

Summary of Major Elements

A preliminary list of issues that must be addressed concerning changes to the Literary Fund regulations includes:

1. Revision of the maximum loan amount – The 1998 General Assembly passed legislation that increased the maximum loan amount for a single project from \$5,000,000 to \$7,500,000.
2. Technology purchases – The 1997 General Assembly passed legislation allowing the Board of Education to issue Literary Fund loans to purchase technology equipment.
3. Administrative changes – The Department of Education proposes adding language to the regulations requiring school divisions only to certify that qualifying expenditures are being reimbursed and allowing them to maintain in their own files the documentation supporting the reimbursement requests submitted for payment. Currently, the regulations require school divisions to submit that documentation to the department.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board waive first review of this request and approve the department's request to proceed with submission of the NOIRA to the Department of Planning and Budget and to the State Registrar.

Impact on Resources:

There is no impact on DOE's resources to initiate these regulations. The impact on DOE's resources to complete the APA process will be minimal and will result from the costs of conducting public hearings and producing materials.

The impact of the changes proposed to the regulations cannot be determined at this time since the process has not yet begun. As changes are discussed, DOE will advise the Board if any changes will have a fiscal impact on the department or on school divisions.

Timetable for Further Review/Action:

Upon approval of the NOIRA package by the Department of Planning and Budget and the Secretary of Education, DOE will file the NOIRA package with the State Registrar, which will begin the APA process. The first step in the APA process is for the NOIRA to be published in the Register of Regulations. This first publication meets the requirement for public notice.

The Board will be asked to begin the revision process at the first meeting following the conclusion of the public notice period. The Board should consider any elements they wish to change in the regulations.



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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
Regulation title	Regulations Governing Literary Fund Loan Applications in Virginia
Action title	Updating Regulations
Document preparation date	Enter date this form is uploaded on the Town Hall

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.

The Board of Education is requesting authorization to prepare and submit the Notice of Intended Regulatory Action [as required by the Virginia Administrative Process Act and Executive Order Number 21 (2002)] in order to amend 8 VAC 20-100: Regulations Governing Literary Fund Loan Applications in Virginia.

The last revision to these regulations was in 1995. Since that time, statutory provisions addressing the content of these regulations have been enacted or amended.

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.

Chapter 10 (Section 22.1-140 through Section 22-1.161, Code of Virginia; Article 8 of the Constitution of Virginia.

Section 22.1-16 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-16> , Code of Virginia, authorizes the Board to promulgate “such regulations as may be necessary to carry out its powers and duties...” Section 22.1-142 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-142> states the Literary Fund shall be invested and managed by the Board of Education as prescribed by Section 22.1-145 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-145> Section 22.1-146 <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+22.1-146> gives the Board of Education the power to make loans from the Literary Fund for erection, etc. of school buildings.

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.

The following summarizes a preliminary list of issues that will be addressed with changes in the Literary Fund regulations.

1. Revision of the maximum loan amount – The 1998 General Assembly passed legislation that increased the maximum loan amount for a single project from \$5,000,000 to \$7,500,000.
2. Technology purchases – The 1997 General Assembly passed legislation allowing the Board of Education to issue Literary Fund loans to purchase technology equipment.
3. Administrative changes – The Department of Education proposes adding language to the regulations requiring school divisions only to certify that qualifying expenditures are being reimbursed and allowing them to maintain in their own files the documentation supporting the reimbursement requests submitted for payment. Currently, the regulations require school divisions to submit that documentation to the department.

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.

The proposed action is to amend existing regulations. The current regulations must be revised to eliminate conflicts with existing state laws and to permit use of streamlined administrative practices. No viable alternatives to promulgating regulations are available since the procedures for governing Literary Fund loans must be enforceable and have the effect of administrative law.

Family impact

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

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.



VIRGINIA DEPARTMENT OF EDUCATION

BRIEFING

**STATUS REPORT ON THE
LITERARY FUND**

**PRESENTED TO THE
HOUSE APPROPRIATIONS SUBCOMMITTEE
ON ELEMENTARY AND SECONDARY
EDUCATION**

JANUARY 18, 2005

**Daniel S. Timberlake
Assistant Superintendent for Finance**



BRIEFING

Background

- The Literary Fund is a permanent and perpetual school fund that began in 1810 and was later established in the Constitution of Virginia.

- Revenues to the Literary Fund are derived primarily from criminal fines, fees, and forfeitures, unclaimed and escheated property, and repayments of prior Literary Fund loans. The most recent addition to the sources of Literary Fund revenues has been the transfers from unclaimed lottery winnings.

- In fiscal year 2004, total revenues were \$209.1 million. The revenue sources were:
 - \$63.8 million from fines, fees, and forfeitures
 - 68.4 million from Literary Fund repayments
 - 50.0 million from unclaimed property
 - 13.0 million from unclaimed lottery winnings
 - 13.9 million in interest earnings

- The Literary Fund has typically been used to provide low-interest loans for school construction, grants under the interest rate subsidy program, debt service for technology funding, and to support the state's share of teacher retirement required by the Standards of Quality.

Terms of a Literary Fund Loan

- Current law and Board of Education regulations provide that:
 - Literary Fund loans may be offered as a source of low-interest loans for the purpose of erecting, altering, or enlarging school buildings;
 - the maximum loan amount available for a single project is \$7.5 million;
 - the minimum loan amount is \$50,000;
 - the length of the loan may run from five to 20 years, but the majority of loans are made for 20 years;
 - the interest rate is based on the school division's composite index of local ability-to-pay. The interest rates are as follows:

<u>Composite Index</u>	<u>Interest Rate</u>
0.2999 and below	2%
From 0.3000 to 0.3999	3%
From 0.4000 to 0.4999	4%
From 0.5000 to 0.5999	5%
0.6000 and above	6%

- Loan applications are placed on a Literary Fund Waiting List in priority order.

Direct Literary Fund Loans Released by Fiscal Year

- Since fiscal year 1983, a total of \$882.9 million has been provided in direct Literary Fund loans to local school divisions. The chart below reflects the release of these loans by fiscal year.

Fiscal Year	Projects Funded
1983	\$41,917,922
1984	13,090,500
1985	40,425,600
1986	32,768,391
1987	64,951,999
1988	36,212,656
1989	68,865,889
1990	22,158,479
1991	16,374,400
1992	-0-
1993	-0-
1994	-0-
1995	23,186,074
1996	48,888,628
1997	67,163,679
1998	78,254,001
1999	111,271,391
2000	99,576,079
2001	117,794,506
2002	-0-
2003	-0-
2004	-0-

Literary Fund Transfers

The Constitution provides that, “*But so long as the principal of the Fund totals as much as eighty million dollars, the General Assembly may set aside all or any part of additional moneys received into its principal for public school purposes, including the teachers retirement fund.*”

- As of June 30, 2004, the principal of the Literary Fund was approximately \$502.9 million.
- Transferring revenue from the Literary Fund for teacher retirement payments has been a standard practice at least since 1973. This action reduces the general fund appropriations needed for teacher retirement and thus makes the general fund revenues available for other purposes.
- Transfers from the Literary Fund for teacher retirement increased steadily over time with increases in Literary Fund revenue itself, reaching more than \$100 million in fiscal year 1992.
- With nearly 90% of all Literary Fund revenues transferred to teacher retirement in fiscal years 1992, 1993, and 1994, many projects waited more than two years to receive funding.
- No direct loans were made from the Literary Fund from January 1991 until April 1995.

Literary Fund Transfers - continued

- Transfers for teacher retirement diminished in the last half of the 1990s and were eliminated in fiscal years 2000 and 2001.
- Since fiscal year 2002, the majority of the Literary Fund revenues have been transferred to support teacher retirement in order to reduce the pressure placed on the general fund.

In fiscal year 1999, a new type of transfer began.

- In fiscal year 1999, \$9.0 million was designated in the appropriation act for transfer from the Literary Fund to the School Construction Grants Program.
- This transfer amount was based on the estimated revenue from the unclaimed lottery prizes.
- The actual transfer in fiscal year 1999 was \$8.4 million.
- Since then, the following transfers have been made:
 - Fiscal year 2000 - \$10.2 million
 - Fiscal year 2001 - \$ 8.2 million
 - Fiscal year 2002 - \$ 9.2 million
- These transfers were discontinued in the 2002-2004 biennium.

Literary Fund Transfer History - Since 1980

Since 1980, approximately \$1.4 billion (49%) has been transferred from Literary Fund revenues for teacher retirement or school construction.

(\$ in millions)

Fiscal Year	Total Revenues	Teacher Retirement Transfer	School Construction Transfer	Total Percent Transferred
1980	\$33.2	\$1.5		4.5%
1981	\$34.1	\$3.3		9.7%
1982	\$41.3	\$8.4		20.3%
1983	\$45.7	\$31.7		69.4%
1984	\$48.4	\$44.4		91.7%
1985	\$51.1	\$10.0		19.6%
1986	\$58.8	\$22.0		37.4%
1987	\$64.4	\$15.0		23.3%
1988	\$67.8	\$32.1		47.3%
1989	\$80.1	\$10.0		12.5%
1990	\$85.1	\$60.0		70.5%
1991	\$102.1	\$36.8		36.0%
1992	\$102.8	\$101.1		98.3%
1993	\$100.9	\$84.5		83.7%
1994	\$101.5	\$93.9		92.5%
1995	\$119.0	\$82.3		69.2%
1996	\$108.6	\$35.0		32.2%
1997	\$124.1	\$41.1		33.1%
1998	\$127.0	\$15.5		12.2%
1999	\$140.3	\$7.8	\$8.4	11.5%
2000	\$138.6	0	\$10.2	7.4%
2001	\$162.0	0	\$8.2	5.1%
2002	\$154.2	\$110.0	\$9.2	77.3%
2003	\$166.5	\$112.8		67.7%
2004	\$209.1	\$118.5		56.7%
<i>2005 - estimate</i>	<i>\$182.3</i>	<i>\$131.9</i>		<i>72.4%</i>
<i>2006 - estimate</i>	<i>\$182.9</i>	<i>\$135.9</i>		<i>74.3%</i>

Literary Funds Used for Technology

- Beginning in 1988, Literary Fund revenues were used as a mechanism to finance the purchase of computers and related technology.

- Technology initiatives have been funded and/or authorized through the issuance of equipment notes through the Virginia Public School Authority with the debt service paid by the Literary Fund.
 - The 1988 initiative focused on computers to assist with remediation instruction in middle schools and distance learning equipment.

 - The 1990 initiative continued implementation of remediation and distance learning efforts at the middle school level and provided funding for statewide administrative computing efforts.

 - The 1995 initiative provided a core level of computer capabilities and access to information in every elementary school (complementing efforts at the middle and high school levels funded in the prior session from the general fund) and began networking efforts.

 - Throughout most of the late 1990s, initiatives have focused on three main components of the Six-Year Plan for Technology: (1) retrofitting and upgrading existing school buildings to use educational technology, (2) providing network-ready multimedia computers for use at the classroom level, and (3) providing a 5 to 1 ratio of pupils to network-ready computers.

Literary Funds Used for Technology - continued

- The 1999 General Assembly authorized a Literary Fund notes program to replace the outdated administrative and student information software that was being used by many school divisions.
- Since fiscal year 2001, the bond issues have been dedicated to, “... a computer-based instructional and testing system for the Standards of Learning...”
- To date, approximately \$232.9 million have been issued as VPSA bonds to support this most recent initiative. During the course of this biennium, approximately \$117.9 million (*per HB 1500 as introduced*) in additional bond proceeds will be made available to school divisions for this initiative.

Interest Rate Subsidy Program

- Given the level of transfers for teacher retirement, the General Assembly authorized a program of “interest rate subsidies” in order to provide maximum funding for school construction projects beginning in fiscal year 1989.
- The purpose of the program is to fund construction loan projects that are currently on the Literary Fund’s First Priority Waiting List through the Virginia Public School Authority.
- Funds are granted from the Literary Fund for each project to reduce the principal amount of debt financed in a manner that produces debt service payments equivalent to what the school division would have paid for a direct Literary Fund loan.
- Based on the level of market rates at the time of a subsidy sale and the rate of interest charged to localities through the Literary Fund, subsidy programs have funded an average of \$5.4 of construction projects with every \$1 of Literary Fund revenue.

Interest Rate Subsidy Program - continued

The following is a summary of the total projects funded and the costs to the Literary Fund for the subsidy program.

Year	Value of Projects Funded	Total Cost to the Literary Fund	Ratio of Projects Funded to Literary Fund Cost
1988	\$23,757,500	\$8,446,500	2.8
1990	43,405,770	11,033,560	3.9
1991	106,806,799	27,898,774	3.8
1992	42,872,037	10,611,971	4.0
1994	40,689,574	10,069,683	4.0
1995	64,733,441	12,266,988	5.3
1996	43,675,000	8,652,972	5.0
1997	59,795,100	9,963,749	6.0
1998	42,978,700	5,596,579	7.7
1999	51,811,589	9,967,509	5.2
2000	102,923,607	18,824,375	5.5
2001	104,628,220	11,324,309	9.2
2002	51,082,187	5,000,000	10.2
2003	35,253,087	2,921,438	12.1
2004	37,352,634	4,870,341	7.7
Total	\$851,765,245	\$157,448,748	
		Average Ratio	5.4

Current Status of the Literary Fund

- As of January 2005, the First Priority Waiting List consisted of 49 projects totaling \$253.7 million.

- The project that has been on the First Priority Waiting List for the longest period of time was placed there in February 2002.

- In fiscal year 2005, revenues are estimated to be \$182.3 million. These revenues will be added to \$68.1 million of unspent revenues from fiscal year 2004.

- These funds are programmed to be used in the following manner pursuant to the provisions of the appropriation act:
 - \$131.9 million will be transferred for teacher retirement;

 - \$64.5 million will be used to pay debt service on the technology equipment notes;

 - \$4.9 million will be used for an interest rate subsidy program; and,

 - it is not anticipated that any funds will be available to issue direct loans.

Current Status of the Literary Fund - continued

- In fiscal year 2006, revenues are estimated to be \$182.9 million. These revenues will be added to \$49.1 million of anticipated unspent revenues from fiscal year 2005.

- These funds are programmed to be used in the following manner pursuant to the provisions of the appropriation act:
 - \$135.9 million will be transferred for teacher retirement;

 - \$62.2 million will be used to pay debt service on the technology equipment notes;

 - \$25.0 million will be used for an interest rate subsidy program (*includes an additional \$20.0 million recommended in HB 1500, as introduced*); and,

 - it is not anticipated that any funds will be available to issue direct loans.

BOARD OF EDUCATION - FIRST PRIORITY WAITING LIST

The following projects have been placed on the First Priority Waiting List with the actions as indicated in the last column.

Priority	Date Placed on Waiting List	School Division	School	Interest Rate	Amount	Cumulative Total	Action/Status
1	February, 2002	Orange County	Locust Grove Middle	4%	7,500,000	7,500,000	Funding Deferred
2	March, 2002	Hopewell City	Carter G. Woodson Middle	2%	1,100,000	8,600,000	Funding Deferred
3	March, 2002	King William County	King William High	3%	7,500,000	16,100,000	Funding Deferred
4	March, 2002	Buckingham County	Buckingham Middle	2%	7,500,000	23,600,000	Funding Deferred
5	April, 2002	Fluvanna County	Fluvanna High	3%	7,500,000	31,100,000	Funding Deferred
6	April, 2002	Orange County	Orange County High	4%	7,500,000	38,600,000	Funding Deferred
7	May, 2002	Amelia County	Amelia High	3%	2,500,000	41,100,000	Funding Deferred
8	May, 2002	Amelia County	Amelia Middle	3%	5,000,000	46,100,000	Funding Deferred
9	June, 2002	Prince George County	South Elementary	2%	5,911,575	52,011,575	Funding Deferred
10	June, 2002	Prince George County	Harrison Elementary	2%	7,044,000	59,055,575	Funding Deferred
11	July, 2002	Newport News City	General Stanford Elementary	2%	7,500,000	66,555,575	Funding Deferred
12	March, 2003	Salem City	Andrew Lewis Middle	4%	7,500,000	74,055,575	Funding Deferred
13	March, 2003	Franklin County	Windy Gap Elementary	3%	7,500,000	81,555,575	Funding Deferred
14	March, 2003	Lynchburg City	E. C. Glass High	3%	7,500,000	89,055,575	Funding Deferred
15	March, 2003	Lunenburg County	Lunenburg Middle	2%	7,500,000	96,555,575	Funding Deferred
16	June, 2003	King George County	King George Elementary	3%	7,500,000	104,055,575	Funding Deferred
17	June, 2003	Galax City	Galax Elementary	3%	2,000,000	106,055,575	Funding Deferred
18	June, 2003	Sussex County	Sussex Central Middle	3%	7,500,000	113,555,575	Funding Deferred
19	June, 2003	Floyd County	Check Elementary	3%	2,160,800	115,716,375	Funding Deferred
20	June, 2003	Floyd County	Floyd Elementary	3%	1,123,737	116,840,112	Funding Deferred
21	June, 2003	Floyd County	Indian Valley Elementary	3%	2,030,933	118,871,045	Funding Deferred
22	June, 2003	Floyd County	Willis Elementary	3%	1,820,531	120,691,576	Funding Deferred
23	June, 2003	Floyd County	Floyd High	3%	4,863,998	125,555,574	Funding Deferred
24	June, 2003	Alleghany County	Falling Springs Elementary	2%	2,000,000	127,555,574	Funding Deferred
25	June, 2003	Alleghany County	Callaghan Elementary	2%	1,000,000	128,555,574	Funding Deferred
26	June, 2003	Alleghany County	Sharon Elementary	2%	1,000,000	129,555,574	Funding Deferred

BOARD OF EDUCATION - FIRST PRIORITY WAITING LIST

The following projects have been placed on the First Priority Waiting List with the actions as indicated in the last column.

Priority	Date Placed on Waiting List	School Division	School	Interest Rate	Amount	Cumulative Total	Action/Status
27	June, 2003	Stafford County	New Elementary 2004	3%	7,500,000	137,055,574	Funding Deferred
28	February, 2004	Mecklenburg County	South Hill Elementary	3%	7,500,000	144,555,574	Funding Deferred
29	February, 2004	Manassas Park City	Manassas Park High	3%	7,000,000	151,555,574	Funding Deferred
30	February, 2004	Rockingham County	Montevideo Middle	3%	6,600,000	158,155,574	Funding Deferred
31	February, 2004	Rockingham County	Elkton Middle	3%	7,000,000	165,155,574	Funding Deferred
32	April, 2004	Greene County	William Monroe High	3%	4,000,000	169,155,574	Funding Deferred
33	April, 2004	Greene County	William Monroe Middle	3%	5,000,000	174,155,574	Funding Deferred
34	April, 2004	Patrick County	Woolwine Elementary	2%	575,000	174,730,574	Funding Deferred
35	April, 2004	Patrick County	Patrick County High	2%	1,714,000	176,444,574	Funding Deferred
36	April, 2004	New Kent County	New Kent Primary	4%	2,596,515	179,041,089	Funding Deferred
37	April, 2004	New Kent County	G. W. Watkins Elementary	4%	6,912,054	185,953,143	Funding Deferred
38	June, 2004	Page County	Page County High	2%	7,500,000	193,453,143	Funding Deferred
39	June, 2004	Page County	Luray High	2%	7,500,000	200,953,143	Funding Deferred
40	September, 2004	Roanoke City	Patrick Henry High	3%	7,500,000	208,453,143	Funding Deferred
41	September, 2004	Roanoke City	Fallon Park Elementary	3%	1,600,000	210,053,143	Funding Deferred
42	September, 2004	Roanoke City	Westside Elementary	3%	3,100,000	213,153,143	Funding Deferred
43	September, 2004	Hanover County	Stonewall Jackson Middle	4%	2,025,000	215,178,143	Funding Deferred
44	January, 2005	Accomack County	Arcadia Middle	2%	7,500,000	222,678,143	Funding Deferred
45	January, 2005	Accomack County	Nandua Middle	2%	4,500,000	227,178,143	Funding Deferred
46	January, 2005	Portsmouth City	Park View Elementary	2%	7,500,000	234,678,143	Funding Deferred
47	January, 2005	Campbell County	Yellow Branch Elementary	2%	7,500,000	242,178,143	Funding Deferred
48	January, 2005	Russell County	Lebanon Primary	2%	4,000,000	246,178,143	Funding Deferred
49	January, 2005	Brunswick County	Brunswick High	2%	7,500,000	253,678,143	Funding Deferred