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HOUSE BILL NO. 336

Offered January 15, 1996

A BILL 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.

Patrons—Woodrum, Almand and Wilkins; Senators: Marye and Stosch

Referred to Committee on General Laws

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

Catoctin 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

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60	Dentistry, Board of
61	<i>Design-Build/Construction Management Review Board</i>
62	Education, State Board of
63	Egg Board, Virginia
64	Emergency Medical Services Advisory Board
65	Employment Agency Advisory Board
66	Farmers Market Board, Virginia
67	Film Office Advisory Board
68	Fire Services Board, Virginia
69	Forensic Science Advisory Board
70	Forestry, Board of
71	Funeral Directors and Embalmers, Board of
72	Game and Inland Fisheries, Board of
73	Geology, Board for
74	Goose Creek Scenic River Advisory Board
75	Health Planning Board, Virginia
76	Health Professions, Board of
77	Health, State Board of
78	Hearing Aid Specialists, Board for
79	Hemophilia Advisory Board
80	Historic Resources, Board of
81	Housing and Community Development, Board of
82	Industrial Development Services Advisory Board
83	Insurance Advisory Board, State
84	Irish Potato Board, Virginia
85	Laboratory Services Advisory Board
86	(Effective July 1, 1996) Litter Control and Recycling Fund Advisory Board
87	Marine Products Board, Virginia
88	Medical Advisory Board, Department of Motor Vehicles
89	Medical Board of the Virginia Retirement System
90	Medicare and Medicaid, Advisory Board on
91	Medicine, Board of
92	Mental Health, Mental Retardation and Substance Abuse Services Board, State
93	Migrant and Seasonal Farmworkers Board
94	Military Affairs, Board of
95	Mineral Mining Examiners, Board of
96	Minority Business Enterprise, Interdepartmental Board of the Department of
97	Networking Users Advisory Board, State
98	Nottoway State Scenic River Advisory Board
99	Nursing, Board of
100	Nursing Home Administrators, Board of
101	Occupational Therapy, Advisory Board on
102	Oil and Gas Conservation Board, Virginia
103	Opticians, Board for
104	Optometry, Board of
105	Peanut Board, Virginia
106	Personnel Advisory Board
107	Pesticide Control Board
108	Pharmacy, Board of
109	Physical Therapy to the Board of Medicine, Advisory Board on
110	Plant Pollination Advisory Board
111	Polygraph Examiners Advisory Board
112	Pork Industry Board, Virginia
113	Poultry Products Board, Virginia
114	Private College Advisory Board
115	Private Security Services Advisory Board
116	Professional and Occupational Regulation, Board for
117	Professional Counselors, Board of
118	Professional Soil Scientists, Board for
119	Psychiatric Advisory Board
120	Psychology, Board of
121	Public Buildings Board, Virginia

- 122 Public Telecommunications Board, Virginia
- 123 Radiation Advisory Board
- 124 Real Estate Appraiser Board
- 125 Real Estate Board
- 126 Reciprocity Board, Department of Motor Vehicles
- 127 Recreational Fishing Advisory Board, Virginia
- 128 Recreation Specialists, Board of
- 129 Reforestation Board
- 130 Rehabilitation Providers, Advisory Board on
- 131 Rehabilitative Services, Board of
- 132 Respiratory Therapy, Advisory Board on
- 133 Retirement System Review Board
- 134 Rockfish State Scenic River Advisory Board
- 135 Safety and Health Codes Board
- 136 Seed Potato Board
- 137 Sewage Handling and Disposal Appeal Review Board, State Health Department
- 138 Shenandoah State Scenic River Advisory Board
- 139 Small Business Advisory Board
- 140 Small Business Environmental Compliance Advisory Board
- 141 Small Grains Board, Virginia
- 142 Social Services, Board of
- 143 Social Work, Board of
- 144 Soil and Water Conservation Board, Virginia
- 145 Soybean Board, Virginia
- 146 State Air Pollution Control Board
- 147 Substance Abuse Certification Board
- 148 Surface Mining Review, Board of
- 149 Sweet Potato Board, Virginia
- 150 T & M Vehicle Dealers' Advisory Board
- 151 Teacher Education and Licensure, Advisory Board on
- 152 Tourism and Travel Services Advisory Board
- 153 Transportation Board, Commonwealth
- 154 Transportation Safety, Board of
- 155 Treasury Board, The, Department of the Treasury
- 156 Veterans' Affairs, Board on
- 157 Veterinary Medicine, Board of
- 158 Virginia Board for Asbestos Licensing
- 159 Virginia Coal Mine Safety Board
- 160 Virginia Correctional Enterprises Advisory Board
- 161 Virginia Employment Commission, State Advisory Board for the
- 162 (Effective July 1, 1996) Virginia Higher Education Tuition Trust Fund, Board of the
- 163 Virginia Horse Industry Board
- 164 Virginia Manufactured Housing Board
- 165 Virginia Retirement System, Board of Trustees
- 166 (For effective date - See Editor's note) Virginia Sheep Industry Board
- 167 Virginia Veterans Cemetery Board
- 168 Virginia Waste Management Board
- 169 Visually Handicapped, Virginia Board for the
- 170 Voluntary Formulary Board, Virginia
- 171 War Memorial Foundation, Virginia, Board of Trustees
- 172 (Contingently repealed - See Editor's note) Waste Management Facility Operators, Board for
- 173 Water Resources Research Center Statewide Advisory Board, Virginia
- 174 Waterworks and Wastewater Works Operators, Board for
- 175 Well Review Board, Virginia
- 176 Youth and Family Services, State Board of.
- 177 B. Notwithstanding the definition for "board" as provided in § 2.1-1.2, the following entities shall be
- 178 referred to as boards:
- 179 Compensation Board
- 180 State Board of Elections
- 181 State Water Control Board
- 182 Virginia Parole Board

183 Virginia Veterans Care Center Board of Trustees.
184 § 2.1-483.1:2. *Assistance to the Design-Build/Construction Management Review Board.*
185 *The Director of the Division of Engineering and Buildings or his designee shall serve as a member*
186 *of the Design-Build/Construction Management Review Board (the Review Board) created pursuant to*
187 *§ 11.41.2:3. The Division shall provide staff support to the Review Board in the conduct of its duties in*
188 *accordance with § 11-41.2:4.*
189 § 9-6.25:2. Policy boards, commissions and councils.
190 There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the
191 following policy boards, commissions and councils:
192 Apprenticeship Council
193 Athletic Board
194 Auctioneers Board
195 Blue Ridge Regional Education and Training Council
196 Board for Accountancy
197 Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects
198 Board for Barbers
199 Board for Contractors
200 Board for Cosmetology
201 Board for Geology
202 Board for Hearing Aid Specialists
203 Board for Opticians
204 Board for Professional and Occupational Regulation
205 Board for Professional Soil Scientists
206 Board for Waterworks and Wastewater Works Operators
207 Board of Agriculture and Consumer Services
208 Board of Audiology and Speech-Language Pathology
209 Board of Coal Mining Examiners
210 Board of Conservation and Recreation
211 Board of Correctional Education
212 Board of Dentistry
213 Board of Directors, Virginia Student Assistance Authorities
214 Board of Funeral Directors and Embalmers
215 Board of Health Professions
216 Board of Historic Resources
217 Board of Housing and Community Development
218 Board of Medical Assistance Services
219 Board of Medicine
220 Board of Mineral Mining Examiners
221 Board of Nursing
222 Board of Nursing Home Administrators
223 Board of Optometry
224 Board of Pharmacy
225 Board of Professional Counselors
226 Board of Psychology
227 Board of Recreation Specialists
228 Board of Social Services
229 Board of Social Work
230 Board of Surface Mining Review
231 Board of Veterinary Medicine
232 Board on Conservation and Development of Public Beaches
233 Chesapeake Bay Local Assistance Board
234 Child Day Care and Early Childhood Programs, Virginia Council on
235 Child Day-Care Council
236 Commission on Local Government
237 Commonwealth Transportation Board
238 Council on Human Rights
239 Council on Information Management
240 Criminal Justice Services Board
241 *Design-Build/Construction Management Review Board*
242 Disability Services Council
243 Farmers Market Board, Virginia
244 Immigrant and Refugee Policy Council

245 Interdepartmental Council on Rate-setting for Children's Facilities
 246 Library Board, the Library of Virginia
 247 Marine Resources Commission
 248 Milk Commission
 249 Pesticide Control Board
 250 Real Estate Appraiser Board
 251 Real Estate Board
 252 Reciprocity Board, Department of Motor Vehicles
 253 Safety and Health Codes Board
 254 Seed Potato Board
 255 Southside Virginia Marketing Council
 256 Specialized Transportation Council
 257 State Air Pollution Control Board
 258 State Board of Corrections
 259 State Board of Elections
 260 State Board of Health
 261 State Board of Youth and Family Services
 262 State Health Department, Sewage Handling and Disposal Appeal Review Board
 263 State Library Board
 264 State Mental Health, Mental Retardation and Substance Abuse Services Board
 265 State Water Control Board
 266 Substance Abuse Certification Board
 267 Treasury Board, The, Department of the Treasury
 268 Virginia Aviation Board
 269 Virginia Board for Asbestos Licensing
 270 Virginia Fire Services Board
 271 Virginia Gas and Oil Board
 272 Virginia Health Planning Board
 273 Virginia Health Services Cost Review Council
 274 Virginia Manufactured Housing Board
 275 Virginia Parole Board
 276 Virginia Public Telecommunications Board
 277 Virginia Soil and Water Conservation Board
 278 Virginia Voluntary Formulary Board
 279 Virginia Waste Management Board
 280 Virginia World Trade Council.

281 § 11-41.2:2. *Design-build or construction management contracts for public bodies other than the*
 282 *Commonwealth; eligibility requirements; award of contract; records to be kept..*

283 A. *Any public body other than the Commonwealth may enter into a contract for construction on a*
 284 *fixed price or not-to-exceed price design-build or construction management basis provided the public*
 285 *body complies with the requirements of this section and has obtained the approval of the*
 286 *Design-Build/Construction Management Review Board (the Review Board) pursuant to § 11-41.2:5.*
 287 *Prior to the procurement of any design-build or construction management contract for a specific*
 288 *construction project, the public body shall submit a request for review to and receive approval from the*
 289 *Review Board. Prior to such request, the public body shall:*

290 1. *Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation*
 291 *and award of design-build and construction management contracts. Such procedures shall be consistent*
 292 *with those described in this chapter for the procurement of nonprofessional services through competitive*
 293 *negotiation and the provisions of the Capital Outlay Manual of the Commonwealth for design-build and*
 294 *construction management;*

295 2. *Have in its employ or under contract a licensed architect or engineer who shall possess the*
 296 *requisite ability and competence appropriate for such construction project; and*

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

301 B. *Once approved by the Review Board in accordance with § 11-41.2:5, the public body may award*
 302 *a design-build or construction management contract. Such contract shall be awarded to the fully*
 303 *qualified offeror who submits an acceptable proposal at the lowest cost in response to a Request for*
 304 *Proposal. If the public body desires to make an exception to this requirement, the public body, by*
 305 *resolution, shall state the basis for the exception.*

306 C. The public body shall maintain records as prescribed by the Review Board to allow post project
307 evaluation by the Review Board.

308 § 11-41.2:3. Design-Build/Construction Management Review Board created; membership; terms;
309 staffing; seal.

310 A. There is hereby created the Design-Build/Construction Management Review Board, hereinafter
311 referred to as the Review Board, which shall be composed of nine members to be appointed by the
312 Governor as follows: the Director of the Division of Engineering and Buildings of the Department of
313 General Services, or his designee; two Class A general contractors selected from a list recommended by
314 the Associated General Contractors; two design professionals selected from a list recommended by the
315 Consulting Engineers Council of Virginia, the Virginia Society of the American Institute of Architects,
316 and the Virginia Society of Professional Engineers; and four representatives of public bodies other than
317 the Commonwealth selected from a list recommended by the Virginia Municipal League and the Virginia
318 Association of Counties.

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

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

328 D. The Review Board shall meet on the third Wednesday of each month to conduct its business as
329 required by § 11-41.2:4. However, monthly meetings may be cancelled by the chairman if there is no
330 business before the Review Board. Five members shall constitute a quorum.

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

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

335 § 11-41.2:4. Duties of the Design-Build/Construction Management Review Board.

336 The Review Board shall have the following duties:

337 1. Review submissions by public bodies other than the Commonwealth to determine if the process for
338 the selection, evaluation and award of a design-build or construction management contract is in
339 compliance with the provisions of this chapter;

340 2. Determine whether the public body has complied with the requirements of § 11-41.2:2 and that the
341 determinations made by the public body pursuant to § 11-41.2:2 are reasonable ;

342 3. Adopt regulations in accordance with the Administrative Process Act (§ 9 -6.14:1 et seq.) relating
343 to the form and substance of submissions to be reviewed by the Review Board and any criteria upon
344 which the Review Board shall make a determination of compliance;

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

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

353 § 11-41.2:5. Review by the Review Board for design-build or construction management approval;
354 effect of disapproval; review of Review Board decision.

355 The Review Board shall conduct such inquiry it deems appropriate and may require the submission
356 of additional documents or information by the public body, in a form prescribed by the Review Board,
357 to determine if the public body has complied with the provisions of this chapter.

358 Within sixty working days of the receipt of the request for review, the Review Board shall render a
359 decision, unless a different timetable is agreed to by the public body. If the Review Board determines
360 that the proposed use of a design-build or construction management contract complies with the
361 provisions of this chapter, it shall approve such use. If the Review Board determines that the proposed
362 use of a design-build or construction management contract does not comply with the provisions of this
363 chapter, then it shall disapprove such use, and the public body shall be precluded from procuring
364 construction of the proposed project using a design-build or construction management contract. If no
365 decision is made by the Review Board within the sixty-day period or as otherwise agreed to by the
366 public body, the proposed use of a design-build or construction management contract shall be deemed
367 approved.

368 *Any public body other than the Commonwealth which has been aggrieved by any action of the*
369 *Review Board shall be entitled to a review of such action. Appeals from such actions shall be in*
370 *accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).*
371 **2. That the provisions of § 11-41.2:2 shall not apply to any project authorized pursuant to**
372 **§ 11-41.2:1 on or before July 1, 1996.**
373 **3. That § 11-41.2:1 of the Code of Virginia is repealed, effective January 1, 1997.**
374 **4. That notwithstanding the repeal of § 11-41.2:1, authority granted public bodies pursuant to**
375 **§ 11-41.2:1 shall continue until July 1, 1997, provided contracts for design-build or construction**
376 **management projects have been awarded on or before that date.**