



## ANNE ARUNDEL COUNTY OFFICE OF LAW

### Legislative Summary

**To:** Members, Anne Arundel County Council

**From:** Lori L. Blair Klasmeier, Supervising County Attorney /s/

**Via:** Gregory J. Swain, County Attorney /s/

**Date:** June 20, 2023

**Subject:** Bill No. 52-23 – Subdivision and Development – Adequate Public Facilities – Adequate School Facilities – Affordable Housing – Workforce Housing – School Utilization Chart

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This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 52-23.

### Background

School utilization charts for the purposes of determining adequacy of school facilities for development have been the subject of multiple bills over the past 6 years. Prior to 2017, § 17-5-502 of the County Code provided for the preparation of school utilization charts each November that based the designation of a school as “open” or “closed” for purposes of determining adequacy of public facilities (“APF”) on 100% of a school’s capacity. Bill No. 92-17 modified the method of preparation of the chart, set the standard of an “open” school at 95% of the State-rated capacity, and added adequacy of school facility mitigation provisions.

Shortly thereafter, Bill No. 15-18 modified exemption requirements, further modified the standards for schools being considered as “open”, required additional school charts to be prepared in May and September of each year based on reductions to available school capacity as a result of proposed development, and decreased the requirements for APF approval for projects when affected schools did not exceed 85% of the available capacity.

Bill Nos. 92-17 and 15-18 (collectively the “Bills”) contained provisions for the Bills to sunset on the earlier of January 1, 2020, or the adoption of legislation updating the 2009 General Development Plan (“GDP”). Bill No. 74-19 extended the effective date of the Bills until the final adoption of the GDP by the County Council, after which time the provisions “stand repealed with no further action required by the County Council”. The updated GDP was adopted by the County Council on May 3, 2021, thus resulting in the sunset of the Bills. This had the practical effect of

**Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.**

returning § 17-5-502 regarding the school utilization chart and the other County Code provisions affected by the Bills to the forms they were in prior to the effective dates of the Bills.

Thereafter, Bill No. 85-21 restored: (1) changes made by the Bills to §§ 17-5-207(a) and (b) relating to the eligibility for the exemption to school APF for certain properties; and (2) the entirety of § 17-5-502 to the version resulting from the Bills. Bill No. 85-21 included a sunset provision, which has been extended to September 1, 2023.

Thus, as it currently stands, the school utilization chart is revised annually based on the recommendation of the Planning and Zoning Officer made no later than November 30. It is updated on May 1 and September 1 of each year based on reductions in capacity due to students generated by new development since the last update of the chart. The chart utilizes enrollments projected by the Board of Education in its most recent educational facilities master plan. Elementary and middle schools are deemed “open” if enrollment is less than 95% of the State-rated capacity projected for the third school year after the year for which the most recent chart is adopted. High schools are deemed “open” if enrollment is less than 100% of the State-rated capacity projected for the third school year after the year for which the most recent chart is adopted.

In 2020, a School APF Workgroup was formed, which included members from the County, the Board of Education, and outside groups with an interest in development, housing, and adequacy of school facilities. The Workgroup’s purpose was to examine the issue of school capacity through the gathering and review of data and to formulate recommendations on achieving adequate school capacity throughout the school system. (See “School APF Workgroup Final Report”, page i). The Workgroup issued its Final Report in May of 2023.

### **Purpose**

The purpose of Bill No. 52-23 is to repeal the sunset provisions of Bill No. 85-21 and to modify certain provisions of the Code related to school APF. These changes are, at least in part, based on the recommendations of the School APF Workgroup.

### **Bill No. 52-23**

#### **SECTION 1.**

This Section repeals Section 3 of Bill No. 85-21, as amended by Bill No. 9-23, which provides that Bill No. 85-21 sunsets on September 1, 2023. Thus, Bill No. 85-21 will not sunset, and the language being modified in this bill is the language as it exists after the passage of Bill No. 85-21.

#### **SECTION 2.**

This Section renumbers certain subsections of § 17-1-101 of the Code to allow for an additional subsection.

### **SECTION 3.**

This Section amends several sections of the Code. In § 17-1-101, a definition of “affordable housing” is added.

Section 17-5-201 designates which types of development are subject to which adequacy of public facilities tests. “Affordable housing or workforce housing under Title 10, Article 18 of this Code” is added as a development type, and is required to meet all adequacy of public facilities tests except for the test for schools.

Section 17-5-501 relating to the requirements to passing the test for school APF is modified in two ways. First, if a school deemed open in the third school year after the determination is made and if the number of students projected to be generated by the development in the third school year after the determination is made does not exceed the available capacity (rather than 85% of the available capacity) of the open school. The “available capacity” used is the available capacity shown in the last approved school chart adjusted to account for student generation from each development approved since the date of the last approved school chart.

Second, a provision is added that allows school APF to be met if there is a school at the same educational level in a geographical attendance area adjacent to a school that is closed that has sufficient available capacity to render the closed school at less than 100% of State-rated capacity.

Subsection 17-5-502(a) relating to the school utilization chart is modified to require that the Planning and Zoning Officer recommend changes to the chart by March 1 of each year, rather than by November 1. The chart is to be based on enrollments projected by the Board of Education and school capacities determined by the Board of Education as of February 1 of each year, and not on the Board of Education’s last educational facilities master plan. Schools will be deemed “open” on the chart if a school is at or less than 100% of State-rated capacity during the third school year after the school year after the most recent utilization chart is adopted. Currently, elementary and middle schools are deemed “open” if they are at or less than 95% of State-rated capacity, and high schools are “open” if they are at or less than 100% of State-rated capacity. Moreover, the Board is now required to provide verified actual enrollment data for each school as of the September 30 of the year immediately preceding the date of the chart.

Subsection 17-5-502(b) is modified to provide that the chart prepared by the Planning and Zoning Officer is not an administrative or adjudicatory order and is not appealable. Currently, this subsection only applies to updates to the chart.

Subsection 17-5-502(c) is modified to provide that projected enrollment in the school utilization chart is based on a student yield generation formula and capacity determination method accepted by the Board of Education and the Office of Planning and Zoning rather than on the most recent Board of Education facilities master plan. The student yield generation formula and capacity determination method must be posted on the County’s website and be accessible for public review. The projections are now required to be provided by February 1 of each year and to

include a list of new development projects, including the number and type of approved dwelling units.

A change to § **17-5-502(d)** requires school capacity in the chart to include capacity for a new school for which a contract has been awarded but for which the geographical attendance area has not been assigned as available capacity for adjacent schools.

The change to § **17-5-502(e)** requires all school utilization charts to be approved by the County Council and no longer allows for interim updates to the chart by the Planning and Zoning Officer.

#### **SECTION 4.**

This section provides that the bill takes effect 45 days after it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill.  
Thank you.

cc: Honorable Steuart Pittman, County Executive  
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