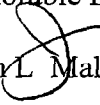


# County of San Mateo County Manager's Office

Date: March 23, 2001

To: Honorable Board of Supervisors  
From:  John L. Maltbie, County Manager  
Subject: **County Manager's Report #3**

1. In 1992 the legislature and Governor created the Educational Revenue Augmentation Fund (ERAF) enabling an annual shift of \$3.9 billion from counties, cities, special districts and redevelopment agencies local property taxes to meet the state's school funding obligation. In 1993-94 the legislature created an exemption for fire and police, hospital and veteran memorial districts from the future contributions to ERAF. Senate Bill 431 (Chapter 786, Statutes of 1997) provided an additional exemption to county free libraries, if the library system was organized as a joint powers agency in fiscal year 1977-78 or the library system was not allocated property tax revenues as part of the Proposition 13 bailout. Three county library systems qualified: Contra Costa, Sacramento and Sonoma County Library

Cumulatively, counties, cities and special districts have shifted a total of \$ 29 billion in general purpose revenues over the past nine years through ERAF resulting in reductions to many desirable local discretionary programs, including park and recreation programs, libraries, and health, human service and crime prevention programs

In each of the past three fiscal years the State has had significant budget surpluses, yet local agencies have been unsuccessful in securing a cap or a permanent return of general-purpose ERAF funds. The Governor and state legislature instead approve a series of one-time appropriations earmarked for politically favored projects or mandated purpose. For example, the Governor's 2001-02 Proposed Budget includes: \$10 million for high technology theft prevention for local law enforcement agencies, \$100 million for incentive grants for cities and counties to promote housing construction; \$20 million to increase local services for homeless mentally ill, \$100 million to clean-up Southern California beaches, \$299 million for local agencies recreational, habitat restoration and historic preservation projects, and \$250 million one-time discretionary funds for cities and counties.

However, the one-time discretionary funding for local governments is allocated on a formula of 50 percent on population and 50 percent based on the local government's contribution to ERAF, disadvantaging counties, since nearly two-thirds of the ERAF contribution comes from counties

Honorable Board of Supervisors  
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Several measures have been introduced in the 2001-02 Legislative Session to cap ERAF or expand the kinds of special district exempt from future contributions to ERAF, including:

Senate Bill 92 (Torlakson and Figueroa) would exempt fire protection and fire suppression districts from future contributions to ERAF,

Senate Bill 93 (Torlakson and Figueroa) would exempt recreation and park districts from future contributions to ERAF;

Senate Bill 94 (Torlakson and Figueroa) would exempt a local library entity from future contributions to ERAF,

Senate Bill 74 (Speier, Sher and McPherson) would exempt dependent and independent library districts from future contributions to ERAF,

Assembly Bill 315 (Dutra) would exempt dependent and independent library districts from future contributions to ERAF, and

Assembly Bill 100 (Simitian) would cap the growth on the Educational Revenue Augmentation Fund over a three-year period by an amount equal shifted in the previous year less one-third.

### Comment

The San Mateo County Board of Supervisors has long held the policy that ERAF should be returned directly in proportion to the loss and unfettered. In fact, on January 30, 2001 your Board approved and adopted 2001-02 Legislative Agenda which includes the statement that San Mateo County shall sponsor and support legislation that enhances the County's long-term fiscal conditions by requiring federal and state governments to fully fund partnership programs, increase flexibility or eliminate the program. The County supports the principle and legislation that guarantees all local governments, including schools, cities, special districts and counties reliable, predictable and equitable funding, and advocates the freeze and return of property taxes shifted to the state through ERAF.

After years without success, many local agencies have simply given up on advocating a permanent return of general purpose property taxes and instead seek ERAF relief for specific, politically popular services: fire, parks and libraries, without regard for local needs, priorities or performance.

District 1 Supervisor Mark Church, liaison to, and on behalf of the San Mateo County Library Joint Powers Authority has requested your Board support the exemption of libraries from future contributions to ERAF

Attached for your consideration is a resolution in

Support of Assembly Bill 100 (Simitian) to cap ERAF growth phased-in over three fiscal years;

Support of legislation to exempt independent and dependent library districts, as defined, from future contributions to ERAF.

2. Under the California Constitution, cities are authorized to purchase and operate facilities that provide light, water, power and heat, state law allows counties to build and run hydroelectric and wind energy generating facilities and transmission lines, but cannot sell power at retail. Additionally, California water districts, municipal water districts, community services districts, public utility districts, irrigation districts, resort improvement districts, municipal utility districts and water conservation districts are authorized to generate or provide electricity. Currently there are 37 special districts that generate or provide electrical services; nine sell electricity

Under the Municipal Utility District Act (MUD) (Public Utilities Code § 11611) two or more public agencies, with or without unincorporated territory may organize and incorporate as a MUD. The steps to form a MUD include:

- 1) a petition is filed with the Board of Supervisors, Clerk of the Board forwards the petition to Elections to verify signatures;
- 2) Local Agency Formation Commission (LAFCO) reviews and analyzes the application under the provisions of Cortese-Knox Hertzberg Act,
- 3) Upon approval of LAFCO, as the conducting authority, calls the election on three distinct issues: district formation, election of directors and approval of the provision of electric services, and
- 4) Canvass the return. A MUD is established if a majority of the voters in both local agencies vote in favor of the formation (PUC § 1156, 11652). The board of supervisors shall canvass the returns of each public agency and each parcel of unincorporated territory, if any, separately, and shall order and declare the district created and established of the public agencies and territory in which a majority of those who voted on the proposition voted in favor of creation of the district if the total number of votes in such approving agencies and territory is not less than two-thirds the number of voters within the district as first proposed, according to the register used at the election.

Background

The City and County of San Francisco has proposed the formation of a Municipal Utility District and without request or consent, included the City of Brisbane as the required second local agency. San Francisco then created a LAFCO with two members, though state law requires five, and approved placing the proposed district formation on the ballot. The San Francisco LAFCO did not complete an analysis or review of the MUD formation, nor conduct public hearings. At this time, the City of Brisbane is not interested in the formation of a MUD with the City and County of San Francisco. Should the proposal be successful Brisbane believes that their city sovereignty would be compromised due in part to MUD eminent domain power within the boundaries of the district.

According to the San Francisco City Attorney the election returns for San Francisco and Brisbane would be canvassed separately and the MUD would be established only if a majority of the voters in San Francisco and in Brisbane vote in favor of formation, and only if there is a two-thirds voter turnout in San Francisco and in Brisbane.

Assembly Bill 47X would encourage increased public control over energy by making it easier to create locally owned and operated utility districts. AB 47 would facilitate municipalization by reinstating the traditional condemnation standard used for determining whether government has properly exercised its power of eminent domain over privately-owned public utility property.

Southern California Edison and PG& E oppose the measure arguing that the rebuttable presumption rather than a conclusive presumption that a taking of private utility company is in the public interest is appropriate public policy. Both the League of California Cities and the California Municipal Utilities Association support AB 47X.

Senate Bill 23X would enact the Fair Citizen Access to Public Power Act and declare the Legislatures intent to streamline the process for forming public power districts. Under SB 23X, LAFCO would be prohibited from denying the approval of a special district formed to furnish gas or electric service. SB 23X prohibits LAFCO from denying the annexation or detachment of an existing public utility district or municipal utility district that furnished gas or electric service.

SB 23X would lower the voting requirement from two-thirds of the voters in the proposed district to a majority of those voters to form a municipal utility district.

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SB 23X is opposed by Southern California Edison and PG&E. Support includes the California Municipal Utilities Association and the League of California Cities.

Comment

Many significant and important legislative efforts are being pursued to reduce the severity of the energy crisis that has resulted from the state's deregulation policies. Regardless of the urgency, new policies should not be approved that could erode local control. The City of Brisbane requests that your Board consider a resolution in opposition to Senate Bill 23X and Assembly Bill 47X unless amended to ensure sovereignty of local agencies in the formation of municipal utility districts.

Attached for your consideration is a resolution to:

Oppose Senate Bill 23X and Assembly Bill 47X unless amended to ensure sovereignty of local agencies in the formation of municipal utility districts

3. Last year, the Governor vetoed Assembly Bill 1796 (Papan) to permit counties, which are currently paying grand jurors less than \$25 per day to phase in the increase at a rate of \$5 per year and to change the mileage reimbursement for grand jurors from 15 cents per mile to the mileage reimbursement set for county employees. The Governor stated: *servicing as a grand juror is a privilege which is honored in our society. People apply to serve as a grand juror and submit to an interview process. This legislation would seek to increase grand juror compensation from \$10 per day to \$25 per day. I recently signed legislation increasing trial court juror pay from \$6 per day to \$15 per day. I do not believe that jurors who are summoned, and thus commanded to serve, should be paid less compensation than a grand juror, I must veto this bill.*

Assembly Bill 1161 (Papan) would increase juror compensation from \$10 to \$25 per day, unless a higher rate is provided by a city or county ordinance; and the mileage reimbursement to that amount provided county employees

Attached for your consideration is a resolution in:

Support of Assembly Bill 1161 (Papan) and a request for amendments to exclude from income tax the amount of compensation for service as a juror or grand juror for any state or federal court

- 4 This week California residents and businesses have once again experienced rolling blackouts. An inconvenience for some, life threatening for many ill or frail and ringing up significant losses of tens of thousands of dollars for many businesses.

Anticipating the economic impacts of the energy crisis, the Senate Budget Committee has voted to zero out the Governor's new and one-time spending proposals for 2001-02 including \$118 million for flood control subventions, \$200 million for job-housing balance incentives, \$40 million for touch screen voting project, \$75 million for law enforcement technology grants, \$250 million for local government fiscal relief and \$30 million for local crime labs.

The energy crisis ongoing loss to State taxpayers is staggering. On Wednesday, March 21, 2001 State Controller Kathleen Connell reported that the state's general fund has dropped to \$3.2 billion from \$8.5 billion in January, due to power purchases made by the Department of Water Resources (CDWR). Connell has denied a request by the Governor to transfer an additional \$5.6 billion from the state general fund to the Special Fund for Economic Uncertainties and ordered an audit of the state's power-purchases. The state would need to borrow \$2.4 billion in order to transfer the \$5.6 billion.

CDWR plans to issue \$10 billion in revenue bonds to buy power and repay the general fund. The state has been spending \$49 million a day on power purchases since mid-January, an estimated \$350 million a week and almost \$4 billion by the end of the month, on the volatile electricity spot market. Some argue CDWR has been taken by professional energy traders, who see in California's power-purchasing plans the opportunity to make off with billions in extra profits.

At this rate the state will exhaust the \$10 billion authorized in January by the Legislature for power purchases by July 1.

The Independent System Operator (ISO) claims that electricity wholesalers have overcharged California more than \$5 billion since May by manipulating the market. The ISO has filed findings with federal regulators requesting a refund resulting from five wholesalers doubling the price of power from what it costs them to produce it.

Combined, PG&E and Southern California Edison have reportedly lost about \$13 billion since June 2000 due to soaring wholesale electricity costs that California's 1996 deregulation law bars them from passing onto customers. California lawmakers continue to argue that cost-based price controls are necessary and that the Bush administration is exacerbating problems through inaction. A spokesperson for the Bush administration recently claimed that the administration is doing all it can, but

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can't control that demand is outstripping supply. The only thing that can prevent blackouts is reduced demand, increased supply and good weather.

Congresswoman Anna Eshoo has called for an investigation by the U.S. Department of Justice and Federal Trade Commission into out-of-state generators' business practices throughout California's energy crisis as a result of a finding by the Federal Energy Regulatory Commission (FERC) that out-of-state generators may have overcharged rate-payers in California \$69 million in the month of January alone. Eshoo has introduced H.R. 238 to grant the Secretary of Energy the authority to impose temporary regional wholesale price caps or cost-of-service based rates.

Attached for your consideration is a resolution in:

Support of H.R. 238 (Eshoo) Authorize Temporary Regional Energy Wholesale Price Caps





and 11611). Under the facts the San Francisco Board of Supervisors would be the appropriate body for presentation of the petitions. The act specifies the procedures applicable to the election for voter approval of the municipal utility district called for in the resolutions or the petitions (see Art 4 (commencing with Sec 11641), Div. 6).

Following the balloting, the election returns are canvassed by the board of supervisors. Section 11652 provides as follows:

"11652. The board of supervisors shall canvass the returns of each public agency and each parcel of unincorporated territory if any separately, and shall order and declare the district created and established of the public agencies and territory in which a majority of those who voted on the proposition voted in favor of the creation of the district if the total number of voters in such approving public agencies and territory is not less than two-thirds the number of voters within the district as first proposed according to the register used at the election

To ascertain the meaning of a statute, such as Section 11652 we begin with the language in which the statute is framed (*Visalia School Dist. v. Workers Comp. Appeals Bd.* (1995) 40 Cal.App 4th 1211 1220). When statutory language is clear, its plain meaning should be followed (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 38). A statute should be interpreted with reference to the system of law of which it is a part (*People v. Conrigure* (.977) 20 Cal 3d 142, 147) and should be construed so as to harmonize if possible, with other laws relating to the same subject and achieve a consistent legislative purpose (*Lobe v. Unemployment Ins. Appeals Bd.* (1974) 12 Cal.3d 584 591).

Applying these rules of statutory construction, in our view the language of Section 11652 requires the board of supervisors to exclude an area from the district if they determine that a majority of the votes cast in that area do not favor the formation in the public agency. Upon determining that the majority in any public agency or agencies favor the formation, the board of supervisors must then determine if the vote in those areas equals not less than two-thirds of the number of registered voters who cast votes in all areas within the district as it was first proposed. If the requisite two-thirds is found, and the other requirements for formation have been met the board must declare the district formed to include only those areas in which a majority of the votes cast favored the formation. This reading of the statute is reinforced by reference to another provision of the act, relating to service on the initial board of directors. This provision prohibits a person from serving as a director unless he or she is a resident and voter of the district 'as finally determined' (Sec. 11653, see also Sec. 11654). It also provides that any vacancies on the board caused by the elimination of territory shall be filled by appointment by the remaining directors, in which case ward lines may be disregarded (*Ibid.*)

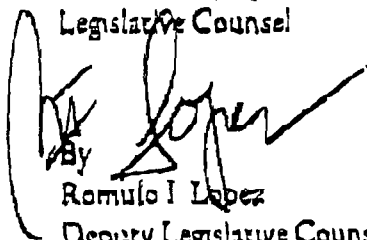
Thus to include Brisbane within the proposed municipal utility boundaries a majority of the votes cast on the measure by voters in San Francisco and, separately, in Brisbane, must vote in favor of the creation of the district, and the total votes cast in both jurisdictions must equal not less than two-thirds of the number of registered voters who cast

votes within the district as first proposed. If a majority of the votes cast by voters in Brisbane oppose creation of the district and a majority of the votes cast by voters in San Francisco support the creation of the district, Brisbane must be excluded from the territory of the proposed district. If the board of supervisors finds that the total number of voters approving formation of the district in San Francisco is not less than two-thirds of the number of votes cast within the district as first proposed by petition, including Brisbane, the board of supervisors may declare the district formed consisting only of San Francisco.<sup>2</sup>

Accordingly, we conclude that to create a municipal utility district having boundaries that include San Francisco and Brisbane, the voters in each of the cities, separately, by a majority vote of those voting on the measure must approve the creation of the district and the total vote must equal not less than two-thirds of the registered voters who cast votes in the district as first proposed. If the voters of Brisbane reject the measure, we further conclude that the municipal utility district may be established in San Francisco, only if San Francisco voters approve the measure by a number equal to two-thirds of the registered voters who cast votes in the district as first proposed.

Very truly yours,

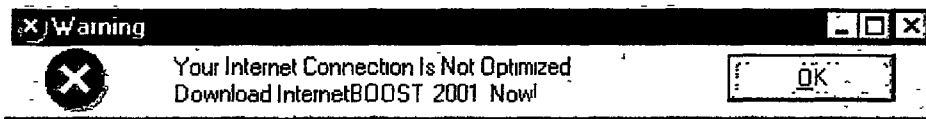
Bion M. Gregory  
Legislative Counsel

  
By  
Romulo I. Lopez  
Deputy Legislative Counsel

RIL:clr

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<sup>2</sup> Because Brisbane has 2116 registered voters and San Francisco has 486,636 registered voters (see Report of Registration as of October 10, 2000, Secretary of State), under these facts it is mathematically impossible for a district to be formed consisting only of Brisbane.



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## Opinion

Editorials and columns

*Published Tuesday Feb 6 2001 in the San Jose Mercury News*

### EDITORIAL

*The opinion of the Mercury News*

# Temporary price cap could help

IF only setting the electrical system aright were as simple as clapping a cap on the price that generators can charge Price caps cannot produce abundant, affordable electricity by decree

But they deserve more consideration than the outright rejection they got Monday from President Bush

Eight governors of Western states had pleaded with the federal government to impose a regionwide cap on the wholesale price of electricity. Last week, Energy Secretary Spencer Abraham and Curt Hebert Jr., chairman of the Federal Energy Regulatory Commission, shot them down Now Bush has made it final.

Price caps discourage investment and production, they said Yes, as a general rule they do But price caps imposed temporarily could provide stability in a market in which prices have frequently soared far beyond the level needed to entice an energy company to build a power plant

Several studies of the electricity marketplace in California have found that generators have been able to exercise ``market power Possessing market power is not like possessing stolen property, but it does mean that producers have an ability to set

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Letters to the Editor

prices that is unchecked by consumers ability to reject the product or look elsewhere to buy it

Price caps may yet prove unnecessary As the state of California purchases more power through long-term contracts, less will be bought in the day-to-day market to which the price cap would apply And the threat of price caps might moderate prices even without their actual imposition


But ruling them out entirely puts too much faith in the ability of this market to fix itself The Bush administration's energy policy must consist of more than drilling for oil, letting prices rise and telling California to sleep in the bed it has made

As a story in Sunday's Mercury News reported, the Federal Energy Regulatory Commission played a role in the mid-1990s in discouraging California from building more power plants While California deserves much of the blame for the current electricity mess, it also has a claim to some federal assistance.

California cannot impose price caps by itself The wholesale marketing of electricity is an interstate business, and the electrical grid ties the states together To be effective, price caps would have to apply throughout the West -- which only the feds could do. A price cap only in California is an invitation for energy producers to take their electrons to another Western state


Any price caps should be temporary. Over the long haul, price caps do what Abraham and Hebert say they do. They cannot substitute for establishing a functioning, competitive energy marketplace, creating new and renewable sources of energy, or reducing the growing demand for electricity through vigorous conservation measures


They could, however, offer a little room to breathe

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**Resolution No. \_\_\_\_\_**  
**Board of Supervisors, County of San Mateo, State of California**  
\*\*\*\*\*

**Resolution in Support of Assembly Bill 100 (Simitian) Cap Contributions  
to the Educational Revenue Augmentation Fund**

---

Resolved the Board of Supervisors of the County of San Mateo State of California that

Whereas in 1992 the legislature and Governor created the Educational Revenue Augmentation Fund (ERAF) to enable an annual shift of \$3.9 billion from counties, cities, special districts and redevelopment agencies local property taxes in order for the state to meet its school funding obligation

Whereas cumulatively counties, cities and special districts have shifted a total of \$29 billion in general purpose revenues over the past nine years through ERAF resulting in reductions to many desirable local discretionary programs including park and recreation programs, libraries, health, human service and crime prevention programs

Whereas in each of the past three fiscal years the State has had significant budget surpluses yet local agencies have been unsuccessful in securing a cap or a permanent return of general-purpose ERAF funds instead seeing relief in a series of one-time appropriations earmarked for politically favored projects or mandated purposes

Whereas Assembly Bill 100 (Simitian) would cap the growth on the Educational Revenue Augmentation Fund phased-in over three fiscal years to local agencies in an amount equal to that shifted in the previous years less one-third

Now therefore it is hereby resolved that the San Mateo County Board of Supervisors support Assembly Bill 100 to return ERAF directly in proportion to the loss and unfettered to ensure all local governments including schools, cities, special districts and counties have reliable, predictable and equitable funding

\*\*\*\*\*

Resolution No. \_\_\_\_\_  
Board of Supervisors, County of San Mateo, State of California  
\*\*\*\*\*

**Resolution in Support of Legislation to Exempt Library Districts from Future Contributions  
to the Educational Revenue Augmentation Fund**

---

Resolved by the Board of Supervisors of the County of San Mateo State of California  
that

Whereas public libraries are an important resources for life long learning for millions of  
Californians of all ages

Whereas public libraries provide an array of community services including literacy  
programs reading readiness career and job search assistance and provide an array of important  
learning materials books tapes and free access to the world wide web

Now therefore be it resolved by the San Mateo County Board of Supervisors support  
legislation that would exempt dependent and independent library districts from future contributions  
to the Educational Revenue Augmentation Fund

\* \* \* \* \*

**Resolution No. \_\_\_\_\_**  
**Board of Supervisors, County of San Mateo, State of California**  
\* \* \* \* \*

**Resolution in Opposition to Senate Bill 23X and Assembly Bill 47X**  
**Unless Amended to Ensure Local Agency Sovereignty**

---

Resolved by the Board of Supervisors of the County of San Mateo State of California that

Whereas the California Constitution provides for cities to purchase and operate facilities that provide light water power and heat and state law allows counties to build and run hydroelectric and wind energy generating facilities and transmission lines but cannot sell power at retail and municipal utility districts are authorized to generate or provide electricity

Whereas the City and County of San Francisco has proposed the formation of a Municipal Utility District without the request or consent of the City of Brisbane included it as the required second local agency

Whereas City and County of San Francisco then created a LAFCO with two members though state law requires five placed the proposed district formation on the ballot without having completed an analysis or review of the MUD formation

Whereas Assembly Bill 47X would encourage increased public control over energy by making it easier to create locally owned and operated utility districts facilitate municipalization by reinstating the traditional condemnation standard used for determining whether government has properly exercised its power of eminent domain over privately-owned public utility property

Whereas Senate Bill 23X would enact the Fair Citizen Access to Public Power Act and declare the Legislatures intent to streamline the process for forming public power districts prohibits LAFCO from denying the approval of a special district formed to furnish gas or electric service prohibits LAFCO from denying the annexation or detachment of an existing public utility district or municipal utility district that furnished gas or electric service and would lower the voting requirement from 2/3 of the voters in the proposed district to a majority of those voters to form a municipal utility district

Whereas as a result of state energy deregulation policies California is experiencing an expensive and extended energy crisis that requires significant improvements and options to purchase and provide adequate power however that effort should not result in promulgating new policies that erode local control and respect local agency sovereignty

Now therefore it is hereby resolved that the San Mateo County Board of Supervisors opposes both Senate Bill 23X and Assembly Bill 47X unless amended to ensure local agency sovereignty in the formation of Municipal Utility Districts

\* \* \* \* \*

Resolution No. \_\_\_\_\_  
Board of Supervisors, County of San Mateo, State of California  
\*\*\*\*\*

**Resolution in Support of Assembly Bill 1161 (Papan) Increase Grand Juror Compensation  
and Request Amendments to Exempt Juror Compensation From State Income Tax**

---

Resolved by the Board of Supervisors of the County of San Mateo State of California  
that

Whereas Assembly Bill 1161 (Papan) would increase juror compensation from \$10 to \$25 per day unless a higher rate is provided by a city or county ordinance and the mileage reimbursement to that amount provided county employees

Whereas a juror and grand juror for any state or federal court of the United States is required to pay gross income tax for any compensation awarded while serving as a juror

Now therefore it is hereby resolved by the San Mateo County Board of Supervisors support Assembly Bill 1161 and request an amendment to specifically exclude compensation as a juror or grand juror for any state or federal court of the United States

\*\*\*\*\*



Resolution No. \_\_\_\_\_  
Board of Supervisors, County of San Mateo, State of California  
\*\*\*\*\*

**Resolution in Support of H.R. 238 (Eshoo) Authorize Temporary Regional  
Energy Wholesale Price Caps**

---

Resolved by the Board of Supervisors of the County of San Mateo State of California  
that

Whereas this week California residents and businesses have once again experienced rolling blackouts causing an inconvenience for some life threatening for many ill or frail and ringing up significant losses of tens of thousands of dollars for many businesses

Whereas the energy crisis ongoing revenue loss to State taxpayers is staggering the state's general fund had dropped to \$3.2 billion from \$8.5 billion in just two months due to power purchases made by the Department of Water Resources (CDWR) the state has been spending \$49 million a day on power purchases since mid-January an estimated \$350 million a week almost \$4 billion by the end of the month

Whereas the Independent System Operator (ISO) claims that electricity wholesalers have overcharged California more than \$5 billion since May 2000 by manipulating the market and the ISO has filed findings with federal regulators requesting a refund resulting from five wholesalers for doubling the price or reducing the generation of power

Now therefore it is hereby resolved by the San Mateo County Board of Supervisors join with other California lawmakers to seek cost-based price controls and support H.R. 238 (Eshoo) to authorize temporary regional wholesale price caps and require an investigation by the U.S. Department of Justice and Federal Trade Commission into out-of-state generators' business practices throughout California's energy crisis as result of a finding by the Federal Energy Regulatory Commission (FERC) that out-of-state generators may have overcharged rate-payers in California \$69 million in the month of January alone

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