



July 27, 2018

Sacramento, California

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Assembly-Senate Wildfire Conference Committee Convenes 1st Hearing

On Wednesday, the Assembly-Senate Wildfire Preparedness and Response Conference Committee met to take testimony from largely the electric utility sector on issues around wildfire mitigation and liability. Senator Bill Dodd (Dem-Napa), Conference Committee Co-Chair, opened the hearing by stating that the panel will seek a comprehensive plan for improving the electric system and making it more resistant to future disasters. “That means utilities planning and greater accountability for those who operate the grid,” Senator Dodd stated.

[SB 901](#), introduced by Senator Dodd, was referred to the Committee where it will be amended to address disaster preparedness and set forth policies to respond to the increasing wildfire danger. Governor Jerry Brown released a proposal for the Committee to consider that includes language that essentially eliminates existing electric utility financial liability laws, according to Stop the Utility Bailout, a coalition of homeowners insurance companies. Stop the Utility Bailout representatives expressed to Committee members the need to resist pressure from electric utilities to reverse existing wildfire liability laws that would give them a free pass on paying for the damage and destruction resulting from wildfires started by their powerlines.

Pacific Gas & Electric Company (PG&E) argues it cannot afford the costs of intense wildfires, which it claims are fueled by climate change. The company has been asking the Legislature to do away with the “strict liability” standard and absolve utilities of financial responsibility for fire damages. Stop the Utility Bailout found that the Governor’s proposal gives electric utilities what they want, as it rewrites the wildfire liability laws by stating that a court would be required to “balance the public benefit of the electrical infrastructure with the harm caused to private property to determine whether the utility acted reasonably.” One of those factors is whether the utility acted in compliance with its “fire mitigation plans” to prevent fires, such as trimming tree branches around power lines.

Michael Wara, Research Fellow, Stanford Woods Institute for the Environment testified that if utilities are absolved of damages, insurance companies could be left with the bill. Insurers would be forced to increase premiums or decline coverage entirely in fire-prone areas as a result. Proposition 103, passed by California voters in November 1988, requires the prior approval of California’s Department of Insurance before insurance companies can implement property and casualty insurance rates. Wara advised this already inhibits insurer ability to price risk. State Farm Insurance Company is not writing homeowner policies in Santa Rosa

because of the lack of defensible space; some homes are single-sided, which essentially make them tinderboxes, according to Wara.

Assembly Member Jim Wood (Dem-Santa Rosa) expressed interest in steps that could be taken to mitigate the exit of insurers as well as broader insurance market reforms. Assembly Member Wood believes 60% of his district is underinsured, in part because insurers are not writing the full value of property and insureds are not allowed to buy excess coverage. Mr. Wood found that as many as 10 different bills could be needed to address issues the Committee will consider. Wara found that one step that should be considered is allowing insurance companies to reinsure wildfire risk, which is permissible in southeastern states. While not advocating the California Earthquake Authority model, Wara did suggest considering the wind damage insurance model used in the southeast. Wara also informed the Committee that California residents are eligible for the Fair Access to Insurance Requirements plan, which accounts for defensible space in rates.

During public comment, Rex Frazier, President, Personal Insurance Federation of California, testified that it should not be overlooked that PG&E has been found legally responsible for 12 of the 16 Bay Area Firestorm areas. Katherine Pettibone, Western Region State Government Affairs Vice President, pointed out that the state has 129 million dead trees, of which only 1 million have been disposed of. Ms. Pettibone also requested that the Committee schedule a panel on the impacts of electric utility liability relief to the insurance industry for its next hearing. The Property Casualty Insurers Association of America shared the view that the Committee needs a separate hearing on the effects of limited utility liability on the homeowner insurance marketplace.

As the Legislature adjourns August 31 for the year, this Committee has only 5 weeks to take action on issues around wildfire preparedness. Assembly Member Chris Holden (Dem-Pasadena), Committee Co-Chair, informed that legislators will caucus in the coming days about the topic for the next hearing.

Dynamex California Supreme Court Case Ruling May Be Retroactive; Past “Independent Contractors” Could Need To Be Reclassified As “Employees”

Companies and judges are grappling with the April 30, 2018 California Supreme Court ruling that upended how employers classify their workers, and whether the new test applies retroactively to businesses facing lawsuits has emerged as a central question. The State Supreme Court’s decision in the case *Dynamex Operations West v. Superior Court* created a new worker classification standard that is more rigid than the previously used system to determine whether a worker is an independent contractor or employee. The distinction is key in wage-and-hour disputes, as employees are entitled to benefits such as minimum wage, overtime, and healthcare benefits. The April ruling makes it more difficult for companies whose business models are often based on independent contractors to deny employee status to their workforce. Management attorneys contend the test is difficult to overcome, particularly because one aspect requires the employer to prove that the worker is performing work outside the usual course of the company’s business.

In the aftermath of the ruling, business groups pressed the Supreme Court to clarify whether its decision applied retroactively – but the justices were silent, turning down a request to modify the opinion to apply only to future disputes. The retroactive scope of the ruling is playing out now in state and federal courts, including in a worker misclassification dispute against online food-ordering portal Grubhub, Inc. pending in federal appeals court. Plaintiffs lawyers were buoyed last week following a ruling in their favor by an Orange County judge. Superior Court Judge William Claster, ruling in a dispute involving exotic dancers and the Anaheim-based company Imperial Showgirls, said the Supreme Court’s decision in the Dynamex case does apply retroactively. Claster said the Supreme Court could have said explicitly that the ruling applied only prospectively. “The lack of such a pronouncement suggests that the decision should apply retroactively,” the judge wrote.

California courts could follow the Orange County decision and rule similarly in the multitude of cases that confront worker classification in California. Of course, one of the biggest questions remaining about the Dynamex case is whether it should be applied retroactively. In other words, should businesses be protected for having relied upon the current law for years, or should they be held liable for years of possible wage and hour violations under a legal test just adopted out of the blue.

Under the banner of the California Chamber of Commerce, a broad-based coalition of businesses and associations have come together as the “I’m Independent Coalition”. There are 2 million Californians who want to work as independent contractors. This group wants something done regarding Dynamex by the Legislature. The goal would be to pass a bill in the next few weeks to delay implementation of the Court’s decision for up to 2 years. Organized labor groups have distributed a letter to the Legislature opposing any legislative response to the issue.

Universal Healthcare Study In Health Trailer Bill A Way To Keep The Topic Alive This Election Year

[AB 1810](#) (Committee on Budget), the Health Budget Trailer Bill, signed by Governor Jerry Brown is a way to forestall legislation along the lines of **[SB 562](#)** (Lara, Dem-Bell Gardens) from getting traction in 2019. AB 1810 is a vehicle for keeping the topic alive during this election year. SB 562 mandates a government-run single payer healthcare system. The roadmap envisioned by AB 1810 will likely build heavily on the information presented to the Assembly Healthcare Delivery Systems and Universal Coverage Select Committee.

Single payer advocates were very upset when Assembly Speaker Anthony Rendon (Dem-Long Beach) refused to immediately take up SB 562 that the Senate approved. Speaker Rendon said he was unwilling to pass a bill that lacked a financing mechanism to generate the \$400 billion that a single payer system would cost. Lieutenant Governor Gavin Newsom, in running for governor, pledged to create a single payer healthcare system as he duelled with fellow Democrat former Los Angeles Mayor Antonio Villaraigosa, who shared the Speaker’s skepticism about financing it.

As described in a legislative staff analysis, AB 1810 establishes the intent of the Legislature to provide coverage and access through a unified financing system for all Californians, to control healthcare and administrative costs, to ensure high-quality healthcare, to limit out-of-pocket

costs, to train and employ an adequate healthcare workforce, and to ensure all Californians have timely access to necessary care. The measure creates a 5-member Healthcare Delivery Systems Council, with 3 members appointed by the Governor and 2 by the Legislature, to write a plan for universal healthcare by October 1, 2021, including a unified financing system.

Appointing a study commission is a time-honored way for politicians to buy time on a controversial issue, in this case nearly 3 years that includes 2 election cycles and the remainder of President Donald Trump's first term. Studies of a single payer system already have already been conducted, so the parameters are fairly well known. Healthcare in California costs about \$400 billion a year, of which governments cover 70% (the federal government 50%) and employers and consumers pay the rest.

A single-payer system assumes that the federal government agrees to funnel its money through the state, including healthcare of federal and military retirees. It also requires new taxes of at least \$100 billion a year to cover the remainder, while presumably relieving consumers and employers of their current costs and providing health coverage to several million Californians, especially undocumented immigrants. The new commission will probably reach much the same conclusion. But the final decision, if any, will be an exercise in power politics with immense economic consequences.

Polls Show Lieutenant Governor Gavin Newsom Well Ahead of Republican Candidate John Cox In Governor's Race

Gavin Newsom, the Democratic Lieutenant Governor, holds a commanding lead over his Republican rival, businessman John Cox, in the race to be California's next governor, according to the Public Policy Institute of California (PPIC). In a new poll released this week, 55% of likely voters favored Newsom, compared to 31% who would pick Cox. More than three months before the November election, only 9% of respondents were still undecided.

PPIC analysts found that Democrats coalesced around Newsom after an open, and at times bitter, June Primary election in which millions of them voted for other major candidates, such as former Los Angeles Mayor Antonio Villaraigosa and State Treasurer John Chiang. About 86% of Democratic likely voters in the poll supported Newsom, significantly narrowing the path forward for Cox's underdog campaign.

Californians registered with no party preference surpassed Republicans in May to become the 2nd largest voting bloc in the state, behind Democrats. Independent likely voters in the PPIC poll favored Newsom over Cox, 44% to 31%. The results are similar to PPIC's July poll from the 2014 gubernatorial election, when Democratic Governor Jerry Brown led Republican Neel Kashkari among likely voters, 52% to 33%, with 11% of respondents undecided. Brown ultimately won that election with 60% of the vote.

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