

# Virginia Board of Education Agenda Item



**Agenda Item:** M

**Date:** September 28, 2017

<b>Title</b>	First Review of Notice of Intended Regulatory Action (NOIRA) for <i>Regulations Governing the Designation of School Divisions of Innovation</i> (Proposed Stage)		
<b>Presenter</b>	Dr. Cynthia A. Cave, Assistant Superintendent for Policy and Communications		
<b>E-mail</b>	Cynthia.Cave@doe.virginia.gov	<b>Phone</b>	(804) 225-2092

**Purpose of Presentation:**

Action required by state or federal law or regulation.

**Previous Review or Action:**

No previous review or action.

**Action Requested:**

Other. Specify below:

Board action requested to waive first review and take action September 28, 2017.

**Alignment with Board of Education Goals: Please indicate (X) all that apply:**

X	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
X	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
X	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify:

**Background Information and Statutory Authority:**

Goal 1: In promulgating these regulations, the Board of Education will establish the policies and standards necessary to ensure accountability of student learning by implementing a system that allows for new or creative alternatives to existing instructional or administrative practices or school structures.

Goal 3: The Board will have the ability to expand opportunities to learn by developing policies that promote a more flexible environment in which to create innovative instructional programs.

Goal 6: The regulations will provide the Board with the opportunity to develop and implement sound policies for student success by focusing on meeting the diverse needs of students.

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). The

legislation directs the Board to promulgate regulations for the designation of a SDI whereby a local school board would submit a plan of innovation, and be exempted from selected regulatory provisions.

Article 1.5.  
School Divisions of Innovation.

§ 22.1-212.28. Definitions.

As used in this article, unless the context requires a different meaning:

"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 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.

"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.

§ 22.1-212.29. Purpose.

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.

§ 22.1-212.30. Board regulations; procedure.

Any local school board may apply to the Board for the local school division or any school therein to be designated as an SDI. Such application shall consist of a plan of innovation for the local school division. The Board shall include in regulations promulgated pursuant to § 22.1-212.29:

1. The procedure and timeline for application, review, amendment, approval, renewal, and revocation of SDI designation;
2. The procedure for the ongoing evaluation of an SDI; and
3. Any other process or procedure that the Board deems appropriate.

§ 22.1-212.31. Board regulations; application; expectations.

The Board shall establish in regulations promulgated pursuant to § 22.1-212.29 expectations for the plan of innovation of an SDI applicant, including:

1. Establishing goals and performance targets that may include:
  - a. Reducing achievement and opportunity gaps among groups of public school students by expanding the range of engaging and relevant learning experiences for students who are identified as academically

low-achieving;

b. Increasing student learning through the implementation of high, rigorous standards for student performance and balanced assessments that measure both student growth and achievement;

c. Creating opportunities for students to demonstrate mastery of learning at different points in the learning process based on readiness;

d. Increasing student participation in opportunities that enhance students' preparation for college, career, and citizenship;

e. Increasing the number of students who are college, career, and citizenship ready;

f. Increasing opportunities for students to learn from content experts through integrated course opportunities; and

g. Motivating students at all levels by offering additional curricular choices, personalized learning opportunities, and relevant student learning experiences such as community service projects, internship opportunities, and job shadowing.

2. Identifying divisionwide and school-level policies that will lead students to be better prepared for success in work and life.

3. Describing the ways in which all schools will incorporate innovative practices.

4. Incorporating relevant professional development.

5. Providing evidence of collaboration, support, and shared leadership among teachers in the school division.

6. Providing evidence of the support and engagement of educators, parents, the local community, and the local business community in the development of the plan of innovation and of the capacity of such individuals and entities to support the implementation of innovation.

7. Providing the rationale for requests for waivers from regulatory and statutory provisions.

8. Identifying specific measures of student success that may include alternate assessments or approved substitute tests that will be used to determine if students have met graduation requirements, as applicable.

§ 22.1-212.32. SDI designation; duration; renewal.

A. The initial designation of an SDI shall be for a five-year period.

B. The initial designation of an SDI may be renewed for subsequent periods not to exceed five years each.

[Section 22.1-253.13:3 \(H\)](#) authorizes the Board to grant waivers of the Board's regulations, as [§ 22.1-](#)

[253.13:3 \(H\)](#), and states, in part:

...Waivers of regulatory requirements may be granted by the Board of Education based on submission of a request from the division superintendent and chairman of the local school board. The Board of Education may grant, for a period up to five years, a waiver of regulatory requirements that are not (i) mandated by state or federal law or (ii) designed to promote health or safety...

The Board's regulations limit the application of these waivers to provisions in the *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (SOA), and prohibit waivers of the SOA provisions related to student achievement requirements, graduation requirements, program of instruction and learning objectives, and the accreditation system. These provisions are set out at [8VAC20-131-290 \(D\)](#) of the SOA, and state:

D. With the approval of the local school board, local schools seeking to implement experimental or innovative programs, or both, that are not consistent with these standards shall submit a waiver request, on forms provided, to the board for evaluation and approval prior to implementation. The request must include the following:

1. Purpose and objectives of the experimental/innovative programs;
2. Description and duration of the programs;
3. Anticipated outcomes;
4. Number of students affected;
5. Evaluation procedures; and
6. Mechanisms for measuring goals, objectives, and student academic achievement.

Except as specified below, the board may grant, for a period up to five years, a waiver of these regulations that are not mandated by state or federal law or designed to promote health or safety. The board may grant all or a portion of the request. Waivers of requirements in 8VAC20-131-30, 8VAC20-131-50, 8VAC20-131-70, and 8VAC20-131-280 through 8VAC20-131-340 shall not be granted, and no waiver may be approved for a program which would violate the provisions of the Standards of Quality.

In recent years, there have not been any applications for such waivers.

Since 2015, the Appropriation Act, at [Item 138 \(U\)](#), has provided funding for High School Program Innovation planning grants to encourage experimental or innovative programs. Applicants have been encouraged to seek waivers of Board regulations that prevent reform efforts. Some applicants expressed desire for waivers; however, none of the waivers desired are permissible by law.

### **Summary of Important Issues:**

HB1981 directs the Board of Education to promulgate regulations for the designation of a SDI whereby a local school board would submit a plan of innovation, and be exempted from selected regulatory provisions. The attached Notice of Intended Regulatory Action (NOIRA) must be published to initiate the regulatory process.

**Impact on Fiscal and Human Resources:**

The administrative impact required in promulgating these regulations will be absorbed within existing resources.

**Timetable for Further Review/Action:**

The timetable for further action shall be governed by the requirements of the Administrative Process Act.

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends the Board of Education waive first review and approve the NOIRA for the *Regulations Governing the Designation of School Divisions of Innovation*, and authorize the Virginia Department of Education staff to proceed with the requirements of the Administrative Process Act.

**Rationale for Action:**

This NOIRA initiates Administrative Process Act procedures by notifying the public that proposed regulations will be drafted for presentation to the Board of Education to fulfill the requirements of HB 1981.



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

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

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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.*

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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.*

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## 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.*

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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.*

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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](mailto: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.



[townhall.virginia.gov](http://townhall.virginia.gov)

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