Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Supervisor Dave Pine

Subject: Resolution Supporting the Energy Innovation and Carbon Dividend Act (H.R. 763) and Opposing any Amendment to Include Legal Immunity for Fossil-Fuel Companies

RECOMMENDATION:

Adopt a resolution supporting the Energy Innovation and Carbon Dividend Act (EICDA) (H.R. 763) and opposing legal immunity for fossil-fuel companies

BACKGROUND:

A. Climate change and sea-level rise

Substantial and continuing greenhouse gas emissions into the atmosphere, especially carbon dioxide (CO2), are causing an increase in global temperature, and the primary cause of this CO2 increase is the burning of carbon-based fuels, including coal, oil, and gas.[i]

In December 2018, the U.S. Global Change Research Program, a consortium of 13 federal agencies, issued its Fourth National Climate Assessment, which finds "that the evidence of human-caused climate change is overwhelming and continues to strengthen, that the impacts of climate change are intensifying across the country, and that climate-related threats to Americans' physical, social, and economic well-being are rising."[ii] The Assessment further finds that, by the end of the century, annual losses in the United States due to climate change "could reach hundreds of billions of dollars."[iii]

For California, the August 2018 California Fourth Climate Change Assessment finds that the "direct climate impact costs by the middle of this century are . . .estimated at tens of billions of dollars."[iv] The Assessment also finds that "funding and financing barriers are among the top barriers to adaptation."[v] While adaptation planning is happening across the nation, activities to implement those plans in order to protect the built and natural environment have been stalled for lack of funding in the wake of political gridlock engendered in part by the fossil-fuel industry's campaigns and lobbying.[vi]

San Mateo County, a peninsula bordered by water on two sides, is especially vulnerable to sea-level rise, which the County's March 2018 Sea Level Rise Vulnerability Assessment concludes is already causing flooding and will, if left unmanaged, "pose considerable risks to life, safety, critical infrastructure, the County's natural and recreational assets, and the economy."[vii]

B. Energy Innovation and Carbon Dividend Act (EICDA) (H.R. 763)

The EICDA is a primarily Democrat-backed bill currently before the United States House of Representatives. The Act places a Carbon Fee on fossil fuels like coal, oil, and gas at their source (e.g. mine, refinery, or "first pipeline"). While the Carbon Fee is levied at the fossil fuel's source, it is likely that such fees will be passed through to business customers and, ultimately, consumers. Initially, the fee will be low and will increase over time.[viii] The escalation of fees is intended to motivate energy companies, fossil-fuel related industries, and American consumers to develop and adopt cleaner and cheaper fuel options. [ix] Through the implementation of the EICDA, it is estimated that carbon emissions will be reduced by 40% over the next twelve years, $240 billion will be saved in environmental and health costs related to fossil fuels, and 2.1 million jobs will be added over ten years as the United States moves toward more sustainable sources of energy.[x]

The Carbon Fees collected pursuant to the EICDA, will be allocated in equal shares every month to the American people to spend without restriction. Aside from the administrative costs to run the program, the government will not retain any of the fees collected pursuant to the bill. Further, the bill builds in protections to safeguard U.S. manufacturers and jobs by assessing a "border carbon adjustment" on imported goods and issuing refunds to manufacturers for goods exported from the United States.[xi] The EICDA pauses the EPA's authority to regulate CO2 and equivalent emissions covered by the Carbon Fee, for the first ten years after the policy is enacted. After the initial ten-year period, if emission targets are not being met, Congress will give the EPA direction to meet those targets. The EICDA does not impact EPA regulations on water quality, air quality, health, or other issues, however, it does suspend some of the enforcement powers of the EPA as it relates to Title II of the Clean Air Act. Under the EICDA, the EPA shall not limit, or require states to limit, greenhouse gas emissions that are subject to the Carbon Fee on the basis of their greenhouse gas effects. The basis for this limitation is that the reduction in emissions attributable to the Carbon Fee will far outpace existing and pending EPA regulations.

As currently drafted, the EICDA does not contain any provision for immunity for fossil-fuel industries or the "phasing out" of federal climate-change regulations.

DISCUSSION:

The goals of the EICDA are consistent with San Mateo County's climate-change-related priorities and positions. The combination of a Carbon Fee and unrestricted dividends is an innovative way to address climate change. Further, it is anticipated that under the EICDA, most Americans will receive more in carbon dividends than they pay in increased costs for fuel or other products. This would increase disposable income for American families and serve as a financial benefit to all San Mateo County residents.

On October 31, 2017, the Board adopted Resolution No. 075519, calling for a revenue-neutral carbon-fee-and-dividend policy.[xii] The EICDA closely mirrors the policy parameters outlined in Resolution No. 075519, except for its enforcement suspension for portions of Title II of the Clean Air Act. Further, in July 2017, just a few months before adopting Resolution 075519, San Mateo County filed, on behalf of its residents, a lawsuit in the Superior Court for the County of San Mateo to hold fossil-fuel companies responsible, under well-established tort principles, for the damages caused by the fossil-fuel products those companies knowingly extracted, manufactured, and marketed.[xiii]

This lawsuit is premised on detailed allegations that: (1) the fossil-fuel companies named in the lawsuit as defendants are directly responsible for nearly 20% of the carbon dioxide emissions released into the atmosphere between 1965 and 2015; (2) since the 1960s, the fossil-fuel industry (including the industry's own scientists and experts) have known that its business model, production processes, and end products increase carbon emissions in the atmosphere, and that those emissions would raise ocean and air temperatures, increase sea levels, and intensify storms, with potentially catastrophic consequences; and (3) despite knowing these effects, fossil-fuel companies embarked on a decades-long campaign of disinformation, denial, and deception to prevent, delay, and undermine national and international actions to reduce carbon emissions, even while some of these companies acted to protect their own assets and resources from rising sea levels.[xiv]

The County filed this lawsuit on the principle that any solution to climate change must include fossil-fuel companies taking responsibility for the damage they for decades have knowingly caused. As currently drafted, the EICDA holds these same companies financially responsible for their continued use of damaging fossil-fuels through the Carbon Fee and encourages them to replace antiquated technologies. Importantly, it achieves these goals without limiting the County's, or any entity's, right to file suit against these same companies.

Any proposed amendment to the EICDA proposing the addition of legal immunity for fossil-fuel companies should be rejected. Such an amendment would not only undermine the County's currently pending legal effort to hold fossil-fuel companies accountable for their part in climate change, but also undermines Americans' basic right to access their courts to address harm. For these reasons, the Board should adopt the accompanying resolution supporting the EICDA and oppose any amendment to it that would immunize the fossil-fuel industry from legal action.

FISCAL IMPACT:

There is no Net County Cost associated with the proposed resolution.

[i] *See generally* U.S. Global Change Research Program, Fourth National Climate Assessment, Chapter 2 (Dec. 2018), https://nca2018.globalchange.gov/chapter/2/.

[ii] *Id.* at 36, https://nca2018.globalchange.gov/chapter/1/.

[iii] *Id.* at 46, https://nca2018.globalchange.gov/chapter/1/.

[iv] California Natural Resources Agency, Summary Report for California's Fourth Climate Change Assessment (Aug. 2018); *see also* Dana Drugmand, "California Climate Assessment Tallies Huge Costs Facing its Communities," *Climate Liability News* (Sept. 4, 2018), https://www.climateliabilitynews.org/2018/09/04/california-climate-assessment-costs-liability/.

[v] Susanne C. Moser, et al., Adaptation Finance Challenges: Characteristic Patterns Facing Local Governments and Ways to Overcome Them, a Report for California's Fourth Climate Change Assessment, at iv (Aug. 2018), https://www.energy.ca.gov/sites/default/files/2019-07/Governance_CCCA4-CNRA-2018-007.pdf.

[vi] *See, e.g.*, Brief of Amicus Curiae Senator Sheldon Whitehouse in Support of Appellees and Affirmance, Docket No. 90-1, *County of San Mateo, et al. v. Chevron Corp., et al.*, Nos. 18-15499, 18-15502, 18-15503, 18-16376 (Ninth Cir.) (discussing Chamber of Commerce's "remorseless efforts to thwart any climate action in Washington").

[vii] San Mateo County Office of Sustainability, County of San Mateo Sea Level Rise Vulnerability Assessment Final Report, at 11 (Mar. 2018), https://seachangesmc.org/wp-content/uploads/2018/03/2018-03-12_SLR_VA_Report_2.2018_WEB_FINAL.pdf.

[viii] The starting fees and annual increases, (indexed to CPI) are as follows: Year 1: $15 per metric ton of CO2-equivalent (CO2-e); Fee increases $10 per ton each year ($15 if emission targets not met); Fee stops increasing when emissions reach 10% of 2016 levels, https://energyinnovationact.org/section-by-section-analysis/ (Section 3: Carbon Dividends and Carbon Fee – Key Components).
[ix] https://energyinnovationact.org/how-it-works. ("How It Works")
[x] https://energyinnovationact.org/how-it-works. ("How It Works" [Infographic])
[xi] H.R, 763, Sec. 9908 – Carbon Border Fee Adjustment (pg. 19 – 29)
Provides adjustment to equalize embedded carbon fee upon import and export. Imports: pay difference between U.S. Fee and country of origin carried price for both fuels and carbon intensive goods; Exports: both fuels and carbon intensive goods are refunded fees paid less cost of carbon to be levied by jurisdiction of import. https://energyinnovationact.org/section-by-section-analysis.
[xii] https://sanmateocounty.legistar.com/View.ashx?M=F&ID=5523014&GUID=33582F10-774A-43D2-A955-20FF3ED0AAA1.

[xiii] *County of San Mateo, et al. v. Chevron Corp, et al.*, No. 17 CIV 03222 (Super. Ct. San Mateo). The lawsuit remains pending and is currently on appeal in the U.S. Court of Appeals for the Ninth Circuit on federal removal issues. *See County of San Mateo, et al. v. Chevron Corp., et al.*, Nos. 18-15499, 18-15502, 18-15503, 18-16376 (Ninth Cir.), on appeal from *County of San Mateo, et al. v. Chevron Corp., et al.*, No. 17-cv-04934 (N.D. Cal.).

[xiv] Complaint ¶¶ 5-6, 72-161, *County of San Mateo, et al. v. Chevron Corp, et al.*, No. 17 CIV 03222 (Super. Ct. San Mateo).