

Jul. 1, 2019

Bill for wildfire mitigation fund doesn't change inverse condemnation rule

A bill introduced last week would devote billions to a wildfire liability fund and modify the burden of proof in cases stemming from wildfire damage. But it wouldn't touch what some call are the "third rail" of California wildfire law: the inverse condemnation standard.

A bill introduced last week would devote billions to a wildfire liability fund and modify the burden of proof in cases stemming from wildfire damage. But it wouldn't touch what some call a third rail of California wildfire law: the inverse condemnation standard.

New language showed up Thursday night via amendments to an existing bill, AB 1054. That came just a week after Gov. Gavin Newsom announced he wanted to establish a wildfire mitigation fund with a combination of money from the state and utilities.

The governor and Legislature are pushing to pass a bill before they go on recess July 12 in order to prevent ratings agencies from downgrading two Southern California utilities if their potential liability is not addressed.

"We appreciate the Legislature's attention to addressing wildfire risk in California," PG&E spokesman James Noonan said in an email. "We are currently reviewing the proposed legislation. Pacific Gas and Electric remains committed to resolving wildfire victims' claims fairly and expeditiously, mitigating wildfire risks, continuing to deliver safe and reliable energy to our customers, while keeping customer rates and bills as low as possible."

The inverse condemnation standard has been a hot debate topic in the state Capitol after two straight years of fires caused by power lines, most notably ones belonging to PG&E. The standard holds that a utility is liable for damages caused by transmission lines even if it was not negligent.

Negligence does matter, though. If a company shows it maintained lines properly it can pass the costs on to customer via increased rates.

Utilities have been pushing to change this standard to one that would force plaintiffs to show negligence to recover from the company. But fire victims, attorneys and insurers have opposed such a move. According to numerous sources, there has been little appetite for the change among legislators.

While AB 1054 does adjust the burden of proof in such cases in the utilities' favor, plaintiffs' attorney Michael Danko said he is fine with the bill because it would not directly impact whether his clients could recover from a utility.

The Redwood Shores-based partner at Danko Meredith has faced PG&E in multiple cases involving wildfires, and also represented 59 victims who sued the utility over the 2010 PG&E gas line explosion in San Bruno.

"It makes sense that PG&E, to the extent that liability is not covered by insurance, that PG&E would be able to recover those costs from ratepayers," Danko said. "The system basically took property, so all of the people who benefit from the system must pay into that."

In the wake of major fires, however, the California Public Utilities Commission became more aggressive about making utilities show they were not at fault, he added.

“That’s what caused PG&E, and PG&E’s investors, to essentially flip out,” Danko said. “They said, ‘How are we going to prove that to the CPUC?’ That is why they filed for bankruptcy.”

The issue is addressed — confusingly, lawyers say — in the beginning of the 25,000-word bill, in a section stating a utility can receive “safety certification” from the commission. Speaking on background, multiple attorneys — some conflicted out of speaking on the record — said despite the short timeline, there remain numerous issues to resolve around the bill. Chief among these are the definitions of some key terms. For instance, utilities must show “substantial compliance” with safety rules. This relies on whether a utility took “reasonable” safety steps.

The money, meanwhile, closely tracks with the proposal Newsom floated several days ago. The state would have provided \$10.5 billion. Billions more would come from utilities, as determined through a “wildfire fund allocation metric” meant to balance the contributions of differently sized utilities.

The California Public Utilities Commission announced Thursday it had opened a probe into possible penalties against PG&E over 2017 fires. Meanwhile, the utility’s equipment is a suspected cause of several smaller fires that have already broken out during what has been a relatively mild summer in much of California.

#353248

Malcolm Maclachlan

Daily Journal Staff Writer
malcolm_maclachlan@dailyjournal.com