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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-100-10 et seq.
Regulation title	<i>Regulations Governing Literary Loan Applications in Virginia</i>
Action title	Amendments to the <i>Regulations Governing Literary Loan Applications in Virginia</i>
Document preparation date	April 5, 2007

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Literary loans are used by local school divisions for the purpose of renovating existing schools or building new ones. *Virginia Code* §§ 22.1-142 through 22.1-161 and the *Regulations Governing Literary Loan Applications in Virginia* (8VAC20-100-10 et seq.) govern the literary loan process in Virginia.

Changes were made to the *Code* sections governing literary loans by the 2007 General Assembly. HB 2350, patroned by Delegate Tata, made several changes to the application process that need to be added to the Board's regulations. HB 2350 provides that a school board's application to the Board of Education for a loan from the Literary Fund must be authorized by the governing body and the school board. The Board may not disburse any proceeds of any approved loan before its receipt of the concurrent approval of the governing body at the time of initial disbursement and an acceptable opinion of bond counsel obtained by the local governing body as to the validity of the loan. The bill also repeals §§ 22.1-154 through 22.1-157 that provide for: (i) the examination of title to property on application for loan, (ii) the certificate of the clerk of court or copy of lease on the application for a loan, and (iii) the submission of the application and certificate of title to the Attorney General.

The *Regulations Governing Literary Loan Applications in Virginia* must be reviewed and revised in order to ensure they comport with the requirements of this bill. Additionally, these regulations were last revised

in 1995. A review is necessary to ensure that the regulations contain all of the requirements necessary for the Board's administration of the fund.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 22.1-16 of the *Code of Virginia* provides that "The Board of Education may adopt bylaws for its own governance and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." These regulations are necessary for the proper administration of the literary loan fund by the Board of Education.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the regulation is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

These regulations have not been revised since 1995. Several changes were made to the sections in the *Code of Virginia* governing literary loans to public schools by the 2007 General Assembly. Of major importance is the repeal of §§ 22.1-154 through 22.1-157. These regulations need to be reviewed for necessary additions, deletions or revisions as a result of this legislation. There are several major elements that need to be considered for addition, deletion or revision. They include:

- Revising the definitions section.
- Requiring that a school board's application to the Board of Education for a loan from the Literary Fund be authorized by the governing body and the school board.
- Adding a provision that requires the Board not to disburse any proceeds of any approved loan before its receipt of the concurrent approval of the governing body at the time of initial disbursement and an acceptable opinion of bond counsel obtained by the local governing body as to the validity of the loan.
- Removing provisions that require: (i) the examination of title to property on application for loan, (ii) the certificate of the clerk of court or copy of lease on the application for a loan, and (iii) the submission of the application and certificate of title to the Attorney General.
- Reviewing and revising each section of the current regulations to ensure compliance with the *Code of Virginia*.
- Adding provisions that may be necessary for the general administration of the program by the Department of Education.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

No alternatives to amending these regulations have been considered as the Board of Education is desirous of conducting this review as essential to the continued improvement of the system of public schools in Virginia and the proper administration of the literary fund, in light of legislative changes approved by the 2007 General Assembly.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

The proposed amendments to the regulations are not expected to have an impact on the institution of the family and family stability.