



SPONSOR: Sen. Huxtable & Sen. Hansen & Rep. Parker Selby  
Sen. Gay

DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

SENATE BILL NO. 186

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

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

7 NOW, THEREFORE:

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

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

11 § 6961. Information from state and local agencies and school districts.

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

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

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

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

29 (2) Notwithstanding the foregoing provisions of this subsection, no certificate of adequate school capacity  
30 shall be required where either: (i) the residential development is restricted by recorded covenants to provide  
31 housing or shelter predominantly for individuals 55 years of age or older pursuant to the Federal Fair Housing Act  
32 [42 U.S.C § 3601 et seq.]; (ii) the residential development is for low income housing, which, for purposes of this  
33 section, shall be defined to mean any housing financed by a loan or mortgage that is insured or held by the  
34 Secretary of HUD or the Delaware State Housing Authority or which is developed by a nonprofit corporation  
35 certified under § 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. § 501(c)(3)]; or (iii) the  
36 applicant has pledged, in a writing recorded and running with the subject property, to pay a Voluntary School  
37 Assessment in an amount determined pursuant to § 103(c) of Title 14, for each lot for which the applicant would  
38 otherwise be required to obtain a certificate.

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

54 subdivision approval shall not be eligible to be used for purposes of obtaining a credit against the voluntary school  
55 assessment notwithstanding the fact that such lands or properties may subsequently be conveyed by the county to a  
56 school district.

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

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

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

64 (a) This section shall apply only to residential development. Prior to recording a residential subdivision plan for  
65 over 5 units in size for any lands ~~annexed into~~ in any municipality ~~located in New Castle County on or after July 1, 1992,~~  
66 located in a County that utilizes Voluntary School Assessments as set forth in Title 9 of the Delaware Code and  
67 notwithstanding any home rule or charter provision to the contrary, the applicant shall provide certification from the  
68 Secretary of the Department of Education, after consultation with the superintendent of the appropriate individual school  
69 district, that the school district has adequate capacity for the proposed development. The Secretary shall respond to any  
70 request for certification or ~~voluntary school assessments~~ Voluntary School Assessments within 60 days of receipt of a  
71 completed request for such certification. That certification shall include the following information:

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

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

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

83 This subsection shall apply to all new residential subdivision final plans over 5 units in size for lands located

84 within or annexed into a municipality located in Sussex County if such County utilizes Voluntary School Assessments.

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

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

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

94 (3) The applicant has pledged, in a writing recorded and running with the subject property, to pay a  
95 ~~voluntary school assessment~~ Voluntary School Assessment in an amount determined pursuant to § 103(c) of Title  
96 14 for each lot for which the applicant would otherwise be required to obtain a certificate.

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

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

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

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

108 (1) Calculating the average cost (including offsite roadway improvements for the school required by the  
109 state transportation department, land or, if the school district already owned such land, the then-fair market value  
110 of such land at the time of construction), per child, for the average new public schools (1 elementary school, 1  
111 middle school, 1 high school) constructed with state assistance ~~in New Castle County~~ as determined by the State of  
112 Delaware School Construction Technical Assistance Manual prepared by the Delaware Department of Education

113 (as such manual exists as of June 30, 1999, such manual to be updated for purposes of this calculation on earlier  
114 than July 1, 2005, and thereafter updated as the Department normally updates such manual);  
115 2) Multiplying that number by the local percentage share then required by state law of the local school  
116 district in order to receive state capital assistance;  
117 (3) Multiplying the resulting figure by 0.50, representing the average number of school-aged children  
118 projected to be housed within each residential unit, provided that in no event shall the Voluntary School  
119 Assessment exceed 5 percent of the total cost of the residential unit.

#### SYNOPSIS

This Act enables Sussex County to use the Voluntary School Assessment (VSA) to address the impact of residential development on school capacity. The following is a summary of the Act's 3 sections:

Section 1 of the Act amends Chapter 69 of Title 9 of the Delaware code pertaining to zoning in Sussex County. It amends § 6961 of Title 9 to add a new subsection (d) that 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 1 also amends § 6961 to provide that to the extent Sussex County has adopted or adopts any regulations linking or restricting residential developments to school capacity, such regulations are preempted.

Section 2 of the Act amends § 842 of Title 22 of the Delaware code, pertaining to school capacity for municipal corporations, to remove specific references to New Castle County. It also revises § 842 to provide that subsection (b) applies to all new residential subdivision plans over 5 units in size for lands located within or annexed into a municipality on or after July 1, 1992; previously, subsection (b) only applied to such lands annexed into a municipality after July 1, 1992.

Section 3 of the Act amends § 103 of Title 14 of the Delaware code to conform with the changes to the code contained in Section 1 of this Act, to provide that in calculating the VSA, the average cost per child shall take into account offsite roadway improvements required by the state transportation department, and to remove a specific reference to New Castle County.

Author: Senator Huxtable