

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 2882 (Chu) – As Amended May 13, 2020

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

SUMMARY: Requires charter schools and private schools to follow the same siting requirements as public schools for evaluating a schoolsite for potential hazardous substances, hazardous emissions, or hazardous waste. Requires the evaluation of a potential charter schoolsite under the California Environmental Quality Act (CEQA) to follow the same process as public schools under CEQA.

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, as the lead agency, 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. (Education Code (EDC) § 17213)
- 2) 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. (EDC § 17213.1)
- 3) Creates the Hazardous Waste Control Law (HWCL), which authorizes the Department of Toxic Substances Control (DTSC) to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et. seq.)
- 4) 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.)
- 5) Requires DTSC to publish and revise, at least annually, a listing of hazardous release sites selected for a response action under the HSAA. (HSC § 25356)
- 6) Creates CEQA which provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. (Public Resources Code (PRC) § 21050)
- 7) Defines "lead agency" as the public agency that has the principal responsibility for carrying out or approving a project that may have a significant effect upon the environment. (Public Resources Code (PRC) § 21067)

- 8) 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)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Private schools and charter schools need to meet the same health and safety requirements as public schools to prevent schools from being built at unsafe locations. With AB 2882, we will ensure the health and safety of all students and school employees in California by requiring proper assessments and evaluations of potential private and charter school sites."

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 will 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 Environmental Impact Report (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.

Siting of schools is a complicated process: Siting schools is not an easy process. Existing law and state regulations prohibit school districts seeking state bond funds 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 railroads 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 California Department of Education (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.

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. 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.

AB 2882 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 seems very 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 1900's and been vacant for decades, and it's 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.

Options for the author to consider: The bill is amending Education Code 17213 to include charter schools, however section's 17213.1 and 17213.2 of the Education Code also include requirements for school districts when acquiring or evaluating a proposed schoolsite. The author may wish to consider updating these two code sections to include charter schools as well.

Arguments in Support:

According to the Bay Area Air Quality Management District, "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. 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 2882 will achieve this by requiring that private schools and charter schools meet the same siting requirements as public schools."

Related legislation:

- 1) 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. This bill was vetoed by the Governor.
- 2) SB 1224 (Ortiz, 2004). Would have required school districts to contact DTSC if a potential health risk to students caused by a hazardous material is discovered. Would have allowed DTSC to oversee, review, and approve a site investigation and remediation for such a risk, and allowed deferred maintenance funding to be used for the investigation, mitigation, and removal of hazardous materials. This bill was held in the Senate Education Committee.
- 3) SB 352 (Escutia, Chapter 668, Statutes of 2003). Prohibits a local educational agency from approving the acquisition of a schoolsite within 500 feet of a busy roadway unless the air quality at the site does not pose a health risk to pupils or staff.

Referral: This bill, under normal circumstances, would likely have been referred to the Assembly Education Committee, the Assembly Environmental Safety and Toxic Materials Committee, and the Assembly Natural Resources Committee, however, given the unique circumstances surrounding the COVID-19 pandemic, this bill was only referred to the Assembly Environmental Safety and Toxic Materials Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

Bay Area Air Quality Management District (Sponsor)
California Air Pollution Control Officers Association
California Association of Private School Organizations (CAPSO)
California Teachers Association (CTA)

Opposition

None on file.

Analysis Prepared by: Josh Tooker / E.S. & T.M. /