

LAWS OF DELAWARE
VOLUME 84
CHAPTER 210
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 186

AN ACT TO AMEND TITLES 9, 14, AND 22 OF THE DELAWARE CODE RELATING TO SCHOOLS.

WHEREAS, planning for land development must take into account all of the public services necessitated by new development; and

WHEREAS, impacts to the school system from new developments are substantial and accounted for in New Castle County through the Voluntary School Assessment; and

WHEREAS, Sussex County should also be enabled to utilize the Voluntary School Assessment as set forth herein to promote concurrency between residential development and adequate school capacity.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6961. Information from state and local agencies and school districts.

(d) This section shall only apply to residential development and only upon an action by Sussex County Council adopting this section. Prior to recording a major record subdivision plan, as defined by Sussex County, Sussex County may require that the applicant provide certification from the Secretary of the Department of Education after consultation with the superintendent of the appropriate individual school district that the school district has adequate capacity for the proposed development.

(1) If so requested, the Secretary shall respond to any request for certification or Voluntary School Assessments within 60 days' receipt of a completed request for such certification. That certification shall include the following information:

a. Existing classrooms and service levels based upon the Delaware Department of Education Delaware School Construction Manual, September 19, 1996, as may be amended or supplemented from time to time, or based upon other standards accepted as current by the Secretary of the Department of Education.

b. Capacity calculations, which shall include the current student population, increased demand resulting from prior certifications from the Department of Education, and the increased demand that will result from the proposed development. The County shall within 20 days provide the Department of Education with all necessary information regarding the number and type of dwelling units proposed and other information which the Secretary may request.

(2) Notwithstanding the foregoing provisions of this subsection, no certificate of adequate school capacity shall be required where either: (i) the residential development is restricted by recorded covenants

to provide housing or shelter predominantly for individuals 55 years of age or older pursuant to the Federal Fair Housing Act [42 U.S.C § 3601 et seq.]; (ii) the residential development is for low income housing, which, for purposes of this section, shall be defined to mean any housing financed by a loan or mortgage that is insured or held by the Secretary of HUD or the Delaware State Housing Authority or which is developed by a nonprofit corporation certified under § 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. § 501(c)(3)]; or (iii) the applicant has pledged, in a writing recorded and running with the subject property, to pay a Voluntary School Assessment in an amount determined pursuant to § 103(c) of Title 14, for each lot for which the applicant would otherwise be required to obtain a certificate.

(3) Voluntary School Assessments will be calculated on a per unit basis as of the time of the issuance of the first building permit, and the assessment shall remain constant throughout the development of the subdivision (and shall not be increased for any reason, including but not limited to any resubdivision); provided, however, that after 5 years the Voluntary School Assessment amount may be recalculated. Any Voluntary School Assessments paid under this subsection shall be paid to the Department of Education at the time that a certificate of occupancy is obtained for each unit, and shall be deposited by the Department into an interest-bearing account as set forth below. With the approval of the Secretary, after consultation with the superintendent of the affected school district, an applicant may receive a credit against voluntary assessments to be paid in an amount equal to the fair market value of any lands or properties set aside by the applicant and deeded to the school district for school uses. Any such lands shall not be used for nonschool purposes, other than as parkland or open space. All voluntary assessments paid shall be held in an interest-bearing account by the State for the school district in which the applicant's project is located until such time as the school district engages in construction activities that increase school capacity, at which time such assessments shall be released to the school district by the State in the amount of the Voluntary School Assessments paid into an interest-bearing account for such district. It is the intent of this section that lands or properties required to be conveyed by the applicant to Sussex County as a condition to subdivision approval shall not be eligible to be used for purposes of obtaining a credit against the voluntary school assessment notwithstanding the fact that such lands or properties may subsequently be conveyed by the county to a school district.

(4) To the extent Sussex County has adopted (or in the future attempts to adopt) any regulations or ordinances linking or tying residential development to school capacity, or otherwise restricting residential development in the absence of school capacity, such regulations and ordinances are hereby preempted and of no force and effect.

Section 2. Amend Title 22 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 842. School capacity application for municipal corporations ~~in New Castle County.~~

(a) This section shall apply only to residential development. Prior to recording a residential subdivision plan for over 5 units in size for any lands ~~annexed into~~ in any municipality ~~located in New Castle County on or after~~

July 1, 1992, located in a County that utilizes Voluntary School Assessments as set forth in Title 9 of the Delaware Code and notwithstanding any home rule or charter provision to the contrary, the applicant shall provide certification from the Secretary of the Department of Education, after consultation with the superintendent of the appropriate individual school district, that the school district has adequate capacity for the proposed development. The Secretary shall respond to any request for certification or ~~voluntary school assessments~~ Voluntary School Assessments within 60 days of receipt of a completed request for such certification. That certification shall include the following information:

(1) Existing classrooms and service levels based upon the Delaware Department of Education, Delaware School Construction Manual, September 19, 1996, as may be amended or supplemented from time to time, or based upon other standards accepted as accurate by the Secretary of the Department of Education; and

(2) Capacity calculations, which shall include the current student population, increased demand resulting from prior certifications from the Department of Education, and the increased demand that will result from the proposed development. The municipality shall, within 20 days, provide the Department of Education with all necessary information regarding the number and type of dwelling units proposed and other information which the Secretary may request.

This subsection shall apply to all new residential subdivision plans over 5 units in size for lands located within or annexed into a municipality located in New Castle County on or after July 1, 1992, and first submitted for review after July 1, 1999.

This subsection shall apply to all new residential subdivision final plans over 5 units in size for lands located within or annexed into a municipality located in Sussex County if such County utilizes Voluntary School Assessments.

(b) Notwithstanding the foregoing provisions of this section, no certificate of adequate school capacity shall be required where either:

(1) The residential development is restricted by recorded covenants to provide housing or shelter predominantly for individuals 55 years of age or older pursuant to the provisions of the Federal Fair Housing Act [42 U.S.C. § 3601, et seq.];

(2) The residential development is for low income housing, which, for purposes of this section; shall be defined to mean any housing financed by a loan or mortgage that is insured or held by the Secretary of HUD or the Delaware State Housing Authority or which is developed by a nonprofit corporation certified under § 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. § 501(c)(3)];
or

(3) The applicant has pledged, in a writing recorded and running with the subject property, to pay a ~~voluntary school assessment~~ Voluntary School Assessment in an amount determined pursuant to § 103(c) of Title 14 for each lot for which the applicant would otherwise be required to obtain a certificate.

(d) To the extent any municipality located in ~~New Castle County~~ a County that utilizes Voluntary School Assessments has adopted (or in the future attempts to adopt) any regulations or ordinances linking or tying residential development to school capacity or otherwise restricting residential development in the absence of school capacity for lands covered by this section, such regulations and ordinances are hereby preempted and of no force and effect.

Section 3. Amend Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 103. Powers, duties and functions of the Secretary.

(c) The Secretary shall calculate a Voluntary School Assessment, which applicants shall have the option of paying in lieu of any school certification required by ~~§ 2661 of Title 9~~ §§ 2661 or 6961 of Title 9 or § 842 of Title 22. Voluntary School Assessments shall be calculated on a per unit basis for each project that seeks to pay such assessments in lieu of certification as follows by:

(1) Calculating the average cost (including offsite roadway improvements for the school required by the state transportation department, land or, if the school district already owned such land, the then-fair market value of such land at the time of construction), per child, for the average new public schools (1 elementary school, 1 middle school, 1 high school) constructed with state assistance ~~in New Castle County~~ as determined by the State of Delaware School Construction Technical Assistance Manual prepared by the Delaware Department of Education (as such manual exists as of June 30, 1999, such manual to be updated for purposes of this calculation on earlier than July 1, 2005, and thereafter updated as the Department normally updates such manual);

2) Multiplying that number by the local percentage share then required by state law of the local school district in order to receive state capital assistance;

(3) Multiplying the resulting figure by 0.50, representing the average number of school-aged children projected to be housed within each residential unit, provided that in no event shall the Voluntary School Assessment exceed 5 percent of the total cost of the residential unit.

Approved September 14, 2023