

# **PUBLIC HEARING:**

## **Proposed Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions 8VAC 20-710-10 et seq.**

The proposed regulations were adopted in draft form at the July 2005 meeting of the Board of Education. The proposed regulations underwent a lengthy executive review process and were published in the *Virginia Register* on July 10, 2006. The publication date initiated the official 60-day comment period.

As a part of the requirements of the Administrative Process Act, the Board of Education will hold the public hearing on the proposed regulations on September 27, 2006. Following the public comment period, all comments will be summarized and submitted to the Board of Education for review prior to the final adoption of the regulations.

### **Background on the Proposed Regulations:**

This is a new regulation that is required by the amendment of § 22.1-25 of the Code of Virginia by the 2004 General Assembly. The amendment directs the Board of Education to promulgate regulations providing for a process by which school divisions may submit proposals for consolidation. The new regulation must be promulgated to comply with the terms of the amendment. Section 22.1-25, as amended, stipulates the information and data to be submitted by school divisions in their proposals for consolidation, the criteria that must be considered by the Board of Education in reviewing the proposals and a process for public participation in the process. The proposed regulations also include a section detailing the statutory authority, a definitions section, and additional administration and consolidation process requirements.

Additional information and the text of the proposed regulations are attached.

### **Guidelines for speakers attending the public hearing:**

Speakers will be recognized in the order in which they registered on the sign-up sheet. Each speaker is limited to three minutes.



## Proposed Regulation Agency Background Document

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| <b>Agency name</b>                                 | Department of Education  |
| <b>Virginia Administrative Code (VAC) citation</b> | 8 VAC 20 - 710   |
| <b>Regulation title</b>                            | Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions                   |
| <b>Action title</b>                                | Submission of proposed regulations that will govern the proposals for the consolidation of school divisions. |
| <b>Document preparation date</b>                   | August 2, 2005   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

This is a new regulation that is required by the amendment of § 22.1-25 of the Code of Virginia by the 2004 General Assembly. The amendment directs the Board of Education to promulgate regulations providing for a process by which school divisions may submit proposals for consolidation. The new regulation must be promulgated to comply with the terms of the amendment. Section 22.1-25, as amended, stipulates the information and data to be submitted by school divisions in their proposals for consolidation, the criteria that must be considered by the Board of Education in reviewing the proposals and a process for public participation in the process. The proposed regulations also include a section detailing the statutory authority, a definitions section, and additional administration and consolidation process requirements.

### Legal basis

The Code of Virginia, § 22.1-25, requires the Board of Education to promulgate regulations that provide for a process whereby school divisions may submit proposals for the consolidation of such school divisions. This mandate is the result of actions taken by the 2004 General Assembly, Chapter 917, 2004 Acts of Assembly.

## Purpose

The purpose of this proposed regulation is to provide a process whereby school divisions may submit proposals for the consolidation of school divisions. The regulatory action is essential because it is required by action taken by the 2004 General Assembly that amended § 22.1-25 of the Code of Virginia to require these regulations. It is intended to address situations where school divisions wish to consolidate.

## Substance

This is a new regulation required by § 22.1-25 of the Code of Virginia, as amended by the 2004 General Assembly. The substantive provisions include the required components of school division consolidation proposals, the criteria that the Board of Education must consider in determining appropriate school divisions for consolidation, timelines for required submission of the request for consolidation and notification by the Superintendent of Public Instruction and an opportunity for public comment on the proposed consolidation.

## Issues

The proposed regulation action does not pose any disadvantages to the public or the Commonwealth. It is intended to facilitate the consolidation of school divisions at their request. The public is afforded the opportunity to participate in the process and officials of each locality must consent to the consolidation.

## Economic impact

The impact on resources of the development and implementation of these regulations is not expected to be significant. However, the regulations are required by § 22.1-25 to provide for an incentive for the consolidation of school divisions by providing for the adjustment of the composite index of local ability to pay, as provided in the appropriation act. If school divisions choose to take advantage of this provision, there would be an increase in general fund costs, and a corresponding decrease in local costs for the applicable school divisions.

**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**

The projected cost to implement this regulation cannot be quantified for several reasons.

- The number of divisions choosing to enter into consolidation agreements is not known.
- If a division chooses to enter into such agreements, it must meet the criteria outlined in the regulation and have the

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|   | <p>agreement approved by the Board.</p> <ul style="list-style-type: none"> <li>• Each division has a unique composite index based upon a number of factors, including Average Daily Membership (ADM), adjusted gross income, and state and local population. Every proposal for consolidation has a different fiscal impact depending upon these factors.</li> </ul> <p>Consequently, the fiscal impact of proposed consolidations would be examined on a case-by-case basis. Furthermore, the current Appropriation Act (Chapter 951, 2005 Acts of Assembly) states the following:</p> <p>b.1) Pursuant to § 15.2-1302, Code of Virginia, and in the event that two or more school divisions become one school division, whether by consolidation of only the school divisions or by consolidation of the local governments, such resulting division shall be paid Standard of Quality payments for all pupils in the combined division on the basis of a composite index determined by the Board of Education, which shall not be less than the lowest nor higher than the highest composite index of any of the individual school divisions involved in such consolidation. In the event of a consolidation of local governments, this index shall remain in effect for a period of fifteen years, unless a lower composite index is calculated through the process for computing an index figure for each locality as set forth above. The Governor shall approve the composite index determined by the Board of Education prior to disbursement of funds under such index. The Department shall annually report to the Chairmen of the House Appropriations and Senate Finance Committees the composite indices approved by the Governor and the Board under this provision.</p> <p>The Appropriation Act currently allows for the practice of school division consolidation and for the use of an alternative composite index of local ability-to-pay.</p> <p>Any consolidation proposals approved by the Board and implemented by school divisions would result in a long-term fiscal impact.</p> |
| <b>Projected cost of the regulation on localities</b> | This information cannot be estimated for the purposes noted above.   |
| <b>Description of the individuals, businesses</b>     | School division consolidations would impact  |

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| <b>or other entities likely to be affected by the regulation</b>  | students, parents, and the local governing bodies of the respective divisions, as well as local businesses and school board employees.  |
| <b>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.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | This information cannot be estimated for the purposes noted above.  |
| <b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>  | Projected costs are unknown. However, it is assumed that costs will be incurred related to the development of consolidation proposals and public hearings related to the proposals. |

### Alternatives

There are no alternatives to this regulation. It is required by § 22.1-25 of the Code of Virginia, as amended by the 2004 General Assembly.

### Public comment

No comments were received.

### Family impact

There does not appear to be an impact on the institution of the family and family stability.

### Detail of changes

These are new regulations. Most of the provisions are required by § 22.1-25 of the Code of Virginia, as amended by the 2004 General Assembly.

The first section of the regulation, 8 VAC 20-710-10, provides the statutory authority for their promulgation. The second section, 8 VAC 20-710-20, provides definitions. The third section, 8 VAC 20-710-30, provides for the administration of the regulations. This section details consent and notice requirements and the following criteria that the Board of Education is required to consider in determining appropriate school divisions.

- The school-age population of the school division proposed to be divided or consolidated;

- The potential of the proposed school division to facilitate the offering of a comprehensive program for kindergarten through grade 12 at the level of the established standards of quality;
- The potential of the proposed school division to promote efficiency in the use of school facilities and school personnel and economy of operation;
- Anticipated increase or decrease in the number of children of school age in the proposed school division;
- Geographical area and topographical features as they relate to existing or available transportation facilities designed to render reasonable access by pupils to existing or contemplated school facilities; and
- The ability of each existing school division to meet the standards of quality with its own resources and facilities or in cooperation with another school division or divisions if arrangements for such cooperation have been made.

The fourth section of the regulation, 8 VAC 20-710-40, prescribes the consolidation process, including the date by which the proposal must be submitted to the Board of Education, a list of information and data that must be included in each proposal and an opportunity for public comment on the proposed consolidation. The list includes:

- The criteria set forth above;
- Evidence of the cost savings to be realized by the consolidation;
- A plan for the transfer of title to school board property to the resulting combined school board governing the consolidated division;
- Procedures and a schedule for the proposed consolidation, including completion of current division superintendent and school board member terms;
- A plan for proportional school board representation of the localities comprising the new school division, including details regarding the appointment or election processes currently ensuring such representation and other information as may be necessary to evidence compliance with federal and state laws governing voting rights;
- Evidence of local support for the proposed consolidation;
- A plan for maintaining and/or combining schools;
- A plan to continue meeting the standards of accreditation; and
- Documentation that both governing bodies and both school boards consent to the proposed consolidation.

PROPOSED REGULATIONS GOVERNING THE PROCESS FOR SUBMITTING PROPOSALS TO CONSOLIDATE SCHOOL DIVISIONS

(8 VAC 20-710-10 et seq.)

8 VAC 20-710-10 Statutory authority.

- A. The Constitution of Virginia, Article VIII, Section 5, authorizes the Board of Education to designate school divisions in the Commonwealth of such geographic size and school-age population as will best promote the realization of the standards of quality.
- B. The Code of Virginia, § 22.1-25, requires the Board of Education to promulgate regulations consistent with that section that provide for a process whereby school divisions may submit proposals for the consolidation of school divisions.

8 VAC 20-710-20 Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

“Board” or “State Board” means the Board of Education.

“Governing body” or “local governing body” means the board of supervisors of a county, council of a city, or council of a town, responsible for appropriating funds for such locality, as the context may require.

“School board” means the school board that governs a school division.

8 VAC 20-710-30 Administration.

- A. The school divisions as they existed on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education taken in accordance with the provisions of these regulations and § 22.1-25 of the Code of Virginia.

- B. No school division shall be consolidated without the consent of the school board and the governing body of the county or city affected or, if a town comprises the school division, of the town council.
  
- C. Notice of any change in the composition of a school division proposed by the Board of Education shall be given by the Superintendent of Public Instruction, on or before January 1 of the year in which the composition of such school division is to be changed, to the clerks of the school board and of the governing body involved and to each member of the General Assembly.
  
- D. The Board of Education shall consider the following criteria in determining appropriate school divisions:
  - 1. The school-age population of the school division proposed to be divided or consolidated;
  - 2. The potential of the proposed school division to facilitate the offering of a comprehensive program for kindergarten through grade 12 at the level of the established standards of quality;
  - 3. The potential of the proposed school division to promote efficiency in the use of school facilities and school personnel and economy in operation;
  - 4. Anticipated increase or decrease in the number of children of school age in the proposed school division;
  - 5. Geographical area and topographical features as they relate to existing or available transportation facilities designed to render reasonable access by pupils to existing or contemplated school facilities; and
  - 6. The ability of each existing school division to meet the standards of quality with its own resources and facilities or in cooperation with another school division or divisions if arrangements for such cooperation have been made.

8 VAC 20-710-40 Consolidation process.

- A. Local school divisions requesting to be consolidated shall submit a proposal to the Board of Education by September 1 of the year prior to the year they wish to consolidate.
  
- B. Each proposal for consolidation shall include the following information and data:

1. The criteria set forth in 8 VAC 20-710-20 D.;
2. Evidence of the cost savings to be realized by the consolidation;
3. A plan for the transfer of title to school board property to the resulting combined school board governing the consolidated division;
4. Procedures and a schedule for the proposed consolidation, including completion of current division superintendent and school board member terms;
5. A plan for proportional school board representation of the localities comprising the new school division, including details regarding the appointment or election processes currently ensuring such representation and other information as may be necessary to evidence compliance with federal and state laws governing voting rights;
6. Evidence of local support for the proposed consolidation;
7. A plan for maintaining and/or combining schools;
8. A plan to continue meeting the standards of accreditation; and
9. Documentation that both governing bodies and both school boards consent to the proposed consolidation.

C. Prior to the adoption of any plan to consolidate school divisions, each school division involved in the consolidation shall:

1. Post such plan on the division's Internet website if practicable;
2. Make a hard copy of the plan available for public inspection and copying;  
and
3. Conduct at least one public hearing to solicit public comment on the consolidation plan.