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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation(s)	8 VAC 20 - ____
Regulation title(s)	Regulations Governing the Designation of School Divisions of Innovation
Action title	New regulations to govern the designation of School Divisions of Innovation as required by Chapter 760 of the 2017 Acts of Assembly
Date this document prepared	September 12, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The intent of this proposed action is to adopt a new regulation for the designation of School Divisions of Innovation (SDI) in which the local school board shall, pursuant to a plan of innovation, be exempted from selected regulatory provisions and be permitted to adopt alternative policies for school administrators, teachers, and staff to meet the diverse needs of students. HB 1981 (2017) defined a School Division of Innovation (SDI) to mean “a school division in which the local school board has developed and for which the Board has approved pursuant to regulations as set forth in this article a plan of innovation to improve student learning; educational performance; and college, career, and citizenship readiness skills in each school in the local school division.” In addition, the bill defined innovation to mean “a new or creative alternative to existing instructional or administrative practices or school structures that evidence-based practice suggests will be effective in improving student learning and educational performance.”

The proposed regulation will establish the SDI designation process and timeline, expectations for a plan of innovation, procedures for ongoing evaluation of an SDI, and regulations that may be waived in conjunction with an SDI application.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Board of Education's regulatory authority is established in [§ 22.1-16](#) of the *Code of Virginia*:

"The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title."

The 2017 Virginia General Assembly approved HB 1981, amending the Code of Virginia by adding §§ 22.1-212.28 through 22.212.32 relating to the designation of School Divisions of Innovation (SDI). [Section 22.1-212.29](#) directs the Board to promulgate regulations, as follows:

"The Board shall promulgate regulations for the designation of School Divisions of Innovation in which the local school board in the local school division so designated shall, pursuant to a plan of innovation, be exempted from selected regulatory provisions and be permitted to adopt alternative policies for school administrators, teachers, and staff to meet the diverse needs of students."

Other provisions of the legislation specify components that the Board must include in such regulations.

Purpose

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

The purpose of this regulatory action is to establish a procedure for school divisions to be designated as a School Division of Innovation and develop creative alternatives to instructional and administrative practices or school structures to improve student learning and educational performance. This action will fulfill the General Assembly's directive that regulations be developed for the designation of SDI. These regulations will specify the procedure and timeline for SDI designation, and will need to specify any limitations on releases from regulations that may be granted in conjunction with an SDI designation.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The proposed regulation will establish the SDI designation process and timeline, expectations for a plan of innovation, procedures for ongoing evaluation of an SDI, and regulations that may be waived in conjunction with an SDI application.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

No alternative to this regulatory action was considered, as HB 1981 requires the Board of Education to promulgate these regulations. Promulgating these regulations will be expected to have little impact on small businesses as businesses are not the focus of this regulation.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including, but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Zack Robbins, Director, Division of Policy, Virginia Department of Education, P.O. Box 2120, Richmond VA 23218-2120, telephone (804) 225-2092, fax (804) 530-4502, e-mail policy@doe.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A regulatory advisory panel will not be convened.