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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Commission on Local Government (CLG)
Virginia Administrative Code (VAC) Chapter citation(s)	1VAC50-30 (new chapter)
VAC Chapter title(s)	Regulation of Procedures Concerning Fiscally Distressed Localities
Action title	Regulations Implementing SB645 (2024)
Date this document prepared	September 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action creates a new chapter in the Virginia Administrative Code and will implement procedures related to 2024 Acts of Assembly Chapter 426, (§ 15.2-2512.1 of the Code of Virginia). This Code section creates new remedies to help resolve fiscal issues in localities that the Auditor of Public Accounts has identified as fiscally distressed. It further gives the Commission on Local Government additional powers to issue reports on a locality's fiscal distress and, in certain geographic regions, help steer localities through fiscal remediation plans with the help of an appointed emergency fiscal manager.

The overall goal of the new regulations is to provide rules for procedures before the Commission and standards to guide the Commission's reports, appointments, and decisions that are required by § 15.2-2512.1 of the Code of Virginia. Accordingly, the regulations proceed in four parts: Part 1 sets the rules for proceedings before the commission generally; Part 2 sets the standards for the Commission's initial

report on a locality's fiscal distress; Part 3 creates a process for appointing an emergency fiscal manager and approving the manager's remediation plan; and Part 4 sets the rules for implementing the remediation plan and ending Commission oversight.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CLG – Commission on Local Government

APA – Auditor of Public Accounts

EFM – Emergency Fiscal Manager

PD19 – Planning District 19

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

Prior to the enactment of § 15.2-2512.1 on July 1, 2024, the APA has had responsibilities related to making preliminary determinations of local fiscal distress through the Budget Bill. Since 2021, Item 4-8.03 of the Appropriations Act required the APA to identify such localities and report to the Governor; however, the CLG was not a part of this process. With the enactment of § 15.2-2512.1, the CLG must have the emergency regulations in place in order to be prepared to act in the event the APA's work has identified a potential locality in fiscal distress. Since the legislation enacting these new requirements went into effect July 1, 2024, if the Auditor finds that a locality is in fiscal distress in accordance with § 15.2-2512.1, the CLG must oversee the intervention team and write a report. Because of the potential scenario where the CLG will need to act in accordance with this new statutory provision before regulations can be put in place via the standard rule-making process, the CLG intends to proceed through the emergency regulatory process pursuant to § 2.2-4011.

In the absence of a statutory mandate under § 2.2-4011 B, the CLG has, under Section A, consulted with the Office of the Attorney General and submitted a request in writing stating the nature of the Emergency. The Department of Housing and Community Development has also coordinated with impacted agencies in the development of the emergency regulations. The Commission will begin the standard rule-making process immediately upon these regulations becoming effective.

Since this action is creating a new chapter to administer a new code section, there are no other issues with pre-existing regulations that need to be addressed as part of this change.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts and Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The promulgating agency is the Commission on Local Government (CLG). Section 15.2-2903 (1) of the Code of Virginia enables the CLG to promulgate regulations generally, including rules of procedure for conducting hearings, and Va. Code § 15.2-2903 (9) directs the CLG to work with the APA to implement the provisions of Va. Code § 15.2-2512.1.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The CLG’s oversight and reporting responsibilities created by § 15.2-2512.1 of the Code of Virginia need regulations to create workable and consistent standards of review, establish timelines for when proceedings are held, and ensure consistent processes for the appointment of an EFM if needed and allowed for all localities that may be in fiscal distress in the future. The consistent and predictable application of law will promote the stability of local governments under the CLG’s oversight and the welfare of their citizens.

One potential issue is the CLG’s standards of review. Pursuant to the statute, CLG’s initial report must determine 1) “whether a locality has taken appropriate action to address the issues” identified by the Auditor and the state intervention team, 2) “whether the locality appears to be on track to resolve its fiscal distress,” and 3) whether “a locality is either unwilling or unable to comply with the conditions necessary to address its fiscal distress.” These are broad statutory mandates that are refined by the regulation.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

This regulatory action creates a new chapter to implement the provisions of a new law. Section 15.2-2512.1 of the Code of Virginia establishes a comprehensive process for determining when a locality is in fiscal distress, guiding limited state intervention once fiscal distress is established, escalating state oversight through the appointment of an EFM by the CLG in certain localities if circumstances require, and allowing a locality to exit state oversight once the CLG determines the fiscal distress is resolved. Under the terms of the legislation, the APA determines when a locality is in fiscal distress. Once the APA notifies the Governor that a locality is in fiscal distress, the CLG will have oversight, reporting, and appointment responsibilities and powers. Each section of this regulatory action is related to those responsibilities and powers.

There are no changes to existing sections.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

There are no disadvantages to the public or the Commonwealth to promulgating regulations to implement the provisions of Va. Code § 15.2-2512.1.

These regulations primarily affect local government officials, especially those in localities that are in PD19 or may be subject to review by the APA (i.e., cities and counties) under the provisions of the statute. Pertinent matters of interest to them include, but are not limited to, their ability to be meaningfully involved in the proceedings before the CLG, respond to evidence before decisions are made, and work with the Emergency Fiscal Manager and the CLG during the development of the remediation plan.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no viable alternatives to creating regulations to implement the provisions of Va. Code § 15.2-2512.1 which grant the Commission new powers and responsibilities that need to be implemented through regulations. Potentially less burdensome alternative regulatory schemes that were considered included a) using pre-existing CLG regulations for proceedings under 15.2-2512.1 and b) treating all CLG action as subject to the Administrative Process Act and incorporating the provisions of that act by reference. Ultimately, the Commission concluded that the statute does not allow for either of these alternative options.

These regulations will not affect small businesses.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this Emergency/NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency.

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

INSERT:

The Commission on Local Government is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email, or fax to

LeGrand Northcutt
 600 E Main St, Ste 300
 Richmond, VA 23219
legrand.northcutt@dhcd.virginia.gov
 804-310-7151

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
1VAC50-30-100	N/A - definitions section.	For all sections in this table, Va. Code § 15.2-2512.1 applies.	This section clarifies words used in the regulations. Where appropriate, definitions are copied directly from the statute.
1VAC50-30-110	Places requirements on the CLG related to accepting		This section clarifies who sends notices to whom under

	oversight authority based on notifications from the Governor.		the statute, what those notices contain, and their effect. The Commission's authority to act with respect to a fiscally distressed locality shall start and end according to the provisions of this section.
1VAC50-30-120	Places requirements on the CLG related to accepting oversight authority based on the determinations of the APA.		This section clarifies who sends notices to whom under the statute, what those notices contain, and their effect. The intent is to clarify that any previous investigation or determination made by the APA under the appropriations act will be valid for purposes of this chapter regardless of when it took place. The impact is to ensure continuity between the appropriations act and § 15.2-2512.1.
1VAC50-30-130	Places requirements on the CLG and parties appearing before the CLG related to preliminary matters and submission of evidence.	Conflict of Interest Act; Freedom of Information Act; 1VAC50-20	Purpose is to create orderly procedural rules for appearing before the Commission and address general issues under this chapter. Where appropriate, provisions from other Commission regulations and statutes are incorporated either directly or by reference.
1VAC50-30-140	Places requirements on the CLG and parties appearing before the CLG related to proceedings before the CLG.	Freedom of Information Act; 1VAC50-20	Purpose is to create orderly procedural rules for appearing before the Commission and address general issues under this chapter. Where appropriate, provisions from other Commission regulations and statutes are incorporated either directly or by reference.
1VAC50-30-150	Places requirements on the CLG to issue reports, etc.		Purpose is to establish how and in what form the CLG may communicate its decisions under § 15.2-2512.1. The Impact is a structured, consistent, and predictable process.
1VAC50-30-160	Places requirements on parties in case of default.		Purpose is to create procedures to be followed in situations where the CLG must proceed without a locality due to its refusal to cooperate.
1VAC50-30-170	Places some requirements on parties when the CLG exercises certain additional discretionary powers.	15.2-2907D; 15.2-2901	Purpose is to clarify the additional powers that the CLG has either directly or impliedly in § 15.2-2512.1 and through other statutes.

1VAC50-30-200	Places requirements on the CLG and parties appearing before the CLG related to proceedings before the CLG.	1VAC50-30-330 E	Purpose is to create orderly procedural rules for appearing before the Commission, specifically during the first phase of oversight and report writing.
1VAC50-30-210	Places requirements on the CLG when issuing its report.	1VAC50-30-200	Purpose is to create rules for issuing decisions for localities NOT in PD19.
1VAC50-30-220	Places requirements on the CLG when issuing its report.	1VAC50-30-200; 1VAC50-30-150	Purpose is to create rules for issuing decisions for localities in PD19.
1VAC50-30-300	None.		Delineates and clarifies the powers of the EFM.
1VAC50-30-310	Places requirements on the CLG when appointing an EFM.	Virginia Public Procurement Act; 15.2-2901	The intent of this section is to clarify how the EFM will be appointed and how any money appropriated to the CLG will be allocated. The intended impact is to create a transparent process and ensure any money appropriated to the CLG is first appropriated to pay the EFM.
1VAC50-30-320	Places requirements on the CLG after appointing an EFM.	1VAC50-30-330	The purpose is to ensure that all relevant stakeholders are notified of Commission decisions and invited to participate in proceedings before the Commission. The impact is a transparent process that encourage localities to participate in Commission proceedings.
1VAC50-30-330	Places requirements on the CLG, the EFM, and the Locality during the development of the remediation plan.		Purpose is to create orderly procedural rules for appearing before the Commission, specifically during the development of the remediation plan, which is the second phase of oversight.
1VAC50-30-340	Places requirements on the CLG when approving a proposed remediation plan.	1VAC50-30-330C	Purpose is to create an orderly process and standard of review for approving, amending, or rejecting a proposed remediation plan.
1VAC50-30-400	Places requirements on the CLG after approving a remediation plan.		The purpose is to ensure that all relevant stakeholders are notified of Commission decisions and invited to participate in proceedings before the Commission. The impact is a transparent process that encourage localities to participate in Commission proceedings.

1VAC50-30-410	Places requirements on the EFM to send regular progress reports to relevant stakeholders.	15.2-2904	Purpose is to create a structure for progress reports required by § 15.2-2512.1. The Impact is a structured, consistent, and predictable process.
1VAC50-30-420	Places requirements on the CLG, EFM, and locality during the final phase of CLG oversight.		Purpose is to create an orderly process and standard of review for a locality to exit fiscal distress and CLG oversight, which is the third phase of oversight. The Impact is a structured, consistent, and predictable process.