

June 6, 2022

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Assembly Member Philip Y. Ting, Vice Chair  
Joint Legislative Budget Committee  
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**Re: Objection to Proposed 2020-21 Proposition 98 Guarantee**

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

The California Teachers Association respectfully submits the following comments on the 2020-2021 draft Proposition 98 certification published by the Department of Finance on May 13, 2022.

CTA objects to the proposed certification on two bases: (1) it does not rebench the Proposition 98 minimum guarantee to account for certain appropriations for the After School Education and Safety (ASES) program and therefore violates Proposition 49 (2002); and (2) it undercounts local property tax dollars from local Education Revenue Augmentation Funds (ERAF) that should have been allocated to school districts, charter schools and county offices of education, 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 2020-21 alone, with permanent damages to education funding reaching billions of dollars.

**1. The 2020-2021 Certification Must Rebench the Minimum Guarantee to Account for Appropriations to the 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,<sup>1</sup> 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).<sup>2</sup> This language was added to ensure that increases in Proposition 49 spending would not encroach on other Proposition 98 educational programs.

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<sup>1</sup> *Id.*

<sup>2</sup> 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.

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. In all subsequent budgets, the ASES program has received similar so-called “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).<sup>3</sup> In the 2019 Budget Act, the “one-time” appropriation was increased to \$100 million.<sup>4</sup> The 2020 Budget Act includes the same \$100 million “one-time” appropriation.<sup>5</sup> Finally, although not at issue with this proposed certification, the 2021 Budget Act included a \$126.2 million appropriation for ASES, thus continuing the “one-time” appropriation of funds for the ASES program. Stats. 2021, ch. 21 (AB 128).<sup>6</sup>

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 funding for ASES in the 2020-21 fiscal year 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 2020-21 should increase the guarantee by \$100 million to account for the \$100 million increase to ASES funding in 2020-21.

**2. The 2020-2021 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 2020-21 also undercalculates the Proposition 98 minimum guarantee due to five counties’ under-allocation of ERAF property tax revenues to school districts.

In 2020, the Legislative Analyst concluded that those five counties had been incorrectly excluding charter schools in their ERAF calculations.<sup>7</sup> 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 to the counties for calculating excess ERAF.<sup>8</sup> The enacted 2020-21 Budget Act also assumed that the Proposition 98 calculation would include the additional ERAF in the calculation of the Proposition 98

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<sup>3</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB840](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB840).

<sup>4</sup> Stats. 2019, ch. 23 (AB 74),  
[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB74](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB74).

<sup>5</sup> Stats. 2020, ch. 7 (AB 89),  
[http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB89](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB89).

<sup>6</sup> [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB128](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB128).

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

<sup>8</sup> Stats. 2020, ch. 24, sec. 84 (SB 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 objections from CTA, the Education Coalition, and the Department of Finance, 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 wrongly treats charter schools as though they are not part of the school funding revenue system. This is clearly not the case -- state law specifically allocates local revenue to charter schools through their school districts to meet the charter schools' LCFF entitlement. Cal. Educ. Code §§ 42238.02(k), 47635(a), 47662.

The result of the Controller's guidance is a dollar-for-dollar decrease in the Proposition 98 guarantee in 2020-21, when Test 1 is applicable. Last year, the 2020-21 May Revision estimated that property tax revenue for schools in 2020-21 decreased by \$298 million due to the Controller's guidance<sup>9</sup> – a decrease that has surely grown by the millions.

Moreover, because Test 1 will continue to be operative for the foreseeable future, the Controller's erroneous guidance will lower the guarantee by an additional hundreds of millions of dollars in subsequent fiscal years. By minimizing local proceeds of taxes, the exclusion of charter schools from ERAF calculations will have the effect of permanently lowering the required school funding level statewide by hundreds of millions, and eventually billions of dollars.

The proposed Proposition 98 certification for 2020-21 should increase the guarantee to reflect accurate ERAF revenue amounts that include charter schools in the calculation of school districts' entitlement to ERAF Funds.

Sincerely,



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<sup>9</sup> 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>.