
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 313
Author: Galgiani
Version: April 6, 2015
Urgency: No
Consultant: Kathleen Chavira
Hearing Date: April 22, 2015
Fiscal: No

Note: This bill has been referred to both the Senate Education and Governance and Finance Committees. A “do pass” motion should include a referral to the Senate Governance and Finance Committee.

Subject: Local government: zoning ordinances: school districts

SUMMARY

This bill expands the requirements to be met by a school district governing board in order to declare a zoning ordinance inapplicable to a proposed use of land for classroom facilities and increases the standard to be met for such action from “arbitrary and capricious” to one of “substantial evidence”.

BACKGROUND

Existing law requires a school district to comply with city and county zoning ordinances if the zoning ordinance makes provision for the location of public schools and if the city/county has adopted a general plan.

Existing law authorizes a school district governing board, by a two-thirds vote of its members, to render a city or county zoning ordinance inapplicable to proposed use of property by the school district if it has complied with requirements to notify the planning commission in writing before acquiring title to the property (Public Resources Code § 21151.2), and it participates in notification and meeting requirements that are intended to foster improved communication and coordination between cities, counties, and school districts related to planning for school siting (Government Code § 65352.2). The school district governing board is prohibited from taking such action if the proposed use of the property is for non-classroom facilities.

Existing law authorizes the city or county to commence an action in the applicable county superior court seeking review of the board’s action to determine whether it was arbitrary and capricious, in which case the court can declare it to have no force and effect and the school district is required to comply with the zoning ordinance.
(Government Code § 53094)

For school sites approved January 1, 1997 and thereafter, existing law requires that, prior to commencing with the acquisition of land designated in a city/county general plan for agricultural use and zoned for agricultural production, a school district governing board makes findings that:

1. The school district has consulted with the city/county on the proposed location.
2. Final site selection was evaluated by the board based on all public interest factors and not limited to selection on the basis of land cost.
3. The school district will try to minimize public health and safety issues from neighboring agricultural uses that might affect students and employees. (Education Code §17215.5)

ANALYSIS

This bill expands the requirements to be met by a school district governing board in order to declare a zoning ordinance inapplicable to a proposed use by the school district. Specifically it:

1. Requires the governing board to comply with specified Education Code provisions regarding the acquisition of agricultural land.
2. Requires that the vote of the board be taken at least 90 days after notifying, the city/county in writing of its reasons for intending to take such action and based upon written findings on the record.
3. Expands the authority of a court's review of the board's action to determine whether the action was arbitrary and capricious to include whether it was based upon "substantial evidence" in the public record pursuant to specified law.

STAFF COMMENTS

1. ***Rationale for the bill.*** According to the author, the siting of schools outside of the local general plan negatively affects farmers and ranchers located in exclusive agricultural zones. When a new school is built on agricultural-zoned land, neighboring farmers are required to maintain pesticide application buffer zones to prevent possible contamination or drift onto school property. According to the author, while this is necessary to protect the health and safety of schoolchildren and residents, the remaining agricultural properties may experience revenue losses due to restricted farming practices. The author opines that, regardless, school districts continue to site new school facilities on agricultural zoned land.

The committee was not provided with any information regarding the magnitude of school sites being constructed on agricultural land or the extent of the use of existing authority to render zoning ordinances inapplicable by school boards.

2. ***Broad applicability.*** It appears to be the intent of the author and sponsor to affect the ability of school districts to declare zoning ordinances inapplicable to school facility projects specifically on agricultural land. As currently drafted, the bill would add a reference to Education Code provisions regarding the use of agricultural land for school siting. The expanded requirements would apply to all school districts for all potential school sites, whether or not the land is zoned for agricultural purposes.

3. **Status of school facilities construction.** Amid concerns about the complexity and structure of the current school facilities construction program and the state's increasing debt service obligations, the Governor has proposed significant changes to the way school facilities are funded. In order to allow districts to better meet their facilities needs at the local level, the Governor's 2015-16 budget proposes to:
- A. Expand revenue generation tools at the local level by expanding local funding capacity and increasing caps on local bond indebtedness;
 - B. Restructure developer fees to set one level for all projects at a level between existing Level II and Level III fees subject to local negotiation; and
 - C. Expand allowable uses of Routine Restricted Maintenance Funding to authorize the pooling of these funds over multiple years for modernization and new construction projects.

On February 18, 2015, this committee held a joint informational hearing with the Budget Subcommittee on Education on K-12 SCHOOL FACILITY PROGRAM: HISTORY, CURRENT STATUS, AND FUTURE OPTIONS to review the Governor's school facilities proposals. Among other things, the committee heard testimony that, while the state's growing debt service is of concern, it was unclear whether local districts have the capacity to generate sufficient revenue at the local level to meet their ongoing facility needs for deferred maintenance, modernization and new construction.

Could this bill create yet additional challenges for school districts attempting to meet their facility needs at the local level?

4. **Is there a problem?** Current law already requires a school district governing board to notify and seek the recommendation of the local planning commission prior to land acquisition and to notify and meet with cities and counties regarding school siting before it can exercise its authority to render a zoning ordinance inapplicable. It is unclear why the expanded requirements established by the bill are necessary due to the absence of evidence that school districts are ignoring these requirements or abusing their authority. At the same time, some elements of the bill do clarify existing process which governing boards must follow; including cross referencing existing requirements that the board make specified findings prior to the acquisition of land zoned for agricultural use and production

Staff recommends the bill be amended to reduce the 90 day notification requirement to 30 days, and to delete "on the record that contain substantial evidence" on page 2, line 15 and "based on substantial evidence in the public record pursuant to Section 1094.5 of the Code of Civil Procedure" on page 3 beginning on line 2.

SUPPORT

California Farm Bureau Federation

OPPOSITION

None received.

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