gas safety units.

Member Comments

Senator Hannah-Beth Jackson (Dem-Santa Barbara) stressed the need to mitigate wildfire in the age of climate change. Senator Jackson said the utilities need to have their feet put to the fire, and the PUC needs to make fire safety more of a priority. Today, business decisions are being made contrary to mitigation best practices. When disaster occurs, utilities use the PUC to pass costs through rates. President Picker said safety is now a priority under his tenure, and risk assessment in ratemaking is a current proactive step. There is also a PUC memorandum of understanding with the Department of Forestry and Fire Prevention (CalFire) to help make decisions around vegetation fuel management. It is also worth pointing out fires are caused by nonelectric sources; the Carr Fire was started by a passing car with a defect, said Picker.

Senator Ben Hueso (Dem-Salinas) considered the Legislature and Governor responsible for hardening power infrastructure, including brush management. State agencies exist today to improve wildfire mitigation without creating a new agency. Senator Hueso also indicated interest in grant funding from the state for local government to take more action on brush reduction. Passing on more costs to ratepayers is not ideal.

Assembly Member Eloise Gomez Reyes (Dem-Fontana) reminded that this month is the only time period for the Legislature to act on wildfire preparedness, given August 31 is the adjournment date. The priority should be making 2017 fire victims whole, then a fire safety plan needs to be agreed to, followed by how to pay for these two areas. Assembly Member Reyes commended San Diego Gas & Electric (SDG&E) for the \$1 billion it has invested in fire mitigation over the last 10 years, and was critical of the other two utilities for not. Picker commented around challenges to innovate in the area of mitigation, one of which is communities wanting overhead power lines to accommodate 5G broadband which inhibits below ground utility infrastructure.

Assembly Member Chad Mayes (Rep-Palm Springs) inquired about the role of the PUC relative to utilities acquiring liability insurance. Picker explained that the PUC does not generally require utilities carry insurance, making it a challenge to know whether the companies are adequately covered. Picker claimed utilities are having difficulty acquiring insurance, necessitating perhaps another model such as self-insurance. Insurers see the fire maps and are staying out of the market, just as was the case after the last major earthquake. Picker also mentioned utilities borrow for operations and new infrastructure via the capital markets through bonds. Companies can also raise revenue through stock sale. But, capital markets are seeing the fire claims that need to be paid and may not buy bonds. Investors are concerned about the credit risk of utilities and general California business climate. Picker did not feel utility bankruptcies are imminent. Co-Chair Chris Holden (Dem-Pasadena) said the Committee may bring back the PUC for further testimony.

Investor Owned Utilities

Phil Herrington, Senior Vice President, Transmission and Distribution, Southern California Edison (SCE), testified that wildfire mitigation operational practices are already in place. SCE identifies risk, reduces vegetation around power poles, and responds when disaster occurs.

The company also restricts work during red flag warnings. SCE does not reenergize parts of its transmission infrastructure during catastrophe, and deenergizes as a last resort. Twenty-five percent of company powerlines are in high wind and fire risk regions. New steps being implemented include its use of fire resistance poles, as well as limited fusing in select high risk fire areas.

Kevin Dasso, Vice President, Electric Asset Management, Pacific Gas & Electric (PG&E), said there is a “new normal” with regard to fire season, which is in part because of climate change. PG&E’s fire safety plan is aimed at prevention and hardening the electric system. The company has a 24-hour wildfire safety center. Infrastructure work includes a program to use insulated conductors, new protective devices, and resiliency zones.

Dave Geier, Senior Vice President, Electric Operations, San Diego Gas & Electric, stated that if the PUC approves a mitigation program and it is followed, the company should be deemed having acted reasonable should a disaster occur. The use of microclimate forecasting allows for detection of a fire the size of a table. The company has 465,000 trees in its service territory. Each tree is in a geographic information system database; SDG&E knows when a tree was last trimmed and its species. To date, 175,000 trees have been trimmed and self-audits are conducted regularly. On infrastructure, 14,000 wood poles have been replaced with steel poles and spread conductors. Also, thicker wires are in high fire areas. Pole loading by telecommunications companies also needs to be monitored.

Marc Joseph, Attorney, Coalition of California Utility Employees, called for a comprehensive safety framework in PUC regulation. The Governor’s fire mitigation plan is a sound start, but not enough. There needs to be clear PUC standards to determine if a utility has acted prudently. Utility safety costs cannot be buried in a rate case. Rather, there needs to be a singular proceeding on safety.

Member Comments

Senator Anthony Cannella (Rep-Merced) asked about regulatory challenges to managing wildfire fuel, particularly state agency permit obstacles. Mr. Dasso advised this process could be expedited given the number of dead trees PG&E manages against hitting power lines. PG&E also seeks assistance gaining authority to access private property to reduce tree obstruction of overhead powerlines. Senator Jeff Stone (Rep-Murrieta) brought to the Committee’s attention that there are 129 million trees that need to be disposed of in some manner, to which Herrington suggested a single state agency be created to triage the vegetation management permitting process in order to reduce the permitting approval process.

Concerning Senator Jackson’s inquiry about how PG&E incorporates safety in its decisionmaking, Dasso said \$13 billion has been invested in transmission infrastructure. \$500 million has been invested in clearing vegetation around powerlines, representing a doubling in investment over the last 3 years. More understanding of what is happening in the environment may increase investment. Conference Committee Co-Chair Bill Dodd (Dem-Napa) commented that PG&E has been found to not be in compliance with state law for 11 of the 16 Bay Area Firestorm wildfires, calling into question the utilities claims today about the efficacy of the efforts to prevent such occurrences. Dasso replied that PG&E has not seen the

analysis that led to CalFire reaching this conclusion on the fires. The utility maintains it has been complying with statute to prevent fires.

Martin Adams, Chief Operating Officer, Los Angeles Department of Water & Power, provided testimony along the lines of the investor owned utilities. In which, Mr. Adams claimed the agency is having challenges securing liability insurance. An insurance claim on the Powerhouse Fire cost \$100 million. Subsequently, the Department's coverage was lowered by about \$60 million, resulting in greater risk exposure to ratepayers.

Public Comment

Kara Cross, Counsel, Personal Insurance Federation of California, informed the Committee that inverse condemnation is prevalent in other states than California and Alabama. In order to force the large, powerful California utilities to utilize this method for vegetation management, state courts had to enhance requirement of its use. John Norwood, Managing Partner, Norwood Associates, representing the Independent Insurance Agents & Brokers of California, Surplus Lines Association of California, and California Insurance Wholesalers Association brought to the Committee's attention that there is a \$600 billion worldwide reinsurance market as well as catastrophe bonds that utilities can access. Last year, was the most catastrophic wildfire year in history, creating \$354 billion in property damage. However, only \$130 billion to \$150 billion in reinsurance was accessed. While a more expensive form of coverage, there is excess market capacity that can be accessed to cover catastrophic damage.

Closing Comment

Co-Chair Dodd informed that next Thursday, August 16, there will be another hearing on wildfire preparedness.

Assembly-Senate Wildfire Preparedness Conference Committee Hold 3rd Hearing On Utility Liability

Assembly-Senate Wildfire Preparedness and Response Conference Committee Co-Chair **Bill Dodd** (Dem-Napa) opened by stating with six or seven hearings that will be conducted by the Conference Committee this month, this panel will have taken as extensive testimony as any this legislative session.

Governor's Wildfire Mitigation Proposal: Electric Utility Liability Component

James Ralph, Chief of Policy and Legal Affairs, Office of the President, Public Utilities Commission, explained that inverse condemnation (IC) requires a government body, which courts have determined public utilities to be treated similarly, to be liable for damage caused on IC-applicable lands. In the case of the 2017 Bay Area Firestorm, 11 of 16 fires, were found by the Department of Forestry and Fire Protection to be caused by Pacific Gas & Electric (PG&E) powerline failure which were not adequately hardened. Governor Jerry Brown's proposal to the Conference Committee limits the strict legal liability inherent in IC in a manner similar to liability applicable to flood control districts during floods. This liability change would apply to investor and publicly owned utilities.

Senator Hannah-Beth Jackson (Dem-Santa Barbara) opposed equating flood liability to wildfire liability. This dramatically changes the legal responsibility of electric utilities. Mr. Ralph acknowledged that the proposed change to electric utility liability will be decided eventually by the courts to determine constitutionality. Assembly Member Eloise Gomez Reyes (Dem-San Bernardino) said constituents are calling the Governor's proposal a bailout for the utilities by moving from strict liability to a reasonableness standard. Ralph replied that a utility should not be held liable if it did not act negligently and was in compliance with the law on safety.

Assembly Member Jim Wood (Dem-Santa Rosa) observed that flood control districts do not put in facilities that cause floods, whereas utilities build infrastructure that cause fires. Wood also considers the Public Utilities Commission disaster mitigation plan requirements to be not driven enough by timelines. These need to come with real results and hard deadlines. Assembly Member Brian Dahle (Rep-Redding) was concerned about ratepayers and insurers bearing costs that utilities would otherwise be responsible for under the Brown Administration proposal.

Inverse Condemnation Support Perspective

John Dunbar, Yountville City Mayor, of behalf of the League of California Cities, oppose utilities passing off wildfire damage costs to local government if changes are made to IC. Dianne Dillon, Supervisor, Napa County, on behalf of the County Supervisors Association of California, found the Governor's proposal to be a radical policy change that places electric service before people's homes. PG&E for years has not been investing in fire mitigation. IC is more expeditious in applying financial liability, which damaged communities rely on. IC forces utilities to come to the table, rather than use the court system to delay paying for damage.

Rex Frazier, President, Personal Insurance Federation of California, described insurer actions to provide emergency relief to insureds affected by the 2017 fires, including through additional living expense payments. Home and automobile losses from the Bay Area Firestorm and Thomas Fires is an estimated \$12 billion. There are over 300 uninsured homeowners in the Bay Area affected by the fire. The ongoing Mendocino Complex Fire currently has \$1.2 billion in insured losses. Actuarially sound rates are not legally allowed in California in high fire areas which creates insurer withdrawal or virtual withdrawal from the marketplace. Utilities have had decades to address forest fire risk, which was identified in the 2003 Governor's Blue Ribbon Fire Commission Report particularly in the area of vegetation and fuel management. Insurers agree with the perspective that climate change is making California uninsurable. If subrogation in IC is watered down, this will result in higher taxes and premiums. Insurers do not profit from subrogation, as dollars received are passed to insureds. In the current environment, insureds are only receiving 40% to 60% of loss recovery through the inverse condemnation process.

John Fiske, Attorney, Consumer Attorneys of California, opposed changing IC. Homeowners in some cases only have limited additional living expense coverage and are often underinsured. IC is essential for property owners to recover losses not covered by insurance. IC allows for the possibility of just compensation and right to jury trial where applicable. Courts have

repeatedly rejected cases where the defendant attempts to apply flood district liability type negligence in electric utility cases.

Inverse Condemnation Opposition Perspective

Henry Weissman, Counsel, Southern California Edison, testified under the current legal environment, utilities become the insurer of last resort because they are held liable for catastrophic damage even if they are found to have acted reasonably to prevent events. The Legislature can change this liability. Courts must give great weight to the Legislature's interpretation of the Constitution, particularly if there is ambiguity. IC has ambiguity, evidenced by three court interpretations, according to Mr. Weissman. Courts need legislative guidance. In nonfire disaster, a reasonableness standard has been applied by courts.

Arlen Orchard, General Manager, Sacramento Municipal Utilities District, on behalf of the California Municipal Utilities Association, claimed strict liability exposes small utilities to bankruptcy risk. The District wildfire insurance rates have increased by a factor of four over the last year. Spending this level on insurance places communities at risk because infrastructure investment modernization suffers. Marc Joseph, Attorney, Coalition of California Utility Employees, shared Mr. Orchard's latter point. Mr. Joseph also said insurance companies should make insureds whole, rather than defray costs through IC.

Co-Chair Dodd commented that PG&E was not invited today because it has an axe to grind on the subject matter. Senator Ben Hueso (Dem-San Diego) was not supportive of any form of bailout, or limit property owner ability to recover losses. The Legislature does not even have the authority to change IC, said Assembly Member Reyes. Senator Jeff Stone (Rep-Palm Springs) noted PG&E's \$15 billion investment in safety measures, with poor results. San Diego Gas & Electric has spent far less with better results. Regarding the Committee's process, legislators are being hamstrung with only three weeks of session left. This issue needs to be decided by the courts, Senator Stone concluded.

Additional Stakeholder Perspective

Tom Long, Litigation Director, The Utility Reform Network, said ratepayers are not responsible for utility failure to trim trees and reduce vegetation around powerlines. Spreading catastrophic loss costs via funding from an insurance policy surcharge needs to be considered. Michael Shaw, Vice President, California Manufacturers and Technology Association, and Michael Boccadoro, Executive Director, Agricultural Energy Consumers argued the state has a financial role to play for wildfire loss. Both also shared the utility perspective on strict liability reform, arguing IC payments are passed through rates. Also, homeowners need to acquire more coverage in fire prone regions.

Closing Comment

Co-Chair Dodd announced that there will be four more hearings, including on the subject of community and grid resiliency next week. Assembly Member Dodd had said previously next week's hearing will be August 16. Co-Chair Chris Holden (Dem-Pasadena) said AB 2911 (Friedman) – Structure Fire Risk Reduction and SB 1260 (Jackson) – Prescribed Burns will be part of upcoming hearings.

Distracted Driving Bill That Applies A Drivers License Point A Step From The Governor's Desk

On Monday, the Senate transmitted with no opposition votes a measure to the Full Assembly for concurrence in amendments that, effective on January 1, 2020, provides that driving a vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device is punishable by a violation point. Upon concurrence, the bill will be on Governor Jerry Brown's desk.

The author states [AB 1698](#) (Dem-Fairfield) is the next step to addressing distracted driving, in particular. Texting while driving is one of the most dangerous activities motorists can do, proponents explain. It makes little sense to charge a violation point for speeding or red light violations, yet treat distracted driving a less risk infraction. The bill has no opposition, and is supported by AAA of Northern and Southern California, American Insurance Association, National Association of Mutual Insurance Companies, Pacific Association of Domestic Insurance Companies, Personal Insurance Federation of California, and Property Casualty Insurers Association of America.

Labor Legislation Of Import Continue Remain Alive In The Legislature

The following bills are eligible to be heard by the Assembly and Senate Appropriations Committees by August 17, which is the Joint Rules deadline for these committees to report measures to their respective full chambers. Other than extenuating circumstances, by Joint Rule, policy committees cannot report bills for the remainder of the year.

[AB 1870](#) (Reyes, Dem-San Bernardino) Unlawful Employment Practices

The Fair Employment and Housing Act makes discrimination against or harassment of employees unlawful. Current law authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred. This bill extends the period to 3 years for which complaints alleging unlawful employment practices may be filed with the Department.

- Senate Judiciary Committee Chair Hannah-Beth Jackson (Dem-Santa Barbara) opposes the bill's ability to apply retroactively. Accordingly, the author has agreed to address this matter, seemingly by removing this element.

Support & Opposition: This bill is supported by the American Civil Liberties Union, California Employment Lawyers Association, and California Teamsters, among 16 other unions and consumer groups. The opposition is led by the Chamber, 15 large industry trade organizations, as well as multiple local chambers of commerce.

Status: This bill is eligible to be heard by the Senate Appropriations Committee by August 17, but has not yet been calendared.

AB 1976 (Limón, Dem-Santa Barbara) Employer Lactation Accommodation

Current law requires every employer to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child and requires an employer to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private. This bill instead requires an employer to make reasonable efforts to provide an employee with use of a room or other location, other than a bathroom, for these purposes.

- Amendments provide for a mother's room temporary structure, and a hardship exemption for employers with less than 50 employees allows for use of a bathroom. Therefore, the Chamber changed its position to neutral. This is justified by the Chamber because most businesses already need to comply with federal legal requirements in this area.

Support & Opposition: The sponsor of the bill is the California Medical Association. Other supporters, of which there are 4, include the American Civil Liberties Union and California Employment Lawyers Association. The opposition was at 16 in total, including the Chamber, and 11 large industry trade associations. Most industry has moved to neutral, however.

Status: This bill is scheduled to be heard by the Senate Appropriations Committee on August 13.

AB 3081 (Gonzalez-Fletcher, Dem-San Diego) Workplace Sexual Harassment

Current law prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off work to obtain relief or because of the employee's status as a victim of domestic violence, sexual assault, or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of the status. This bill also prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of sexual harassment for taking time off work to obtain specified relief or because of the employee's status as a victim of sexual harassment.

- As mentioned at last week's CEC meeting, this is a priority floor fight. During testimony on Monday in the Senate Appropriations Committee, the Department of Finance reiterated Brown Administration opposition to the measure because it duplicates existing law and is drafted in a confusing manner that could proliferate litigation.

Support & Opposition: The bill is supported by the California Teamsters and several women's organizations, among 12 other entities. It is opposed by the Chamber, 13 business trade groups, and 12 local chambers.

Status: This bill is eligible to be heard by the Senate Appropriations Committee by August 17, but has not yet been calendared.

[SB 1284](#) (Jackson, Dem-Santa Barbara) Employer Paydata Reporting

This bill requires private employers with more than 100 employees to submit an annual paydata report to the Department of Industrial Relations. This bill requires the Department to make the reports available to the Department of Fair Employment and Housing upon request. It imposes a civil penalty of \$500 on any employer who does not comply with the reporting requirement, and requires any penalties collected to be deposited into the Labor Enforcement and Compliance Fund, to be allocated upon appropriation by the Legislature to the Division of Labor Standards Enforcement to enforce wage differential laws.

- The Chamber achieved amendments to only allow data to be accessed in state agency or civil litigation circumstances and not to be available for general public consumption, which moved the bill off the Chamber Job Killer list, which the author sought. Now, the Chamber is in an oppose only position. The Chamber is not actively lobbying against the measure because preventing public view of this information keeps it from being used as a public shaming tool against industry.

Support & Opposition: The bill is supported by the Consumer Attorneys of California and the Service Employees International Union – California. There are 20 local chambers in opposition, in addition to the Chamber, as well 11 large industry trade organizations.

Status: This bill is eligible to be heard by the Assembly Appropriations Committee by August 17, but has not yet been calendared.

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