

Memorandum No. 63-17

Subject: Senate Bill No. 47 (Workmen's Compensation)

Attached is a copy of Senate Bill No. 47. Also attached, as Exhibit I (pink pages) is a letter from the Department of Conservation. The amendment suggested by the department is set out in Exhibit I.

There are three suggested exclusions, each of which involves different policy considerations:

- (1) Members of the armed forces of the United States should not be considered employees for the purpose of Section 3365.
- (2) Inmates and wards of correctional institutions should not be considered employees for the purpose of Section 3365.
- (3) Aircraft owners and pilots engaged in fire suppression work should be deemed to be independent contractors.

So far as members of the armed forces of the United States are concerned, it would seem sound to exclude them from the provisions of Sections 3365 and 3366. The Federal Government makes adequate provisions for injured members of the armed forces and for their relatives in case such members are killed.

So far as inmates and wards of correctional institutions are concerned, a more difficult policy question is presented. In 1962, Penal Code Section 4017 was amended to provide that when a county jail prisoner suffers injuries or death while engaged in fire prevention or suppression, he shall be considered to be an employee of the county for purposes of workmen's compensation. On the other hand, Penal Code

Section 2791 provides that prisoners confined in state prisons are not entitled to workmen's compensation when injured or killed while engaged in work at forest camps. The State Department of Corrections wants a specific amendment to make clear that our bill will not authorize payment of workmen's compensation to prisoners in the State Prison or to wards of state correctional institutions. In connection with this matter, keep in mind that the death benefits to surviving dependents are important.

The problem of aircraft owners and pilots engaged in fire suppression is still being considered by the Department of Conservation. It should be recognized that if these persons are made eligible for workmen's compensation, they will not have a cause of action for negligence against the employing public entity. On the other hand, workmen's compensation is paid without regard to negligence of the employer and without regard to the contributory negligence of the injured person. One suggested amendment would be to insert in line 5 of the bill, after "each person" the following: "(other than an independent contractor)".

The staff suggests that Section 3365 in Senate Bill No. 47 be amended to read:

3365. Except as otherwise provided in Sections 2700, 2766 and 2791 of the Penal Code, for the purposes of this division, each person engaged in suppressing a fire pursuant to Section 4010 or 4160 of the Public Resources Code, and each person (other than an independent contractor) engaged in suppressing a fire at the request of a public officer or employee charged with the duty of preventing or suppressing fires, is

deemed to be an employee of the public entity that he is serving or assisting in the suppression of the fire, and is entitled to receive compensation from such public entity in accordance with the provisions of this division. Members of the armed forces of the United States while serving as such are not employees of a public entity within the meaning of this section.

If it is desired to provide workmen's compensation benefits for state prisoners as well as county jail prisoners, the introductory clause set out above should read:

3365. Notwithstanding Sections 2700, 2766 and 2791 of the Penal Code, for the purposes of this division, each person . . .

We plan to request that a representative of the Department of Conservation be present at our February 22-23 meeting to assist us in the consideration of Senate Bill No. 47.

In addition, in view of the above analysis, the following sentence should be added to Section 3366: "Members of the armed forces of the United States while serving as such are not employees of a public entity within the meaning of this section."

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Memo 63-17

EXHIBIT I

THE RESOURCES AGENCY OF CALIFORNIA

DEPARTMENT OF CONSERVATION

State Office Building No. 1, Sacramento 14

February 7, 1963

Honorable James A. Cobey
California State Senate
5070 State Capitol
Sacramento 14, California

Dear Senator Cobey:

The Division of Forestry of the Department of Conservation is concerned with the proposed legislation under Senate Bill No. 47, which you have introduced at the request of the California Law Revision Commission.

This bill provides that every person engaged in suppressing a fire at the request of a public officer or employee will be entitled to workmen's compensation protection. As written this would apparently include both prisoners and wards of state correctional institutions and military personnel who are engaged in this work for the state.

In addition, it appears to us that pilots flying their own planes or flying on behalf of a contractor for fire patrol, fire reconnaissance, and air tanker operations will also be eligible for workmen's compensation insurance. By ruling of the Industrial Accident Commission such pilots and contractors are eligible for workmen's compensation insurance even though we are employing them in a capacity of independent contractor.

We strongly believe that neither the inmates or wards of correctional institutions should qualify for workmen's compensation insurance. In fact, the Penal Code specifically denies such coverage. Such inmates and wards are, of course, provided medical care by the institutions.

Honorable James A. Cobey
February 7, 1963
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In the instance of military personnel, whom we frequently use in fire suppression, we do not believe that they should be covered under the workmen's compensation insurance because they are not on our payrolls nor do we reimburse the federal government for their services. They are, however, covered under the provisions of federal law in some manner.

We, therefore, suggest that Section 3365 of Senate Bill No. 47 be amended as follows:

"provided, however, that owner pilots, or pilots in the employ of airplane owners actively engaged in fire suppression work for the State of California, shall not be deemed to be employees of the state and are deemed to be operating solely as independent contractors; and provided further that inmates and wards of correctional institutions and members of the armed forces of the United States be exempt from this section".

Sincerely yours,

S/ DEWITT NELSON, DIRECTOR