

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 762 (Lee) – As Amended March 30, 2021

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

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

SUMMARY: Requires the governing body of a charter school and the governing board of a private school to comply with the same requirements as school districts for the acquisition or purchase of a schoolsite or the construction of a new schoolsite related to the impact of hazardous emissions and substances on a site. Specifically, **this bill:**

Provisions related to charter schools

- 1) Prohibits the governing body of a charter school from approving a project involving the acquisition of a schoolsite unless it complies with specified requirements as follows:
 - a) The property purchased or to be built 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 governing body of a charter school concludes that the wastes have been removed;
 - ii) A hazardous substance release site identified by the Department of Toxic Substances Control (DTSC) on a current list adopted pursuant to Health and Safety Code (HSC) Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the HSC; and
 - 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.
 - b) In preparing the environmental impact report (EIR) or negative declaration, the governing body of a charter school has 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 and 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 air emissions, or to handle hazardous or extremely hazardous materials, substances, or waste. Requires the governing body of a charter school to include a list of the locations for which information is sought.
 - c) The governing body of a charter school makes one of the following findings:

- i) Consultation identified none of the facilities or significant pollution sources specified in (b) above; or
 - ii) The facilities or other pollution sources specified in (b) above 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 school;
 - (2) The governing body of a charter school finds that corrective measures required under an existing order by another governmental entity that has 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 that, if the governing body of a charter school makes this finding, the governing body of a charter school also make a subsequent finding before occupancy of the school, that the emissions have been mitigated to these levels;
 - (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 governing body of a charter school determines, through analysis pursuant to HSC Section 44360(b)(2), 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; or
 - (4) The governing body of a charter school finds that the conditions set forth in (2) and (3) 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 the requirements in subdivision (a) above. Requires that, if the governing body of a charter school makes this finding, the governing body of a charter school adopt a statement of overriding considerations.
- 2) Provides that as a condition for receiving state bond funds, the governing board of a school district is not required to comply with the requirement that the property purchased is not built upon the site of a current or former hazardous waste disposal site or solid waste disposal site prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

Provisions related to private schools

- 3) Establishes the following definitions:
- a) “Administering agency” means an agency authorized pursuant to HSC Section 25502 to enforce Chapter 6.95 (commencing with Section 25500) of Division 20 of the HSC;
 - b) “Extremely hazardous substance” has the same meaning as defined in HSC Section 25532(j)(2);

- c) “Facilities” means 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 (ARB);
 - d) “Freeway or other busy traffic corridor” means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in HSC Section 50101, and 100,000 vehicles in an urban area, as defined in HSC Section 50104.7;
 - e) “Handle” has the same meaning as defined in HSC Section 25501;
 - f) “Hazardous air emissions” means emissions into the ambient air of air contaminants that have been identified as toxic air contaminants by the ARB or by the air pollution control officer for the jurisdiction in which the project is located. Provides that, as determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in HSC 44321(a) to (f), inclusive;
 - g) “Hazardous substance” has the same meaning as defined in HSC Section 25316;
 - h) “Hazardous waste” has the same meaning as defined in HSC Section 25117; and
 - i) “Hazardous waste disposal site” has the same meaning as “disposal site,” as defined in HSC Section 25114.
- 4) 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 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 on a current list adopted pursuant to HSC Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the HSC; or
 - iii) A site that contains one or more pipelines, situated underground or aboveground, 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 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 board to include a list of the locations for which information is sought.

- i) Requires each administering agency, air pollution control district, or air quality management district receiving written notification from a governing board to identify facilities pursuant to (4)(b) above to provide the requested information and provide a written response to the governing 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 of the type specified in (4)(b) above or other significant pollution sources;
 - ii) One or more facilities specified in (4)(b) above 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. Requires that, if the city or county makes a finding pursuant to this clause, it 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 city or county determines, through analysis pursuant to HSC 44360(b)(2), 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 facilities specified in (4)(b) above or other pollution sources exist, but conditions in (c)(ii)(1) through (3) 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 the requirements in this section.

General provisions

- 5) Requires the evaluation, under the California Environmental Quality Act (CEQA), of a potential charter schoolsite to follow the same CEQA process as public schools.
- 6) Makes nonsubstantive, organizational changes in the definition section of the provisions related to charter schools.

- 7) Provides that a state mandated reimbursement is not required because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of services. However, requires that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

EXISTING LAW:

- 1) 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))
- 2) Prohibits a school district governing board from approving a project involving a school site acquisition unless the school district, in preparing an EIR or negative declaration pursuant to the 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))
- 3) 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))
- 4) 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 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)

- 5) 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)

FISCAL EFFECT: Unknown

COMMENTS: *Need for the bill.* The author states, “Private and some charter schools are not required to meet the same siting requirements as public schools, before building a new school. As a result, a school could potentially be built at an unsafe location near sources of hazardous emissions, substances, or waste. Consequently, the public health and safety of the students, teachers, and school employees could be put at risk. The bill would require private and charter schools to identify nearby sources of air pollution, consult with their local air districts, and meet siting requirements by evaluating the schoolsite for potential hazardous substances, hazardous emissions, or hazardous waste.”

The author states that there is an abundance of research showing that children’s exposure to harmful emissions is linked to health problems, including respiratory issues, and that this is even more important during a pandemic of a respiratory virus.

According to the author’s office, this bill is based on concerns raised by parents in Fremont, California, where a school was permitted to be built alongside a concrete plant. The concrete plant produced 350 times more concrete than they reported to air quality regulators. As a result, the safety risk is higher than reported on the permit application to build the school.

The author further notes that in February of this year, Capital & Main reported plans to build a charter school on land containing toxic substances, including lead and arsenic.

School construction. School construction is not an easy process. Existing law prohibits schools from being located 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 others. 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 1500 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 to grant exemptions to the standards if the 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.

Building a new school can take several years.

Charter schools and private schools. 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 by state law.

This bill requires charter schools to comply with the same requirements as school districts for acquiring a site for new schools, including CEQA, in regards to hazardous emissions and

substances. Because existing law was written for school districts, a public entity that can hold public hearings and meetings, this bill applies the same requirements to private schools, but designates a city or a county as the entity to determine whether a proposed site does not meet one of the prohibited conditions (hazardous waste disposal site, contains one or more pipelines carrying hazardous substances, etc.) and gives the city or county the authority to make specified written findings regarding a site.

Committee amendment. *Staff recommends* the following amendments:

- 1) EC 17212 requires school districts to, prior to acquiring a site, investigate a site's potential for earthquake or other geological hazard damage and other factors, such as transportation, population, water supply, utilities, traffic hazards, and more. *Staff recommends* requiring the governing body of a charter school and the governing board of a private school to comply with this provision.
- 2) EC 17251 specifies the duties required of the CDE related to siting and standards for design plans for school districts. *Staff recommends* adding charter schools to this section.

Arguments in support. The Bay Area Air Quality Management District, the sponsor of the bill, states, "Existing law requires public schools to follow certain requirements before approving and building a new school. These requirements include that the public school district determines that the proposed schoolsite is not hazardous and that the public school district consults with its local air district to identify sources of air pollution that may affect the health of the children and employees at the proposed school. Doing so will ensure awareness of any harmful pollution and provide an early opportunity to mitigate its effects before or as the school is constructed.

Unfortunately, these requirements only apply to public schools and not to private schools and some charter schools. Consequently, this has resulted in instances where schools have been built in locations near sources of pollution, unbeknownst to the children, their parents, and school employees. 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 762 will achieve this by requiring that private schools and charter schools meet the same siting requirements as public schools."

Related legislation. AB 2882 (Chu) of the 2019-20 Session was substantially similar to this bill. 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 (sponsor)
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

Opposition

None on file

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