

Introduced 01.04.2022  
Public Hearing 01.18.2022  
Council Action 04.04.2022  
Executive Action 04.06.2022  
Effective Date 06.06.2022

## County Council of Howard County, Maryland

2022 Legislative Session

Legislative Day No. 1

### Bill No. 9 -2022

Introduced by Deb Jung

AN ACT to alter a duty of the Department of Planning and Zoning related to the Adequate Public Facilities Ordinance; requiring certain developers to meet with the School System about school capacity solutions; requiring a certain submission from specified entities; requiring a certain report and specifying who must create the report and submit it to the County Council; and generally relating to the Adequate Public Facilities Ordinance.

Introduced and read first time Jan 4, 2022. Ordered posted and hearing scheduled.

By order

Michelle Harrod  
Michelle R. Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on Jan 18, 2022.

By order

Michelle Harrod  
Michelle R. Harrod, Administrator

This Bill was read the third time on Apr 4, 2022 and Passed ☒ Passed with amendments ☐ Failed ☐

By order

Michelle Harrod  
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 5 day of April, 2022 at 1<sup>00</sup> a.m. 0 p.m.

By order

Michelle Harrod  
Michelle R. Harrod, Administrator

Approved by the County Executive April 6, 2022

Calvin Ball  
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

Tabled 2/7/2022  
Extended & Tabled 3/7/2022

Michelle Harrod

1 **Section 1. *Be It Enacted*** by the County Council of Howard County, Maryland, that the  
2 *Howard County Code is amended as follows:*

3 *By amending:*

4 *Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations.*

5 *Subtitle 11. - Adequate Public Facilities.*

6 *Section 16.1103. Adequate school facilities.*

7  
8 **Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations.**

9 Subtitle 11. - Adequate Public Facilities

10  
11 Sec. 16.1103. Adequate school facilities.

12 (a) Requirement to Be Tested for Adequate Public School Facilities. As a condition of  
13 subdivision or site development plan approval, all residential subdivisions and site development  
14 plans, except those listed in section 16.1107, "Exemptions," are required to pass the tests for  
15 adequate public school facilities.

16 (b) The Tests for Adequate Public Schools. A proposed residential project will pass the tests  
17 for adequate public schools if the school capacity chart (see subsection (c), "School Capacity  
18 Chart," below) indicates that:

19 (1) The elementary school region where the proposed project will be located  
20 will be open for new residential development during the scheduled completion  
21 year of the project and any phase of a project; and

22 (2) The elementary, middle, and high schools which will serve the proposed  
23 project will be open for new residential development during the scheduled  
24 completion year of the project and any phase of a project.

25 (c) School Capacity Chart Preparation and Adoption:

26 (1) Definition. The school capacity chart is a chart indicating which  
27 elementary school regions and which elementary, middle, and high schools are  
28 open for new residential development and which are constrained each year for  
29 each of the following ten years, and shall be based on the definition of program  
30 capacity defined by HCPSS policy.

31 (2) Basis of chart. The basis of the school capacity chart is the assumptions  
32 used by the Board of Education in predicting capacity utilization, such as school

1 capacity, current enrollment, demographic and growth trends, and the housing  
2 unit allocation chart.

3 (3) Preparation and adoption of school capacity chart. The school capacity  
4 chart is designed to work in conjunction with the housing unit allocation chart in  
5 order to provide consistency and predictability in the planning process for  
6 schools. For that reason, the school capacity chart shall be revised for consistency  
7 concurrent with any amendments to the housing unit allocation chart.

8 The Department of Planning and Zoning shall receive the school capacity chart  
9 [[,]] from the Board of Education [[,]] accompanied by a report that contains the  
10 following information for each school:

- 11 (i) State and local capacities of the facility;
- 12 (ii) The date of the last redistricting which impacted the attendance  
13 area of that school;
- 14 (iii) For any projected increase in enrollment, an indication of what  
15 portions of the increase are attributed to sales or rental turnover of existing  
16 residential units, new development, and other factors; [[ and ]]
- 17 (iv) A LIST OF APPROVED OR IN PROCESS SUBDIVISION PLANS, INCLUDING  
18 NAME OF DEVELOPMENT, LOCATION, AND PROPOSED UNITS, ASSIGNED TO  
19 EACH SCHOOL BOUNDARY; AND
- 20 (v) For any school designated as open on the school capacity chart based  
21 on a capital improvement project or proposed redistricting associated with  
22 a capital improvement project:
  - 23 a. Current and future funding assumptions for the capital  
24 improvement project(s);
  - 25 b. Future redistricting assumptions associated with the capital  
26 improvement project; and
  - 27 c. An explanation of any capacity utilization changes based  
28 on (a) or (b).

29 The school capacity chart shall be submitted to the County Council  
30 for adoption by resolution after a public hearing. Whenever the  
31 County Council adopts, amends, or updates the housing unit

1 allocation chart, it shall concurrently adopt the school capacity  
2 chart.

3 (d) Joint Special Work Meeting on Schools Nearing Capacity. Upon receiving written  
4 notification from the Howard County Public School System that a school or school  
5 region has reached 95 percent capacity utilization and is projected to exceed 110 percent  
6 capacity utilization within five years as well as the Board of Education's proposed  
7 solution to address the projected overcrowding, the County Council shall hold a joint  
8 special work meeting. The Council shall invite the County Executive and the Board of  
9 Education to attend the meeting and participate in a collaborative working discussion of  
10 school capacity needs and the Board's proposed solution. The Council shall give the  
11 general public three weeks' notice before the meeting to allow the public to provide  
12 written comment.

13 (e) Special Affordable Housing Opportunities. To balance the County's policy goals  
14 to provide adequate school facilities and affordable housing in accordance with section 7-  
15 101 of the Land Use Article of the Annotated Code of Maryland and the County's  
16 General Plan, if an affordable housing project or phase of a project is located in the  
17 attendance area of a school that is closed for development due to projected enrollment in  
18 the school capacity chart, the Director of the Department of Planning and Zoning shall  
19 authorize the affordable housing project to proceed subject to all other provisions of this  
20 subtitle, provided that:

21 (1) At least 40 percent of the units shall be affordable to households earning  
22 60 percent or less of the metropolitan statistical area median income;

23 (2) The project or phase of a project is led by or in partnership with a local  
24 nonprofit or the Housing Commission;

25 (3) The project or phase of a project is seeking or has received an allocation of  
26 Low-Income Housing Tax Credits or other state or federal financial assistance for  
27 affordable housing;

28 (4) The project or phase of a project has obtained a letter of support from the  
29 County Executive; [[and]]

30 ~~(5) A REPRESENTATIVE FROM THE PROJECT OR PHASE OF A PROJECT HAS MET~~  
31 ~~WITH THE DESIGNEE OF THE SUPERINTENDENT OF THE SCHOOL SYSTEM AND~~

1       ~~SECURED A REASSIGNMENT OR CAPACITY SOLUTION IN WRITING PRIOR TO THE~~  
2       ~~APPLICATION FOR STATE GRANTS AND CREDITS; AND~~

3       (5) THE REQUIREMENTS OF SUBSECTION (F) OF THIS SECTION HAVE BEEN MET; AND

4       (6)     The County Council and County Executive have approved either a  
5       Payment in Lieu of Taxes (PILOT) agreement for the project or a resolution  
6       authorizing the project to proceed. As part of the approval of the PILOT or  
7       resolution, the Council shall hold a public hearing and consider:

8             (i)     The capacity utilization at the school or schools impacted by the  
9             project and at adjacent schools, AND THE SCHOOL REGION, including  
10            limiting the potential impact on any elementary or middle school with a  
11            capacity utilization rate greater than 115 percent unless an adjacent school  
12            with the same grade levels has a capacity utilization rate of 100 percent or  
13            less;

14            (ii)    Estimated student generation from the project;

15            (iii)   [[Any potential for the Board of Education to add capacity to the  
16            impacted school or schools through redistricting, facility expansion, or  
17            other programs]] ~~THE SOLUTION PROJECTED IMPACT AND POTENTIAL~~  
18            ~~STRATEGIES~~ IDENTIFIED IN ITEM (5) OF THIS SUBSECTION; and

19            (iv)    The need for affordable housing in the County, including factors  
20            such as the housing cost burden on families, the availability of housing for  
21            individuals with disabilities, and the extent of homelessness among  
22            families and school children.

23  
24       (F) SPECIAL AFFORDABLE HOUSING OPPORTUNITIES -- STRATEGIES FOR ADDRESSING  
25       SCHOOL CAPACITY.

26  
27       (1) WHEN A REPRESENTATIVE OF A PROJECT OR PHASE OF A PROJECT APPLIES FOR  
28       STATE LOW INCOME TAX CREDITS OR FUNDS AND THE PROJECT OR PHASE OF A  
29       PROJECT IS, AT THE TIME OF SUCH APPLICATION, LOCATED IN AN AREA IN WHICH A  
30       SCHOOL IS DESIGNATED AS CLOSED FOR DEVELOPMENT DUE TO PROJECTED

1 ENROLLMENT IN THE SCHOOL CAPACITY CHART, THE REPRESENTATIVE SHALL SEND  
2 NOTICE OF ESTIMATES OF THE NUMBER OF UNITS AND UNIT TYPES TO:

3 (I) THE HOWARD COUNTY PUBLIC SCHOOL SYSTEM, OFFICE OF THE  
4 SUPERINTENDENT AND THE OFFICE OF SCHOOL PLANNING;

5 (II) THE DEPARTMENT OF PLANNING AND ZONING; AND

6 (III) THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT.  
7

8 (2) (I) PROMPTLY AFTER THE TAX CREDITS OR FUNDS ARE AWARDED, THE DEPARTMENT  
9 OF PLANNING AND ZONING SHALL REQUEST THAT THE DESIGNEE OF THE  
10 SUPERINTENDENT OR THE OFFICE OF SCHOOL PLANNING PROVIDE:

11 A. THE PROJECTED IMPACT OF THE DEVELOPMENT ON THE HOWARD  
12 COUNTY PUBLIC SCHOOL SYSTEM; AND

13 B. POTENTIAL STRATEGIES TO ADDRESS THE IMPACT.

14 (II) THE STRATEGIES ARE NOT BINDING ON THE HOWARD COUNTY PUBLIC SCHOOL  
15 SYSTEM OR THE COUNTY.

16 (III) THE DEPARTMENT OF PLANNING AND ZONING SHALL COLLECT THE  
17 INFORMATION PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH AND SHARE IT  
18 WITH THE DIRECTOR OF HOUSING AND COMMUNITY DEVELOPMENT.  
19

20 (3) THE DIRECTOR OF HOUSING AND COMMUNITY DEVELOPMENT SHALL PREPARE A  
21 WRITTEN REPORT THAT:

22 (I) DESCRIBES THE POTENTIAL IMPACTS AND STRATEGIES TO ADDRESS SCHOOL  
23 CAPACITY ISSUES BASED ON INFORMATION PROVIDED BY THE HOWARD COUNTY  
24 PUBLIC SCHOOL SYSTEM; OR

25 (II) EXPLAINS THAT THE INFORMATION REQUIRED TO FULFILL ITEM (I) OF THIS  
26 PARAGRAPH WAS NOT PROVIDED.  
27

28 (4) THE HOUSING AND COMMUNITY DEVELOPMENT BOARD SHALL CONSIDER THE  
29 REPORT AND SUBMIT THE REPORT AND THE BOARD'S RECOMMENDATIONS TO THE  
30 COUNTY COUNCIL.  
31

1 **Section 2. And Be It Further Enacted** by the County Council of Howard County,  
2 Maryland that notwithstanding 16.1103(e)(5) as added by Section 1 of this Act, for  
3 projects that applied for State credits and grants before the effective date of this Act, the  
4 Director of the Department of Planning and Zoning shall authorize the affordable  
5 housing project to proceed if a representative from the project meets with a designee of  
6 the Superintendent of the school system ~~and secures a reassignment or capacity solution~~  
7 ~~in writing before construction begins.~~ and a representative from the Department of  
8 Planning and Zoning and the Department of Housing and Community Development to  
9 facilitate discussion of the projected impact of the development on the school system and  
10 potential strategies to address the identified impact, with the understanding that such  
11 strategies are not binding on the Board of Education and the County.  
12  
13

14 **Section 3. And Be It Further Enacted** by the County Council of Howard County,  
15 Maryland that this Act shall become effective 61 days after its enactment.  
16  
17

Introduced 1-7-2022  
Public Hearing 1-18-2022  
Council Action 2-7-2022  
Executive Action \_\_\_\_\_  
Effective Date \_\_\_\_\_

## County Council of Howard County, Maryland

2022 Legislative Session

Legislative Day No. 1

Bill No. 9 -2022

Introduced by Deb Jung

AN ACT to alter a duty of the Department of Planning and Zoning related to the Adequate Public Facilities Ordinance; requiring certain developers to meet with the School System about school capacity solutions; and generally relating to the Adequate Public Facilities Ordinance.

Introduced and read first time Jan 4, 2022. Ordered posted and hearing scheduled.

By order

Michelle R. Harrod  
Michelle R. Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on Jan 18, 2022.

By order

Michelle R. Harrod  
Michelle R. Harrod, Administrator

This Bill was read the third time on Feb 7, 2022 and Passed 7. Passed with amendments \_\_\_\_\_, Failed \_\_\_\_\_.

By order

Michelle R. Harrod  
Michelle R. Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 8 day of Feb, 2022 at \_\_\_\_\_ a.m./p.m.

By order

Michelle R. Harrod  
Michelle R. Harrod, Administrator

Approved by the County Executive \_\_\_\_\_, 2022

\_\_\_\_\_  
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.



1 ***Section 1. Be It Enacted*** by the County Council of Howard County, Maryland, that the  
2 *Howard County Code is amended as follows:*

3 *By amending:*

4 *Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations.*

5 *Subtitle 11. - Adequate Public Facilities.*

6 *Section 16.1103. Adequate school facilities.*

7  
8 **Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations.**

9 Subtitle 11. - Adequate Public Facilities

10  
11 Sec. 16.1103. Adequate school facilities.

12 (a) Requirement to Be Tested for Adequate Public School Facilities. As a condition of  
13 subdivision or site development plan approval, all residential subdivisions and site development  
14 plans, except those listed in section 16.1107, "Exemptions," are required to pass the tests for  
15 adequate public school facilities.

16 (b) The Tests for Adequate Public Schools. A proposed residential project will pass the tests  
17 for adequate public schools if the school capacity chart (see subsection (c), "School Capacity  
18 Chart," below) indicates that:

19 (1) The elementary school region where the proposed project will be located  
20 will be open for new residential development during the scheduled completion  
21 year of the project and any phase of a project; and

22 (2) The elementary, middle, and high schools which will serve the proposed  
23 project will be open for new residential development during the scheduled  
24 completion year of the project and any phase of a project.

25 (c) School Capacity Chart Preparation and Adoption:

26 (1) Definition. The school capacity chart is a chart indicating which  
27 elementary school regions and which elementary, middle, and high schools are  
28 open for new residential development and which are constrained each year for  
29 each of the following ten years, and shall be based on the definition of program  
30 capacity defined by HCPSS policy.

31 (2) Basis of chart. The basis of the school capacity chart is the assumptions  
32 used by the Board of Education in predicting capacity utilization, such as school

1 capacity, current enrollment, demographic and growth trends, and the housing  
2 unit allocation chart.

3 (3) Preparation and adoption of school capacity chart. The school capacity  
4 chart is designed to work in conjunction with the housing unit allocation chart in  
5 order to provide consistency and predictability in the planning process for  
6 schools. For that reason, the school capacity chart shall be revised for consistency  
7 concurrent with any amendments to the housing unit allocation chart.

8 The Department of Planning and Zoning shall receive the school capacity chart  
9 [[,]] from the Board of Education [[,]] accompanied by a report that contains the  
10 following information for each school:

- 11 (i) State and local capacities of the facility;
- 12 (ii) The date of the last redistricting which impacted the attendance  
13 area of that school;
- 14 (iii) For any projected increase in enrollment, an indication of what  
15 portions of the increase are attributed to sales or rental turnover of existing  
16 residential units, new development, and other factors; [[ and ]]
- 17 (iv) A LIST OF APPROVED OR IN PROCESS SUBDIVISION PLANS, INCLUDING  
18 NAME OF DEVELOPMENT, LOCATION, AND PROPOSED UNITS, ASSIGNED TO  
19 EACH SCHOOL BOUNDARY; AND
- 20 (v) For any school designated as open on the school capacity chart based  
21 on a capital improvement project or proposed redistricting associated with  
22 a capital improvement project:
  - 23 a. Current and future funding assumptions for the capital  
24 improvement project(s);
  - 25 b. Future redistricting assumptions associated with the capital  
26 improvement project; and
  - 27 c. An explanation of any capacity utilization changes based  
28 on (a) or (b).

29 The school capacity chart shall be submitted to the County Council  
30 for adoption by resolution after a public hearing. Whenever the  
31 County Council adopts, amends, or updates the housing unit

1 allocation chart, it shall concurrently adopt the school capacity  
2 chart.

3 (d) Joint Special Work Meeting on Schools Nearing Capacity. Upon receiving written  
4 notification from the Howard County Public School System that a school or school  
5 region has reached 95 percent capacity utilization and is projected to exceed 110 percent  
6 capacity utilization within five years as well as the Board of Education's proposed  
7 solution to address the projected overcrowding, the County Council shall hold a joint  
8 special work meeting. The Council shall invite the County Executive and the Board of  
9 Education to attend the meeting and participate in a collaborative working discussion of  
10 school capacity needs and the Board's proposed solution. The Council shall give the  
11 general public three weeks' notice before the meeting to allow the public to provide  
12 written comment.

13 (e) Special Affordable Housing Opportunities. To balance the County's policy goals  
14 to provide adequate school facilities and affordable housing in accordance with section 7-  
15 101 of the Land Use Article of the Annotated Code of Maryland and the County's  
16 General Plan, if an affordable housing project or phase of a project is located in the  
17 attendance area of a school that is closed for development due to projected enrollment in  
18 the school capacity chart, the Director of the Department of Planning and Zoning shall  
19 authorize the affordable housing project to proceed subject to all other provisions of this  
20 subtitle, provided that:

- 21 (1) At least 40 percent of the units shall be affordable to households earning  
22 60 percent or less of the metropolitan statistical area median income;
- 23 (2) The project or phase of a project is led by or in partnership with a local  
24 nonprofit or the Housing Commission;
- 25 (3) The project or phase of a project is seeking or has received an allocation of  
26 Low-Income Housing Tax Credits or other state or federal financial assistance for  
27 affordable housing;
- 28 (4) The project or phase of a project has obtained a letter of support from the  
29 County Executive; [[and]]
- 30 (5) A REPRESENTATIVE FROM THE PROJECT OR PHASE OF A PROJECT HAS MET  
31 WITH THE DESIGNEE OF THE SUPERINTENDENT OF THE SCHOOL SYSTEM AND

1 SECURED A REASSIGNMENT OR CAPACITY SOLUTION IN WRITING PRIOR TO THE  
2 APPLICATION FOR STATE GRANTS AND CREDITS; AND

3 (6) The County Council and County Executive have approved either a  
4 Payment in Lieu of Taxes (PILOT) agreement for the project or a resolution  
5 authorizing the project to proceed. As part of the approval of the PILOT or  
6 resolution, the Council shall hold a public hearing and consider:

7 (i) The capacity utilization at the school or schools impacted by the  
8 project and at adjacent schools, AND THE SCHOOL REGION, including  
9 limiting the potential impact on any elementary or middle school with a  
10 capacity utilization rate greater than 115 percent unless an adjacent school  
11 with the same grade levels has a capacity utilization rate of 100 percent or  
12 less;

13 (ii) Estimated student generation from the project;

14 (iii) [[Any potential for the Board of Education to add capacity to the  
15 impacted school or schools through redistricting, facility expansion, or  
16 other programs]] THE SOLUTION IDENTIFIED IN ITEM (5) OF THIS  
17 SUBSECTION; and

18 (iv) The need for affordable housing in the County, including factors  
19 such as the housing cost burden on families, the availability of housing for  
20 individuals with disabilities, and the extent of homelessness among  
21 families and school children.  
22  
23

24 **Section 2. And Be It Further Enacted** by the County Council of Howard County,  
25 Maryland that notwithstanding 16.1103(e)(5) as added by Section 1 of this Act, for  
26 projects that applied for State credits and grants before the effective date of this Act, the  
27 Director of the Department of Planning and Zoning shall authorize the affordable  
28 housing project to proceed if a representative from the project meets with a designee of  
29 the Superintendent of the school system and secures a reassignment or capacity solution  
30 in writing before construction begins.  
31

1

2     ***Section 3. And Be It Further Enacted*** by the County Council of Howard County,  
3     *Maryland that this Act shall become effective 61 days after its enactment.*

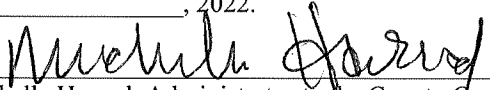
4

5

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on

April 6, 2022.

  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Michelle Harrod, Administrator to the County Council