



# TOWN OF FAIRFAX

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May 8, 2024

State Senator Scott Weiner  
Chair, Senate Budget Committee  
1021 O Street, Suite 8620  
Sacramento, CA 95814

Assemblymember Jesse Gabriel  
Chair, Assembly Budget Committee  
1021 O Street, Suite 8330  
Sacramento, CA 95814

## **Re: Governor's Proposed Budget: Charter School Eligibility for Education Revenue Augmentation Funds (ERAF) – OPPOSE**

Dear Senator Weiner and Assemblymember Gabriel,

On behalf of Town of Fairfax – I write to convey our strong opposition to the Governor's 2024-25 budget proposal regarding Charter School Eligibility for Education Revenue Augmentation Funds (ERAF). This proposal would result in the permanent **loss of \$1.1 to \$2.7 million annually** in Excess ERAF funding to 65 local governmental entities throughout Marin County that deliver vital transportation, public safety, safety net, and other services. Critically, **it would not result in any more funding for schools.**

We understand the difficult situation of the state budget this year, and that tough budgetary decisions must be made. However, given other proposed cuts to state safety net programs, infrastructure funding, and other state-administered services, now is not the time to also pass on additional ongoing – and disproportionate – cuts to a handful of counties, cities and special districts facing difficult challenges of their own.

As you know, Excess ERAF results from ERAF property tax funds left over once the state has fulfilled its funding obligations to Marin schools and community colleges. Excess ERAF funds collected from Marin residents are then returned to Marin County, its cities, towns, and special districts to provide general public services. The services supported by Excess ERAF provide some of the most direct impacts on the day-to-day lives of residents including parks, libraries, public safety, affordable and workforce housing, economic vitality, initiatives to address homelessness, and other key local government functions.

Many residents who rely most on these services include vulnerable, low-income communities of color, older adults, those living with disabilities, and unhoused residents. We know these groups would be most affected by any ongoing cuts to Excess ERAF revenues because **cuts to the general fund will mean cuts to discretionary services.**

Furthermore, solving state fiscal challenges with local Excess ERAF revenues sets a dangerous precedent. Local governments, with small budgets and limited room to manage cuts without serious consequences to local services, should not disproportionately shoulder the burden of the state's deficit.

Additionally, the Governor's proposal would result in approximately **\$440,000 in cuts to 58 special districts** in Marin. Special districts deliver key services that our residents and visitors rely on: from sanitary districts to flood zone protection infrastructure to volunteer fire districts in West Marin, which provide emergency medical services to residents and visitors alike on a shoestring budget.

To be clear, we **strongly support our public schools** and are concerned with any funding cuts that impact learning and education. However, this proposal maintains the same level of state funding to our charter schools while actually **reducing funding to public libraries**. The net result is a loss in public education funding in our communities.

Finally, we not only believe that this proposal is poor public policy because of the reasons stated in this letter, but we also maintain that Excess ERAF funds are constitutionally protected for the localities that generate them. Please see the attached February 14, 2024 letter from the Marin County Executive which highlights these legal concerns.

Thank you for your consideration of our concerns, and we urge the state not to move forward with the Governor's proposal, which would result in permanent cuts to dozens of local entities without benefiting our schools.

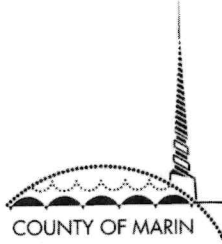
Sincerely,

A handwritten signature in blue ink, appearing to read 'Barbara Coler', with a long horizontal flourish extending to the right.

Barbara Coler, Mayor

Cc: Senator Mike McGuire  
Assemblymember Damon Connolly

Attachment A: February 14, 2024 letter from the County of Marin



Matthew H. Hymel  
COUNTY EXECUTIVE

February 14, 2024

Daniel Eilerman  
ASSISTANT COUNTY EXECUTIVE

State Senator Scott Weiner  
Chair, Senate Budget Committee  
1021 O Street, Suite 8620  
Sacramento, CA 95814

Ariel Espiritu Santo  
ASSISTANT COUNTY EXECUTIVE

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

Dear Senator Weiner and Assemblymember Gabriel,

On behalf of the Marin County Board of Supervisors, I write to oppose the Governor's budget proposal that purports to "clarify" that charter schools are eligible to receive Education Revenue Augmentation Funds (ERAF)<sup>1</sup>. This is the latest in a series of attempts by the State Department of Finance (DOF) to take constitutionally protected funds from local governments for State use at the expense of local health and safety programs and services.

**ERAF allocations are constitutionally protected.**

Faced with a fiscal crisis in 1992, the Legislature, seeking to meet State minimum educational funding obligations under Proposition 98, required local governments to shift a significant portion of their local property tax revenues into a newly established Educational Revenue Augmentation Fund (ERAF). Under that scheme, once school funding levels were met, any remaining property tax contributions in the ERAF were considered "excess ERAF". Excess ERAF must be returned pro rata to the county, cities, and special districts that originally contributed those property taxes to ERAF.

To satisfy the State's constitutional school funding obligations, the Legislature has periodically mandated additional funding shifts, significantly impairing local government budgets and planning efforts. In 2004, as a State budget balancing compromise, the Legislature and the Administration agreed to a one-time local shift in funding (known as "the triple flip") in exchange for putting a measure on the ballot (Proposition 1A), which was adopted by fully 83.7 percent of the State's voters. That constitutional amendment prohibits the Legislature "*from reduc[ing] for any fiscal year the percentage of the total amount of ad valorem property tax revenues in a*

<sup>1</sup> Governor's Budget Summary-2024-25, p. 18, available at <https://ebudget.ca.gov/budget/2024-25/#/BudgetSummary>.

county that are allocated among the county, cities, and special districts in that county below the percentage that was allocated among those agencies on November 3, 2004.”<sup>2</sup>

The Legislative Analyst's Prop 1A 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.”<sup>3</sup> “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 funding shifts of property tax revenues from local agencies to satisfy the State's school funding obligations.”<sup>4</sup>

**The Governor’s Proposal, in any case, is unconstitutional.**

One of DOF's most recent attempts was to erroneously assert that excess ERAF decreases school funding statewide. They also supported the California School Boards Association in a lawsuit challenging the State Controller's determination that charter schools are not entitled to receive ERAF<sup>5</sup>. Both the trial and appellate courts rejected their arguments<sup>6</sup>. DOF now seeks to “clarify” a matter already addressed in statutes and expressly decided by the courts. DOF's proposal to change the law to use excess ERAF to fund charter schools, even if successful legislatively to provide the “clarity” they seek, would explicitly violate the California Constitution because it would reduce the total percentage of property tax revenues allocated to counties, cities, and special districts below the amount that was in effect on November 3, 2004 when Proposition 1A was enacted.

**The Governor’s Proposal would have significant consequences to local governments.**

Apart from conflicting with Proposition 1A, the 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<sup>7</sup>. However, the impact to the affected local governments, including Santa Clara, San Mateo, San Francisco, Marin, Napa, and Alpine Counties, would be significant.

In Marin County, the proposed budgetary change affects 65 governmental entities and would cost the Marin community \$1.1 million per year, including approximately \$713,000 per year to the County of Marin and the Marin County Free Library; \$179,000 to Marin’s eleven cities and towns; and \$173,000 to various special district

<sup>2</sup> 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).)

<sup>3</sup> *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](https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=2237&context=ca_ballot_props).

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

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

<sup>6</sup> *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.

<sup>7</sup> 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.

agencies. This latest effort by the state to take local revenue would compound local fiscal challenges, including critical public programs and safety net services to our most vulnerable populations.

We respectfully urge the Legislature to reject this latest State taking of property tax revenue, which violates the clear voice of the voters of the State of California when they approved Prop 1A in 2004 – and purportedly does so in the name of charter schools when, in fact, charter schools will not benefit.

Sincerely,

A handwritten signature in black ink, appearing to read "MHymel", written in a cursive style.

Matthew Hymel  
Marin County Executive

Cc: Senator Mike McGuire  
Assemblymember Damon Connolly