
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 2214
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Fiscal: Yes

SUBJECT: California Environmental Quality Act: schoolsites: acquisition of property: school districts, charter schools, and private schools

DIGEST: Requires charter schools and private schools to comply with the same siting requirements as public schools for evaluating a schoolsite for potential hazardous substances, emissions, and waste.

ANALYSIS:

Existing law:

- 1) Requires the governing board of a school district, before acquiring any site on which it proposes to construct a school building, to have the site under construction investigated by competent personnel to ensure that the final selection is determined by an evaluation of all factors affecting the public interest and is not limited to the selection on the basis of raw land cost only. Requires, if the prospective schoolsite is located within the boundaries of a special studies zone or within an area designated as geologically hazardous in the safety element of the local plan, the investigation to include geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage. (Education Code (EDC) §17212).
- 2) Prohibits the governing board of a school district from approving a project involving the acquisition of a schoolsite unless all of the following occur (EDC) §17213):
 - a) The school district, as the lead agency, determines that the property purchased or to be built upon is not any of the following:
 - i) A current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed;

- ii) A hazardous substance release site identified by Department of Toxic Substances Control (DTSC) in the current list of sites selected for removal or remedial action pursuant to the Hazardous Waste Control Law; or
 - iii) A site that contains one or more pipelines, either underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood.
- b) The school district, as the lead agency in preparing the environmental impact report (EIR) or negative declaration (ND), consulted with the administering agency in which the proposed schoolsite is located and with any air pollution control district or air quality management district having jurisdiction in the area to identify facilities within the district's authority that are within one-fourth of one mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous air emissions or to handle hazardous or extremely hazardous materials, substances, or waste.
- c) The governing board makes one of the following written findings:
- i) Consultation identified none of the facilities or significant pollution sources;
 - ii) The facilities or other pollution sources exist, but either the health risks from the facilities or pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school; or the governing board finds that corrective measures required under an existing governmental order will, before the school is occupied, result in mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school;
 - iii) For a schoolsite with a boundary that is within 500 feet of a freeway or other busy traffic corridor, the governing board of the school district determines that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils; or
 - iv) The governing board finds that the conditions in (ii) or (iii) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet these requirements. If the governing board makes this finding, requiring

the governing board to adopt a statement of overriding considerations.

- 3) Requires the governing board of a school district, as a condition of receiving state funding, before the acquisition of a schoolsite, to conduct a Phase I environmental assessment or a preliminary endangerment assessment of the proposed school site. (EDC 17213.1)
- 4) Requires the California Department of Education (CDE) to do all of the following (EDC §17251):
 - a) Advise the governing board of the school district on the acquisition of new schoolsites and give the governing board a list of the recommended locations in the order of their merit. Allows the governing board to purchase a site deemed unsuitable for school purposes by CDE only after reviewing CDE's report at a public hearing. Requires CDE to charge the school district a reasonable fee for each schoolsite reviewed.
 - b) Develop standards for use by a school district in the selection of schoolsites and standards for use by school districts to ensure that the design and construction of school facilities are educationally appropriate, promote school safety, and provide school districts with flexibility in designing instructional facilities. Requires CDE to investigate complaints of noncompliance with site selection standards and to notify the governing board of the school district of the investigation results. If the notification is received before the site acquisition, the governing board of the school district is required to discuss the findings at a public hearing.
 - c) Upon the request of the governing board of a school district, review plans and specifications for school buildings. Requires CDE to charge the school district for the review of plans and specifications.
 - d) Upon the request of the governing board of the school district, make a survey of the building needs of the school district, advise the governing board of the school district concerning the building needs, and suggest plans for financing a building program to meet the needs. Requires CDE to charge the school district for the cost of the survey.
 - e) Provide information relating to the impact or potential impact upon a schoolsite of hazardous substances, solid waste, safety, hazardous air emissions, and other information CDE deems appropriate.

- f) Develop strategies to assist small school districts with technical assistance relating to school construction and the funding of school facilities.
- 5) Under the Hazardous Waste Control Law, authorizes the Department of Toxic Substances Control (DTSC) to regulate the management of hazardous wastes in California. (Heath and Safety Code (HSC) §§25100 et seq.)
 - 6) Under the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA) program, provides for response authority for release of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to public health or the environment. (HSC §§25300 et seq.)
 - a) Requires DTSC to publish and revise, at least annually, a listing of hazardous release sites selected for a response action under HSAA. (HSC §25356)
 - 7) Under the California Environmental Quality Act (CEQA), provides a process for evaluating the environmental effects of projects undertaken or approved by public agencies. (Public Resources Code §21000 et seq.)
 - a) Requires the governing board of each school district, before acquiring title to property for a new schoolsite or for an addition to a present schoolsite, to give the planning commission having jurisdiction notice of the proposed acquisition. Requires the planning commission to investigate the proposed site and, within 30 days of receipt of the notice, submit a written report on the investigation and its recommendations to the governing board. Prohibits the governing board from acquiring title to the property until the report of the planning commission has been received.
 - b) Prohibits an EIR from being certified or a ND from being approved for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless certain conditions are met. (PRC §21151.8)

This bill applies the above siting and acquisition requirements that are imposed on governing boards of school districts onto governing bodies of charter schools and governing boards private schools. Specifically:

- 1) Requires the governing body of a charter school, before acquiring any site on which it proposes to construct a school building, to have the site under construction investigated by competent personnel to ensure that the final selection is determined by an evaluation of all factors affecting the public

interest and is not limited to the selection on the basis of raw land cost only. Requires, if the prospective schoolsite is located within the boundaries of a special studies zone or within an area designated as geologically hazardous in the safety element of the local plan, the investigation to include geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

- 2) Requires the governing body of a charter school or the governing body of a private school to conduct a Phase I environmental assessment or a preliminary endangerment assessment of the proposed school site before acquiring a schoolsite or, if the charter school or private school owns or leases a school site, before the construction of a project.
- 3) Prohibits the governing body of a charter school or a governing board of a private school from approving the acquisition or purchase of a schoolsite, or the construction of a new elementary or secondary school, by, or for use by, a charter school or private school unless all of the following occur:
 - a) The city or county determines that the property proposed to be acquired or purchased, or to be constructed upon, is not any of the following:
 - i) A current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the city or county concludes that the wastes have been removed;
 - ii) A hazardous substance release site identified by DTSC in the current list of sites selected for removal or remedial action pursuant to the Hazardous Waste Control Law; or
 - iii) A site that contains one or more pipelines, either underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.
 - b) The governing body or board has notified in writing and consulted with the relevant administering agency, any air pollution control district, air quality management district to identify both permitted and nonpermitted facilities within the district's authority that are within one-fourth of one mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous air emissions or to handle hazardous or extremely hazardous materials, substances, or waste.

- c) The city or county makes one of the following written findings:
- i) The consultation identified none of the facilities specified in (b) or other significant pollution sources;
 - ii) One or more of the facilities specified in (b) or other pollution sources exist, but either the health risks from the facilities or pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school; or corrective measures required under an existing order by another agency will, before the school is occupied, result in mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school; or for a schoolsite with a boundary that is within 500 feet of a freeway or other busy traffic corridor, the city or county determines that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.
 - iii) One or more of the facilities specified in (b) or other pollution exists, but the conditions in (ii) cannot be met and the charter school or private school is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet these requirements.
- 4) Adds charter schools to the duties required of CDE related to siting and standards for design plans.
- 5) Requires the governing body of a charter school or governing board of a private school to, before acquiring title to property for a new schoolsite or for an addition to a present schoolsite, give the planning commission having jurisdiction notice in writing of the proposed acquisition. Requires the planning commission to investigate the proposed site and, within 30 days after receipt of the notice, submit to the governing body or board a written report of the investigation and its recommendations concerning the acquisition of the site. Prohibits the governing body or board from acquiring title to the property until the report of the planning commission has been received.
- 6) Prohibits a lead agency from certifying an EIR or approving a ND for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a charter school or private school unless the charter school or private school meets the same conditions that are imposed on the school district off a public school.

Background

- 1) *Hazardous Waste Control Law (HWCL)*. The HWCL is the state's program that implements and enforces federal hazardous waste law in California. HWCL statute directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility. Current law prohibits a public school from being built on a hazardous waste site permitted by DTSC.
- 2) *Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA)*: State law provides DTSC with general administrative responsibility for overseeing the state's responses to spills or releases of hazardous substances, and for overseeing hazardous waste disposal sites that pose a threat to public health or the environment. The HSAA provides DTSC with the authority, procedures, and standards to investigate, remove, and remediate contamination at sites; to issue and enforce a removal or remedial action order to any responsible party; and, to impose administrative or civil penalties for noncompliance with an order. DTSC utilizes HSAA for cleanup of contaminated sites and HWCL for the regulation of hazardous waste sites. Current law prohibits a public school from being built on a site with hazardous substances that is on a list compiled by DTSC.
- 3) *CEQA*. CEQA generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. If a project subject to CEQA will not cause any adverse environmental impacts, a public agency may adopt a document known as a negative declaration. If the project may cause adverse environmental impacts, the public agency must prepare an EIR. An EIR contains in-depth studies of potential impacts, measures to reduce or avoid those impacts, and an analysis of alternatives to the project. A key feature of the CEQA process is the opportunity for the public to review and provide input on both negative declarations and EIRs. The process of siting and building a school is subject to the CEQA process.
- 4) *Siting of schools is a complicated process*: Siting schools is not an easy process. Existing law prohibits school districts from locating public schools on land that was previously a hazardous waste disposal site, that contains pipelines that carry hazardous substances, or that is near a freeway and other busy traffic

corridors and railyards that have the potential to expose students and school staff to hazardous air emissions. Existing law also requires school districts to comply with CEQA requirements, review by DTSC, and approval by the CDE to ensure the design plans meet the academic need of the school.

School districts must also comply with the Field Act, which ensures that school buildings can withstand earthquakes. School districts must submit all school design plans to the Division of State Architect to ensure that the architectural design plans meet fire, life, and safety requirements, Field Act requirements, and access requirements under the Americans with Disability Act.

Charter schools are not required to comply with school siting requirements unless they receive state school bond funds. Private schools are not subject to the requirements in the Education Code unless specified, typically related to health and safety issues.

- 5) *Charter schools.* Charter schools are authorized by school district boards and county boards of education. A charter school is generally exempt from most laws governing school districts, except where specifically noted in the law. Specific goals and operating procedures for the charter school are detailed in an agreement (or "charter") between the authorizing board and charter organizers. According to the CDE, in the 2018-19 academic year, there were 1,317 charter schools in California, with an enrollment of over 630,000 students. Some charter schools are new, while others are conversions from existing public schools. Charter schools are part of the state's public education system and are funded by public dollars. Funding for charter schools can also be supplemented by private funds.

Comments

- 1) *Purpose of Bill.* According to the author, "Private and some charter schools are not required to meet the same siting requirements as public schools, before building a new school. These schools can be built in unsafe locations near sources of hazardous emissions, substances, or waste. As a result, the public health and safety of the students, teachers, and school employees could be put at risk.

"AB 2214 would keep students safe by requiring private and charter schools to follow the same laws as public schools to identify nearby sources of air pollution, consult with their local air districts, and evaluate school sites for potential hazardous emissions, substances, or waste. This bill simply requires parity so that all students whether they attend a public school or a

private/charter school attend a school site free from hazardous waste or admissions.”

2) *Overview of the bill.*

a) *Section 1: Site acquisition – earthquake and other geological hazards.*

This bill requires the governing body of a charter school, before acquiring any site on which it proposes to construct any school building to have the site under construction investigated to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to the selection on the basis of raw land cost only. If the prospective schoolsite is located in an area designated as geologically hazardous then the investigation is required to include geological and soil engineering studies in order to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

b) *Section 2 – Environmental assessment.* This bill requires, before acquiring a schoolsite, or before the construction of a project, requires all school districts, charter schools, and private schools to conduct a Phase 1 environmental assessment, and subsequent assessments, as defined, to determine the potential presence of hazardous materials. This provision is an existing requirement for school districts seeking state bond funds for school facilities.

c) *Section 3 – Site selection.* This bill prohibits the governing body of a charter school or a private school from approving the acquisition or purchase of a schoolsite, or the construction of a new school, unless it is determined that the project is not located upon a hazardous waste disposal site, a hazardous substance release site, a site that contains pipelines that carry hazardous substances; or near freeways, busy traffic corridors, large agricultural operations, and railyards. This provision is an existing requirement for school districts.

d) *Section 4 – CDE technical assistance.* This bill authorizes the CDE, upon request from the governing body of a charter school, to, for a fee, provide advice related to site selection, and review plans and specifications for school buildings. School districts are currently authorized to request this type of fee-based assistance from the CDE.

e) *Section 5 – Site acquisition and local planning commission.* This bill requires the governing body of a charter school or private school to, before acquiring the title to property for a new schoolsite or for an additional

schoolsite, give the local planning commission notice in writing of the proposed acquisition. If the report issued by the commission does not favor the acquisition of the schoolsite, prohibits the governing body of the charter school or private school from acquiring the title to the property until 30 days after the commission's report is received. This provision is an existing requirement for school districts.

- f) *Section 6 – Environmental impact report certification.* This bill prohibits a lead agency from certifying an environmental impact report or approving a negative declaration for a project involving the purchase of a schoolsite or the construction of a new school by a charter school, or a private school, unless specified health and safety conditions are met. This provision is an existing requirement for school districts.
- 3) *Need for bill.* Last year, instances of a private school or charter school being located near sources of pollution, unknown to the parents of the children who attended the school and school employees, were reported causing concerns in local communities. For example, when a new private school opened in the Bay Area, parents of children that attended the new school became alarmed when they learned that the school was located adjacent to a concrete plant. The process of making concrete can send microscopic chemicals into the air, which can cause respiratory problems and heart disease. Ultra-fine dust particles can travel into the lungs and heart, which can lead to respiratory problems and sometimes cardiac arrest. The parents did not realize that the new school was next to the concrete plant because, during construction, the plant looked like it was a part of the school's construction site. After a series of unfortunate missteps, including an incorrect health assessment and the planning department failing to contact the Bay Area Air Quality Management District, the school site was approved for construction.

The goal of AB 2214 is to provide additional guardrails that will hold charter schools and private schools to the same siting standards as public schools.

- 4) *Achieving parity with public schools.* If public schools are held to certain standards intended to minimize student and employee exposure to hazardous materials and substances, it would make sense to also apply those same standards to charter schools and private schools.

Siting and consultation requirements. This bill, similar to public schools, would prohibit private schools and charter schools from being built on a hazardous waste site, a hazardous substance release site that DTSC has identified for cleanup, or a site that contains pipelines that carry hazardous

substances, extremely hazardous substances, or hazardous wastes unless certain findings are made; and would require consultation with air pollution control districts or air quality management districts. Because existing law was written for school districts, which are public entities that can hold public hearings and meetings, this bill, in applying the same requirements to private schools or charter schools, designates a city or a county as the entity to determine whether the site falls within any of the prohibited categories.

- 5) *Charter schools are subject to local planning processes.* Opponents of the bill argue that because charter schools are already subject to local planning processes, including CEQA, imposing the additional siting and acquisition requirements of the bill is unnecessary. While it is true that charter schools are subject to local oversight and approval, that does not always offer the same level of protection against hazardous environments as this bill would. For example, although charter schools are subject to the California Building Standards Code, compliance with the regulations does not mean that the schoolsite will not be located near significant sources of pollution.

Additionally, while one hopes this would not be the case, existing law does not prohibit a local planning commission or other entity from approving a schoolsite at a location despite the presence of potential health risks from pollution sources identified in a CEQA environmental review document or if the project is approved ministerially. For example, the City of Cudahy approved, ministerially, the construction of a charter school on land that contained lead and arsenic. Residents of the city sued to prevent the charter school from being built arguing that environmental review should have been done and that the proposed facility should not be built before thorough cleanup of the site's alleged toxins has been completed.

This bill, by requiring certain findings be made relating to nearby sources of pollution, adds an additional layer of protection for those schools sites and helps avoid these situations..

- 6) *Previous legislation.* This bill is substantially similar to last year's AB 762 (Lee), which was held on the suspense file in the Senate Appropriations Committee. The main difference between this bill and AB 762 is this bill adds a requirement for charter schools and private schools to notify the local planning commission before acquiring property and, if a report from the planning commission does not favor acquiring the property, prohibits the charter school or private school from acquiring the property until 30 days after the report is received (Section 5 of this bill).

Related/Prior Legislation

AB 2882 (Chu, 2020). Would have required charter schools and private schools to follow the same siting requirements as public schools for evaluating a schoolsite for potential hazardous substances, hazardous emissions, or hazardous waste. Would have required the evaluation of a potential charter schoolsite under CEQA to follow the same process as public schools under CEQA. This bill was referred to this committee but was not set for a hearing.

AB 2825 (Ruskin, 2006). Would have required a school district, in preparing the Environmental Impact Report (EIR) on a proposed schoolsite, to identify any proposed facilities that emit hazardous air emissions or handle specified hazardous substances within a one-fourth mile of the proposed site. This bill was vetoed by Governor Schwarzenegger.

SB 1224 (Ortiz, 2004). Would have required school districts to contact DTSC if a potential health risk to students caused by a hazardous material is discovered. Would have allowed DTSC to oversee, review, and approve a site investigation and remediation for such a risk, and would have allowed deferred maintenance funding to be used for the investigation, mitigation, and removal of hazardous materials. This bill was held in the Senate Education Committee.

SB 352 (Escutia, Chapter 668, Statutes of 2003). Prohibits a local educational agency from approving the acquisition of a schoolsite within 500 feet of a busy roadway unless the air quality at the site does not pose a health risk to pupils or staff.

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Education Committee.

SOURCE: Bay Area Air Quality Management District

SUPPORT:

Bay Area Air Quality Management District
California Air Pollution Control Officers Association
California Federation of Teachers Afl-cio
California Safe Schools
California School Employees Association
Communities for A Better Environment

Cudahy Alliance for Justice
San Diego; County of

OPPOSITION:

California Charter Schools Association

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