

Date of Hearing: June 22, 2016

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 313 (Monning) – As Amended June 2, 2016

[Note: This bill is doubled referred to the Assembly Local Government Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SENATE VOTE: 29-3

SUBJECT: Local government: zoning ordinances: school districts

SUMMARY: Imposes additional requirements on the governing board of a school district that chooses to render a city or county zoning ordinance inapplicable for a proposed use of property on agriculturally zoned land. Specifically, **this bill:**

- 1) Requires a school district to, prior to commencing the acquisition of real property for a new schoolsite in an area designated for agricultural use, do the following:
 - a) Notify and consult with the county agricultural commissioner.
 - b) Attempt to minimize any land use incompatibilities that may arise when using a portion of land in an area zoned for agricultural production for a purpose other than agricultural use.
- 2) Strikes the 2/3 vote requirement for a governing board of a school district to render a city or county zoning ordinance inapplicable to a proposed use of property by a school district.
- 3) Requires the governing board of a school district that chooses to render a city or county zoning ordinance inapplicable for a proposed use of property on agriculturally zoned land to take the required vote of 2/3 of its members at least 30 days after the governing board has notified the city or county, in writing, of the reason the governing board intends to take this action, and based upon written findings that a zoning ordinance fails to accommodate the need to renovate and expand an existing public school or locate a new public school within the city or county.
- 4) Specifies that the authority of a city or county to commence an action in the superior court seeking a review of the action of the governing board of a school district to determine whether the action was arbitrary and capricious shall be conducted pursuant to Section 1094.5 of the Code of Civil Procedure.

EXISTING LAW:

- 1) Authorizes the governing board of a school district that has complied with the notification requirements to the local planning commission, by a vote of 2/3 of its members, to render a city or county zoning ordinance inapplicable to a proposed use of property by the school district. Specifies that the governing board of the school district may not take this action when the proposed use of the property by the school district is for nonclassroom facilities,

including, but not limited to, warehouses, administrative buildings, and automotive storage and repair buildings. (Government Code Section 53094)

- 2) Requires the governing board of the school district to, within 10 days, notify the city or county concerned of any action taken. Provides that if the governing board has taken such an action, the city or county may commence an action in the superior court of the county whose zoning ordinance is involved or in which is situated the city whose zoning ordinance is involved, seeking a review of the action of the governing board of the school district to determine whether it was arbitrary and capricious. Requires the city or county to cause a copy of the complaint to be served on the board. Provides that if the court determines that the action was arbitrary and capricious, it shall declare it to be of no force and effect, and the zoning ordinance in question shall be applicable to the use of the property by the school district. (Government Code Section 53094)
- 3) Requires a governing board of a school district, prior to acquiring real property for a new schoolsite in an area designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production, to make all of the following findings:
 - a) The school district has notified and consulted with the city, county, or city and county within which the prospective schoolsite is to be located.
 - b) The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.
 - c) The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the schoolsite. (Education Code Section 17215.5)
- 4) Requires the governing board of a school district to, prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, evaluate the property at a public hearing using the site selection standards established by the California Department of Education (CDE). (Education Code Section 17211)

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS: *Background.* Under current law, the governing board of a school district, after complying with notification requirements to local planning agencies, is authorized to override local city or county zoning ordinances by a 2/3 vote of the governing board for school facilities. Existing law prohibits this override for any nonclassroom facilities, including, but not limited to, warehouses, administrative buildings, and automotive storage and repair buildings. The governing board of a school district is required to notify the city or county within 10 days of such an action. Existing law gives a city or county the authority to take action in the superior court seeking a review if it determines that the override was arbitrary and capricious.

This bill adds additional requirements for governing boards seeking to render a zoning ordinance inapplicable on land zoned for agricultural purposes. This bill requires the governing board of a school district to do the following prior to waiving a zoning ordinance designated for agricultural production:

- Notify and consult with the county agricultural commissioner.
- Attempt to minimize any land use incompatibilities that may arise when using a portion of land in an area zoned for agricultural production.
- Notify the city and county, at least 30 days prior to taking the required 2/3 vote, in writing, of the reason the governing board intends to waive an agriculturally zoned land and based upon written findings that a zoning ordinance fails to accommodate the need to renovate and expand an existing public school or locate a new public school within the city or county.

Purpose of the bill. The author states, "Placing schools in exclusively agricultural production zones not only removes limited agricultural land from production, but also raises important public health concerns about exposing students to pesticide drift and contamination. While there are existing notification requirements that a school board must follow before siting a school outside a local general plan, there is still a glaring need for greater awareness by cities, counties, and the public as to why existing zoning is inadequate for school construction."

Siting of schools is a complicated process. Siting schools is not an easy process. Existing law and state regulations require school districts seeking state bond funds to avoid siting schools near freeways or airports, hazardous or solid waste disposal sites, or where there are underground pipelines, and require school districts to comply with California Environmental Quality Act (CEQA) requirements, review by the Department of Toxic Substances Control, and approval by the CDE. Other challenges include objections by neighbors who do not want schools sited near their properties or insufficient available land requiring school districts to take property through eminent domain.

Current law already requires notification. Current law already requires several layers of notification to cities and counties of school facilities plans. The Education Code specifically requires notification prior to acquiring property zoned for agricultural production and requires the governing board of a school district to make specified findings, including that the governing board had evaluated all factors affecting the public interest and that the site was not selected solely because of the cost of the land. Public Resources Code Section 21151.2 requires school districts to notify local planning commissions of a proposed acquisition and prohibits acquiring title of the property until a report from the planning commission has been received. A school district is prohibited from acquiring title to the property until 30 days after the commission's report has been received if the report does not favor acquisition of the property. Government Code Section 65352.2 requires a school district, in conducting a school facility needs analysis or other long-range plan that may result in expansions of schoolsites or the need to acquire additional schoolsites, to provide information to the planning commission at least 45 days prior to completing the needs analysis or long-range plan. Current law under Education Code Section 17211, also requires the governing board of a school district, prior to acquiring property, to evaluate the property at a public hearing. It is unclear how or why these current requirements are not sufficient in ensuring that a planning commission is notified and has opportunities to weigh in on school district plans for school facilities.

Requirements unclear and may lead to litigation. This bill requires a school district to attempt to minimize any land use incompatibilities when using a portion of land zoned for agricultural production. It is unclear what "incompatibility" means and how school districts are to

"minimize" the incompatibility. For example, does the fact that the land is zoned for agriculture make it incompatible? Is it still incompatible if the site is a future growth area under the general plan? If a proposed schoolsite is next to existing farmland, does that make it incompatible? Who would determine whether the proposed schoolsite is incompatible? Given that the motivation behind the bill appears to be to reduce or halt siting of schools on agricultural land, there are strong concerns that this language could lead to potential litigation. Can the owner of a neighboring farmland sue the school district claiming incompatibility or that the school district did not take sufficient action to minimize incompatibilities?

According to the sponsor, the California Farm Bureau Federation, and the author's office, incompatibilities may include issues around lack of infrastructure, roads, sewers, sidewalk, transportation, safe-routes to school and planning issues. Most of these issues are addressed through the CEQA and CDE's site approval processes. Acquisition of schoolsites requires CEQA review and school districts are required to develop mitigations in response to issues raised through the CEQA process. As such, **staff recommends** striking this language and instead authorizing the topic to be discussed with the agricultural commissioner.

This bill prohibits a governing board of a school district from waiving an agriculturally zoned ordinance until 30 days after it submits written findings to the city or county of the reason it intends to take the action and that a zoning ordinance fails to accommodate expansion of a schoolsite or locate a new school within the city or county. This requirement appears to require the governing board of a school district to justify in writing both why it is choosing a site as well as why it is not choosing other locations identified for schools in a general plan. Requiring a school district to identify all potential schoolsite locations in a general plan and provide an explanation as to why each location is not chosen appears to insinuate that school siting is an either/or option. It is not.

Compulsory education law requires all children aged 18 and under to attend school and school districts to ensure that all children are adequately housed. As mentioned previously, schoolsiting is not an easy process and takes a long time. Completing a school facility project from start to finish may take five years or more. School districts need the flexibility to determine appropriate locations of schoolsites in order to adequately house existing and incoming children. If the intent is to encourage more collaboration than is already required, **staff recommends** an amendment to require written notification only if a school district fails to request a meeting pursuant to Government Code Section 65352.2(b). This will provide an incentive for school districts to work with planning commissions earlier.

Pesticides regulations. Part of the motivation for the bill involves proposed regulations being considered by the Department of Pesticide Regulation. Proposed regulations require increasing notifications to schools regarding intended applications of certain pesticides and impose additional restrictions on applications. The supporters of the bill fear that anti-pesticide advocates will seek future regulations establishing no-spray zones around schools, thereby putting farmlands near schools in jeopardy. The Committee may wish to consider whether the answer is to make it difficult to site schools on agricultural land, especially if a city or county's general plan intends for those lands to be residential in the future. With growth, school districts will need schools in those areas to accommodate incoming students.

2/3 vote requirement eliminated. This bill eliminates the 2/3 vote requirement for governing boards of school districts to waive a zoning ordinance. According to the author, this was a drafting error. **Staff recommends** reinstating this requirement.

Related legislation. AB 1344 (Jones), held by the author in this Committee, authorizes county offices of education (COE) to render a city or county zoning ordinance inapplicable to a proposed use of property by COEs, and requires the governing board of a school district or county office to render a city or county zoning ordinance inapplicable at the request of a charter school for a charter school facility.

Arguments in support. A joint letter by most of the supporters listed below states, "School locations can have many impacts on traffic patterns, housing location, expansion of sewers, waterlines, roads, and sidewalks, other basic infrastructure, and the overall quality-of-life of a community. Instead of schools being an anchor for communities, they instead are being built on the urban fringe and incur more 'vehicles miles travelled' and have a deleterious air quality impact. There is also push for further pesticide regulations around schools despite air monitoring and soil sample studies that document school children are safe and not being exposed to pesticides. If schools want buffers zones around them, they should consider that before they site the school near a working farm, not after the school is built and then expect a farmer to take their land out of production without any fair justification or compensation."

Arguments in opposition. The Association of California School Administrators (ACSA) states, "We are concerned that the provisions of SB 313 will result in potential legal challenges whereby a city or county authorities try to leverage a school district into completing additional site work or forcing a governing board to use a site that benefits the city or county but not the school district or students we serve. ACSA believes the current process for the placement of school sites provides the necessary notification and justification through the Brown Act and CEQA."

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Farm Bureau
Agricultural Council of California
American Planning Association, California Chapter
Association of California Egg Farmers
California Agricultural Commissioners and Sealers Association
California Association of Wheat Growers
California Association of Winegrape Growers
California Farm Bureau Federation
California Grain and Feed Association
California Pear Growers Association
California Seed Association
California State Association of Counties
California State Floral Association
California Fresh Fruit Association
Contra Costa County Farm Bureau
El Dorado County Farm Bureau
Monterey County Farm Bureau
Napa County Board of Supervisors

Orange County Farm Bureau
Riverside County Farm Bureau
Sacramento County Farm Bureau
San Benito County Farm Bureau
San Diego County Farm Bureau
San Mateo County Farm Bureau
San Joaquin County Farm Bureau
Santa Clara County Farm Bureau
Santa Cruz County Farm Bureau
Solano County Farm Bureau
Stanislaus County Farm Bureau
Western Growers Association
Yolo County Farm Bureau

Opposition

Association of California School Administrators
California Association of School Business Officials
California Building Industry Association
Central Valley Education Coalition
Coalition for Adequate School Housing
Kern County Superintendent of Schools

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