

BILL ANALYSIS

C.S.H.B. 1839
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Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 110th Congress passed the federal Energy and Independence Security Act of 2007, which required the Environmental Protection Agency, in consultation with the Secretary of Education and the Secretary of Health and Human Services, to develop model school site selection guidelines to be finalized by the fall of 2009. Among other things, the guidelines must specifically address "the special vulnerability of children to hazardous substances or pollution exposures in any case in which the potential for contamination at a potential school site exists."

Current Texas law is silent on the issue of school site selection. As a result, Texas has schools located in very close proximity to landfills, petrochemical factories, and smelting plants.

C.S.H.B. 1839 requires a school district to adopt a school site selection policy before establishing a new school that accounts for the special vulnerability of children and promotes the health and safety of children and employees of the new school. The bill provides that a school district is not required to adopt a site selection policy until the district receives voter approval for the issuance of bonds necessary to finance costs associated with establishment of a new school.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1839 amends the Education Code to require a school district, before establishing a new school, to adopt a site selection policy that accounts for the special vulnerability of children and promotes the health and safety of children and employees to be assigned to the new school by protecting those individuals from exposure to environmental toxins, hazards, and associated health risks. The bill provides that a school district is not required to adopt a site selection policy until the district receives voter approval for the issuance of bonds necessary to finance costs associated with establishment of a new school. The bill prohibits the school district, after voter approval is received, from entering into a contract for the purchase or lease of a site to be used for the new school or, if a new site will not be purchased or leased, for construction of the new school, until the district has adopted a policy and, if required, obtained Texas Commission on Environmental Quality (TCEQ) approval of the site selection criteria included in the policy. The bill authorizes a school district, after adopting a site selection policy and obtaining approval, if necessary, of included site selection criteria for the first time, to continue to act in accordance with the policy when subsequently selecting additional sites for new schools and does not require the district to adopt a new policy before proceeding with selection of a site for each subsequent new school.

C.S.H.B. 1839 requires a school district's site selection policy to include the following components: it must include site selection criteria that may either be developed by the district or be the voluntary school site selection criteria established by the United States Environmental

Protection Agency adopted by the district, and if the district develops the site selection criteria or adopts the voluntary criteria with modifications, the district must submit the district-developed criteria or modifications, as applicable, to TCEQ for approval; the policy must require that, before the district enters into a contract for purchase or lease of a proposed site or for construction at a proposed site already owned by the district, that a Phase I environmental site assessment be conducted at the proposed site and the results of the Phase I environmental site assessment be presented to the board of trustees; if the Phase I environmental site assessment does not indicate an area of concern, the policy must authorize the district to take any action necessary to pursue establishment of a new school at the proposed site, including entering into any necessary contracts; and if the Phase I environmental site assessment indicates an area of concern, the policy must require the following actions before the district may enter into a contract for purchase or lease of the proposed site or for construction at the proposed site:

- a Phase II environmental site assessment must be conducted at the proposed site, and
- the district must take at least the following steps to publicize the district's interest in the proposed site and provide the following opportunities for meaningful public input regarding the site: publish notice in at least one newspaper of general circulation in the district, post notice on the district's Internet website, and conduct at least one public meeting held specifically for the purpose of discussing the site selection.

C.S.H.B. 1839 requires a school district, if the district proceeds to establish a new school at a site at which a Phase II environmental site assessment indicates a need for remediation, to develop a site remediation plan, submit the remediation plan to TCEQ for approval, and complete the required remediation measures specified in the remediation plan to ensure that the site is protective of human health, as required by TCEQ. The bill defines "commission" and "construction." The bill defines "Phase I environmental site assessment" to mean an assessment that complies with ASTM Standard E1527 and "Phase II environmental site assessment" to mean an assessment that complies with ASTM Standard E1903.

C.S.H.B. 1839 authorizes TCEQ to impose an administrative penalty against a school district that enters into a contract in violation of district site selection policy requirements. The bill prohibits the penalty from exceeding the sum of \$5,000 and \$100 for each day beginning on the day after the date the district enters into the contract and ending on the later of the day the district adopts a site selection policy in compliance with these provisions, or, if necessary, the day the district obtains TCEQ approval of site selection criteria included in the policy.

EFFECTIVE DATE

September 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1839 differs from the original by adding a new subchapter to the Education Code governing site selection for new schools, whereas the original adds a new section relating to a school district site selection policy for establishing new schools.

C.S.H.B. 1839 requires a school district, before establishing a new school, to adopt a site selection policy that accounts for the special vulnerability of children and promotes the health and safety of children and employees to be assigned to the new school by protecting those individuals from exposure to environmental toxins, hazards, and associated health risks, and authorizes a district, after adopting and obtaining Texas Commission on Environmental Quality (TCEQ) approval, if necessary, to continue acting in accordance with the policy when subsequently selecting additional sites for new schools without adopting a new policy before proceeding, whereas the original requires a district to develop, adopt, and periodically revise as necessary a policy that specifies the district procedures required to be followed in selecting a site on which to construct a new school and to file the policy with TCEQ not later than the 30th day

before the date the site selection process for a new school begins.

C.S.H.B. 1839 differs from the original by not requiring a district to adopt a site selection policy until it receives voter approval for the issuance of bonds necessary to finance costs associated with establishment of a new school, whereas the original does not require a school district to develop, adopt, and file a policy if it does not anticipate constructing a new school on a site selected for that purpose.

C.S.H.B. 1839 adds a provision not in the original prohibiting a school district from entering into a contract for the purchase or lease of the site, or if a new site will not be purchased or leased, for the construction of the new school until the district has adopted a policy and, if needed, obtained TCEQ approval of the site selection criteria included in the policy.

C.S.H.B. 1839 differs from the original, with respect to policy content, by requiring the policy to require the district, before entering into a purchase, lease, or construction contract, to take certain steps to publicize the district's interest in the proposed site and provide opportunities for meaningful public input regarding the proposed site, including holding at least one public meeting specifically for the purpose of discussing the site selection only if the Phase I environmental site assessment indicates an area of concern, whereas the original requires the policy to include procedures for obtaining general public input regarding proposed sites generally, without the condition in the substitute, and to include procedures for obtaining public input before final selection of a site after informing the public of the results of any Phase II environmental site assessment of a proposed site.

C.S.H.B. 1839 differs from the original by requiring the policy to include site selection criteria and authorizing a school district to adopt site selection criteria developed by the district or to adopt voluntary school site selection criteria established by the United States Environmental Protection Agency and requiring the district, if it proposes either to adopt district-developed criteria or to adopt the established selection criteria with modifications, to submit the proposed criteria or modifications to TCEQ for approval; the original requires the policy to include procedures for obtain public input regarding proposed sites, a list of criteria for determining suitable sites, including certain specified criteria, and a list of factors that immediately disqualify a site.

C.S.H.B. 1839 differs from the original, in provisions relating to the required contents of the policy, by including the requirement to take at least certain specified steps to publicize the district's interest in a site that has warranted a Phase II environmental site assessment and provide opportunity for public input regarding the site, whereas the original only includes the requirement to provide procedures for informing the public of the results of a Phase II environmental site assessment and for obtaining public input before final selection.

C.S.H.B. 1839 differs from the original by requiring a school district, if it proceeds to establish a new school at a site at which a Phase II environmental site assessment indicates a need for remediation, to develop a site remediation plan, submit the remediation plan to TCEQ for approval, and complete the required remediation measures specified in the remediation plan to ensure that site is protective of human health, whereas the original requires the district's site selection policy to include procedures, if the district's board of trustees finally selects a site with one or more known environmental hazards, as indicated by the Phase II environmental site assessment, for developing and submitting a site remediation plan to TCEQ for approval.

C.S.H.B. 1839 differs from the original by requiring the policy to require, before the district enters into a contract for purchase or lease of a proposed site or for construction at a proposed site already owned by the district, a Phase I environmental site assessment of the proposed site and presentation of those results to the board of trustees, whereas the original requires the policy to include procedures for determining, based on the results of the Phase I environmental site assessment, whether a Phase II environmental site assessment of a proposed site must be

conducted before the site may be selected.

C.S.H.B. 1839 differs from the original by requiring the policy to authorize the district, if the Phase I environmental site assessment does not indicate an area of concern, to take any action necessary to pursue establishment of a new school at the proposed site, including entering into any necessary contracts, whereas the original requires the policy to include procedures for determining, based on the results of the Phase I environmental site assessment, whether a Phase II environmental site assessment of a proposed site must be conducted before the site may be selected.

C.S.H.B. 1839 removes a provision in the original requiring a Phase I environmental site assessment to include a review of the site's history; identification of potential liabilities and risks associated with environmental and public health considerations arising from previous ownership and uses of the site; a visual inspection of the site and surrounding properties for potential sources of environmental contamination; and a review of federal, state, and local government records regarding release of hazardous substances that may affect the site and a provision requiring a Phase II assessment site to include a thorough assessment of any environmental concern identified in the Phase I assessment.

C.S.H.B. 1839 differs from the original by authorizing TCEQ to impose an administrative penalty against a district that enters into a contract in violation of district site selection policy requirements, rather than authorizing the commission, on its own motion or at the request of the Texas Education Agency, to impose the penalty against a district that selects or attempts to select a new school construction site without having filed a site selection policy. The substitute differs from the original by allowing the imposition of the penalty each beginning on the day after the date the district enters into the contract and ending on the later of the day the district adopts a site selection policy in compliance with the requirement of these provisions, or, if necessary, the day the district obtains TCEQ approval of the site selection criteria included in the policy, rather than beginning on the day after the date the district begins the site selection process and ending on the day the district files with TCEQ a policy that complies with this provision or certifies in writing to TCEQ and the agency that the district is no longer attempting to select a site for a new school, as in the original.

C.S.H.B. 1839 differs from the original by applying its provisions only in connection with a new school for which associated bonds are approved by the voters, rather than in connection with a school site selection process that begins, as in the original, on or after the bill's effective date.

C.S.H.B. 1839 adds definitions for "commission," "construction," "Phase I environmental site assessment," and "Phase II environmental site assessment."

C.S.H.B. 1839 makes the bill effective September 1, 2010, rather than September 1, 2009, as in the original.