

California State Assembly

UTILITIES AND ENERGY AND INSURANCE



COTTIE PETRIE-NORRIS AND
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CHAIRS

BACKGROUND

Thursday, October 29, 2026
10 am
1021 O Street, Room 1100

JOINT OVERSIGHT HEARING

Subrogation

Findings:

- *Subrogation is a legal process through which an insurer can “stand in the shoes” of the insured to recover from a responsible party losses paid out through insurance claims. When a wildfire occurs in California, insurers generally initiate an investigation to determine the cause of the fire in parallel with investigations by public entities. If utility equipment is determined to be the cause, the insurer may seek to recover some of the moneys paid out to policyholders, which are then primarily used to reimburse policyholder deductibles and reinsurers.*
- *Evaluating whether a change to subrogation would benefit Californians requires weighing several factors, including, how much cost would move from utilities and their ratepayers to insurers and their policyholders; whether total transaction costs, such as attorneys’ fees and claims trading by hedge funds and other investors would fall; how costs would be distributed among households; and how utilities’ financing costs, the life of the Wildfire Fund, and insurance availability and affordability would be affected.*

The purpose of this hearing is to examine how subrogation works within California’s utility-caused wildfire framework, how it affects ratepayers and policyholders, and what information the Legislature would need to judge whether a statutory change to the subrogation process would leave Californians better off as a whole.

This hearing builds on a series of hearings in the Assembly, including the Assembly Utilities and Energy Committee’s May 13, 2026 hearing on the utility-caused wildfire recovery system, its October 20, 2026 oversight hearing on the utility wildfire safety regime, and its October 28, 2026 oversight hearing on historic growth, generational investment, and utility

investability. This joint hearing brings the closely related issues of utility rate affordability and insurance affordability and availability together for a comprehensive discussion on the implications of the subrogation framework.

I. How Insurance Subrogation Works

Subrogation is a long-standing legal doctrine through which a third party may pursue debts or damages on behalf of another party. In the context of insurance, the Ninth Circuit Court of Appeals described subrogation as:

A common law doctrine based in equity that permits an insurer to take the place of the insured to pursue recovery from third-party tortfeasors responsible for the insured's loss. As the party who pays the insured's loss, the insurer (the subrogee) stands in the shoes of the insured (the subrogor) and succeeds to the insured's right and remedies. Aside from equitable subrogation, a subrogation right may be expressly created by contract or statute.¹

In other words, when an insurer pays out a policyholder's claim, the insurer effectively takes on the loss originally incurred by the policyholder to the extent the loss is covered by the insurance policy. Accordingly, the insurer also assumes the right from the policyholder to seek recovery of that loss from the party responsible for the damage. Ideally, this process results in more prompt payment to policyholders, and spares them the lengthy and onerous burden of civil litigation.

Insurance subrogation is most impactful in cases of large catastrophes, such as wildfires, where insurers must promptly pay out sizable amounts to many policyholders simultaneously. When a wildfire occurs, impacted insurers will typically initiate an investigation in parallel to the public investigation in order to determine the cause of the fire. If the insurer determines that the fire was caused by a utility, they can then pursue a subrogation claim to recover from the utility a portion of the money paid out to policyholders through claims resulting from the wildfire. In practice, the funds recovered through subrogation are primarily used by the insurer to pay back policyholder deductibles, and to refund reinsurers as a credit against the insurer's reinsurance costs.

Under Article I, Section 19 of the California Constitution, property owners who suffer wildfire damage caused by utility equipment can bring claims against the utility under the doctrine of inverse condemnation. Under inverse condemnation, both publicly-owned utilities (POUs) and investor-owned utilities (IOUs) can be treated as public entities: POUs because they are public utilities, and IOUs because courts extended the doctrine to them in *Barham v. Southern California Edison* (1999).²

In California, inverse condemnation imposes liability without fault: a utility is liable for property damage caused by its equipment whether or not it acted negligently, as long as the damage resulted from an inherent risk of that equipment as deliberately designed, constructed, or maintained.³ As a result of inverse condemnation, an insurer may bring an inverse condemnation claim when seeking subrogation, and need not prove that the utility

¹ *Chubb Customs Ins. Co. v. Space Systems/Loral, Inc.* (9th Cir. 2013) 710 F. 3d 946, 957.

² Cal. Const., art. I, §19, *Barham v. Southern California Edison Co.* (1999) 74 Cal.App.4th 744; *Holtz v. Superior Court* (1970) 3 Cal.3d 296.

³ *City of Oroville v. Superior Court* (2019) 7 Cal.5th 1091, 1105-1111.

was negligent, provided the plaintiff shows that the damage arose from the utility’s facilities as deliberately designed, constructed and maintained.

Utility subrogation claims are usually settled at a negotiated rate per dollar that insurers paid their policyholders, rather than proceeding to trial. Insurers may also sell their subrogation rights to hedge funds at a discount to immediately increase liquidity and claims-paying capacity rather than delaying payment until the culmination of the often lengthy litigation process; Eaton Fire claims have reportedly traded for roughly 40 to 60 cents on the dollar.⁴ For certain utility-caused fires, after the passage of SB 254 (Becker, 2025), an insurer must first offer the utility the same terms before selling subrogation rights to a third party.

II. Subrogation’s Share of Utility-Caused Wildfire Settlements

In a figure prepared by Lloyd Dixon for the Assembly Utilities and Energy Committee’s May 13, 2026 hearing, RAND estimates that California utilities paid approximately \$38 billion in wildfire compensation between 2017 and 2024, of which insurer subrogation accounted for 40%.⁵

Table 1. Utility wildfire compensation by recipient, 2017-2024

Recipient	Share of compensation	Approximate amount
Injured parties ⁶	56%	About \$21 billion
Insurer subrogation	40%	About \$15 billion
Public entities	4%	About \$1.5 billion
Total	100%	About \$38 billion

Source: Lloyd Dixon, RAND, compiled from Southern California Edison (SCE) and Pacific Gas & Electric (PG&E) cost recovery testimony before the CPUC. Approximate amounts are calculated from RAND’s percentages.

⁴ Insurance Journal, “Hedge Funds Are Hunting Deals in Risks Too Big for Insurers” (Apr. 7, 2025), <https://www.insurancejournal.com/news/national/2025/04/07/818602.htm>; Hedgeweek, “Hedge funds up investments in LA wildfire claims,” <https://hedgeweek.com/news/hedge-funds-up-investments-in-la-wildfire-claims>.

⁵ Lloyd Dixon, RAND, “Utilities Paid Approximately \$38 Billion in Compensation Between 2017 and 2024,” figure prepared for the May 13 2026 hearing of the Assembly Committee on Utilities and Energy, compiled from SCE and PG&E cost recovery testimony in CPUC proceedings A.23-08-013, A.24-10-002 and A.25-11-001, <https://autl.assembly.ca.gov/system/files/2026-05/lloyd-dixon-figure-for-may-13-assembly-hearing.pdf>.

⁶ “Injured parties” combines many types of claims. Insurer subrogation, by contrast, is a single type of claim, which is likely why the Wildfire Fund Administrator describes it as the largest single component of utility wildfire liability.

Similarly, the Administrator's SB 254 study identifies subrogation payments as the largest single source of utility wildfire liability and Wildfire Fund payments, and estimates that removing subrogation could reduce total wildfire settlement costs by roughly 35% to 40%.⁷

III. Subrogation Settlement Rates in California

Public information on subrogation settlement terms is scarce. Where settlement terms are public, California utilities have paid subrogation claimants between 52 and 67 cents per dollar the insurers paid their policyholders, and about 55% of asserted claims in Pacific Gas & Electric Company's (PG&E's) bankruptcy.⁸ Other public indicators point to the same range. Mercury General, a California insurer, recorded an expected Eaton subrogation recovery equal to 55% of its estimated ultimate losses, based on payouts in prior utility settlements.⁹ On the secondary market, Eaton subrogation claims have reportedly traded at roughly 40 to 60 cents on the dollar.¹⁰

That said, the lack of publicly available settlement data makes it challenging to:

- See how rates vary by fire, by utility, by stage of litigation, or between insurers and investors that bought claims;
- Determine whether creating a fund, like the Wildfire Fund, has impacted or could impact subrogation settlement rates;
- Measure how claims trading and the time to resolution affect what utilities, and ultimately the Wildfire Fund and ratepayers, pay;
- Determine the impact of subrogation recoveries on policyholder premiums; or
- Estimate what a statutory cap at any given level would change.

While this data exists, it is held by various parties – namely, insurers and utilities – and reported to different state entities, including the California Department of Insurance (CDI) and the California Public Utilities Commission (CPUC) for different uses – and little of it is compiled in a form that easily allows for use in policymaking. Some of this data is also shielded from disclosure due to the mediation privilege and the confidentiality terms of individual settlement amounts. As a result, even where stakeholders and regulators hold this

⁷ California Earthquake Authority, as Wildfire Fund Administrator, Enhancing California's Resiliency to Natural Catastrophes: Senate Bill 254 (2025) Study Report (Apr. 7, 2026), <https://www.cawildfirefund.com/sites/wildfire/files/documents/2026/sb254-natcatresiliencyreport-locked-4-7-26.pdf>

⁸ Per-dollar rates: San Diego Gas & Electric Company, Form 8-K (June 26, 2009), <https://investor.sempa.com/node/39736/html>, and SEC filing, note on 2007 wildfire litigation (2014), <https://www.sec.gov/Archives/edgar/data/86521/000008652114000054/R17.htm> (57.5% of insurers' paid and reserved claims, 2007 Witch, Guejito and Rice fires); Edison International, 2022 Form 10-K, <https://www.sec.gov/Archives/edgar/data/827052/000082705223000010/eix-20221231x10k.htm> (55.5 cents per dollar for later Thomas, Koenigstein and Montecito claims); Edison International, Form 8-K (Jan. 25, 2021), <https://download.edison.com/405/files/202210/20210125-eix-form-8k.pdf> (67 cents per dollar, Woolsey Fire); Edison International, Form 8-K (Sept. 15, 2025), <https://www.sec.gov/Archives/edgar/data/827052/000082705225000081/eix-20250915x8k.htm> (52 cents per dollar, one Eaton Fire insurer). PG&E bankruptcy: KQED, "PG&E, Insurance Companies Strike \$11 Billion Deal to Settle Wildfire Claims" (Sept. 2019), <https://www.kqed.org/news/11774069/pge-insurance-companies-strike-11-billion-deal-to-settle-wildfire-claims> (\$11 billion on roughly \$20 billion in asserted claims).

⁹ Mercury General Corporation, Form 10-Q, note on 2025 Southern California wildfires (Q1 2025), <https://www.sec.gov/Archives/edgar/data/64996/000006499625000028/R16.htm>.

¹⁰ *Supra* at 7.

information, they may not be able to share it publicly without changes to law or the consent of the parties.

IV. Looking Ahead: Weighing Impacts on Ratepayers and Policyholders

Any change to subrogation will move costs between two groups of Californians: utility ratepayers, who pay through their electric bills, and insurance policyholders, who pay through their premiums. In many cases these are the same households. The Administrator describes the insurance market, utility finances and the Wildfire Fund as a single interconnected system that spreads catastrophic losses across ratepayers and policyholders, noting that many of the ratepayers who ultimately fund utility settlements are the same policyholders whose claims started the process.¹¹ For that reason, the question before the committees is not only who pays for utility-caused wildfire losses, but whether a change would reduce what Californians pay in total. The underlying losses would be the same under any scenario, but the cost of paying for them may differ depending on whether they are passed through electric rates or insurance premiums, and on how much is consumed along the way by litigation, attorneys' fees and claims trading.

This joint hearing is intended to explore how the cost of paying for those losses might change under different approaches to subrogation, and to help members understand the implications of each for ratepayers and policyholders. It will also help identify what additional information the Legislature would need to make sound policy decisions.

¹¹ *Supra* at 1, p. 32.