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**HOUSE BILL NO. 336****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on General Laws  
on February 28, 1996)

(Patron Prior to Substitute—Delegate Woodrum)

*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.*

**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

Dentistry, Board of

*Design-Build/Construction Management Review Board*

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

- 122 Real Estate Appraiser Board
- 123 Real Estate Board
- 124 Reciprocity Board, Department of Motor Vehicles
- 125 Recreational Fishing Advisory Board, Virginia
- 126 Recreation Specialists, Board of
- 127 Reforestation Board
- 128 Rehabilitation Providers, Advisory Board on
- 129 Rehabilitative Services, Board of
- 130 Respiratory Therapy, Advisory Board on
- 131 Retirement System Review Board
- 132 Rockfish State Scenic River Advisory Board
- 133 Safety and Health Codes Board
- 134 Seed Potato Board
- 135 Sewage Handling and Disposal Appeal Review Board, State Health Department
- 136 Shenandoah State Scenic River Advisory Board
- 137 Small Business Advisory Board
- 138 Small Business Environmental Compliance Advisory Board
- 139 Small Grains Board, Virginia
- 140 Social Services, Board of
- 141 Social Work, Board of
- 142 Soil and Water Conservation Board, Virginia
- 143 Soybean Board, Virginia
- 144 State Air Pollution Control Board
- 145 Substance Abuse Certification Board
- 146 Surface Mining Review, Board of
- 147 Sweet Potato Board, Virginia
- 148 T & M Vehicle Dealers' Advisory Board
- 149 Teacher Education and Licensure, Advisory Board on
- 150 Tourism and Travel Services Advisory Board
- 151 Transportation Board, Commonwealth
- 152 Transportation Safety, Board of
- 153 Treasury Board, The, Department of the Treasury
- 154 Veterans' Affairs, Board on
- 155 Veterinary Medicine, Board of
- 156 Virginia Board for Asbestos Licensing
- 157 Virginia Coal Mine Safety Board
- 158 Virginia Correctional Enterprises Advisory Board
- 159 Virginia Employment Commission, State Advisory Board for the
- 160 Virginia Higher Education Tuition Trust Fund, Board of the
- 161 Virginia Horse Industry Board
- 162 Virginia Manufactured Housing Board
- 163 Virginia Retirement System, Board of Trustees
- 164 Virginia Sheep Industry Board
- 165 Virginia Veterans Cemetery Board
- 166 Virginia Waste Management Board
- 167 Visually Handicapped, Virginia Board for the
- 168 Voluntary Formulary Board, Virginia
- 169 War Memorial Foundation, Virginia, Board of Trustees
- 170 Waste Management Facility Operators, Board for
- 171 Water Resources Research Center Statewide Advisory Board, Virginia
- 172 Waterworks and Wastewater Works Operators, Board for
- 173 Well Review Board, Virginia
- 174 Youth and Family Services, State Board of.
- 175 B. Notwithstanding the definition for "board" as provided in § 2.1-1.2, the following entities shall be
- 176 referred to as boards:
- 177 Compensation Board
- 178 State Board of Elections
- 179 State Water Control Board
- 180 Virginia Parole Board
- 181 Virginia Veterans Care Center Board of Trustees.
- 182 § 2.1-483.1:2. Assistance to the Design-Build/Construction Management Review Board.

183     *The Director of the Division of Engineering and Buildings or his designee shall serve as a member*  
184     *of the Design-Build/Construction Management Review Board (the Review Board) created pursuant to*  
185     *§ 11.41.2:3. The Division shall provide staff support to the Review Board in the conduct of its duties in*  
186     *accordance with § 11-41.2:4.*

187     § 9-6.25:2. Policy boards, commissions and councils.

188     There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the  
189     following policy boards, commissions and councils:

190     Apprenticeship Council

191     Athletic Board

192     Auctioneers Board

193     Blue Ridge Regional Education and Training Council

194     Board for Accountancy

195     Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects

196     Board for Barbers

197     Board for Contractors

198     Board for Cosmetology

199     Board for Geology

200     Board for Hearing Aid Specialists

201     Board for Opticians

202     Board for Professional and Occupational Regulation

203     Board for Professional Soil Scientists

204     Board for Waterworks and Wastewater Works Operators

205     Board of Agriculture and Consumer Services

206     Board of Audiology and Speech-Language Pathology

207     Board of Coal Mining Examiners

208     Board of Conservation and Recreation

209     Board of Correctional Education

210     Board of Dentistry

211     Board of Directors, Virginia Student Assistance Authorities

212     Board of Funeral Directors and Embalmers

213     Board of Health Professions

214     Board of Historic Resources

215     Board of Housing and Community Development

216     Board of Medical Assistance Services

217     Board of Medicine

218     Board of Mineral Mining Examiners

219     Board of Nursing

220     Board of Nursing Home Administrators

221     Board of Optometry

222     Board of Pharmacy

223     Board of Professional Counselors

224     Board of Psychology

225     Board of Recreation Specialists

226     Board of Social Services

227     Board of Social Work

228     Board of Surface Mining Review

229     Board of Veterinary Medicine

230     Board on Conservation and Development of Public Beaches

231     Chesapeake Bay Local Assistance Board

232     Child Day Care and Early Childhood Programs, Virginia Council on

233     Child Day-Care Council

234     Commission on Local Government

235     Commonwealth Transportation Board

236     Council on Human Rights

237     Council on Information Management

238     Criminal Justice Services Board

239     *Design-Build/Construction Management Review Board*

240     Disability Services Council

241     Farmers Market Board, Virginia

242     Immigrant and Refugee Policy Council

243     Interdepartmental Council on Rate-setting for Children's Facilities

244     Library Board, the Library of Virginia

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

279 § 11-41.2:2. *Design-build or construction management contracts for public bodies other than the*  
 280 *Commonwealth; eligibility requirements; award of contract; records to be kept.*

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

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

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

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

303 a. *Design-build construction projects shall include a two-step competitive negotiation process*  
 304 *consistent with the applicable provisions of the Design-Build Selection Procedures of paragraph D of*  
 305 *Chapter IX (Special Construction Procedures) of the Capital Outlay Manual of the Commonwealth*

306 developed by the Department of General Services through the Division of Engineering and Buildings.  
307 The provisions of the Capital Outlay Manual shall apply, *mutatis mutandis*, to such procedures for  
308 design-build construction projects.

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

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

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

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

327 § 11-41.2:3. Design-Build/Construction Management Review Board created; membership; terms;  
328 staffing; seal.

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

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

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

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

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

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

358 § 11-41.2:4. Duties of the Design-Build/Construction Management Review Board; transitional  
359 provisions relating to regulations.

360 A. The Review Board shall have the following duties:

361 1. Review submissions by public bodies other than the Commonwealth of draft or adopted ordinances  
362 or resolutions to determine if the process for the selection, evaluation and award of a design-build or  
363 construction management contract is in compliance with the provisions of subdivision A1 of § 11-41.2:2;

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

366 3. Review the findings and the basis of such findings submitted by the public body to determine if the  
367 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 1a and A 1b 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 its findings pursuant to subdivision A2 of § 11-41.2:2 are not unreasonable, it shall approve such use. If the Review Board determines that the public body has not complied with the provisions of § 11-41.2:2, 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.**