

Legislative Issue: Research legislative authority for local APFO development wait times changes, including other jurisdictions that put restraints on developments moving forward unless adequate capacity or mitigation is provided.

HCPSS Analysis: In 2018 the Howard County Council adopted amendments to the Adequate Public Facilities Ordinance (APFO) that included a new schools test. The current wait time for a residential development to move forward when failing the schools test under APFO is four years.

Subsequently, in 2019, Council Member Liz Walsh proposed CB17-2019 that would have extended this wait to seven years. After several months of deliberation, that bill failed, along with a reintroduction under CB1-2020 in January of the following year. During this same timeframe, the Council passed CB42-2019 to increase the school facility surcharge for residential developers and CR84-2020 to increase the County’s transfer tax rate, of which 25 percent of any increase would be distributed to HCPSS capital projects.

In support of the local extended wait time bills above, HCPSS public testimony noted that the current four-year APFO wait time has not been sufficient to enable the school system to plan, develop, finance, and build additional infrastructure. The typical high school design to build time, for instance, is five years. In planning for capital needs, the Capital Budget sets an expectation with the projects listed that attempt to capitalize on available funding. There is limited opportunity within the current framework to insert new projects on a yearly basis based on new developments. Moreover, due to years of underfunded capital and deferred maintenance budgets, HCPSS capacity has not kept pace with the exponential growth in student populations in Howard County. In order for the school system to provide seats for our students, there needs to be continued commitment to:

1. Land acquisition,
2. Capital funding, and
3. Adequate time to build capital infrastructure.

Through a review of other local jurisdictions ordinances in 2019, HCPSS staff found that both Anne Arundel Code Sec. 17-5-503 and Calvert County Zoning Ordinance Sec. 7-1.05 included a wait period of six years related to adequate school capacity – two years beyond the current four years in Howard County. Calvert County also indicates a project can receive final approval if the developer provides improvements to render schools adequate. In 2020 Montgomery County replaced an existing moratorium on closed school areas with a three-tiered Utilization Premium Payment. The fee is mandatory and is based on a system that sets a fee dependent on the number of students the development will provide and anticipated overutilization. Other counties provide options for a developer to present mitigation strategies that are approved by the local board of education or county governing body.

Every ten years, Howard County updates its General Plan to guide land use decisions, with the next version expected in late spring 2023. Following the Plan’s adoption, Sec. 16.1100 (b)(3)(iv) of the Howard County Code requires an Adequate Public Facilities Act Review Committee to be convened within one year to submit a report with recommendations on the Adequate Public Facilities Act to the County Executive and the County Council. The Committee includes representation of the school system and Board, and could likely revisit aspects of the development wait times.

RECOMMENDED BY HCPSS STAFF: *In order to maintain expected levels of service by the school system, APFO should work as intended to allow public facilities sufficient time and financing to have commensurate capital infrastructure growth to meet population needs. Staff recommends this topic be included as a legislative priority, seeking Howard County Delegation authorization if needed and Howard County Council support for an amendment to APFO to extend developer wait times to five or more years, along with the opportunity for developers to mitigate their impact by contributing financially to a capacity solution. In cases where capacity is beyond a predetermined threshold that will require new construction, a requirement for land acquisition may also be warranted.*

RECOMMENDED BY LEGISLATIVE COMMITTEE:

Agree but shift focus away from wait times

*• Finding source for land acquisition + capital - dedicated funding stream
✓ from state → County = more robust than transfer tax*

Overland Park Kansas model

above, there is precedent for holding out funds in separate programs and grants that do not require this local match. The Board is seeking Howard County Delegation support in removing the local match at a minimum from the Healthy School Facilities Fund to support facility improvements needed to maintain safe and healthy school buildings for students and staff.

Long-Term Facilities Maintenance

Safe, healthy schools are a top priority of the Board, as well as the need for sufficient funds to address deferred maintenance and unforeseen operational circumstances. Aging infrastructure creates significant demands for facilities maintenance funding, with current deferred maintenance projects totaling nearly half a billion dollars for the HCPSS. The availability of recent funds has been insufficient to address the backlog of projects as it has allowed for the funding of only a few projects every year, with new deferred maintenance projects taking their place.

The Board has encouraged the Howard County Delegation, along with local elected officials, to explore financing options dedicated to the purpose of funding long-term facilities maintenance for several years. This includes legislative initiatives similar to Ho.Co. 19-20, Ho.Co. 11-21, and Ho.Co. 8-22 to authorize a commercial building excise tax the County could use for maintenance needs identified by the Board of Education, none of which have been acted upon by the Delegation.

The Board continues to advocate for the introduction of this local bill, as well as statewide legislative efforts brought forth by Delegation members under HB0068/SB0040 Interagency Commission on School Construction – Systemic Renovation Projects – Eligibility, which the Board supported in 2022 to clarify that the Interagency Commission on School Construction (IAC) shall consider systemic renovation projects eligible for Supplemental Public School Construction Finance and Facilities Funds under the Built to Learn Act, regardless of costs.

Adequate Public Facilities Wait Times

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In order to maintain expected levels of service by the school system, APFO should work as intended to allow public facilities sufficient time and financing to have commensurate capital infrastructure growth to meet population needs. The Board is seeking Howard County Delegation authorization if needed and Howard County Council support for an amendment to APFO to ~~extend developer wait times to five or more years~~ *include* along with the opportunity for developers to mitigate their impact by contributing financially to a capacity solution. In cases where capacity is beyond a predetermined threshold that will require new construction, a requirement for land acquisition may also be warranted.

In addition, a dedicated funding stream . . .

Digital Learning Flexibility

The unplanned transition to virtual learning during the COVID-19 pandemic required school systems to develop new resources of knowledge and technological capabilities, including increased student-device ratios in Howard County. The lessons learned during transitions among instructional delivery models enables us to reimagine multiple aspects of digital learning, including the benefits of a virtual option for students who were more engaged and successful and may be best served through an online experience, the value of flexibility to transition between in-person and virtual instruction to provide continuity of learning during emergencies and adverse weather conditions, the potential for expanded course offerings in both subject matter and availability that can reach broader student populations, and the opportunity for enhanced professional learning for staff. The Board urges legislators to recognize that any changes in statute, regulations, or frameworks could create roadblocks to current and future innovative digital offerings that are transformative for all students and help to close achievement and opportunity gaps.

To this end, the Board opposed HB1163/SB0362 Virtual Schools – Revisions in 2022 for the restrictive nature of the provisions on virtual schools and uncertainty around its impact on virtual learning options outside the DEC, such as digital programs and synchronous courses that have been offered for years at the high school level. While amendments made to the bill late in session curtailed some of these concerns, remaining impacts included restrictive application requirements for virtual schools, and limitations on what populations school systems could serve.

Although budgetary constraints required discontinued use of the HCPSS Digital Education Center (DEC) for the 2022-2023 school year, the flexibility of current state education law enables school systems to offer a virtual school or virtual program should the need and resources be present in future years. The Board urges the Delegation to advocate for local school system authority and autonomy to work collaboratively with the State Board to give teachers, students, and parents a meaningful role in the development of virtual options.

While the Governor's veto of HB1163/SB0362 ultimately meant the provisions for virtual schools would not move forward, it also killed the option for local school systems to implement virtual weather days. Although not the robust program HCPSS requested under HB1306 Howard County - Public Schools - Alternative Instruction Model Policy Ho. Co. 09-22, SB0717 Virtual Education Days – Authorization had