



HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1 FOR HOUSE BILL NO. 383

AS AMENDED BY

HOUSE AMENDMENT NOS. 2 & 3

AN ACT TO AMEND TITLES 9, 14, AND 22 OF THE DELAWARE CODE RELATING TO LAND  
USE PLANNING AND EDUCATION.

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

Section 1. Amend §2661 of Title 9 of the Delaware Code by deleting subsection (c) in its entirety and substituting in lieu thereof the following:

"(c)(i) 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 sixty (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 twenty (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 (c) 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.

(ii) Notwithstanding the foregoing provisions of this subsection (c), 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 non-profit corporation certified under Section 501(c)(3) of the United States Internal Revenue Code, or (3) 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 Title 14, Section 103(c), for each lot for which the applicant would otherwise be required to obtain a certificate.

(iii) 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 five (5) years the Voluntary School Assessment amount may be recalculated. Any Voluntary School Assessments paid under this subsection (c) shall be paid at the time of obtaining a certificate of occupancy for each unit to the Revolving Fund created by Title 14, Section 1714. 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 non-school purposes, other than as parkland or open space. All voluntary assessments paid shall be held in the Revolving Fund 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 which 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 the Revolving Fund for such district.

(iv) 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 pre-empted and of no force and effect."

Section 2. Amend Chapter 8 of Title 22 of the Delaware Code by creating a new §842 as follows:

"§842. School Capacity Application for Municipal Corporations in New Castle County.

(i) This section shall apply only to residential development. Prior to recording a residential subdivision plan for over five 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 sixty (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 municipality shall within twenty (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 section shall apply to all new residential subdivision plans over five units in size for lands annexed into a municipality on or after July 1, 1992 and first submitted for review after July 1, 1999.

(ii) 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 non-profit corporation certified under Section 501(c)(3) of the United States Internal Revenue Code , or (3) 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 Title 14, Section 103(c), for each lot for which the applicant would otherwise be required to obtain a certificate.

(iii) Voluntary School Assessments will be calculated on a per unit basis as of the issuance of the first building permit, and the fee shall remain constant throughout the development of the of the subdivision (and shall not be increased for any reason, including but not limited to any resubdivision); provided, however, that after five (5) years the Voluntary School Assessment amount may be recalculated. Any Voluntary School Assessments paid under this section shall be paid at the time of obtaining a certificate of occupancy for each unit to the Revolving Fund created by Title 14, Section 1714. 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 non-school purposes, other than as parkland or open space. All voluntary assessments paid shall be held in the Revolving Fund 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 which increase school capacity, at which time such assessments shall be released to the school district by the State in the amount of Voluntary School Assessments paid into the Revolving Fund for such district.

(iv) To the extent any municipality located in 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, for lands covered by this section, such regulations and ordinances are hereby pre-empted and of no force and effect."

Section 3. Amend §1714 of Title 14 of the Delaware Code by deleting the third sentence thereof in its entirety and substituting in lieu thereof the following:

"The Department shall make no payments to any school district from the Revolving Fund unless either the acquisition of a school site and the approximate cost of the proposed new construction thereon

have first been approved by a referendum held among the voters in the school district concerned or, in the event that such a referendum has not been approved, upon presentation from the school district that it otherwise has available sufficient funds to meet the local share, as that term is defined in Chapter 75 of Title 29 of the Delaware Code, of the school district concerned necessary for the school construction project."

Section 4. Amend Title 14, Section 103 of the Delaware Code by adding a new Section 103(c) to read as follows:

"(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 Title 9, Section 2661 or Title 22, Section 842. Voluntary School Assessments shall be calculated on a per unit basis for each project which seeks to pay such assessments in lieu of certification as follows: (1) calculating the average cost (including 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 (one elementary school, one middle school, one 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 not to be updated for purposes of this calculation no 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 the five percent of the total cost of the residential unit."

Section 5. If any provision of this act is held invalid, the act in its entirety shall be invalid.

Section 6. The Department of Education may promulgate rules and regulations to effectuate the purposes of this Act.