
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 762
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Urgency: No
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Fiscal: Yes

SUBJECT: Hazardous emissions and substances: schoolsites: private and charter schools

DIGEST: Requires private schools to comply with the same requirements as public schools for the acquisition or construction of a schoolsite related to the impact of potential hazardous substances, hazardous emissions, and hazardous waste, as specified, and requires charter schools to comply with those requirements, to the extent that CEQA applies. Requires the CEQA environmental assessment of a potential charter schoolsite to follow the same CEQA process as public schools.

ANALYSIS:

Existing law:

- 1) 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.)
- 2) 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)
- 3) 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) 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)

- 4) Prohibits the governing board of a school district from approving a project involving the acquisition of a schoolsite unless all of the following occur (Education Code (EDC) §17213):
 - a) The school district determines that the property purchased or to be built upon is not any of the following:
 - i) A site of 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 DTSC in the current list of sites selected for removal or remedial action pursuant to the Hazardous Waste Control Law; or
 - iii) The site 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 under CEQA and in preparing the EIR or 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.
- 5) 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.

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

- 1) With regard to charter schools, prohibits the governing body of a charter school from approving a project involving the acquisition of a schoolsite unless all of the following occur:
 - a) The governing body determines that the property purchased or to be built upon is not the site of a current or former hazardous waste disposal site or solid waste site, except as specified; a hazardous substance release site identified by DTSC in a list of sites selected for removal or remedial action; or a site that contains one or more pipelines that carry hazardous substances, extremely hazardous substances, or hazardous wastes, except as specified.
 - b) The governing body, in preparing the EIR or ND, consulted with the relevant administering agency, air pollution control districts, and air quality management districts 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 body 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:
 - a) 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;
 - b) The governing body 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;
- c) For a schoolsite with a boundary that is within 500 feet of a freeway or other busy traffic corridor, the governing body 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
 - d) The governing body finds that the conditions in (b) or (c) above cannot be met, and the charter school is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet these requirements. If the governing body makes this finding, requires the governing body to adopt a statement of overriding considerations.
- 2) With regard to private schools, prohibits the 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 private-school unless all of the following occur:
- a) The city or county determines that the property to be acquired or purchased, or to be constructed upon is not the site of a current or former hazardous waste disposal site or solid waste site, except as specified; a hazardous substance release site identified by DTSC in a list of sites selected for removal or remedial action; or a site that contains one or more pipelines that carry hazardous substances, extremely hazardous substances, or hazardous wastes, except as specified.
 - b) The governing body has notified and consulted with the relevant administering agency, air pollution control districts, and air quality management districts 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 city or county makes one of the following written findings:
 - i) Consultation identified no facilities that might emit hazardous air emissions or handle hazardous materials, substances, or waste, or significant pollution sources;
 - ii) The facilities or other pollution sources exist, but either: (i) 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 proposed school; (ii) corrective measures required under an existing 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; or (iii) 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) Facilities that might emit hazardous emissions or handle hazardous substances or waste and other pollution sources exist but the conditions specified in (ii) above cannot be met and the private school is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet these requirements.
- 3) Adds charter schools to the duties required of CDE related to siting and standards for design plans.
 - 4) With regard to CEQA, requires a charter school to follow the same CEQA processes as public schools.
 - 5) Makes various changes that are either nonsubstantive, conforming, or organizational.

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 762 would keep students safe by requiring private and charter schools to identify nearby sources of air pollution, consult with their local air districts, and evaluate schoolsites for potential hazardous emissions, substances, or waste."

- 2) *Need for bill.* According to the author, this bill stems from 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. 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. According to information provided by the author, the parents did not realize that the new school was next to the concrete plant because, during construction, the plant looked like it as 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 762 is to provide additional guardrails that will hold charter schools and private schools to the same siting standards as public schools.

- 3) *Does this bill achieve 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 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; 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, designates a city or a county as the entity to determine whether the site falls within any of the prohibited categories.

For charter schools, this bill would also apply these siting prohibitions and consultation requirements, to the extent that CEQA applies. If CEQA does not apply, a charter school would not be restricted from acquiring or constructing a school site on a “prohibited” site nor would the charter school be required to consult with the relevant air pollution control districts or air quality management districts.

The author may wish to consider whether charter schools should also be prohibited from acquiring or building on specific sites and should be required to consult with the specified agencies, regardless if CEQA applies.

CEQA processes. AB 762 also requires charter schools that are seeking to construct a new school or purchase a new schoolsite to follow the same CEQA process that is imposed on school districts – that the EIR or ND contain an analysis of possible hazardous waste and pollution problems. Under existing law, this specific environmental assessment imposed on school districts pairs with the requirement that the school district make certain findings before approving new school construction or schoolsite acquisition. The specific CEQA analysis is to provide the school district with the necessary information to make the determination that the site is not a prohibited site.

AB 762 does not require a private school to perform this specific CEQA analysis. The author may want to consider whether it would be appropriate for a private school, when a project is subject to CEQA, to be subject to this specific CEQA analysis.

- 4) *When CEQA doesn't apply.* This bill's requirements only apply to a charter school *to the extent the acquisition of property or the construction of a school by the school is subject to CEQA.* CEQA only applies when there is a discretionary action taken by a public entity. Therefore, if there is no discretionary act of a public entity, CEQA does not apply. For example, ministerial actions are not subject to CEQA. If a local jurisdiction has an ordinance that makes the construction of a school facility not subject to a discretionary action, CEQA does not apply.

This happened in the City of Cudahy, which has a planning code that allows for a charter school to build a new facility as a ministerial project. Residents of the city are suing 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 the site's alleged toxins has completed. AB 762 would not address this issue because, in accordance with the city's local ordinance, CEQA does not apply.

- 5) *Terminology issues.* As written, AB 762 contains some inaccurate terminology when it comes to CEQA and the role of the lead agency that need to be addressed with technical amendments.

The committee may wish to require the author to work with the committee to make various technical, nonsubstantive changes that would address the CEQA terminology issues.

Related/Prior Legislation

AB 2882 (Chu, 2020) was substantially similar to this bill. The 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 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. The bill was vetoed by Governor Schwarzenegger.

SB 1224 (Ortiz, 2004) would have required school districts to contact the DTSC if a potential health risk to students caused by a hazardous material is discovered, allow the DTSC to oversee, review, and approve a site investigation and remediation for such a risk, and allow 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 school district 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 Association of Private School Organizations
California Safe Schools
County of San Diego
Los Angeles County Office of Education
South Coast Air Quality Management District

OPPOSITION:

California Catholic Conference
California Charter Schools Association

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