



SPONSOR: Sen. Hansen

DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1  
FOR  
SENATE BILL NO. 287

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

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

3 WHEREAS, currently New Castle County is prohibited from considering the impact on the school system as a  
4 result of new development and instead must rely solely upon the setting of the Voluntary School Assessment by the  
5 Department of Education; and

6 WHEREAS, impacts to the school system from new development are substantial and not fully accounted for in the  
7 current Voluntary School Assessment; and

8 WHEREAS, a specific deficiency within the Voluntary School Assessment has been identified regarding roadway  
9 improvements, but there are other elements of good planning such as timing that cannot be captured within the Voluntary  
10 School Assessment; and

11 WHEREAS, closer coordination between New Castle County and the local school district with regard to planning  
12 for new development is in the best interest of the community; and

13 WHEREAS, Kent and Sussex Counties should also be enabled to utilize the Voluntary School Assessment and  
14 other agreements as set forth herein to promote concurrency between residential development and adequate school capacity.

15 NOW, THEREFORE:

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

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

19 § 2656. Required and optional elements of comprehensive plan; studies and surveys.

20 (g) The comprehensive plan shall include:

21 (11) An educational element consistent with the master plans of the local school districts which guide the  
22 construction and allocation of school facilities within the districts. This element will be developed with input from

the local school districts, the Department of Education, and the Office of State Planning and Coordination. The educational element shall include recommendations for promoting concurrency between residential development and adequate school capacity.

§ 2661. Information from state and local agencies and school districts.

(c)(1) This section shall apply only to residential development. Prior to recording a major record subdivision plan, as defined by New Castle County, the applicant shall provide certification to the Department of Land Use 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 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 accurate by the Secretary of the Department of Education; and

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 Department of Land Use 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 major subdivision plans submitted pursuant to the New Castle County Unified Development Code adopted December 31, 1997, as may be amended.

(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 New Castle 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 New Castle 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 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4956. Required and optional elements of comprehensive plan; studies and surveys.

(g) The comprehensive plan shall include:

(11) An educational element consistent with the master plans of the local school districts which guide the construction and allocation of school facilities within the districts. This element will be developed with input from the local school districts, the Department of Education, and the Office of State Planning and Coordination. The

educational element shall include recommendations for promoting concurrency between residential development and adequate school capacity.

§ 4961. Information from state and local agencies and school districts.

(d) This section shall only apply to residential development. Prior to recording a major record subdivision plan, as defined by Kent County, Kent 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 Kent 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.

Section 3. Amend Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6956. Required and optional elements of comprehensive plan; studies and surveys.

(g) The comprehensive plan shall include:

(11) An educational element consistent with the master plans of the local school districts which guide the construction and allocation of school facilities within the districts. This element will be developed with input from the local school districts, the Department of Education, and the Office of State Planning and Coordination. The educational element shall include recommendations for promoting concurrency between residential development and adequate school capacity.

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

(d) This section shall only apply to residential development. 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.

Section 4. 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 any municipality located in New Castle County on or after July 1, 1992, 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 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.

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

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

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

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

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

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

219 Section 5. Amend Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as  
220 shown by underline as follows:

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

222 (c) The Secretary shall calculate a Voluntary School Assessment, which applicants shall have the option of paying  
223 in lieu of any school certification required by ~~§ 2661 of Title 9~~ §§ 2661, 4961, or 6961 of Title 9 or § 842 of Title 22.  
224 Voluntary School Assessments shall be calculated on a per unit basis for each project that seeks to pay such assessments in  
225 lieu of certification as follows by:

226 (1) Calculating the average cost (including land or, if the school district already owned such land, the  
227 then-fair market value of such land at the time of construction), per child, for the average new public schools (1  
228 elementary school, 1 middle school, 1 high school) constructed with state assistance ~~in New Castle County~~ as  
229 determined by the State of Delaware School Construction Technical Assistance Manual prepared by the Delaware  
230 Department of Education (as such manual exists as of June 30, 1999, such manual to be updated for purposes of



231 this calculation on earlier than July 1, 2005, and thereafter updated as the Department normally updates such  
232 manual);

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

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

238 Section 6. By July 1, 2024, the Department of Education, in consultation with the local school districts, the local  
239 planning agencies, the Office of State Planning Coordination, and municipalities shall develop guidance and policies for  
240 implementing § 2656(g)(11) of Section 1 of this Act, § 4956(g)(11) of Section 2 of this Act, and § 6956(g)(11) of Section 3  
241 of this Act.

242 Section 7. Effective as of January 1, 2023, the Counties must include the educational element as set forth in §  
243 2656(g)(11) of Section 1 of this Act, § 4956(g)(11) of Section 2 of this Act, and § 6956(g)(11) of Section 3 of this Act  
244 within their next comprehensive plan update following this Act's enactment into law.

#### SYNOPSIS

This Act addresses the relation between land development and school capacity and facilitates greater coordination between the counties and local school districts with regard to planning. In addition, the Act enables Kent and Sussex County to use the Voluntary School Assessment (VSA) and other agreements to address the impact of residential development on school capacity.

The following is a summary of the Act's 7 sections:

Section 1 of the Act amends Chapter 26 of Title 9 of the Delaware code pertaining to zoning in New Castle County. First, it amends § 2656 of Title 9 to require that New Castle County's comprehensive plan for planning and development include an educational element concerning the construction and allocation of school facilities within school districts.

Second, Section 1 of the Act amends § 2661(c) of Title 9 to remove language providing that any regulation or ordinance adopted by New Castle County linking residential development to school capacity is preempted by state law and of no force or effect.

Section 2 of the Act amends Chapter 49 of Title 9 of the Delaware code pertaining to zoning in Kent County. First, it amends § 4956 of Title 9 to require that Kent County's comprehensive plan for planning and development include an educational element concerning the construction and allocation of school facilities within school districts.

Second, Section 2 of the Act amends § 4961 of Title 9 to add a new subsection (d) concerning the certification of adequate school capacity for proposed residential developments. Section 4961(d) enables Kent County to require residential developers to provide a certification from the Secretary of the Department of Education concerning school capacity prior to recording a major record subdivision plan; however, no certification is required where the proposed development is (i) restricted to providing housing predominantly for individuals 55 years of age or older; (ii) for low income housing; or (iii) the developer has pledged to pay a VSA.

Section 3 of the Act amends Chapter 69 of Title 9 of the Delaware code pertaining to zoning in Sussex County. First, it amends § 6956 of Title 9 to require that Sussex County's comprehensive plan for planning and development include an educational element concerning the construction and allocation of school facilities within school districts.

Second, Section 3 of the Act amends § 6961 of Title 9 to add a new subsection (d) concerning the certification of adequate school capacity for proposed residential developments. Section 6961(d) enables Sussex County to require residential developers to provide a certification from the Secretary of the Department of Education concerning school capacity prior to recording a major record subdivision plan; however, no certification is required where the proposed

development is (i) restricted to providing housing predominantly for individuals 55 years of age or older; (ii) for low income housing; or (iii) the developer has pledged to pay a VSA.

Section 4 of the Act amends § 842 of Title 22 of the Delaware code to conform with the changes to § 2661 of Title 9 contained in Section 1 of the Act. Specifically, Section 4 of the Act removes language providing that any regulation or ordinance adopted by New Castle County linking residential development to school capacity is preempted by state law and of no force or effect.

Section 5 of the Act amends § 103 of Title 14 of the Delaware code to remove a specific reference to New Castle County.

Section 6 of the Act directs the Department of Education to develop guidance and policies for implementing §§ 2656(g)(11), 4956(g)(11), and 6956(g)(11) of Title 9, concerning the requirement that the Counties consider an educational element in developing their comprehensive plans for planning and development. The Department of Education is to develop these guidance and policies by July 1, 2024.

Section 7 of the Act provides that, effective as of January 1, 2023, the Counties must include the educational element in their comprehensive plans within the next comprehensive plan update following the Act's enactment into law.

This Act is a substitute for and differs from Senate Bill No. 287 in several respects.

Section 1 of Senate Bill No. 287 would have amended § 2661(c) of Title 9 by removing an exception to the requirement that a residential developer provide a certification of adequate school capacity for proposed residential developments where the developer has pledged to pay a VSA. Section 1 of this Act leaves that exception intact. In addition, Section 1 of Senate Bill No. 287 would have added language to § 2661(c) permitting a school district to require a residential developer to enter into an agreement to resolve school capacity issues arising from a development that are not addressed by the VSA. This Act does not include that language.

Sections 2 and 3 of this Act include an exception to the requirement that a residential developer provide a certification of adequate school capacity for proposed residential developments where the developer has pledged to pay a VSA. Sections 2 and 3 of Senate Bill No. 287 did not include this exception. In addition, Sections 2 and 3 of Senate Bill No. 287 would have added language to § 4961 and § 6961 of Title 9 permitting a school district to require a residential developer to enter into an agreement to resolve school capacity issues arising from a development that are not addressed by the VSA. Sections 2 and 3 of this Act does not include that language.

Section 4 of Senate Bill No. 287 would have amended § 842 of Title 22 to remove an exception to the requirement that a residential developer provide a certification of adequate school capacity for proposed residential developments where the developer has pledged to pay a VSA. Section 4 of this Act leaves that exception intact.

Section 5 of Senate Bill No. 287 would have amended § 103 of Title 14 to provide that in calculating the VSA, the Secretary of the Department of Education shall consider the cost of off-site roadway improvements required by the state transportation department. Section 5 of this Act does not make this amendment.

Section 8 of Senate Bill No. 287 would have required New Castle County to include the educational element in its comprehensive plan by December 31, 2025. Section 7 of this Act provides instead that, effective as of January 1, 2023, New Castle, Sussex, and Kent Counties must include the educational element in their comprehensive plans in their next comprehensive plan updates following this Act's enactment into law.

Author: Senator Hansen