



Gavin Newsom ■ Governor

State Capitol ■ Room 1145 ■ Sacramento CA ■ 95814-4998 ■ www.dof.ca.gov

June 30, 2021

Honorable Nancy Skinner, Chair
Joint Legislative Budget Committee
Senate Budget and Fiscal Review Committee

Honorable Phil Ting, Chair
Assembly Budget Committee

Honorable Anthony Portantino, Chair
Senate Appropriations Committee

Honorable Lorena Gonzalez, Chair
Assembly Appropriations Committee

Department of Finance's Response to Proposition 98 Certification Comments

Pursuant to section 9795 of the Government Code, the attached comments and the Director of Finance's responses to the Proposition 98 Certification comments are respectfully submitted.

If you have any questions or need additional information regarding this matter, please call Aaron Heredia, Principal Program Budget Analyst, at (916) 445-0328.

KEELY MARTIN BOSLER
Director
By:

ERIKA LI
Chief Deputy Director

Attachment

cc: On the following page

cc: Honorable Kevin McCarty, Chair, Assembly Budget Subcommittee No. 2
Honorable John Laird, Chair, Senate Budget and Fiscal Review Subcommittee
No. 1
Honorable Jim Nielsen, Vice Chair, Senate Budget and Fiscal Review Committee
Honorable Vince Fong, Vice Chair, Assembly Budget Committee
Gabriel Petek, Legislative Analyst (3)
Sue Parker, Chief Clerk, California State Assembly
Joe Stephenshaw, Staff Director, Senate Budget and Fiscal Review Committee
Kirk Feely, Fiscal Director, Senate Republican Fiscal Office
Christopher W. Woods, Senate President pro Tempore's Office (2)
Christian Griffith, Chief Consultant, Assembly Budget Committee
Joseph Shinstock, Fiscal Director, Assembly Republican Caucus, Office of Policy
and Budget
Paul Dress, Caucus Co-Chief of Staff, Assembly Republican Leader's Office Luigi
Luciano, Legislative Director, Assembly Republican Leader's Office
Jason Sisney, Assembly Speaker's Office (2)
Mark McKenzie, Staff Director, Senate Appropriations Committee
Jay Dickenson, Chief Consultant, Assembly Appropriations Committee
Honorable Betty Yee, California State Controller
Richard J. Chivaro, Chief Counsel, Office of the State Controller
Dr. Shirley N. Weber, California Secretary of State



June 30, 2021

Teri Holoman
Associate Executive Director Governmental Relations
California Teachers Association
1118 10th Street
Sacramento, CA 95814

Department of Finance's Response to Proposition 98 Certification Comments Submitted by the California Teachers Association on May 28, 2021

Dear Ms. Holoman:

Pursuant to section 41206.01 of the Education Code, the comments received from the California Teachers Association are respectfully rejected for the following reasons:

1. The 2019-2020 Certification Must Rebench the Minimum Guarantee to Account for \$100 Million Appropriated to the After School Education and Safety (ASES) Program.

Proposition 49 and its implementing statutes, specifically Education Code section 8483.6, prohibit increasing the continuous appropriation for the ASES program (which by law cannot exceed \$550 million) without providing a corresponding increase in the Proposition 98 minimum guarantee. However, the additional funding referenced in the Association's objection was appropriated through multiple annual Budget Acts, as single year augmentations, and not by the continuous appropriation. Education Code section 8483.6 does not apply to single year augmentations and is therefore not subject to a corresponding increase in the Proposition 98 minimum guarantee.

2. The 2019-2020 Certification Must Include Local Property Tax Revenue Estimates with Accurate ERAF Revenue that Includes Charter School ADA in the Calculation of Districts' Entitlement to ERAF Funds.

The Proposition 98 certification requires the use of "the best available estimate until actual data becomes available, and then . . . actual data when it is available" pursuant to Education Code section 41206.01(a). Finance calculated offsetting property tax revenues using the most updated actual data available from the California Department of Education (CDE), in addition to estimates of expected property tax collection from the State Controller's Office and the CDE.

As a result, and consistent with Education Code section 41206.01, offsetting property taxes for the 2019-20 Proposition 98 certification reflect actual property tax revenues reported by the CDE as well as estimated property tax revenues reported by the CDE and the State Controller's Office for the 2019-20 fiscal year.

Revenue and Taxation Code section 97.2(d)(2)(B) required the State Controller to issue guidance to counties regarding the distribution of ERAF revenues. That guidance was issued on February 16, 2021, to commence with the 2019-20 fiscal year. This new guidance states that "recipients of property tax revenue include cities, counties, special districts, K-12 school districts, and community college districts," thereby excluding charter school ADA from the ERAF entitlement calculation. Accordingly, the property tax revenue estimates included in the 2019-20 Proposition 98 certification reflect the State Controller's guidance to counties, as required by section 97.2.

KEELY MARTIN BOSLER
Director
By:



ERIKA LI
Chief Deputy Director

Attachment

cc: Honorable Betty T. Yee, State Controller, Office of the State Controller
Richard J. Chivaro, Chief Counsel, Office of the State Controller (rchivaro@sco.ca.gov)
Gabriel Petek, State Legislative Analyst (gabe.petek@lao.ca.gov)

May 28, 2021

Keely Martin Bosler, Director
Department of Finance
State Capitol, Room 1145
Sacramento, CA 95814
P98Certification@dof.ca.gov

Senator Nancy Skinner, Chair
Assembly Member Philip Y. Ting, Vice Chair
Joint Legislative Budget Committee
1020 N Street, Room 553
Sacramento, CA 95814
senator.skinner@senate.ca.gov
assemblymember.ting@assembly.ca.gov

Re: Objection to Proposed 2019-20 Proposition 98 Guarantee

To Director Bosler, Senator Skinner, and Assembly Member Ting,

The California Teachers Association respectfully submits the following comments on the 2019-2020 draft Proposition 98 certification published by the Department of Finance on May 14, 2021.

We object to the proposed certification on two bases: (1) that it does not rebench the Proposition 98 minimum guarantee to account for a \$100m appropriation for the ASES program and therefore violates Proposition 49 (2002); and (2) that it undercounts local property tax dollars from Education Revenue Augmentation Funds that should have been allocated to schools, but which were instead unlawfully diverted to cities, counties, and special districts. The combined effect of these two deficiencies is several hundred million dollars in 2019-20 alone, with permanent damages to education funding reaching billions of dollars.

1. The 2019-2020 Certification Must Rebench the Minimum Guarantee to Account for \$100m Appropriated to the After School Education and Safety (“ASES”) Program.

The ASES program was established in 2002 by Proposition 49, a voter initiative. See Cal. Educ. Code §§ 8482-8484.65. To support the ASES program, Proposition 49 provides a continuous appropriation “not to exceed five hundred fifty million dollars (\$550,000,000) [. . .].” *Id.*, § 8483.5(b). Although the Legislature is not prohibited from appropriating more than \$550 million,¹ the voters required that any increase in the continuous appropriation come from non-Proposition 98 funding to prevent the ASES program from encroaching on other preexisting educational programs. To that end, section 8483.6 states that “that portion of any continuous appropriation [. . .] which is in excess of the amount appropriated for [the ASES program] for the immediately preceding fiscal year shall not be appropriated until the Legislature has appropriated sums sufficient to fully fund the requirements of [Proposition 98] and shall be appropriated *in addition to* the sums required by, and *shall not be considered toward fulfilling the funding requirements of*” Proposition 98. *Id.*, § 8483.6 (emphasis added).² This language was added to

¹ *Id.*

² Importantly, this provision can only be changed by another vote of the people; the Legislature cannot amend it. See Ballot Pamp., Gen. Elec. (Nov. 2002), Prop. 49, § 14, p.75.

ensure that increases in Proposition 49 spending would not encroach on other Proposition 98 educational programs.

In 2017, the Legislature made a one-time appropriation of \$50 million in Proposition 98 funding over and above the amount required by Proposition 49:

For local assistance, State Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of the After School Education and Safety program, pursuant to Article 22.5 (commencing with Section 8482) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code . . . \$50,000,000.³

In all subsequent budgets, the ASES program has received similar one-time appropriations. In the 2018 Budget Act, the same language appeared with another “one-time” appropriation of \$50 million. Stats. 2018, ch. 29 (SB 840)⁴. In the 2019 Budget Act, the “one-time” appropriation was **increased to \$100 million**. Stats. 2019, ch. 23 (AB 74)⁵. Finally, in the 2020 Budget Act, the same language appears, thus continuing the “one-time” appropriation of \$100 million for the 2020-21 budget year. Stats. 2020, ch. 7 (AB 89).⁶ Clearly this is an attempt to do an end-run around the Proposition 49 requirement that continuous increases in the appropriation for ASES result in a corresponding increase in the Proposition 98 guarantee.

The total ongoing funding for ASES is now \$650 million, not the \$550 million originally appropriated, but the Proposition 98 guarantee has not been rebenchmarked by \$100 million. This is precisely the result Proposition 49 was intended to prevent.

The proposed Proposition 98 Certification for 2019-20 should increase the guarantee by \$100 million to account for the \$100 million increase to ASES funding.

2. The 2019-2020 Certification Must Include Local Property Revenue Estimates with Accurate ERAF Revenue that Includes Charter School ADA in the Calculation of Districts’ Entitlement to ERAF Funds.

The proposed certification for 2019-20 also undercalculates the Proposition 98 minimum guarantee by \$283 million due to five counties’ under-allocation of ERAF property tax revenues to school districts.

³ See Budget Act of 2017, Stats. 2017, ch. 14 (AB 97), item 6100-149-0001. *Compare* Governor’s 2017-18 Enacted Budget, § 6100 Department of Education at 19 (*available at* <http://www.ebudget.ca.gov/2017-18/pdf/Enacted/GovernorsBudget/6000/6100.pdf>) (providing approximately \$550 million to ASES and citing specifically Education Code sections 8483.5 and 8483.51, the statutory provisions providing for the continuous appropriation), *with id.* at 18 (the line item providing the \$50 million ASES appropriation, omitting reference to the continuous appropriation statute).

⁴ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB840_

⁵ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB74_

⁶ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB89_

In 2020, the Legislative Analyst concluded that those five counties had been incorrectly excluding charter school student ADA in their ERAF calculations.⁷ By under-allocating funds to schools, the counties increased their excess ERAF to benefit the county, cities, and special districts. In response, the Legislature amended the ERAF statute to require the State Controller's Office to issue guidance for calculating excess ERAF.⁸ The enacted 2020-21 Budget Act also assumed that the Proposition 98 calculation would include charter school ADA and thus include the additional ERAF in the calculation of the Proposition 98 guarantee for that year, and future years, as property tax revenues allocated to school districts and community college districts.

Despite the clear legislative intent and objection from CTA, the Department of Finance and the California Department of Education, the Controller issued a guidance in February 2021 that sanctioned the counties' practice of excluding charter school ADA from the ERAF capacity calculation. In effect, the Controller's guidance treats charter schools as though they are funded wholly outside the school funding revenue system, which they are not. State law specifically allocates local revenue to charter schools through their school districts to meet the charter schools' LCFF target. Cal. Educ. Code §§ 42238.02(k), 47635(a), 47662.

The immediate result of the Controller's guidance is a \$283 million deficiency in the 2019-20 guarantee because in a Test 1 year, ERAF funds allocated to school districts affect the guarantee on a dollar-for-dollar basis. Moreover, because Test 1 will continue to be operative for the foreseeable future, the Controller's erroneous guidance will drop the guarantee further – by an additional \$298 million in 2020-21, and \$315.9 million in 2021-22. By minimizing local proceeds of taxes, the exclusion of charter ADA from ERAF allocations will have the effect of permanently lowering the required school funding level statewide by hundreds of millions, and eventually billions of dollars.

Sincerely,



Teri Holoman
Associate Executive Director Governmental Relations
California Teachers Association

Cc: State Controller Betty T. Yee (bettytyee@sco.ca.gov)
Richard J. Chivaro, Chief Counsel, Office of the State Controller (rchivaro@sco.ca.gov)
Kari Krogseng, Chief Counsel, Department of Finance (kari.krogseng@dof.ca.gov)
Gabriel Petek, State Legislative Analyst (gabe.petek@lao.ca.gov)

⁷ Legislative Analyst's Off., *Excess ERAF: A Review of the Calculations Affecting School Funding* (Mar. 6, 2020).

⁸ Stats. 2020, ch. 24, sec. 84 (SB 98).



June 30, 2021

Vernon M. Billy
CEO and Executive Director
California School Boards Association
Sacramento, CA 95691

Karen Getman, Esq.
Olson Remcho
1901 Harrison Street, Suite 1550
Oakland, CA 94612

Department of Finance's Response to Proposition 98 Certification Comments Submitted by the California School Boards Association on May 27, 2021

Dear Mr. Billy and Ms. Getman:

Pursuant to section 41206.01 of the Education Code, the comments received from the California School Boards Association are respectfully rejected for the following reasons:

1. Charter School ADA Must Be Included in the Calculation of Districts' Entitlement to ERAF Funds.

The Proposition 98 certification requires the use of "the best available estimate until actual data becomes available, and then . . . actual data when it is available" pursuant to Education Code section 41206.01 (a). Finance calculated offsetting property tax revenues using the most updated actual data available from the California Department of Education (CDE), in addition to estimates of expected property tax collection from the State Controller's Office and the CDE. As a result, and consistent with Education Code section 41206.01, offsetting property taxes for the 2019-20 Proposition 98 certification reflect actual property tax revenues reported by the CDE as well as estimated property tax revenues reported by the CDE and the State Controller's Office for the 2019-20 fiscal year.

Revenue and Taxation Code section 97.2(d)(2)(B) required the State Controller to issue guidance to counties regarding the distribution of ERAF revenues. That guidance was issued on February 16, 2021, to commence with the 2019-20 fiscal year. This new guidance states that "recipients of property tax revenue include cities, counties, special districts, K-12 school districts, and community college districts," thereby excluding charter school ADA from the ERAF entitlement calculation. Accordingly, the property tax revenue estimates included in the 2019-20 Proposition 98 certification reflect the State Controller's guidance to counties, as required by section 97.2.

2. The Controller's Guidance Unlawfully Lowers the 2019-20 Minimum Guarantee by \$283 Million.
 - a. The 2019-2020 Certification Must Rebench the Minimum Guarantee to Account for \$100 Million Appropriated to the After School Education and Safety (ASES) Program.

Proposition 49 and its implementing statutes, specifically Education Code section 8483.6, prohibit increasing the continuous appropriation for the ASES program (which by law cannot exceed \$550 million) without providing a corresponding increase in the Proposition 98 minimum guarantee. However, the additional funding referenced in the Association's objection was appropriated through multiple annual Budget Acts, as single year augmentations, and not by the continuous appropriation. Education Code section 8483.6 does not apply to single year augmentations and is therefore not subject to a corresponding increase in the Proposition 98 minimum guarantee.

- b. The 2019-2020 Certification Must Include Local Property Tax Revenue Estimates with Accurate ERAF Revenue that Includes Charter School ADA in the Calculation of Districts' Entitlement to ERAF Funds.

The Proposition 98 certification requires the use of "the best available estimate until actual data becomes available, and then . . . actual data when it is available" pursuant to Education Code section 41206.01 (a). Finance calculated offsetting property tax revenues using the most updated actual data available from the California Department of Education (CDE), in addition to estimates of expected property tax collection from the State Controller's Office and the CDE. As a result, and consistent with Education Code section 41206.01, offsetting property taxes for the 2019-20 Proposition 98 certification reflect actual property tax revenues reported by the CDE as well as estimated property tax revenues reported by the CDE and the State Controller's Office for the 2019-20 fiscal year.

Revenue and Taxation Code section 97.2(d)(2)(B) required the State Controller to issue guidance to counties regarding the distribution of ERAF revenues. That guidance was issued on February 16, 2021, to commence with the 2019-20 fiscal year. This new guidance states that "recipients of property tax revenue include cities, counties, special districts, K-12 school districts, and community college districts," thereby excluding charter school ADA from the ERAF entitlement calculation.

Vernon M. Billy
Karen Getman
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Accordingly, the property tax revenue estimates included in the 2019-20
Proposition 98 certification reflect the State Controller's guidance to
counties, as required by section 97.2.

KEELY MARTIN BOSLER
Director
By:

Handwritten signature of Erika Li in black ink.

ERIKA LI
Chief Deputy Director

Attachment

cc: Honorable Betty T. Yee, State Controller, Office of the State Controller
Richard J. Chivaro, Chief Counsel, Office of the State Controller
Gabriel Petek, State Legislative Analyst
Keith Bray, General Counsel, California School Board Association



May 27, 2021

VIA EMAIL

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Assembly Member Philip Y. Ting, Vice Chair
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1020 N Street, Room 553
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senator.skinner@senate.ca.gov
assemblymember.ting@assembly.ca.gov

Re: Objection to Proposed 2019-20 Proposition 98 Certification

To Director Bosler, Senator Skinner, and Assembly Member Ting:

The California School Boards Association (CSBA), a statewide organization composed of the governing boards of nearly 1,000 K-12 school districts and county boards of education, supports local school board governance and advocates on behalf of school districts and county offices of education. Any error or manipulation of the calculation of the State's minimum funding guarantee for school districts, county offices of education, and community college districts pursuant to California Constitution article XVI, section 8 ("Proposition 98") that results in less funding for education than is legally required directly and adversely impacts CSBA and its members. Accordingly, as an interested party to the certification of the Proposition 98 minimum guarantee, CSBA formally objects to the Department of Finance's proposed 2019-20 Proposition 98 certification. Attached please find a letter from our legal counsel setting forth the grounds for our objection.

Sincerely,



Vernon M. Billy
CEO & Executive Director

Attachment

cc: via email, w/attachment

State Controller Betty T. Yee (bettytyee@sco.ca.gov)

Richard J. Chivaro, Chief Counsel, Office of the State Controller (rchivaro@sco.ca.gov)

Kari Krogseng, Chief Counsel, Department of Finance (kari.krogseng@dof.ca.gov)

Gabriel Petek, State Legislative Analyst (gabe.petek@lao.ca.gov)

VIA EMAIL

May 27, 2021

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1020 N Street, Room 553
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senator.skinner@senate.ca.gov
assemblymember.ting@assembly.ca.gov

Re: Objection to Proposed 2019-20 Proposition 98 Certification

To Director Bosler, Senator Skinner, and Assembly Member Ting:

We write on behalf of our client, the California School Boards Association (“CSBA”), to formally object to the proposed 2019-20 Proposition 98 certification pursuant to Education Code section 41206.01(e) on the ground that the certification incorporates improperly undercalculated property tax revenues owed to school districts. As a result, the proposed certification for 2019-20 undercalculates the Proposition 98 minimum guarantee by \$283 million as set forth in the May Revision 2021-22 at page 47.¹

The undercalculation of property tax revenues in 2019-20 by five counties was “ratified” in recent guidance issued by the State Controller, which seemingly confirms the counties’ erroneous methodology for calculating local excess Educational Revenue Augmentation Fund (“ERAF”). Specifically, the Controller’s guidance unlawfully permits counties to ignore charter school average daily attendance (“ADA”) when calculating the required allocation of ERAF to school districts and community college districts, resulting in a larger amount of “excess ERAF” that is diverted from school districts to county agencies, cities, and special districts. The guidance ignores Education Code provisions that explicitly require inclusion of charter school ADA in school funding calculations.

¹ 2021-22 May Revision to the Governor’s Budget, 47 (May 14, 2021), <http://www.ebudget.ca.gov/2021-22/pdf/Revised/BudgetSummary/K-12Education.pdf>.

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Not only is the Controller's guidance contrary to the plain language and intent of the relevant statutory provisions, but also it has an immediate, deleterious, and ongoing effect on the Proposition 98 guarantee. As a direct result of the Controller's guidance, the 2019-20 proposed certification undercalculates the Proposition 98 minimum guarantee by \$283 million in that year alone, with increasing, permanent reductions to school funding going forward. For this reason, CSBA objects to the proposed 2019-20 Proposition 98 certification.

A. Charter School ADA Must Be Included in the Calculation of Districts' Entitlement to ERAF Funds

In 1992, the same year it first authorized charter schools, the Legislature created county ERAFs to meet the state's constitutional responsibility under Proposition 98 for funding public K-14 schools, including charter schools.² *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125, 1136-37 (1999) (citing Cal. Const. art. IX, § 6). ERAFs are an accounting mechanism to allow a shift of property tax revenue from other local government entities to school districts and community college districts. County auditor-controllers are required to apportion property tax revenue shifted into the ERAF back out to school districts and community college districts to offset revenue they would otherwise receive from the state General Fund. Cal. Rev. & Tax. Code §§ 97.1, 97.2(a)-(d), 97.3(a)-(d). Even when ERAF funds began to surpass the amount necessary for some counties to fund schools, the Legislature reaffirmed the primacy of schools' entitlement to ERAF funds, amending the ERAF statute to require counties with "excess ERAF" to first fund special education programs before making remaining funds available to the county, cities and special districts within the county. Stats. 1995, ch. 308 (AB 825); Stats. 2000, ch. 611 (SB 1396).³

To determine how much ERAF must be allocated to school districts and how much can be diverted to other non-educational purposes, counties follow a multi-step calculation. First, school districts are entitled to ERAF revenue in inverse proportion to the amounts of property tax revenue per each school district's ADA, with more ERAF going to districts with less property tax revenue per ADA. Cal. Rev. & Tax. Code § 97.2(d)(1)-(2). Each district's ERAF allotment counts toward that district's Local Control Funding Formula (LCFF) entitlement. Cal. Educ. Code §§ 42238.02(j)-(k), 47635(a), 47662. The county calculates a similar ERAF entitlement for the

² Cal. Educ. Code § 41204.5. As discussed further below, generally speaking charter schools do not receive a direct allocation of property tax revenue. Rather, they receive funding from their authorizing districts "in lieu" of property tax allocations. The property taxes allocated to the district thus help fund not just the district's own ADA, but also the ADA of the charter school.

³ Beginning in 2004, the Legislature also offset city and county revenue losses from the Vehicle License Fee reduction with ERAF funds. See Cal. Rev. & Tax. Code § 97.70.

Keely Martin Bosler
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county's community college districts. Cal. Rev. & Tax. Code § 97.2(d)(3). The sum of ERAF revenue owed to each school district and community college district within a county is the county's "ERAF capacity."

The county auditor-controller compares the county's total ERAF revenue with its ERAF capacity. If there is more revenue than capacity, or "excess ERAF," the county auditor-controller apportions those excess funds first to county offices of education for special education programs, and then to cities, counties, and special districts. *Id.* § 97.2(d)(4)(B).

Beginning around 2019, it became apparent that a group of five counties – Marin, Napa, San Francisco, San Mateo, and Santa Clara – had been calculating excess ERAF in a manner that results in less property tax revenue being allocated to school districts and community colleges, and more being spent on counties, cities, and special districts. In March 2020, the Legislative Analyst issued a report concluding that those counties had been improperly failing to account for charter school student ADA in their ERAF capacity calculations.⁴ The counties claimed to have been confused by Revenue and Taxation Code section 97.2(d)(2)(A), which requires that the ERAF capacity calculation turn on the average daily attendance for "school districts," and in response, the Legislature amended Revenue and Taxation Code section 97.2(d)(2)(B) to require the Controller to issue guidance for calculating ERAF capacity and excess ERAF.⁵ Crucially, the enacted 2020-21 Budget Act assumed that the calculation would include charter school ADA and thus included the additional ERAF in the calculation of the Proposition 98 guarantee for that year as property tax revenues allocated to school districts and community college districts.

The Controller issued her guidance on February 16, 2021 and despite the legislative intent and protests from the DOF and the California Department of Education, the Controller sanctioned the counties' practice of excluding charter school ADA from the ERAF capacity calculation. The Controller's rationale was that the applicable Revenue and Taxation Code provisions concerning property tax allocations speak only of "school districts" and do not expressly refer to charter schools.⁶ The Department of Finance's most recent figures conclude exclusion of charter school

⁴ Legislative Analyst's Off., *Excess ERAF: A Review of the Calculations Affecting School Funding* (Mar. 6, 2020).

⁵ Stats. 2020, ch. 24, § 84 (SB 98).

⁶ A footnote in the Controller's guidance states: "Charter schools are not included in the definition of school districts for the calculation of excess ERAF because they do not directly receive property tax revenue pursuant to [Revenue and Taxation Code] sections 97.2 and 97.3, but from the sponsoring district in accordance with Education Code section 47635." California State Controller, *Excess Educational Revenue Augmentation Fund Revenue Guidance*, 2 n.3 (Feb. 21, 2021), https://www.sco.ca.gov/Files-ARD-Local/sco_eraf_guidance.pdf.

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ADA from ERAF calculations decreased the amount of property taxes going to school districts and community college districts and the Proposition 98 guarantee by \$283 million in 2019-20, \$298 million in 2020-21, and \$315.9 million in 2021-22.

B. The Controller's Guidance Unlawfully Lowers the 2019-20 Minimum Guarantee by \$283 Million

By permitting counties to exclude charter school ADA in their ERAF capacity calculations, thereby undercalculating the amount of ERAF funds that should flow to school districts, the Controller's guidance lowers the 2019-20 guarantee by \$283 million.

This is especially ironic given that the Legislature created ERAF specifically to help the state meet its minimum funding guarantee under Proposition 98. *Cal. Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 245 (2011). State law specifically allocates local revenue (or an amount "in lieu" of local revenue) to charter schools through their school districts, in order to meet the charter schools' LCFF target. Cal. Educ. Code §§ 42238.02(k), 47635(a), 47662. The Controller's guidance allowing the exclusion of charter school ADA from the ERAF allocation, in effect, treats charter schools as though they are funded wholly outside the school funding revenue system, which they are not.

The 2021-22 May Revision confirms the immediate statewide impact of the Controller's erroneous guidance. The 2019-20 school funding level is based on Proposition 98's "Test 1." Under Test 1, districts receive a set percentage of General Fund revenues (currently 38 percent), plus all their allocated property tax revenues. Any decrease in property tax revenues in a Test 1 year has a dollar-for-dollar impact on the Proposition 98 guarantee. As a direct result of the Controller's guidance, the May Revision for the 2021-22 fiscal year decreases the 2019-20 Proposition 98 minimum funding guarantee by \$283 million because of the lower property tax revenue allocations to school districts in the five counties.⁷

It is hard to overstate the damage to school funding that will result from giving effect to the Controller's guidance. Current fiscal projections assume that Test 1 will continue to be operative through at least 2022, which means that excluding charter schools from ERAF allocations will drop the guarantee further – by an additional \$298 million in 2020-21, and \$315.9 million in 2021-22. Furthermore, because the "Test 2" calculation of each year's minimum guarantee – the benchmark test – depends on the prior year's total funding to school districts and community college districts from General Fund revenues and local property tax

⁷ 2021-22 May Revision to the Governor's Budget, 47 (May 14, 2021), <http://www.ebudget.ca.gov/2021-22/pdf/Revised/BudgetSummary/K-12Education.pdf>.

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revenues, including ERAF funds, minimizing those local proceeds of taxes will have the effect of permanently lowering the required school funding level statewide by hundreds of millions, and eventually billions of dollars.

CONCLUSION

We urge the Department of Finance and the Legislature to take corrective action forthwith. The Legislature should immediately amend the relevant statutes to reconfirm that charter school ADA is included in the ERAF calculations, and that the recalculated amount of local property tax revenues should be included in the calculation of the Proposition 98 guarantee for 2019-20 and following. Should that not occur, we urge the Department to join us in exploring all legally available options to ensure the Controller's erroneous guidance is withdrawn or otherwise declared unlawful.

Sincerely,

Karen Getman

KG:NL

cc: Keith Bray (via email, kbray@csba.org)
(00438069)