

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 2214 (Cristina Garcia) – As Amended March 31, 2022

**[Note: This bill is double referred to the Assembly Environmental Safety and Toxic Materials Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]**

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

**SUMMARY:** Adds numerous new requirements related to schoolsite acquisition, and environmental assessment for school districts, charter schools, and private schools. Specifically, **this bill:**

- 1) 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, or sites, under construction investigated by competent personnel 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. Requires that if the prospective schoolsite is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general 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 board of a school district, the governing body of a charter school or the governing body of a private school to, before acquiring a school site, contract with an environmental assessor to supervise the preparation of, and sign, a Phase I environment assessment of the proposed schoolsite.
- 3) Requires, if the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control (DTSC) concludes after its Phase I environmental assessment that a preliminary endangerment assessment is needed, the school district, charter school or private school to either contract with an environmental assessor to supervise the preparation of, and sign, a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the DTSC to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. Requires additional assessments, as specified.
- 4) Requires the governing body of a charter school or the governing board of a private school to not approve 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 a 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) The 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 city or county concludes that the wastes have been removed;
  - ii) A hazardous substance release site identified by the DTSC in a current list for removal or remedial action, as specified; or
  - iii) A site that contains one or more pipelines, situated underground or above ground, that carry 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 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 both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways or other busy traffic corridors, large agricultural operations, and railyards, within one-fourth of one mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous substances or waste. Requires the notification by the governing body or board to include a list of the locations for which information is sought. Requires each administering agency, air pollution control district, or air quality management district receiving written notification from a governing body or board to identify facilities to provide the requested information and provide a written response to the governing body or board within 30 days of receiving the notification;
- c) The city or county makes one of the following written findings:
- i) Consultation identified no facilities that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous substances or waste or other significant pollution sources;
  - ii) One or more facilities specified that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous substances or waste or other pollution sources exist, but one of the following conditions applies: the health risks from the facilities or other 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; corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the 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. Requires, if the city or county makes a finding to also make a subsequent finding, before occupancy of the school, that the emissions have been so mitigated; and
  - iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the city or county determines,

through a specified analysis, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

- d) One or more specified facilities that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous substances or other pollution sources exist, but the other conditions (above) 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 the specified requirements.
- 5) Requires the changes made by this bill related to a schoolsite selection apply to a schoolsite acquisition project or a schoolsite construction project pending approval before a local or state agency on or before January 1, 2023, in addition to a new schoolsite acquisition project or a schoolsite construction project on or after January 1, 2023.
- 6) Requires the CDE, upon the request of the governing body of a charter school, to advise the governing body of the charter school on the acquisition of new schoolsites and, after a review of available plots, give the governing body of the charter school in writing a list of the recommended locations in the order of their merit, considering especially the matters of educational merit, safety, reduction of traffic hazards, and conformity to the land use element in the general plan of the city, county, or city and county having jurisdiction. Authorizes the governing body of the charter school to purchase a site deemed unsuitable for school purposes by the CDE only after reviewing the report of the CDE on proposed sites at a public hearing. Requires the CDE to charge the charter school a reasonable fee for each schoolsite reviewed not to exceed the actual administrative costs incurred for that purpose.
- 7) Requires the CDE to develop standards for use by a charter school in the selection of schoolsites. Requires the CDE to investigate complaints of noncompliance with site selection standards, and to notify the governing body of the charter school of the results of the investigation. Requires that notification is received before the acquisition of the site, the governing body of the charter school to discuss the findings of the investigation in a public hearing.
- 8) Requires the CDE to establish standards for use by charter schools to ensure that the design and construction of school facilities are educationally appropriate, promote school safety, and provide charter schools with flexibility in designing instructional facilities.
- 9) Requires the CDE, upon the request of the governing body of a charter school, to review plans and specifications for school buildings in the charter school. Requires the CDE to charge the charter school for the review of plans and specifications, a reasonable fee not to exceed the actual administrative costs incurred for that purpose.
- 10) Requires the CDE, upon the request of the governing body of a charter school to make a survey of the building needs of the charter school, advise the governing body of the charter school concerning the building needs, and suggest plans for financing a building program to meet the needs. Requires the CDE to charge the charter school for the cost of the survey, a reasonable fee not to exceed the actual administrative costs incurred for that purpose.

- 11) Requires that a project involving the demolition, construction, or alteration of a public school, including a charter school, or a private school not be exempted from the list of classes of projects that have been determined not to have a significant effect on the environment for the purposes of determining environmental quality, and are categorically ineligible.
- 12) Requires, to promote the health and safety of pupils and comprehensive community planning, the governing body of each charter school, or 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.
- 13) Requires the planning commission to investigate the proposed site and within 30 days after receipt of the notice to submit to the governing board or body of the school district, charter school, or private school, a written report of the investigation and its recommendations concerning acquisition of the site.
- 14) Requires the governing board or body of the school district, charter school, or private school to not acquire title to the property until the report of the planning commission has been received.
- 15) Prohibits, if the report does not favor the acquisition of the property for a schoolsite, or for an addition to a present schoolsite, 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.
- 16) 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 elementary or secondary school by a charter school, or a private school unless all of the following occur:
  - a) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:
    - i) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed;
    - ii) A hazardous substance release site identified by the DTSC in a current list for removal or remedial action;
    - iii) A site that contains one or more pipelines, situated 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; or
    - iv) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.
  - b) Requires the lead agency, in preparing the environmental impact report or negative declaration to have notified in writing and 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 both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways or other busy traffic corridors, large agricultural operations, and railyards, within one-fourth of one mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous substances or waste. Requires the notification by the lead agency to include a list of the locations for which information is sought.

- c) Requires each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities, as specified, to provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. Requires the environmental impact report or negative declaration to be conclusively presumed to comply, as specified, as to the area of responsibility of an agency that does not respond within 30 days.
- d) Requires the lead agency to make one of the following written findings:
  - i) Consultation identified no facilities of this type or other significant pollution sources;
  - ii) The facilities or other pollution sources exist, but one of the following conditions applies:
    - 1. The health risks from the facilities or other 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;
    - 2. Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the 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. If the lead agency makes a finding pursuant to this clause, it must also make a subsequent finding, before occupancy of the school, that the emissions have been so mitigated; or
    - 3. For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the lead agency determines, through a specified analysis, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, 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) The facilities or other pollution sources exist, but specified conditions cannot be met, and the lead agency is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet specified requirements. Requires, if the lead agency makes this finding, the lead agency to adopt a statement of overriding considerations.

***General provisions***

- 1) Defines the following:
  - a) “Administering agency” to mean a Certified Unified Program Agencies (CUPA), as specified, to implement and enforce Hazardous Materials Release Response Plans and Inventory;
  - b) “Extremely hazardous substance” to mean any of the following: a gas at standard temperature and pressure; a liquid with a vapor pressure at standard temperature and pressure equal to or greater than 10 millimeters mercury; or a solid that is one of the following: in solution or in molten form, in powder form with a particle size less than 100 microns, or reactive with a National Fire Protection Association rating of 2, 3, or 4;
  - c) “Facilities” to mean a source with a potential to use, generate, emit, or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the State Air Resources Board;
  - d) “Freeway or other busy traffic corridor” to mean those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, and 100,000 vehicles in an urban area;
  - e) “Handle” to mean any of the following: to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion; the use or potential use of a quantity of hazardous material by the connection of a marine vessel, tank vehicle, tank car, or container to a system or process for any purpose;
  - f) “Hazardous air emissions” to mean emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified, as specified;
  - g) “Hazardous substance” to have the same meaning as Section 25316 of the Health and Safety Code;
  - h) “Hazardous waste” to have the same meaning as defined in Section 25117 of the Health and Safety Code; and
  - i) “Hazardous waste disposal site” to have the same meaning as “disposal site,” as defined in Section 25114 of the Health and Safety Code.

**EXISTING LAW:**

- 1) Prohibits the State Allocation Board (SAB) from apportioning funds to any school district, unless the applicant school district has certified to the SAB that the services of any architect, structural engineer, or other design professional for any work under the project have been

obtained pursuant to a competitive process and has obtained the written approval of the CDE that the site selection, and the building plans and specifications, comply with the standards adopted by the CDE. (EC § 17070.50)

- 2) Prohibits the governing board of a school district from approving a project involving the acquisition of a school site unless the school district, as the lead agency, determines that the property to be built upon is not a current or former hazardous waste site or a hazardous substances release site and the school district has consulted with state and local agencies and made a finding that the health risks or other 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; and the site does not contain one or more pipelines, situated 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. (Education Code (EC) 17213(a))
- 3) Prohibits a school district governing board from approving a project involving a school site acquisition unless the school district, in preparing an Environmental Impact Report (EIR) or negative declaration pursuant to the California Environmental Quality Act (CEQA), has consulted with certain entities to identify permitted and non-permitted facilities, including freeways and other busy traffic corridors, large agricultural operations, and rail yards within one quarter of a mile of a proposed school site that might reasonably be anticipated to emit hazardous air emissions. (EC 17213(b))
- 4) Prohibits a school district governing board from approving a project involving a school site acquisition when certain environmental standards are not met unless the governing board makes one of the following written findings:
  - a) For a school site with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board determines, through specified analysis based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses a significant health risk to pupils; or
  - b) The governing board finds that the specified conditions 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 the specified environmental safety requirements. (EC 17213(c)(2)(C) and (D))
- 5) Requires the governing board of a school district, as a condition of receiving state funding, prior to the acquisition of a schoolsite, to conduct a Phase I environmental assessment or a preliminary endangerment assessment of the proposed schoolsite. (EC 17213.1)
- 6) Prohibits the SAB from apportioning funds to any school district unless the applicant school district has certified to the SAB that the services of any architect, structural engineer, or other design professional for any work under the project have been obtained pursuant to a competitive process and has obtained the written approval of the California Department of Education (CDE) that the site selection, and the building plans and specifications, comply with the standards adopted by the CDE. (EC 17070.50)

- 7) Requires the CDE to do the following:
- a) Advise the governing board of a school district on the acquisition of new schoolsites, and after a review of available plots, give the governing board of the school district in writing a list of the recommended locations in the order of their merit, considering especially the matters of educational merit, safety, reduction of traffic hazards, and conformity to the land use element in the general plan of the city, county, or city and county having jurisdiction. Authorizes the governing board of the school district to purchase a site deemed unsuitable for school purposes by the CDE only after reviewing the report of the CDE on proposed sites at a public hearing;
  - 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;
  - c) Upon the request of the governing board of a school district, review plans and specifications for school buildings in the school district and make a survey of the building needs of the school district. Requires the CDE to charge a reasonable fee not to exceed the actual administrative costs incurred for these purposes;
  - d) Provide information relating to the impact or potential impact upon a schoolsite of hazardous substances, solid waste, safety, hazardous air emissions, and other information as the CDE may deem appropriate; and
  - e) Develop strategies to assist small school districts with technical assistance relating to school construction and the funding of school facilities. (EC 17251)
- 8) Creates the Hazardous Waste Control Law (HWCL), which authorizes the DTSC to regulate the management of hazardous wastes in California. (HSC 25100 et. seq.)
- 9) Establishes the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA) program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to public health or the environment. (HSC 25300 et seq.)
- 10) Requires the DTSC to publish and revise, at least annually, a listing of hazardous release sites selected for a response action under the HSAA. (HSC 25356)
- 11) Creates the CEQA, which provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. (Public Resources Code (PRC) 21050)
- 12) Prohibits an environmental impact report (EIR) from being certified or a negative declaration 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)



13) Defines “lead agency,” for the purposes of the CEQA, to mean the public agency which has the principal responsibility for carrying out or approving a project. Requires the lead agency to decide whether an EIR or negative declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the lead agency for a project are contained in Section 14 of the California Code of Regulations (CCR) 15051. (14 CCR Section 15367)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

***Key provisions of the bill.*** *Section 1 Site acquisition – earthquake or other geologic 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. ***The Committee may wish to consider*** that charter schools and private schools may lease, rather than own, the land and buildings they occupy. This provision is an existing requirement for school districts.

*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.

The environmental assessments would also apply this provision to any schoolsite acquisition project or a schoolsite construction project pending approval before a local or state agency on or before January 1, 2023, in addition to a new schoolsite acquisition project or a schoolsite construction project on or after January 1, 2023. This provision is an existing requirement for school districts seeking state bond funds for school facilities. ***The Committee may wish to consider*** the potential impact of changing requirements in the middle of a facilities project.

*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.

*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.

*Section 5 – Environmental quality.* This bill requires that a project involving the demolition, constriction, or alteration of a public school, including a charter school, or a private school not be allowed to apply or qualify for an exemption from the list of classes of projects that have been

determined not to have a significant effect on the environment for the purposes of determining environmental quality.

*Section 6 – 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.

*Section 7 – Environmental impact report certification.* This bill requires that a lead agency may not certify an environmental impact report or approve 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.

***Need for the bill.*** According to the author, “AB 2214 ensures the public health and safety of all students and school employees in California by requiring private and charter schools to identify nearby sources of air pollution, consult with their local air districts, and meet certain siting requirements prior to constructing a new school.”

According to information provided by the author’s office, a private school was permitted to be built alongside a concrete plant in the city of Fremont in 2019, and a charter school was proposed to be built on land believed to contain toxic substances in the city of Cudahy in February.

***School construction.*** School construction is neither an easy process, nor a quick one to complete. Existing law and state regulation prohibit school districts seeking state bond funds from locating 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 and review by various state and local agencies.

The CDE is required under existing law to provide guidance and recommendations to school districts upon their request and develop standards for site selection. School districts seeking state bond funds must receive approval of a site from the CDE and review by the DTSC. Under regulations adopted by the CDE in Title 5 of the California Code of Regulations, standards and requirements for site selection include appropriate acreage, location, zoning, access to transportation and utility lines, and other requirements. The regulations, consistent with existing law, prohibit a site from being adjacent to a road or freeway, in an area of flood or earthquake fault, near an above-ground water or fuel storage tank, or within 1,500 feet of the easement of an above ground or underground pipeline. Once contacted by a school district, the CDE visits a proposed site and evaluates the site pursuant to requirements in law and in Title 5 regulations. The regulations allow the State Superintendent of Public Instruction (SPI) to grant exemptions to the standards if the school district can demonstrate that mitigation of specific circumstances overrides a standard without compromising a safe and supportive school environment.

In addition to approval for site selection, a school district must also receive approval from the CDE for their design plans, also covered by Title 5 regulations, to ensure that new schools are educationally appropriate and promote school safety. The CDE's review takes into consideration the enrollment and grade levels of the school and reviews the design plans on factors such as entry and egress, playground and field areas, minimum classroom size, specialty classrooms, and others.

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 (structural), and access requirements under the Americans with Disabilities Act. Existing law also requires school districts to comply with CEQA.

Building a new school can take several years.

***Charter schools and private 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. A charter school is usually created or organized by a group of teachers, parents, community leaders, a community-based organization, or an education management organization. Charter schools are not required to comply with school siting or Field Act requirements unless they seek state school bond funds. Charter schools not constructed with state funds must comply with local building codes. Private schools are not subject to requirements in the Education Code unless explicitly specified, typically related to health and safety issues.

***The Committee may wish to consider*** whether exposure of private school students to poor air quality, contaminated sites, and other hazards are health and safety risks that warrant oversight under state law. This bill amends existing law to require charter schools and private schools to perform the same evaluation for a proposed schoolsite as is required for public schools. It is reasonable to provide the students of charter schools and private schools with the same protections from potential hazardous chemicals at a potential schoolsite that is afforded to students who attend public schools. In addition, AB 2882 is requiring the lead agency, under CEQA, over a charter school, to complete the same evaluations as is required for a lead agency of a public school. There are thousands of known contaminated sites in California; however, there are estimates of tens of thousands of unknown contaminated sites in the state. A site may have been an industrial site in the early 1900s and been vacant for decades, and the potential of containing hazardous substances is unknown until there is an environmental assessment of the property. It is important that potential schoolsites, regardless of whether the school is a public school, private school, or charter school, be properly evaluated in order to protect the health and well-being of the future students who will attend that school.

***California 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.

***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 the HSAA for cleanup of contaminated sites and the HWCL for the regulation of hazardous waste sites.

***Evaluation of proposed schoolsites for potential hazardous substance contamination.*** All proposed school sites that receive State funding for acquisition or construction are required to go through a rigorous environmental review and cleanup process under DTSC's oversight. School districts conduct environmental assessments to provide basic information for determining if there has been a release of hazardous material at the sites, or if a naturally occurring hazardous material that presents a risk to human health or the environment may be present. Outreach activities integrated into the process allow a more active role for stakeholders in the selection process for school sites.

***California Environmental Quality Act (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 brief document known as a negative declaration. If the project may cause adverse environmental impacts, the public agency must prepare a more detailed study called 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. In some cases, a categorical exemption from the CEQA may be sought by those behind the project. Some examples of categorical exemptions include: minor additions to schools, defined as additions that will not increase student capacity by more than 25% or ten classrooms, whichever is less; and new construction or conversion of small structures or installation of small equipment, except for where there is a particularly sensitive environmental setting. This bill would remove the ability of a school district, charter school, or private school from being able to apply for a categorical exemption.

***Recommended Committee Amendments.*** *Staff recommends that the bill be amended as follows:*

- *Section 2 – Environmental assessment.* Apply this section to school districts seeking bond funds, charter schools, and private schools.
- *Section 2 – Environmental assessment.* Remove the requirement that changes made by this bill apply to a schoolsite acquisition project or a schoolsite construction project pending approval before a local or state agency on or before January 1, 2023, in addition

to a new schoolsite acquisition project or a schoolsite construction project on or after January 1, 2023.

- *Section 5 – Environmental quality.* Remove the prohibition of any project that involves the demolition, construction, or alternation of a public school, including a charter school, or a private school from being able to apply for a categorical exemption from the CEQA.

***Arguments in support.*** The Bay Area Air Quality Management District writes, “Given that private and charter schools are not held to the same requirements as public schools before building new schools, there are cases in California where schools have been built in a potentially unsafe location near sources of hazardous emissions, substances, or waste, unbeknownst to the children, their parents, and school employees. Consequently, the public health and safety of all students and school employees in California at these schools could be at risk. One of those such instances occurred in Fall 2018, when a private preschool through eighth grade school was constructed next to the Tri-City Rock concrete batch facility in Fremont, CA without consulting the Bay Area AQMD, or properly notifying the students’ parents. In order to ensure the public health and safety of all students and school employees in California, the potential location for a new private school or charter school needs to be properly evaluated. AB 2214 will achieve this by requiring that private schools and charter schools meet the same siting requirements as public schools.”

***Arguments in opposition.*** The Charter Schools Development Center writes, “Unfortunately, this bill will unnecessarily complicate the process by which charter schools acquire facilities, making it more difficult for charter schools to open or expand.”

***Related legislation.*** AB 762 (Lee) of the 2021-22 Session would have required charter schools and private schools to follow the same siting requirements as traditional public schools for evaluating schoolsites for potential hazardous substances, emissions, or waste.

AB 2882 (Chu) of the 2019-20 Session 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, emissions, or waste. This bill would have required the evaluation of a potential charter schoolsite under the CEQA to follow the same process as public schools under CEQA. The bill was held in the Senate Environmental Quality Committee.

AB 2825 (Ruskin) of the 2005-06 Session 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 with the following message:

I am concerned that this bill would impose unnecessary additional costs on school districts requiring them to identify and review potential impacts of proposed facilities that may never be built. Current law provides assurances that schools will not be built near sites containing actual air emissions which could be harmful to school children.

SB 1224 (Ortiz) of the 2003-04 Session 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.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Bay Area Air Quality Management District  
California Safe Schools  
Cudahy Alliance for Justice  
2 individuals

**Opposition**

California Charter Schools Association  
Charter Schools Development Center

**Analysis Prepared by:** Marguerite Ries / ED. / (916) 319-2087