

COUNTY OF SANTA CLARA

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JAMES R. WILLIAMS
COUNTY EXECUTIVE

February 2, 2024

The Honorable Dave Cortese
California State Senate
1021 O Street, Room 6630
Sacramento, CA 95814-4900

**Re: Governor's Proposed Budget: Charter School Eligibility for Education
Revenue Augmentation Funds—OPPOSE**

Dear Senator Cortese:

On behalf of the County of Santa Clara, I write to oppose the Governor's budget proposal to "clarify" that charter schools are eligible to receive Education Revenue Augmentation Funds (ERAF).¹ Unfortunately, the Governor's current Excess ERAF Proposal is the latest in a series of misguided attempts by the Department of Finance (DOF) to strip local governments' constitutionally protected funds that are essential for the maintenance of critical local safety net programs and services. While we are mindful of the need to close the State's budget gap, this proposal would do so at the expense of vulnerable communities without any offsetting benefit to charter schools.

ERAF allocations are constitutionally protected

Faced with a fiscal crisis in 1992, the Legislature, seeking to meet State minimum funding obligations under Proposition 98, required local governments to divert a portion of their property tax revenues to ERAF. Under this scheme, once school funding levels are met, any remaining funds—"excess ERAF"—are returned pro rata to the county, cities, and special districts that contributed their property taxes to ERAF.

However, to satisfy the State's school funding obligations, the Legislature periodically mandated further ERAF shifts, wreaking havoc on local government budgets.

¹ *Governor's Budget Summary—2024-25*, p. 18, available at <https://ebudget.ca.gov/2024-25/pdf/BudgetSummary/FullBudgetSummary.pdf>.

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In 2004, to spare local governments from this volatility, the Legislature and Administration agreed to a ballot measure—Proposition 1A—that was adopted by 83.7 percent of the voters. That measure prohibits the Legislature from “*reduc[ing] for any fiscal year the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among the county, cities, and special districts in that county below the percentage of the total amount of those revenues that would be allocated among those agencies for the same fiscal year under the statutes in effect on November 3, 2004.*”²

The Legislative Analyst's ballot summary stated that the measure “[e]nsures local property tax and sales tax revenues remain with local government thereby safeguarding funding for public safety, health, libraries, parks, and other local services.”³ “Proposition 1A was intended to prevent the Legislature from statutorily reducing the existing allocations of property taxes among cities, counties, and special districts. In essence, it was intended to stop the periodic ERAF shifts of property tax revenues from local agencies to satisfy the State's school funding obligations.”⁴

Yet this is precisely what DOF has been attempting for years. One of DOF's recent attempts was to erroneously assert that excess ERAF decreases school funding statewide and to support the California School Boards Association in its lawsuit challenging the State Controller's determination that charter schools are not entitled to excess ERAF.⁵ The trial and appellate courts rejected these arguments as baseless.⁶ Having lost this case, DOF now seeks to legislate around it. However, DOF's proposal to change the law to give excess ERAF to charter schools would violate the California Constitution because it would reduce the total percentage of property tax revenues allocated to counties, cities, and special districts below what the laws in effect on November 3, 2004 would have provided.

² Cal. Const. art. XIII, § 25.5(a)(1)(A), emphasis added. This provision protects counties, cities, and special districts from State actions to shift local property taxes to schools because it defines “local agency” for these purposes as “a city, county, and a special district.” (Cal. Const. art. XIII, § 25.5(b); Rev. & Tax Code, § 95(a).)

³ *Official Voter Information Guide—November 3, 2004 General Election*, p. 3, available at https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=2237&context=ca_ballot_props.

⁴ *City of Cerritos v. State of California* (2015) 239 Cal.App.4th 1020, 1041.

⁵ The evidence submitted by CSBA in its lawsuit included a declaration and other documents from DOF staff.

⁶ *California School Bds. Ass'n v. Cohen*, 2023 WL 4853693 (3rd Dist. Court of Appeal, unpublished) (“CSBA”). Although the appellate decision is unpublished, it constitutes a final judicial determination that charter schools do not receive ERAF.

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The proposed budgetary change would have devastating consequences to local government

Apart from conflicting with Proposition 1A, this proposal would yield no additional funding to charter schools or school districts. State law already provides a mechanism for charter schools to receive “local” funding through “in lieu” payments from their host school district.⁷ But the impact to affected local governments, including Santa Clara, San Mateo, San Francisco, Marin, Napa, and Alpine Counties, would be dramatic.

The proposed budgetary change would have a significant impact on Santa Clara County, costing about \$32 million in funding per year. This would be devastating to a county that is already facing a budget deficit of close to \$300 million. The cities and special districts in Santa Clara County would likewise be stripped of an additional \$10 million a year. This money-grab will compound local fiscal challenges, with grave consequences for local governments' ability to provide critical public programs and safety net services to their most vulnerable populations—precisely when they are most in need.

As the safety net to the most vulnerable of its two million residents, the County would be unable to close a budget gap of this size without considering severe cuts to critical services and staff reductions. In 2023, Santa Clara County staff collectively assisted more than 150,000 families with their benefit applications; helped 2,560 individuals gain permanent housing; enrolled 6,072 individuals in temporary housing; coordinated more than 1.5 million meals for seniors; issued 10,300 marriage licenses; answered more than 200,000 9-1-1 calls; provided reentry resources for 5,700 individuals formerly in custody; delivered 4,400 babies; provided care through more than 1 million primary, specialty, and emergency visits; hired 2,100 new County employees; coordinated countywide emergency response efforts during multiple disasters; investigated 6,000 reports of child abuse and neglect; managed 52,000 acres of parkland; processed 486,000 real property assessments; collected \$8 billion in property taxes to support K-12 schools and other public services; and delivered so many other vital services to our community. These are the services that the County would be forced to cut if the Governor's budget proposal moves forward.

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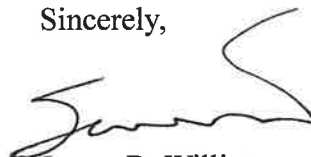
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⁷ See Educ. Code §§ 42238.02(i)-(k), 42238.03(a), (e), 46735; CSBA, 2023 WL 4853693, * 4. This in lieu payment is a percentage of the school district's property tax revenues based on the ratio of the school district's average daily attendance (ADA) and the charter school's ADA. Non-basic aid school districts are effectively reimbursed from ERAF for their charter school in lieu payments.

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I respectfully urge you to reject DOF's budget proposal. We look forward to discussing this with you and the rest of our delegation in the next county caucus meeting in March, which will be scheduled in the near future. In the meantime, please don't hesitate to reach out if you have any questions.

Sincerely,



James R. Williams
County Executive

Enclosed Fact Sheet

cc: Santa Clara County Legislative Delegation
Senate President Pro Tempore Designate, Mike McGuire
Senator Nancy Skinner, Chair, Senate Budget Committee
Senator Roger Niello, Vice Chair, Senate Budget Committee
Senator John Laird, Chair, Senate Budget Subcommittee on Education
Senator Steven Padilla, Chair, Senate Budget Subcommittee on State Administration and General Government
Assemblymember Jesse Gabriel, Chair, Assembly Budget Committee
Assemblymember Vince Fong, Vice Chair, Assembly Budget Committee
Assemblymember David Alvarez, Chair Assembly Budget Subcommittee on Education Finance
Assemblymember Sharon Quirk-Silva, Chair, Assembly Budget Subcommittee on State Administration
Santa Clara County Board of Supervisors
Greta S. Hansen, J.D., Chief Operating Officer
David Campos, Deputy County Executive
Josh Tosney, Legislative Deputy County Counsel
Jean Hurst, Hurst Brooks Espinosa



Impacts of Re-Redirecting Excess ERAF from Counties

BACKGROUND

The California Constitution requires the State to guarantee that schools receive a certain minimum level of funding. In 1992, to reduce the impact of this mandate on the State general fund, the State required each county to establish an Educational Revenue Augmentation Fund (ERAF) where local property tax dollars are taken from the county, cities, and special districts, deposited in ERAF, and used to bring school districts up to their minimum funding levels. Importantly, despite its name, **ERAF does not increase school funding—it merely offsets the State’s school funding obligations, dollar-for-dollar.** When more local property tax revenue is diverted to ERAF than is needed to meet school districts’ minimum funding needs, that revenue is deemed “excess ERAF” and returned to the county, cities, and special districts whose taxes were diverted to ERAF.

CHARTER SCHOOL FUNDING

Charter schools also have minimum funding guarantees, but they do not receive ERAF.ⁱ Instead, they receive “in lieu” payments from their host school district. If the in lieu payment is not enough to meet the charter school’s minimum funding level, the State makes up the difference.

PROBLEM

The California Department of Finance (DOF) has engaged in numerous efforts over many years to shift excess ERAF away from local governments to benefit the State budget.

One of DOF’s recent efforts was to assert, without any legal basis, that charter schools receive ERAF. DOF even supported the California School Boards Association’s unsuccessful lawsuit challenging the State Controller’s determination that charter schools do not receive ERAF.

DOF’s response to that judicial defeat is to propose unconstitutional budget legislation that would give charter schools ERAF, thereby shifting funds away from local governments.

The estimated impact to Santa Clara County from DOF’s proposal would be \$32 million per year. Our 15 cities and 11 special districts would also lose roughly \$10 million per year.

Losing these additional local property tax dollars would put critical safety net services—such as behavioral health care, supportive housing, and health services for children and families—at significant risk.

DOF’s proposal is also unconstitutional because Article XIII, § 25.5(a) restricts the State’s authority to use or redirect local property taxes from counties, cities and special districts. But DOF seems undeterred by this inconvenient fact.

We are asking our delegation to stay very alert for any proposed legislation entitling charter schools to ERAF.

CONTACT

James R. Williams, County Executive

Funding At Risk for Santa Clara County Communities

Annual Revenue Loss	
County of Santa Clara	\$32 M
15 Cities	\$7.9M
11 Special Districts	\$2M
Total Revenue Loss	\$41.9M

ⁱ *California School Bds. Ass’n v. Cohen*, 2023 WL 4853693 (3rd Dist. Court of Appeal, unpublished) (“CSBA”). Although the appellate decision is unpublished, it constitutes a final judicial determination that charter schools do not receive ERAF.