

VIRGINIA ACTS OF ASSEMBLY -- 1996 RECONVENED SESSION

CHAPTER 962

An Act to amend and reenact §§ 2.1-1.6 and 9-6.25:2 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 2.1-483.1:2 and 11-41.2:2 through 11-41.2:5; and to repeal § 11-41.2:1 of the Code of Virginia effective January 1, 1997, relating to the Virginia Public Procurement Act; design-build authority for public bodies other than the Commonwealth.

[H 336]

Approved April 17, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.6 and 9-6.25:2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.1-483.1:2 and 11-41.2:2 through 11-41.2:5 as follows:

§ 2.1-1.6. State boards.

A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies affiliated with a state agency within the executive branch:

Accountancy, Board for
Aging, Advisory Board on the
Agriculture and Consumer Services, Board of
Air Pollution, State Advisory Board on
Alcoholic Beverage Control Board, Virginia
Apple Board, Virginia State
Appomattox State Scenic River Advisory Board
Aquaculture Advisory Board
Architects, Professional Engineers, Land Surveyors and Landscape Architects, State Board for
Art and Architectural Review Board
Athletic Board, Virginia
Auctioneers Board
Audiology and Speech-Language Pathology, Board of
Aviation Board, Virginia
Barbers, Board for
Branch Pilots, Board for
Bright Flue-Cured Tobacco Board, Virginia
Building Code Technical Review Board, State
Catoclin Creek State Scenic River Advisory Board
Cattle Industry Board, Virginia
Cave Board
Certified Seed Board, State
Chesapeake Bay Local Assistance Board
Chickahominy State Scenic River Advisory Board
Child Abuse and Neglect, Advisory Board on
Chippokes Plantation Farm Foundation, Board of Trustees
Clinch Scenic River Advisory Board
Coal Mining Examiners, Board of
Coal Research and Development Advisory Board, Virginia
Coal Surface Mining Reclamation Fund Advisory Board
Coastal Land Management Advisory Council, Virginia
Conservation and Development of Public Beaches, Board on
Conservation and Recreation, Board of
Contractors, Board for
Corn Board, Virginia
Correctional Education, Board of
Corrections, State Board of
Cosmetology, Board for
Criminal Justice Services Board
Dark-Fired Tobacco Board, Virginia
Deaf and Hard-of-Hearing, Advisory Board for the Department for the
Dentistry, Board of
Design-Build/Construction Management Review Board
Education, State Board of

Egg Board, Virginia
 Emergency Medical Services Advisory Board
 Employment Agency Advisory Board
 Farmers Market Board, Virginia
 Film Office Advisory Board
 Fire Services Board, Virginia
 Forensic Science Advisory Board
 Forestry, Board of
 Funeral Directors and Embalmers, Board of
 Game and Inland Fisheries, Board of
 Geology, Board for
 Goose Creek Scenic River Advisory Board
 Health Planning Board, Virginia
 Health Professions, Board of
 Health, State Board of
 Hearing Aid Specialists, Board for
 Hemophilia Advisory Board
 Historic Resources, Board of
 Housing and Community Development, Board of
 Industrial Development Services Advisory Board
 Insurance Advisory Board, State
 Irish Potato Board, Virginia
 Laboratory Services Advisory Board
 Litter Control and Recycling Fund Advisory Board
 Marine Products Board, Virginia
 Medical Advisory Board, Department of Motor Vehicles
 Medical Board of the Virginia Retirement System
 Medicare and Medicaid, Advisory Board on
 Medicine, Board of
 Mental Health, Mental Retardation and Substance Abuse Services Board, State
 Migrant and Seasonal Farmworkers Board
 Military Affairs, Board of
 Mineral Mining Examiners, Board of
 Minority Business Enterprise, Interdepartmental Board of the Department of
 Networking Users Advisory Board, State
 Nottoway State Scenic River Advisory Board
 Nursing, Board of
 Nursing Home Administrators, Board of
 Occupational Therapy, Advisory Board on
 Oil and Gas Conservation Board, Virginia
 Opticians, Board for
 Optometry, Board of
 Peanut Board, Virginia
 Personnel Advisory Board
 Pesticide Control Board
 Pharmacy, Board of
 Physical Therapy to the Board of Medicine, Advisory Board on
 Plant Pollination Advisory Board
 Polygraph Examiners Advisory Board
 Pork Industry Board, Virginia
 Poultry Products Board, Virginia
 Private College Advisory Board
 Private Security Services Advisory Board
 Professional and Occupational Regulation, Board for
 Professional Counselors, Board of
 Professional Soil Scientists, Board for
 Psychiatric Advisory Board
 Psychology, Board of
 Public Buildings Board, Virginia
 Public Telecommunications Board, Virginia
 Radiation Advisory Board
 Real Estate Appraiser Board
 Real Estate Board
 Reciprocity Board, Department of Motor Vehicles

Recreational Fishing Advisory Board, Virginia
 Recreation Specialists, Board of
 Reforestation Board
 Rehabilitation Providers, Advisory Board on
 Rehabilitative Services, Board of
 Respiratory Therapy, Advisory Board on
 Retirement System Review Board
 Rockfish State Scenic River Advisory Board
 Safety and Health Codes Board
 Seed Potato Board
 Sewage Handling and Disposal Appeal Review Board, State Health Department
 Shenandoah State Scenic River Advisory Board
 Small Business Advisory Board
 Small Business Environmental Compliance Advisory Board
 Small Grains Board, Virginia
 Social Services, Board of
 Social Work, Board of
 Soil and Water Conservation Board, Virginia
 Soybean Board, Virginia
 State Air Pollution Control Board
 Substance Abuse Certification Board
 Surface Mining Review, Board of
 Sweet Potato Board, Virginia
 T & M Vehicle Dealers' Advisory Board
 Teacher Education and Licensure, Advisory Board on
 Tourism and Travel Services Advisory Board
 Transportation Board, Commonwealth
 Transportation Safety, Board of
 Treasury Board, The, Department of the Treasury
 Veterans' Affairs, Board on
 Veterinary Medicine, Board of
 Virginia Board for Asbestos Licensing
 Virginia Coal Mine Safety Board
 Virginia Correctional Enterprises Advisory Board
 Virginia Employment Commission, State Advisory Board for the
 Virginia Higher Education Tuition Trust Fund, Board of the
 Virginia Horse Industry Board
 Virginia Manufactured Housing Board
 Virginia Retirement System, Board of Trustees
 Virginia Sheep Industry Board
 Virginia Veterans Cemetery Board
 Virginia Waste Management Board
 Visually Handicapped, Virginia Board for the
 Voluntary Formulary Board, Virginia
 War Memorial Foundation, Virginia, Board of Trustees
 (Contingently repealed) Waste Management Facility Operators, Board for
 Water Resources Research Center Statewide Advisory Board, Virginia
 Waterworks and Wastewater Works Operators, Board for
 Well Review Board, Virginia
 Youth and Family Services, State Board of.

B. Notwithstanding the definition for "board" as provided in § 2.1-1.2, the following entities shall be referred to as boards:

Compensation Board
 State Board of Elections
 State Water Control Board
 Virginia Parole Board
 Virginia Veterans Care Center Board of Trustees.

§ 2.1-483.1:2. Assistance to the Design-Build/Construction Management Review Board.

The Director of the Division of Engineering and Buildings or his designee shall serve as a member of the Design-Build/Construction Management Review Board (the Review Board) created pursuant to § 11-41.2:3. The Division shall provide staff support to the Review Board in the conduct of its duties in accordance with § 11-41.2:4.

§ 9-6.25:2. Policy boards, commissions and councils.

There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the

following policy boards, commissions and councils:

Apprenticeship Council
Athletic Board
Auctioneers Board
Blue Ridge Regional Education and Training Council
Board for Accountancy
Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects
Board for Barbers
Board for Contractors
Board for Cosmetology
Board for Geology
Board for Hearing Aid Specialists
Board for Opticians
Board for Professional and Occupational Regulation
Board for Professional Soil Scientists
Board for Waterworks and Wastewater Works Operators
Board of Agriculture and Consumer Services
Board of Audiology and Speech-Language Pathology
Board of Coal Mining Examiners
Board of Conservation and Recreation
Board of Correctional Education
Board of Dentistry
Board of Directors, Virginia Student Assistance Authorities
Board of Funeral Directors and Embalmers
Board of Health Professions
Board of Historic Resources
Board of Housing and Community Development
Board of Medical Assistance Services
Board of Medicine
Board of Mineral Mining Examiners
Board of Nursing
Board of Nursing Home Administrators
Board of Optometry
Board of Pharmacy
Board of Professional Counselors
Board of Psychology
Board of Recreation Specialists
Board of Social Services
Board of Social Work
Board of Surface Mining Review
Board of Veterinary Medicine
Board on Conservation and Development of Public Beaches
Chesapeake Bay Local Assistance Board
Child Day Care and Early Childhood Programs, Virginia Council on
Child Day-Care Council
Commission on Local Government
Commonwealth Transportation Board
Council on Human Rights
Council on Information Management
Criminal Justice Services Board
Design-Build/Construction Management Review Board
Disability Services Council
Farmers Market Board, Virginia
Immigrant and Refugee Policy Council
Interdepartmental Council on Rate-setting for Children's Facilities
Library Board, The Library of Virginia
Marine Resources Commission
Milk Commission
Pesticide Control Board
Real Estate Appraiser Board
Real Estate Board
Reciprocity Board, Department of Motor Vehicles
Safety and Health Codes Board
Seed Potato Board

Southside Virginia Marketing Council
 Specialized Transportation Council
 State Air Pollution Control Board
 State Board of Corrections
 State Board of Elections
 State Board of Health
 State Board of Youth and Family Services
 State Health Department, Sewage Handling and Disposal Appeal Review Board
 State Library Board
 State Mental Health, Mental Retardation and Substance Abuse Services Board
 State Water Control Board
 Substance Abuse Certification Board
 Treasury Board, The, Department of the Treasury
 Virginia Aviation Board
 Virginia Board for Asbestos Licensing
 Virginia Fire Services Board
 Virginia Gas and Oil Board
 Virginia Health Planning Board
 Virginia Health Services Cost Review Council
 Virginia Manufactured Housing Board
 Virginia Parole Board
 Virginia Public Telecommunications Board
 Virginia Soil and Water Conservation Board
 Virginia Voluntary Formulary Board
 Virginia Waste Management Board
 Virginia World Trade Council
 (Contingently repealed) Waste Management Facility Operators, Board for.

§ 11-41.2:2. Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept.

A. While the competitive sealed bid process remains the preferred method of construction procurement for public bodies in the Commonwealth, any public body other than the Commonwealth may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the public body complies with the requirements of this section and has obtained the approval of the Design-Build/Construction Management Review Board (the Review Board) pursuant to § 11-41.2:5.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal.

Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall:

1. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. Except as may otherwise be approved by the Review Board, such procedures for:

a. Design-build construction projects shall include a two-step competitive negotiation process consistent with the applicable provisions of the Design-Build Selection Procedures of paragraph D of Chapter IX (Special Construction Procedures) of the Capital Outlay Manual of the Commonwealth developed by the Department of General Services through the Division of Engineering and Buildings. The provisions of the Capital Outlay Manual shall apply, mutatis mutandis, to such procedures for design-build construction projects.

b. Construction management projects shall include (i) selection procedures consistent with the applicable provisions of the Selection Procedures of paragraphs D and E of Chapter IX (Special Construction Procedures) of the Capital Outlay Manual of the Commonwealth and (ii) required construction management contract terms consistent with applicable provisions of the Required Construction Management Contract Terms of paragraph F of Chapter IX (Special Construction Procedures) of the Capital Outlay Manual. The provisions of the Capital Outlay Manual shall apply, mutatis mutandis, to such procedures for construction management projects.

2. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

B. Once approved by the Review Board in accordance with § 11-41.2:5, the public body may award a design-build or construction management contract. Unless otherwise specified in the Request for Proposal, such contract shall be awarded to the fully qualified offeror who submits an acceptable proposal at the lowest cost in response to the Request for Proposal. The provisions of this subsection shall supersede any related provision in the Capital Outlay Manual.

C. The public body shall provide information as requested by the Review Board to allow post-project evaluation by the Review Board.

§ 11-41.2:3. Design-Build/Construction Management Review Board created; membership; terms; staffing; seal.

A. There is hereby created the Design-Build/Construction Management Review Board, hereinafter referred to as the Review Board, which shall be composed of nine members to be appointed by the Governor as follows: the Director of the Division of Engineering and Buildings of the Department of General Services, or his designee; two Class A general contractors selected from a list recommended by the Associated General Contractors; one architect and one engineer selected from a list recommended by the Consulting Engineers Council of Virginia, the Virginia Society of the American Institute of Architects, and the Virginia Society of Professional Engineers; and four representatives of public bodies other than the Commonwealth selected from a list recommended by the Virginia Municipal League and the Virginia Association of Counties. Each such list shall include the names of at least four persons who are experienced in competitive sealed bidding or competitive negotiation and in design-build or construction management procedures. The Director of the Division of Engineering and Buildings or his designee shall be a nonvoting member of the Review Board, except in the event of a tie vote of the Review Board.

B. The initial terms of the Review Board shall be as follows: three members shall be appointed for two-year terms, three members shall be appointed for three-year terms and three members shall be appointed for four-year terms. Thereafter, all appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive full terms, except the Director of the Division of Engineering and Buildings, who shall serve until a successor qualifies.

C. The Review Board shall elect its chairman and vice-chairman from among its members. Members shall receive no compensation for their services as members of the Review Board, but shall receive reasonable expenses.

D. The Review Board shall meet monthly to conduct its business as required by § 11-41.2:4. However, monthly meetings may be canceled by the chairman if there is no business before the Review Board. Five members shall constitute a quorum.

E. Such staff support as is necessary for the conduct of the Review Board's business shall be furnished by the Division of Engineering and Buildings of the Department of General Services pursuant to § 2.1-483.1:2.

F. The Review Board shall adopt a seal by which it shall authenticate its proceedings.

§ 11-41.2:4. Duties of the Design-Build/Construction Management Review Board; transitional provisions relating to regulations.

A. The Review Board shall have the following duties:

1. Review submissions by public bodies other than the Commonwealth of draft or adopted ordinances or resolutions to determine if the process for the selection, evaluation and award of a design-build or construction management contract is in compliance with the provisions of subdivision A 1 of § 11-41.2:2;

2. Determine if the public body has complied with the provisions of § 11-41.2:2 relating to the retention of a licensed architect or engineer;

3. Review the findings and the basis of such findings submitted by the public body to determine if the public body has complied with the requirements of § 11-41.2:2 and that the findings made by the public body pursuant to § 11-41.2:2 are not unreasonable;

4. Develop guidelines relating to the documents and information to be reviewed by the Review Board;

5. Make post-project evaluations of construction projects procured by design-build or construction management contracts entered into by public bodies other than the Commonwealth, including cost and time savings, effectiveness of the selection, evaluation and award of such contracts, and the benefit to the public body; and

6. Report to the General Assembly and the Governor on or before December 1, 1999, concerning the Review Board's evaluation of and findings regarding all design-build and construction management construction undertaken by public bodies other than the Commonwealth since July 1, 1996, and any recommendations relating to future use of design-build or construction management contracts by such

public bodies.

B. On or before July 1, 1997, the Review Board shall adopt regulations, as it deems appropriate, based on the substantive requirements of Chapter IX of the Capital Outlay Manual of the Commonwealth, for a two-step competitive negotiation process which shall be applied to design-build and construction management projects undertaken by public bodies other than the Commonwealth. For construction management projects, such regulations shall also include applicable provisions of the Required Construction Management Contract Terms of the Capital Outlay Manual. Such regulations shall also allow the Review Board to approve deviations from provisions of the Capital Outlay Manual that it deems appropriate. Such regulations, upon final adoption, shall supersede the provisions of subdivisions A 1 a and A 1 b of § 11-41.2:2. Regulations of the Review Board shall be adopted in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), except that regulations adopted pursuant to this subsection during the Review Board's first year of operation shall not be subject to the Administrative Process Act. Thereafter, all regulations shall be adopted in accordance with the Administrative Process Act.

§ 11-41.2:5. Review by the Review Board for design-build or construction management approval; effect of disapproval; review of Review Board decision.

The Review Board shall conduct such inquiry it deems appropriate and may require the submission of additional documents or information by the public body, in a form prescribed by the Review Board, to determine if the public body has complied with the provisions of § 11-41.2:2.

Within sixty days of the receipt of the request for review, the Review Board shall render a decision, unless a different timetable is agreed to by the public body. If the Review Board determines that the public body has complied with the provisions of § 11-41.2:2 and the findings made by the public body pursuant to subdivision A 2 of § 11-41.2:2 are not unreasonable, the Review Board shall approve such use. If the Review Board determines that (i) the public body has not complied with the provisions of § 11-41.2:2 or (ii) the findings made by the public body pursuant to subdivision A 2 of § 11-41.2:2 are unreasonable, it shall disapprove such use, and the public body shall not use a design-build or construction management contract to procure construction for the proposed project. If no decision is made by the Review Board within the sixty-day period or as otherwise agreed to by the public body, the proposed use of a design-build or construction management contract shall be deemed approved.

Any public body other than the Commonwealth which has been aggrieved by any action of the Review Board shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

2. That the provisions of §§ 11-41.2:2 through 11-41.2:5 shall not apply to any project authorized pursuant to § 11-41.2:1 on or before July 1, 1996, except to the extent such provisions relate to post-project evaluations by the Review Board of projects for which a construction contract is entered into by the public body on or after July 1, 1996.

3. That § 11-41.2:1 of the Code of Virginia is repealed, effective January 1, 1997.

4. That the authority granted to public bodies other than the Commonwealth pursuant to § 11-41.2:1 for projects listed therein shall continue notwithstanding the repeal of § 11-41.2:1 on January 1, 1997.