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Proposed Regulation Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) citation(s)	8 VAC 20-740
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 HB 1981, which was approved by the 2017 General Assembly and became effective on July 1, 2017
Date this document prepared	March 8, 2018

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*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The 2017 Virginia General Assembly approved HB 1981 (Greason), directing the Board to develop regulations for the designation of School Divisions of Innovation (SDI). To be eligible for designation, a local school board would submit a plan of innovation according to Board criteria as presented in these proposed regulations. The legislation defines "innovation" as a new or creative alternative to existing instructional or innovative practices or school structures that evidence-based practice suggests will be effective in improving student learning and educational performance.

The legislation requires the Board to establish expectations for plans of innovation, including goals and performance targets, which could include reducing achievement and opportunity gaps, implementing high standards for student performance and balanced assessments, increasing learning opportunities through integrated coursework, and providing additional learning choices such as personalized learning

opportunities and experiences such as community service projects, and work-based learning. The plan of innovation could also include requests for exemptions from selected regulations, allowing school divisions to implement alternative policies to address local needs. The Board would also be required to establish a procedure for the ongoing evaluation of a SDI.

The proposed regulations would establish the procedure and criteria for the designation of a SDI, and provide that the Superintendent of Public Instruction establish a format and timelines for local school boards to submit plans of innovation. The proposed regulations would prohibit any exemptions to regulations that are mandated by state or federal law or are designed to promote health or safety, to as well as special education regulations, and certain provisions of the Standards of Accreditation (8VAC20-131-5 et seq.). The regulations also include provisions to evaluate the performance of a SDI, including revocation in the event that performance expectations are not met.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"Innovation" means 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.

"School Division of Innovation" or "SDI" means a school division in which the local school board has developed and for which the board has approved a plan of innovation to improve student learning; educational performance; and college, career, and citizenship readiness skills in one or more schools, for the benefit of all schools in the school division.

Legal basis

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

The Board of Education's authority for promulgating regulations governing the designation of School Divisions of Innovation is as follows:

As noted above, the Virginia General Assembly enacted HB 1981 (Greason) in 2017, amending the *Code of Virginia* by adding in Chapter 13 of Title 22.1 an article numbered 1.5, consisting of sections numbered 22.1-212.28 through 22.1-212.32, relating to SDIs. This bill, which became effective on July 1, 2017, directs the Board of Education to develop regulations for the designation of SDIs.

The Board of Education's overall regulatory authority may be found 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."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The proposed regulatory action is necessary to fulfill the General Assembly's directive that regulations be developed for the designation of SDIs. In promulgating these regulations, the Board of Education will help provide high-quality, effective learning environments for all students by allowing alternative policies to be developed and implemented to address the diverse needs of students.

Substance

Please 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.

These regulations govern the designation of SDIs. The regulations would establish the procedure and criteria for the designation of a SDI, and provide that the Superintendent of Public Instruction establish a format and timelines for local school boards to submit plans of innovation. The proposed regulations would prohibit any exemptions certain requirements, including: special education regulations, graduation requirements, and any other regulations that are mandated by state or federal law or are designed to promote health or safety. The regulations also include provisions to evaluate the performance of a SDI, including revocation in the event that performance expectations are not met.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

The primary advantage to the public is that the promulgation of these regulations will help provide high-quality, effective learning environments for all students in the Commonwealth by allowing alternative policies to be developed and implemented to address the diverse needs of students.

Staff has identified no disadvantage to the proposed regulations.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Neither federal law nor regulation addresses the designation of school divisions as SDIs.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

All school divisions in the Commonwealth will be subject to the proposed regulations.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board of Education is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Board of Education is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email, or phone to: Zachary Robbins, Director of Policy, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, (804)225-2092, BOE@doe.virginia.gov.

Comments may also be submitted through the Public Forum feature of the [Virginia Regulatory Town Hall website](#). Written comments must include the name and address of the commenter. 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 not be held following the publication of this stage of this regulatory action. However, comments may be submitted to the Board of Education at their regular monthly meetings.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>The cost of implementing and enforcing the proposed amendments is not expected to be significant, and would be absorbed within the agency's general fund appropriation.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>If a school division chooses to seek such designation, costs could vary considerably depending upon the innovative programs or practices the local school board develops.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Local school divisions and public school students in the Commonwealth.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 132 school divisions in the Commonwealth that could seek an SDI designation.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</p>	<p>Unknown. The costs could vary considerably from one school division to another. This is an optional program and these amendments would apply only to school divisions seeking to participate.</p>

<p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>These regulations will help provide high-quality, effective learning environments for all students in the Commonwealth by allowing alternative policies to be developed and implemented to address the diverse needs of students.</p>

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.

There are no viable alternatives to the proposed regulations.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposed regulations will have no impact on small business.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Not applicable.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No public comments were received during the NOIRA stage.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The promulgation of these regulations will help provide high-quality, effective learning environments for all students in the Commonwealth by allowing alternative policies to be developed and implemented to address the diverse needs of students. A strong education is essential to economic self-sufficiency, self-pride, and the assumption of responsibility for one’s self and family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
8VAC20-760-10	<u>Definitions.</u> This section defines terms related to the designation of a school division as a School Division of Innovation.	§ 22.1-212.28 of the Code of Virginia	To set the framework for the remainder of the regulations.
8VAC20-760-20	<u>School Division of Innovation Designation.</u> This section explains the application process through which a school division may seek designation of a SDI. This section states that applications for SDI designation must conform to a format and timeline prescribed by the Superintendent of Public Instruction.	§ 22.1-212.30 of the Code of Virginia	Establishes the minimum components of a plan of innovation submission, and delegates the development of the format and timelines for submissions to the Superintendent of Public Instruction.
8VAC20-760-30	<u>Exemptions from Regulatory Provisions.</u> This section explains that, in the designation of an SDI, the Board of Education may exempt a local school board from regulations, with certain exceptions.	§ 22.1-212.29 of the Code of Virginia	Permits the waiver of regulations as part of a SDI application. Establishes certain regulatory provisions that cannot be waived. Permits the board to approve or conditionally approve a SDI application.

8VAC20-760-40	<u>Approval, Amendment, and Renewal</u> . This section provides the terms for approval, amendment, and renewal of the designation of a SDI.	§ 22.1-212.31 of the Code of Virginia	Establishes five year terms for initial and renewal of a SDI designation. Requires resubmission for amendment to a plan of innovation.
8VAC20-760-50	<u>Evaluation</u> . This section explains how a designated SDI must annually submit information demonstrating progress toward meeting the goals and performance targets included in the plan of innovation. This section also provides how a SDI designation may be revoked.	§ 22.1-212.30(2) of the Code of Virginia	Requires a SDI to provide information annually showing progress toward stated goals. Permits the Board to revoke designation for appropriate reasons, including failure to meet goals, or failure to maintain accreditation. The anticipated impact is expected to be minimal as school divisions are already expected to review data on a regular basis.