

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2021, Legislative Day No. 19

Bill No. 85-21

Introduced by Ms. Lacey, Chair  
(by request of the County Executive)

By the County Council, October 4, 2021

---

Introduced and first read on October 4, 2021  
Public Hearing set for and held on November 1, 2021  
Public Hearing on AMENDED bill set for and held on November 15, 2021  
Public Hearing on SECOND AMENDED bill set for and held on December 6, 2021  
Bill Expires January 7, 2022

By Order: Laura Corby, Administrative Officer

---

A BILL ENTITLED

1 AN ORDINANCE concerning: Subdivision and Development – Adequate Public Facilities  
2 – Public Schools

3  
4 FOR the purpose of modifying the provisions for an exemption from requirements for  
5 adequate public facilities for schools; restoring provisions relating to the school  
6 utilization chart as they existed before the sunset of Bill No. 15-18; adding the option  
7 of donating land to the Board of Education for future construction of school facilities  
8 to pass the test for adequate school facilities; making certain technical changes;  
9 providing for the termination of this Ordinance; and generally relating to subdivision  
10 and development.

11  
12 BY repealing and reenacting, with amendments: §§ 17-5-207(a) and (b); ~~and 17-5-~~  
13 ~~501(a)(2) 17-5-501(a); and 17-5-901(a) and (h)~~  
14 Anne Arundel County Code (2005, as amended)

15  
16 BY repealing: § 17-5-502  
17 Anne Arundel County Code (2005, as amended)

18  
19 BY adding: § 17-5-502  
20 Anne Arundel County Code (2005, as amended)

---

EXPLANATION: CAPITALS indicate new matter added to existing law.  
[[Brackets]] indicate matter deleted from existing law.  
Captions and taglines in **bold** in this bill are catchwords and are not law.  
Underlining indicates matter added to bill by amendment.  
~~Strikeover~~ indicates matter removed from bill by amendment.

1 SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*  
2 That § 17-5-502 of the Anne Arundel County Code (2005, as amended) be repealed.

3  
4 SECTION 2. *And be it further enacted,* That Section(s) of the Anne Arundel County  
5 Code (2005, as amended) read as follows:

6  
7 **ARTICLE 17. SUBDIVISION AND DEVELOPMENT**

8  
9 **TITLE 5. ADEQUATE PUBLIC FACILITIES**

10  
11 **17-5-207. Exemptions.**

12  
13 (a) **Exemption.** A developer may obtain an exemption from the requirements for  
14 adequate public facilities for schools for no more than ~~[[three]]~~ FIVE lots in a subdivision  
15 for single family detached dwellings or for no more than ~~[[three]]~~ FIVE dwelling units  
16 shown on a site development plan if ~~[[the following requirements are met:~~

17  
18 (1) for a subdivision or site development plan application received before April 6,  
19 2008, a developer shall sign and record an agreement as required by subsection (b); or

20  
21 (2) for a subdivision or site development plan application received on or after April  
22 6, 2008, a] THE developer shall provide evidence of ownership of the property for a  
23 minimum of ~~[[five]]~~ THREE years as of the date of AN INITIAL SUBDIVISION OR SITE  
24 DEVELOPMENT PLAN application and shall sign and record an agreement as required by  
25 subsection (b).

26  
27 (b) **Agreement.** All applications for subdivision or residential site development plans  
28 seeking exemption under this section shall execute an agreement with the County in which  
29 the developer acknowledges the exemption shall be limited to ~~[[three]]~~ FIVE lots or  
30 dwelling units, including any existing residences, of the pending application and that  
31 further subdivision or development of the site, if permitted, will be subject to the adequate  
32 public facilities requirement for schools. The agreement shall be:

33  
34 (1) in the form and contain the language required by the Office of Law;

35  
36 (2) recorded among the land records of Anne Arundel County, run with the land,  
37 and bind all future owners of the site that is the subject of the application and all future  
38 owners of the lots created by a subdivision approved under this exemption;

39  
40 (3) executed and recorded before approval by the Planning and Zoning Officer of  
41 the proposed record plat for a subdivision, the application for a grading or building permit  
42 in connection with a site development plan, or the approval of a site development plan for  
43 development that does not require a permit, as applicable; and

44  
45 (4) noted on the proposed record plat or site development plan, with the note  
46 including a reference to the book and page number of the location in the land records.

1 **17-5-501. Standards; report to the Board of Education.**

2  
3 (a) **Standards.** A development passes the test for adequate school facilities if:

4  
5 (1) each public elementary, middle, and high school is designated as “open” on the  
6 school utilization chart described in § 17-5-502 for the geographical attendance areas for  
7 the development in the third school year after the school year in which the determination  
8 is being made, AND THE NUMBER OF STUDENTS PROJECTED TO BE GENERATED BY THE  
9 DEVELOPMENT IN THE THIRD SCHOOL YEAR AFTER THE SCHOOL YEAR IN WHICH THE  
10 DETERMINATION IS BEING MADE BASED ON THE STUDENT GENERATION FACTORS FOR  
11 THE DEVELOPMENT DOES NOT EXCEED 85% OF THE AVAILABLE CAPACITY OF EACH OPEN  
12 SCHOOL AS OF THE DATE OF THE LAST APPROVED OR UPDATED SCHOOL CHART, AS  
13 DETERMINED BY THE OFFICE OF PLANNING AND ZONING;

14  
15 (2) the Office of Planning and Zoning has received written notice via certified mail  
16 from the Board of Education that the requirements for applicable future capacity, as  
17 described in [[§ 17-5-502(c)(2)(i) and (ii)]] § 17-5-502(D)(2)(I) AND (II), have been satisfied,  
18 without formal adoption of a school utilization chart, AND WITH THE APPLICABLE FUTURE  
19 CAPACITY THE DEVELOPMENT WILL SATISFY THE REQUIREMENTS OF SUBSECTION (A);  
20 [[or]]

21  
22 (3) the developer has executed an approved School Capacity Mitigation Agreement  
23 under the provisions of § 17-5-901[[.]]. OR

24  
25 (4) THE PLANNING AND ZONING OFFICER AND THE BOARD OF EDUCATION  
26 APPROVE A DONATION OF LAND FOR FUTURE CONSTRUCTION OF SCHOOL FACILITIES AS  
27 PROVIDED IN § 17-5-901(H)(2).

28  
29 **17-5-502. School utilization chart.**

30  
31 (A) **Chart defined.** THE PLANNING AND ZONING OFFICER SHALL PREPARE A SCHOOL  
32 UTILIZATION CHART FOR APPROVAL BY ORDINANCE OF THE COUNTY COUNCIL. THE  
33 SCHOOL UTILIZATION CHART:

34  
35 (1) SHALL BE REVISED AT LEAST ONCE A YEAR BY THE COUNTY COUNCIL UPON  
36 THE ANNUAL RECOMMENDATION OF THE PLANNING AND ZONING OFFICER MADE NO  
37 LATER THAN NOVEMBER 30 EACH YEAR, AND THE CHART MAY BE REVISED MORE OFTEN  
38 BECAUSE OF SIGNIFICANT CHANGES IN CAPACITIES;

39  
40 (2) SHALL BE UPDATED BY THE PLANNING AND ZONING OFFICER ON MAY 1 AND  
41 SEPTEMBER 1 OF EACH YEAR, AND BE EFFECTIVE AS OF THAT DATE, BASED ON PROPOSED  
42 REDUCTIONS IN AVAILABLE SCHOOL CAPACITY DUE TO NEW STUDENTS PROPOSED TO BE  
43 GENERATED BY NEW DEVELOPMENT APPROVED BY THE OFFICE OF PLANNING AND  
44 ZONING SINCE THE LAST SCHOOL UTILIZATION CHART WAS APPROVED OR UPDATED;

45  
46 (3) SHALL BE BASED ON ENROLLMENTS PROJECTED BY THE BOARD OF EDUCATION  
47 AND THE CAPACITIES OF SCHOOLS AS DETERMINED BY THE BOARD OF EDUCATION IN THE  
48 MOST RECENT EDUCATIONAL FACILITIES MASTER PLAN PREPARED BY THE BOARD OF  
49 EDUCATION AND AS REQUIRED UNDER SUBSECTIONS (B) AND (C), AS WELL AS NEW  
50 STUDENTS PROPOSED TO BE GENERATED BY EACH NEW DEVELOPMENT APPROVED BY  
51 THE OFFICE OF PLANNING AND ZONING SINCE THE LAST SCHOOL UTILIZATION CHART  
52 WAS APPROVED OR UPDATED; AND

53  
54 (4) SHALL DETERMINE FOR EACH PUBLIC ELEMENTARY, MIDDLE, AND HIGH  
55 SCHOOL WHETHER, TAKING INTO ACCOUNT ALL ENROLLMENT AND STUDENT

1 GENERATION DATA PROVIDED BY THE BOARD OF EDUCATION, INCLUDING NEW  
2 STUDENTS PROJECTED TO BE GENERATED BY NEW DEVELOPMENT APPROVED SINCE THE  
3 LAST SCHOOL UTILIZATION CHART WAS APPROVED OR UPDATED, THE SCHOOL  
4 ENROLLMENT:

5  
6 (I) FOR EACH ELEMENTARY AND MIDDLE SCHOOL IS AT OR LESS THAN 95% OF  
7 THE STATE-RATED CAPACITY DURING THE THIRD SCHOOL YEAR AFTER THE SCHOOL  
8 YEAR IN WHICH THE MOST RECENT REVISION OF THE SCHOOL UTILIZATION CHART IS  
9 ADOPTED, AND DESIGNATE FOR THAT YEAR EACH PUBLIC ELEMENTARY AND MIDDLE  
10 SCHOOL IN THE COUNTY AS EITHER "OPEN", IF THE SCHOOL ENROLLMENT IS LESS THAN  
11 95% OF THE STATE-RATED CAPACITY, OR "CLOSED", IF THE SCHOOL ENROLLMENT IS AT  
12 OR OVER 95% OF THE STATE-RATED CAPACITY; AND

13  
14 (II) FOR EACH HIGH SCHOOL IS LESS THAN 100% OF THE STATE-RATED  
15 CAPACITY DURING THE THIRD SCHOOL YEAR AFTER THE SCHOOL YEAR IN WHICH THE  
16 MOST RECENT REVISION OF THE SCHOOL UTILIZATION CHART IS ADOPTED AND  
17 DESIGNATE FOR THAT YEAR EACH PUBLIC HIGH SCHOOL IN THE COUNTY AS EITHER  
18 "OPEN", IF THE SCHOOL ENROLLMENT IS LESS THAN 100% OF THE STATE-RATED CAPACITY,  
19 OR "CLOSED", IF THE SCHOOL ENROLLMENT IS AT OR OVER 100% OF THE STATE-RATED  
20 CAPACITY.

21  
22 (B) **Updates.** AN UPDATE TO THE SCHOOL UTILIZATION CHART BY THE PLANNING AND  
23 ZONING OFFICER MAY NOT CONSTITUTE AN ADMINISTRATIVE OR ADJUDICATORY ORDER  
24 AND MAY NOT BE APPEALED.

25  
26 (C) **Projected enrollment.** THE PROJECTED ENROLLMENT OF A SCHOOL USED IN THE  
27 SCHOOL UTILIZATION CHART SHALL BE BASED UPON THE MOST RECENT EDUCATIONAL  
28 FACILITIES MASTER PLAN PREPARED BY THE BOARD OF EDUCATION AND SHALL INCLUDE:

29  
30 (1) ANY PREDICTED INCREASE IN THE NUMBER OF STUDENTS FROM NEW  
31 DEVELOPMENT IN THE GEOGRAPHICAL ATTENDANCE AREA OF THE SCHOOL; AND

32  
33 (2) OTHER STUDENTS EXPECTED BY THE BOARD OF EDUCATION TO ENROLL IN THE  
34 SCHOOL, INCLUDING STUDENTS ASSIGNED TO THE SCHOOL FOR PROGRAMMATIC  
35 REASONS.

36  
37 (D) **Capacity.** THE CAPACITY OF A SCHOOL USED IN THE SCHOOL UTILIZATION CHART  
38 SHALL BE BASED UPON THE MOST RECENT EDUCATIONAL FACILITIES MASTER PLAN  
39 PREPARED BY THE BOARD OF EDUCATION AND:

40  
41 (1) SHALL INCLUDE THE EXISTING CAPACITY OF THE SCHOOL BASED ON THE  
42 PROGRAM REQUIREMENTS OF THE BOARD OF EDUCATION;

43  
44 (2) SHALL INCLUDE ANY APPLICABLE FUTURE CAPACITY IF:

45  
46 (I) A CONTRACT FOR CONSTRUCTION OF THE SCHOOL OR AN ADDITION TO THE  
47 SCHOOL NECESSARY TO ACHIEVE THE FUTURE CAPACITY HAS BEEN AWARDED; AND

48  
49 (II) THE BOARD OF EDUCATION ESTIMATES THAT THE CONSTRUCTION WILL BE  
50 COMPLETED IN TIME TO BE USED FOR THE BEGINNING OF CLASSES IN THE SCHOOL YEAR  
51 IN WHICH THE FUTURE CAPACITY IS INCLUDED IN THE SCHOOL UTILIZATION CHART; AND

52  
53 (3) MAY NOT INCLUDE CAPACITY BASED ON TEMPORARY OR RELOCATABLE  
54 STRUCTURES.

55  
56 (E) **Approval.** A SCHOOL UTILIZATION CHART AND ANY REVISIONS TO THE CHART  
57 MAY NOT TAKE EFFECT UNTIL THE COUNTY COUNCIL BY ORDINANCE HAS APPROVED THE  
58 CHART OR THE REVISIONS TO THE CHART, OR THE PLANNING AND ZONING OFFICER HAS

1 APPROVED AN UPDATE TO THE CHART PURSUANT TO SUBSECTION (A)(2). THE ORDINANCE  
2 SHALL ESTABLISH THE EFFECTIVE DATE OF THE CHART OR REVISED CHART, AND THE  
3 CHART OR REVISED CHART, OR ANY UPDATE TO THE CHART APPROVED BY THE PLANNING  
4 AND ZONING OFFICER, SHALL CONTINUE IN EFFECT UNTIL REPLACED, REVISED, OR  
5 UPDATED.

6  
7 **17-5-901. Mitigation.**

8  
9 (a) **General requirement.** Except as provided in this section, mitigation consists of the  
10 construction or funding of improvements to offsite public facilities by a developer that  
11 increase capacity are compatible with the function, safety, and capacity of multi-modal  
12 transportation infrastructure, and improve environmental effectiveness or safety of each  
13 public facility that is below the minimum standard in the impact area so that the capacity,  
14 environmental effectiveness or safety of the facility in the scheduled completion year will  
15 be equal to or greater than if the development had not been constructed. A SCHOOL  
16 CAPACITY mitigation plan may also include DONATION OF LAND TO THE BOARD OF  
17 EDUCATION FOR FUTURE SCHOOL FACILITIES CONSTRUCTION. A mitigation plan may  
18 include DONATION OF LAND TO THE BOARD OF EDUCATION FOR FUTURE SCHOOL  
19 FACILITIES CONSTRUCTION PURSUANT TO SUBSECTION (H)(2). physical improvements  
20 secured by bond, letter of credit or other security acceptable to the County, which shall be  
21 provided under a public works agreement or grading permit, or an agreement with the  
22 Board of Education to construct school facilities, including a contract school, or payment  
23 of storm drain fees in excess of those required by Title 11, or contributions to existing  
24 capital projects and shall be approved by the Planning and Zoning Officer. The developer  
25 shall submit THE MOST RECENT TAX ASSESSMENT INFORMATION FOR ANY LAND TO BE  
26 DONATED TO THE BOARD OF EDUCATION, a cost estimate to establish the value of  
27 construction or off-site improvements offered in mitigation, and a cost estimate for  
28 construction and improvements in conformance with County specifications may be  
29 approved by the Planning and Zoning Officer, who may also require a mitigation  
30 agreement to ensure compliance with the requirements of this section. An agreement with  
31 the Board of Education to construct school facilities OR FOR THE DONATION OF LAND FOR  
32 A SCHOOL SITE must comply with applicable State law and be approved by resolution  
33 introduced by the County Executive and adopted by the County Council.

34  
35 **(h) School Capacity Mitigation Agreement.**

36  
37 (1) Pursuant to this section and § 17-5-501, a developer may enter into a School  
38 Capacity Mitigation Agreement acceptable to the Planning and Zoning Officer to provide  
39 capital improvements to increase school capacity, including construction of a contract  
40 school, to resolve existing capacity deficiencies and to mitigate the predicted increase in  
41 student enrollment in schools required to be adequate for the development, as determined  
42 by the Board of Education, so that the capacity of the school in the scheduled completion  
43 year will be equal to or greater than if the development had not been constructed. Approvals  
44 of the development may not be granted until the capital improvements are completed by  
45 the developer and accepted by the Board of Education, or adequate security for completion  
46 of the capital improvements is provided by the developer. The capital improvements  
47 provided by the developer pursuant to a School Capacity Mitigation Agreement shall be  
48 available to any portion of the developer's specified property or project and shall provide  
49 school capacity to allow approval of subdivision sketch plan applications filed for the  
50 property or project within six years of the date of the School Capacity Mitigation

1 Agreement. The six year filing deadline may be extended by the Planning and Zoning  
2 Officer for good cause shown.

3  
4 (2) IF ENROLLMENT AT AN ELEMENTARY, MIDDLE, OR HIGH SCHOOL IS IN EXCESS  
5 OF 95% BUT LESS THAN 100% OF THE STATE-RATED CAPACITY, THEN PURSUANT TO THIS  
6 SECTION AND § 17-5-501, A DEVELOPER MAY ENTER INTO AN AGREEMENT ACCEPTABLE TO  
7 THE PLANNING AND ZONING OFFICER AND APPROVED BY THE BOARD OF EDUCATION TO  
8 DONATE LAND TO THE BOARD OF EDUCATION FOR FUTURE SCHOOL FACILITIES  
9 CONSTRUCTION.

10  
11 (I) LAND DONATIONS AS SCHOOL MITIGATION MAY NOT BE APPROVED BY THE  
12 PLANNING AND ZONING OFFICER UNLESS THE PLANNING AND ZONING OFFICER AND THE  
13 BOARD OF EDUCATION DETERMINE THAT:

14  
15 1. THE LAND TO BE DONATED IS SUITABLE FOR A SCHOOL SITE IN THE SAME  
16 FEEDER DISTRICT AS THE DEVELOPMENT;

17  
18 2. THE LAND TO BE DONATED IS SUITABLE TO BE ADDED TO AN EXISTING  
19 SCHOOL SITE FOR A SCHOOL THAT IS OVER THE STATE-RATED CAPACITY, IN THE SAME  
20 SCHOOL FEEDER DISTRICT AS THE DEVELOPMENT, AND SUITABLE FOR EXPANSION; OR

21  
22 3. THE LAND TO BE DONATED IS SUITABLE FOR USE AS A PORTION OF A  
23 SCHOOL SITE IN THE SAME FEEDER DISTRICT AS THE DEVELOPMENT, AND THE BOARD OF  
24 EDUCATION REASONABLY EXPECTS OTHER SCHOOL MITIGATION LAND DONATIONS  
25 SUFFICIENT TO COMPRISE A DEVELOPABLE SCHOOL SITE; AND

26  
27 4. THAT DEVELOPMENT OF A DONATED SITE OR PARTIAL SITE FOR NEW OR  
28 EXPANDED SCHOOL FACILITIES CAN REASONABLY BE EXPECTED TO PROCEED TO  
29 CONSTRUCTION NO LATER THAN SIX YEARS AFTER THE DATE OF DONATION.

30  
31 (II) A LAND DONATION SHALL MITIGATE SCHOOL CAPACITY DEFICIENCIES  
32 BASED ON THE FOLLOWING FORMULA: THE PER-STUDENT SCHOOL CAPACITY CREATED  
33 BY A LAND DONATION SHALL BE CALCULATED BY DIVIDING THE STATE TAX ASSESSMENT  
34 AT THE TIME OF DONATION OF THE PROPERTY DONATED BY THE CURRENT COST-PER-  
35 STUDENT COST OF SCHOOL CONSTRUCTION (AS PROVIDED BY THE BOARD OF EDUCATION)  
36 OF THE SAME CLASS OF SCHOOL FACILITY AS THAT WHICH WAS DEFICIENT IN THE FEEDER  
37 DISTRICT.

38  
39 (III) MITIGATION BY LAND DONATION MUST BE SUFFICIENT TO MITIGATE  
40 EXISTING SCHOOL DEFICIENCIES AS WELL AS THE ADDITIONAL CAPACITY GENERATED BY  
41 THE DEVELOPMENT.


42  
43 (IV) THE CAPACITY CREATED BY A LAND DONATION SHALL BE AVAILABLE TO  
44 ANY PORTION OF THE DEVELOPER'S SPECIFIED PROPERTY OR PROJECT AND SHALL  
45 PROVIDE SCHOOL CAPACITY TO ALLOW APPROVAL OF SUBDIVISION SKETCH PLAN  
46 APPLICATIONS FILED FOR THE PROPERTY OR PROJECT WITHIN SIX YEARS OF THE DATE OF  
47 THE SCHOOL CAPACITY MITIGATION AGREEMENT. THE SIX YEAR FILING DEADLINE MAY  
48 BE EXTENDED BY THE PLANNING AND ZONING OFFICER FOR GOOD CAUSE SHOWN.

49  
50 SECTION 3. *And be it further enacted,* That the provisions of this Ordinance shall  
51 remain in effect until May 1, 2023, after which it shall stand repealed and, with no further  
52 action required by the County Council, be of no further force and effect.


53  
54 SECTION 3. 4. *And be it further enacted,* That this Ordinance shall take effect 45 days  
55 from the date it becomes law.

READ AND PASSED this 6<sup>th</sup> day of December, 2021

By Order:

  
Laura Corby  
Administrative Officer

PRESENTED to the County Executive for his approval this 7<sup>th</sup> day of December, 2021

  
Laura Corby  
Administrative Officer

APPROVED AND ENACTED this 10<sup>th</sup> day of December, 2021

  
Steuart Pittman  
County Executive

EFFECTIVE DATE: January 24, 2022

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF  
BILL NO. 85-21 THE ORIGINAL OF WHICH IS RETAINED IN THE FILES  
OF THE COUNTY COUNCIL.

  
Laura Corby  
Administrative Officer