

VIRGINIA ACTS OF ASSEMBLY -- 1997 RECONVENED SESSION

CHAPTER 885

An Act to amend and reenact §§ 2.1-1.6, 9-6.25:2, 10.1-1408.2, 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-516, 54.1-517, 54.1-1100, 54.1-1102, 54.1-1103, 54.1-1108.2, 54.1-1118, 54.1-1119, 54.1-1120, 54.1-1123, 54.1-1125, 54.1-1126, 54.1-1127, 54.1-1129 through 54.1-1135, 54.1-2211, and 54.1-2212 of the Code of Virginia, relating to certain boards at the Department of Professional and Occupational Regulation.

[H 2554]

Approved April 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.6, 9-6.25:2, 10.1-1408.2, 54.1-500, 54.1-500.1, 54.1-501, 54.1-503, 54.1-516, 54.1-517, 54.1-1100, 54.1-1102, 54.1-1103, 54.1-1108.2, 54.1-1118, 54.1-1119, 54.1-1120, 54.1-1123, 54.1-1125, 54.1-1126, 54.1-1127, 54.1-1129 through 54.1-1135, 54.1-2211, and 54.1-2212 of the Code of Virginia are amended and reenacted 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
 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
 Irish Potato Board, Virginia
 Juvenile Justice, State Board of
 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 and Lead
 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
 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.

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.
 § 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 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
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 Juvenile Justice
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 and Lead~~
Virginia Fire Services Board
Virginia Gas and Oil Board
Virginia Health Planning Board
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
Waste Management Facility Operators, Board for.

§ 10.1-1408.2. Certification and on-site presence of facility operator.

A. On and after January 1, 1993, no person shall be employed as a waste management facility operator, nor shall any person represent himself as a waste management facility operator, unless such person has been ~~certified~~ *licensed* by the Board ~~of~~ *for* Waste Management Facility Operators.

B. On and after January 1, 1993, all solid waste management facilities shall operate under the direct supervision of a waste management facility operator ~~certified~~ *licensed* by the Board for Waste Management Facility Operators.

§ 54.1-500. Definitions.

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

"Asbestos" means any material containing more than one percent asbestos by area as determined by microscopy.

"Asbestos analytical laboratory license" means an authorization issued by the Board to perform phase contrast, polarized light, or transmission electron microscopy on material known or suspected to contain asbestos.

"Asbestos contractor's license" means an authorization issued by the Board permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos inspector's license" means an authorization issued by the Board permitting a person to perform on-site investigations to identify, classify, record, sample, test and prioritize by exposure potential asbestos-containing materials.

"Asbestos management plan" means a program designed to control or abate any potential risk to human health from asbestos.

"Asbestos management planner's license" means an authorization issued by the Board permitting a person to develop or alter an asbestos management plan.

"Asbestos project" or "asbestos abatement project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing roofing, flooring and siding materials which when installed, encapsulated or removed do not become friable.

"Asbestos project designer's license" means an authorization issued by the Board permitting a person to design an asbestos abatement project.

"Asbestos project monitor's license" means an authorization issued by the Board permitting a person to monitor an asbestos project, subject to Department regulations.

"Asbestos supervisor" means any person so designated by an asbestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Asbestos worker's license" means an authorization issued by the Board permitting an individual to work on an asbestos project.

"Board" means the Virginia Board for Asbestos ~~Licensing and Lead Certification~~.

"~~Certified lead contractor~~" means a person who has met the Board's requirements and has been issued a certificate by the Board to enter into contracts to perform lead-based paint activities.

"~~Certified lead professional~~" or "~~certified lead worker~~" means a person who has met the certification requirements in at least one of the lead evaluation, inspection or abatement disciplines established by the Board and has been issued a certificate by the Board.

"Friable" means that the material when dry, may be crumbled, pulverized or reduced to powder by hand pressure and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Lead-containing substance" means any coating, paint, plaster or surface encapsulation material

containing more than 0.5 percent lead by weight of dry film or more than one milligram of lead per square centimeter of dry film, or other materials meeting standards that are consistent with applicable federal regulations.

"Licensed lead contractor" means a person who has met the Board's requirements and has been issued a license by the Board to enter into contracts to perform lead-based paint activities.

"Licensed lead professional" or "licensed lead worker" means a person who has met the licensing requirements in at least one of the lead evaluation, inspection or abatement disciplines established by the Board and has been issued a license by the Board.

"Local education agency" or "LEA" shall have the meaning provided in the USEPA AHERA regulations set forth in 40 CFR 763.

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity.

"Primary instructor" means an instructor whose main responsibility is to instruct courses, supervise other instructors and manage the overall course curriculum.

§ 54.1-500.1. Virginia Board for Asbestos and Lead; membership; meetings; offices; quorum.

The Virginia Board for Asbestos ~~Licensing~~ and Lead ~~Certification~~ shall be appointed by the Governor and composed of nine members as follows: one shall be a representative of a Virginia licensed asbestos contractor, one shall be a representative of a Virginia ~~certified~~ *licensed* lead contractor, one shall be either a Virginia-licensed asbestos inspector or project monitor, one shall be a Virginia ~~certified~~ *licensed* lead risk assessor, one shall be a representative of a Virginia-licensed asbestos analytical laboratory, one shall be a representative of an asbestos and lead training course provider and three shall be citizen members. Of the 1994 appointments, the terms shall be as follows: one member shall serve a term of two years, and one member shall serve a term of four years. Thereafter, the terms of members of the Board shall be four years, except that vacancies may be filled for the remainder of the unexpired term. The initially appointed representatives of the lead industry shall be deemed to be certified upon having completed lead training offered at an Environmental Protection Agency Regional Training Center.

The Board shall meet at least four times each year and other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice chairman to serve for a period of one year. Five members of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this chapter.

§ 54.1-501. Powers and duties of the Board.

The Board shall administer and enforce this chapter. The Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of asbestos *and lead* licenses ~~and lead certificates~~, and governing conflicts of interest between various categories of asbestos *and lead* licenses ~~and lead certificates~~;

2. Approve the criteria for training courses and primary instructors;

3. Approve training courses, examinations and the grading system for testing applicants for asbestos *and lead* licensure ~~and lead certification~~;

4. Promulgate regulations governing the licensing of and establishing performance criteria applicable to asbestos analytical laboratories;

5. Promulgate regulations governing the functions and duties of project monitors on asbestos projects, circumstances in which project monitors shall be required for asbestos projects, and training requirements for project monitors; and

6. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the: (i) approval of lead-based paint activities training programs, (ii) ~~certification~~ *licensure* of individuals and firms to engage in lead inspection, evaluation, and abatement activities, and (iii) establishment of standards for performing lead-based paint activities consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency regulations. The Board's regulations shall not be more stringent than the federal requirements set forth in: (i) the United States Environmental Protection Agency's (EPA) proposed regulations, if the Board's regulations are promulgated prior to the effective date of the EPA's final regulations, or (ii) the EPA's final regulations, if the Board's regulations are promulgated after the effective date of the EPA's final regulations.

§ 54.1-503. Licenses required.

A. It shall be unlawful for any person who does not have an asbestos contractor's, supervisor's, inspector's, management planner's, or project designer's license to contract with another person, for compensation, to carry out an asbestos project or develop a management plan. It shall be unlawful for any person who does not have a license as a project monitor to act as project monitor on an asbestos project.

B. One hundred and twenty days after the effective date of the Board's initial regulations, it shall be unlawful for any person who does not hold a ~~certificate~~ *license* issued by the Board as a ~~certified~~

licensed lead contractor, professional, or worker to perform lead inspection, evaluation, or abatement activities.

§ 54.1-516. Disciplinary actions.

A. The Board may reprimand, or suspend or revoke the ~~certificate~~ *license* of a lead contractor, professional or worker or the license of an asbestos contractor, supervisor, inspector, management planner, project designer, project monitor or worker or the approval of an asbestos training provider or primary instructor, if the licensee or ~~certified entity~~:

1. Fraudulently or deceptively obtains or attempts to obtain a license or ~~certificate~~;
2. Fails at any time to meet the qualifications for a license or ~~certificate~~ or to comply with the requirements of this chapter or any regulation adopted by the Board; or
3. Fails to meet any applicable federal or state standard when performing an asbestos project or service or performing a lead inspection, evaluation, or abatement.

B. The Board may reprimand, or suspend or revoke (i) the license of any asbestos contractor who employs or permits an individual without an asbestos supervisor's or worker's license to work on an asbestos project or (ii) any lead contractor who employs or permits an individual required to be ~~certified~~ *licensed* under this chapter to perform any lead inspection, evaluation, or abatement.

§ 54.1-517. Penalties for willful violations.

Notwithstanding any other provision of law, any person who willfully violates any provision of this chapter or any regulation related to licensure, ~~certification~~ or training adopted pursuant to this chapter shall be guilty of a Class 1 misdemeanor for the first two violations and a Class 6 felony for a third and each subsequent violation within a three-year period.

In addition, licensed asbestos contractors, supervisors, inspectors, management planners, project designers, project monitors, asbestos analytical laboratories and workers and ~~certified~~ *licensed* lead contractors, professionals and workers may be assessed a civil penalty by the Board of not more than \$1,000 for an initial violation and \$5,000 for each subsequent violation within a three-year period arising from a willful violation of standards established by the Environmental Protection Agency, Occupational Safety and Health Administration, Department of Labor and Industry, and the Divisions of Air Pollution Control and Waste Management of the Department of Environmental Quality in a three-year period.

§ 54.1-1100. Definitions.

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

"Board" means the Board for Contractors.

"Class A contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is \$70,000 or more, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is \$500,000 or more.

"Class B contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is \$7,500 or more, but less than \$70,000, or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is \$150,000 or more, but less than \$500,000.

"Class C contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but no more than \$7,500, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is no more than \$150,000. The Board shall require a master ~~certification~~ *tradesmen license* as a condition of licensure or ~~certification~~ of for electrical, plumbing and heating, ventilation and air conditioning contractors.

"Contractor" means any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by another person or any other improvements to such real property.

"Department" means the Department of Professional and Occupational Regulation.

"Designated employee" means the contractor's full-time employee who is at least eighteen years of age and who has successfully completed the oral or written examination required by the Board on behalf of the contractor.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Owner-developer" means any person who performs or supervises the construction, removal, repair or improvements of any building or structure permanently annexed to real property owned, controlled or leased by him or any other improvements to such property when either (i) the total value of all such improvements to or upon any single parcel of land is \$70,000 or more or (ii) the total value of all such improvements to or upon all real property undertaken by him within any twelve-month period is \$500,000 or more, but shall not include a person who performs or supervises the construction, removal, repair or improvement of (i) not more than one building upon his own real property and for his own use during any twenty-four-month period, (ii) a house upon his own real property as a bona fide gift to a

member of his immediate family provided such member lives in the house for at least twenty-four months, (iii) industrial or manufacturing facilities for his own use, or (iv) any person who contracts with a duly licensed Class A contractor classified as a building contractor to perform such construction, removal, repair or improvements.

For purposes of this section, "immediate family" includes one's mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law and father-in-law.

"Person" means any individual, firm, corporation, association, partnership, joint venture, or other legal entity.

"Value" means fair market value. When improvements are performed or supervised by a contractor, the contract price shall be prima facie evidence of value.

§ 54.1-1102. Board for Contractors membership; offices; meetings; seal; record.

A. The Board for Contractors shall be composed of thirteen members as follows: one member shall be a licensed Class A general contractor; the larger part of the business of one member shall be the construction of utilities; the larger part of the business of one member shall be the construction of commercial and industrial buildings; the larger part of the business of one member shall be the construction of single-family residences; the larger part of the business of one member shall be the construction of home improvements; one member shall be a subcontractor as generally regarded in the construction industry; one member shall be in the business of sales of construction materials and supplies; one member shall be a local building official; one member shall be a licensed plumbing contractor; one member shall be a licensed electrical contractor; one member shall be a licensed heating, ventilation and ~~air conditioning~~ *air conditioning* contractor; and two members shall be citizen members. The terms of the Board members shall be four years.

The Board shall meet at least four times each year, once in January, April, July and October, and at such other times as may be deemed necessary. Annually, the Board shall elect from its membership a chairman and a vice-chairman to serve for a one-year term. Seven members of the Board shall constitute a quorum.

The Board shall promulgate regulations not inconsistent with statute necessary for the licensure ~~or certification~~ of contractors and ~~the certification and the recertification~~ of tradesmen and ~~the certification of~~ backflow prevention device workers, and for the ~~re-licensure and re-certification~~ *relicensure* of contractors and tradesmen ~~and for the recertification of backflow prevention device workers~~, after license ~~or certificate~~ suspension or revocation.

The Board may adopt regulations requiring all Class A, B, and C residential contractors, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to use legible written contracts including the following terms and conditions:

1. General description of the work to be performed;
2. Fixed price or an estimate of the total cost of the work, the amounts and schedule of progress payments, a listing of specific materials requested by the consumer and the amount of down payment;
3. Estimates of time of commencement and completion of the work; and
4. Contractor's name, address, office telephone number and license or certification number and class.

In transactions involving door-to-door solicitations, the Board may require that a statement of protections be provided by the contractor to the homeowner, consumer or buyer, as the case may be.

The Board shall adopt a seal with the words "Board for Contractors, Commonwealth of Virginia." The Director shall have charge, care and custody of the seal.

B. The Director shall maintain a record of the proceedings of the Board.

§ 54.1-1103. Necessity for license; requirements for water well drillers and landscape irrigation contractors.

A. No person shall engage in, or offer to engage in, contracting work or operate as an owner-developer in the Commonwealth unless he has been licensed ~~or certified~~ under the provisions of this chapter. Prior to a joint venture engaging in, or offering to engage in, contracting work or operating as an owner-developer in the Commonwealth, (i) each contracting party of the joint venture shall be licensed ~~or certified~~ under the provisions of this chapter or (ii) a license ~~or certificate~~ shall be obtained in the name of the joint venture under the provisions of this chapter.

B. Except as provided in § 54.1-1117, the issuance of a license ~~or certificate~~ under the provisions of this chapter shall not entitle the holder to engage in any activity for which a special license is required by law.

C. When the contracting work is for the purpose of landscape irrigation or the construction of a water well as defined in § 62.1-255, the contractor shall be licensed ~~or certified~~, regardless of the contract amount, as follows:

1. A Class C ~~certificate~~ *license* is required when the total value referred to in a single contract or project is no more than \$7,500, or the total value of all such water well or landscape irrigation contracts undertaken within any twelve-month period is no more than \$150,000;
2. A Class B license is required when the total value referred to in a single contract is \$7,500 or more, but less than \$70,000, or the total value of all such water well or landscape irrigation contracts undertaken within any twelve-month period is \$150,000 or more, but less than \$500,000; and

3. A Class A license is required when the total value referred to in a single contract or project is \$70,000 or more, or when the total value of all such water well or landscape irrigation contracts undertaken within any twelve-month period is \$500,000 or more.

§ 54.1-1108.2. Application for Class C license; fees; issuance.

A. Any person desiring to be ~~certified~~ *licensed* as a Class C contractor shall file with the Department a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain information concerning the name, location, nature, and operation of the business, as well as information demonstrating that the applicant possesses the character and minimum skills to properly engage in the occupation of contracting, and an affidavit stating that the information on the application is correct.

B. The Board may grant a Class C ~~certificate~~ *license* in any of the following classifications: (i) building contractor, (ii) highway/heavy contractor, and (iii) specialty contractor.

§ 54.1-1118. Definitions.

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

"Act" means the Virginia Contractor Transaction Recovery Act.

"Biennium" means a two-year period beginning on July 1 of an even-numbered year and continuing through June 30 of the next even-numbered year.

"Claimant" means any person with an unsatisfied judgment against a regulant, who has filed a verified claim under this Act.

"Fund" means the Contractor Transaction Recovery Fund.

"Improper or dishonest conduct" includes only the wrongful taking or conversion of money, property or other things of value which involves fraud, material misrepresentation or conduct constituting gross negligence, continued incompetence, or intentional violation of the Uniform Statewide Building Code (§ 36-97 et seq.). The term "improper or dishonest conduct" does not include mere breach of contract.

"Judgment" includes an order of a United States Bankruptcy Court (i) declaring a claim against a regulant who is in bankruptcy to be a "Debt Nondischargeable in Bankruptcy" or (ii) extinguishing a claim against a regulant who is in bankruptcy and for which claim no distribution was made from the regulant's bankruptcy estate but excluding any such claim disallowed by order of the bankruptcy court.

"Regulant" means any individual, person, firm, corporation, association, partnership, joint venture or any other legal entity licensed ~~or certified~~ by the Board for Contractors. "Regulant" shall not include tradesmen or backflow prevention device workers *licensed or* certified in accordance with Article 3 (§ 54.1-1128 et seq.) of this chapter.

§ 54.1-1119. Assessments by Director; assignment to Fund; minimum balance; notice; penalties; costs of administration.

A. Each initial regulant, at the time of application, shall be assessed twenty-five dollars, which shall be specifically assigned to the ~~fund~~ *Fund*. Initial payments may be incorporated in any application fee payment and transferred to the ~~fund~~ *Fund* by the Director within thirty days.

All assessments, except initial assessments, for the ~~fund~~ *Fund* shall be deposited within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits Act (§ 2.1-359 et seq.). The deposit of these funds in federally insured banks, savings and loan associations or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 26-40.01.

B. The minimum balance of the ~~fund~~ *Fund* shall be \$400,000. Whenever the Director determines that the balance of the ~~fund~~ *Fund* is or will be less than this minimum balance, the Director shall immediately inform the Board, which shall assess each regulant at the time of his license renewal a sum sufficient to bring the balance of the ~~fund~~ *Fund* to an amount of not less than \$400,000, when combined with similar assessments of other regulants. No regulant shall be assessed a total amount of more than fifty dollars during any biennium.

Notice to regulants of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within forty-five days after the mailing of the notice to regulants.

C. If any regulant fails to remit the required assessment mailed in accordance with subsection B within forty-five days of such mailing, the Director shall notify such regulant by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within thirty days after mailing the second notice, the license ~~or certificate~~ of the regulant shall be automatically suspended and shall be restored only upon the actual receipt by the Director of the delinquent assessment.

Interest earned on the deposits constituting the ~~fund~~ *Fund* shall be used for administering the ~~fund~~ *Fund*. The remainder of this interest may be used for the purposes of providing educational programs about the Uniform Statewide Building Code (§ 36-97 et seq.), for providing education on subjects of

benefit to licensees or members of the public relating to contracting, or shall accrue to the ~~fund~~ Fund.

§ 54.1-1120. Recovery from Fund generally.

A. Whenever any person is awarded a judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct occurring (i) during a period when such individual or entity was a regulant and (ii) in connection with a transaction involving contracting, the claimant may file a verified claim with the Director to obtain a directive ordering payment from the ~~fund~~ Fund of the amount unpaid upon the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board in the manner prescribed by law. Included in such service shall be an affidavit stating all acts constituting improper or dishonest conduct. The provisions of § 8.01-288 shall not be applicable to the service of process required by this subdivision.

2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.

3. For judgments entered on or after July 1, 1996, a verified claim shall be filed with the Director no later than twelve months after the judgment became final. Such verified claim shall be accompanied by the copies of the order for the underlying judgment, and evidence of compliance with subdivisions 6 and 7 below.

4. The claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence(s).

5. The claimant shall not himself be (i) an employee of such judgment debtor, (ii) a vendor of such judgment debtor, (iii) another licensee, (iv) the spouse or child of such judgment debtor nor the employee of such spouse or child, or (v) any financial or lending institution nor anyone whose business involves the construction or development of real property.

6. No directive ordering payment from the ~~fund~~ Fund shall be entered unless and until the claimant has filed with the Director a verified claim containing the following statements:

a. That the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment.

b. A description of the assets disclosed by such interrogatories.

c. That all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom.

d. The balance remaining due the claimant after the sale or application of such assets.

7. A claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper or dishonest conduct." Any language in the order which supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

B. If the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board. The Board shall determine (i) whether the conduct that gave rise to the claim was improper or dishonest and (ii) what amount, if any, such claimant is entitled to recover from the Fund.

§ 54.1-1123. Limitations upon recovery from Fund; certain actions not a bar to recovery.

A. The maximum claim of one claimant against the ~~fund~~ Fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving contracting, is limited to \$10,000, regardless of the amount of the unpaid judgment of the claimant.

B. The aggregate of claims against the ~~fund~~ Fund based upon unpaid judgments arising out of the improper or dishonest conduct of any one regulant involving contracting, is limited by the Board to \$20,000 during any biennium. If a claim has been made against the ~~fund~~ Fund, and the Board has reason to believe there may be additional claims against the ~~fund~~ Fund from other transactions involving the same regulant, the Board may withhold any payment(s) from the ~~fund~~ Fund involving such regulant for a period of not more than one year from the date on which the claimant is awarded in a court of competent jurisdiction in the Commonwealth the final judgment on which his claim against the ~~fund~~ Fund is based. After this one-year period, if the aggregate of claims against the regulant exceeds \$20,000, during a biennium, \$20,000 shall be prorated by the Board among the claimants and paid from the ~~fund~~ Fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

C. Excluded from the amount of any unpaid judgment upon which a claim against the ~~fund~~ Fund is based shall be any sums representing interest, or punitive or exemplary damages. Such claim against the ~~fund~~ Fund may include court costs and attorneys' fees.

D. If, at any time, the amount of the ~~fund~~ Fund is insufficient to fully satisfy any claims or claim filed with the Board and authorized by this Act, the Board shall pay such claims, claim, or portion thereof to the claimants in the order that the claims were filed with the Board.

E. Failure of a claimant to comply with the provisions of subdivisions 1, 2, and 7 of § 54.1-1120 and

the provisions of § 54.1-1124 shall not be a bar to recovery under this Act if the claimant is otherwise entitled to such recovery.

F. The Board shall have the authority to deny any claim which otherwise appears to meet the requirements of the Act if it finds by clear and convincing evidence that the claimant has presented false information or engaged in collusion to circumvent any of the requirements of the Act.

§ 54.1-1125. Assignment of claimant's rights to Board; payment of claim.

Subject to the provisions of § 54.1-1123 upon the claimant's execution and delivery to the Director of an assignment to the Board of his rights against the regulant, to the extent he received satisfaction from the ~~fund~~ Fund, the Director shall pay the claimant from the ~~fund~~ Fund the amount ordered by the Board.

§ 54.1-1126. Revocation of license upon payment from Fund.

Upon payment by the Director to a claimant from the ~~fund~~ Fund as provided in § 54.1-1125, the Board shall immediately revoke the license ~~or certificate~~ of the regulant whose improper or dishonest conduct resulted in this payment. Any regulant whose license ~~or certificate~~ is revoked shall not be eligible to apply for a license ~~or certificate~~ as a contractor until the regulant has repaid in full the amount paid from the ~~fund~~ Fund on his account, plus interest at the judgment rate of interest from the date of payment.

§ 54.1-1127. No waiver by Board of disciplinary action against regulant.

This article shall not limit the authority of the Board to take disciplinary action against any regulant for any violation of this title or the regulations of the Board. Full repayment of the amount paid from the ~~fund~~ Fund on a regulant's account shall not nullify or modify the effect of any disciplinary proceeding against that regulant for any violation.

Article 3.

Certification of Tradesmen and Backflow Prevention Device Workers.

§ 54.1-1129. Necessity for licensure.

A. Beginning July 1, 1995, no individual shall engage in, or offer to engage in, work as a tradesman as defined in § 54.1-1128 unless he has been ~~certified~~ *licensed* under the provisions of this article. Individuals shall not be subject to *licensure as a tradesman certification* when working under the supervision of a tradesman who is ~~certified~~ *licensed* in the specialty for which work is being performed. Individuals holding a ~~certification~~ *license* in one specialty shall not be required to have a tradesman ~~certification~~ *license* in another specialty when performing work which is incidental to work being performed under their own specialty ~~certification~~ *license*.

B. Beginning July 1, 1998, no individual shall ~~engage in, or offer to engage in, work~~ *present himself* as a *certified* backflow prevention device worker as defined in § 54.1-1128 unless he has been certified under the provisions of this article. Individuals certified as backflow prevention device workers shall not be required to hold any other professional or occupational license or certification; however, nothing in this subsection shall prohibit an individual from holding more than one professional or occupational license or certification. *The certification program set forth in this article concerning backflow prevention device workers shall be voluntary and shall not be construed to prevent or affect the practice of backflow prevention device workers by those not certified by the Board, so long as any requirements of the applicable local governing body's programs relating to backflow prevention device workers are met. All local governing bodies shall accept certification by the Board of backflow prevention device workers as proof of experience and training without requiring additional examination.*

§ 54.1-1130. Application for licensure; fees; examinations; issuance.

Any individual desiring to be ~~certified~~ *licensed* as a tradesman or *certified* as a backflow prevention device worker shall file a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain the applicant's name, place of employment, and business address; information on the knowledge, skills, abilities and education or training of the applicant; and an affidavit stating that the information on the application is correct.

If the application is satisfactory to the Board, the applicant shall be required by Board regulations to take an oral or written examination to determine his general knowledge of the trade in which he desires ~~certification~~ *licensure* or of backflow prevention devices *if he desires voluntary certification* unless he is exempt pursuant to § 54.1-1131. If the applicant successfully completes the examination, ~~certification a license~~ as a tradesman or *certification* as a backflow prevention device worker shall be issued.

§ 54.1-1131. Exemptions.

A. An individual certified or licensed by any one of the following agencies shall not be required to fulfill the examination requirement specified in § 54.1-1130 for a tradesman ~~certification~~ *license*:

1. The Board of Housing and Community Development prior to July 1, 1995.
2. Any local governing body prior to July 1, 1978.
3. An apprenticeship program which is approved by the Virginia Apprenticeship Council.

Individuals applying for a tradesman ~~certification~~ *license* between July 1, 1995, and July 1, 1998, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate *that they have* the required number of years of discipline-free experience set forth in Board regulations.

B. Upon satisfactory evidence to the Board, the following individuals shall not be required to fulfill the examination requirement specified in § 54.1-1130 to be certified as a backflow prevention device worker:

1. Individuals approved, or recognized as having expertise, by a local governing body prior to July 1, 1998, to perform backflow prevention device work; or

2. Individuals applying for certification between July 1, 1998, and July 1, 1999, who are able to demonstrate that they have the required number of years of discipline-free experience and education or training set forth in Board regulations.

C. The provisions of this article shall not apply to any individual who is performing work on any ship, boat, barge or other floating vessel.

§ 54.1-1132. Expiration and renewal of license or certificate.

A ~~certificate~~ *license* as a tradesman or *certification as a* backflow prevention device worker issued pursuant to this article shall expire as provided in Board regulations and shall become invalid on that date unless renewed, subject to approval of the Board. Application for renewal of any *certificate or license* issued pursuant to this article shall be made as provided by Board regulations and shall be accompanied by a fee set by the Board pursuant to § 54.1-201.

§ 54.1-1133. Continuing education.

The Board may establish in the regulations requirements for continuing education as a prerequisite to renewal of any ~~certification~~ *certificate or license* issued under this article.

§ 54.1-1134. Grounds for denial or revocation of certification or license; reports of building officials and others.

The Board shall have the power to require remedial education and to suspend, revoke or deny renewal of the *certification or license* of any individual who is found to be in violation of the statutes or regulations governing the practice of ~~certified~~ *licensed* tradesmen or *certified* backflow prevention device workers in the Commonwealth.

Any building official who finds that an individual is practicing as a tradesman ~~or backflow prevention device worker~~ without ~~certification~~ *a license* as required by this article shall file a report to such effect with the Board. Any water purveyor ~~or building official~~ who finds that an individual is practicing as a backflow prevention device worker without ~~certification~~ *a certificate as required by this article*, *if a certificate is required by the locality in which an individual is engaging in backflow prevention device worker activities*, shall file a report to such effect with the Board.

Any building official who has reason to believe that (i) a tradesman is performing incompetently as demonstrated by an egregious or repeated violation of the Uniform Statewide Building Code (§ 36-97 et seq.) or (ii) a *certified* backflow prevention device worker is performing incompetently as demonstrated by an egregious or repeated violation of the standards adopted by the American Society of Sanitary Engineering referenced in the plumbing code adopted by the Virginia Uniform Statewide Building Code shall file a report to such effect with the Board. Any water purveyor who has reason to believe that a *certified* backflow prevention device worker is performing incompetently as demonstrated by an egregious or repeated violation of the standards adopted by the American Society of Sanitary Engineering referenced in the plumbing code adopted by the Virginia Uniform Statewide Building Code shall file a report to such effect with the Board and local building official.

§ 54.1-1135. Prohibited acts.

A. Practicing or attempting to practice as a tradesman ~~or backflow prevention device worker~~ in the Commonwealth, except as provided for in this article, is prohibited and shall constitute the commission of a Class 3 misdemeanor.

B. *No person shall represent himself as a certified backflow prevention device worker unless he has been certified by the Board. Any person engaging or offering to engage in backflow prevention device worker activities within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a certified backflow prevention device worker without holding such a certificate from the Board shall be guilty of a Class 1 misdemeanor.*

~~B.~~ C. No person shall be entitled to assert the lack of ~~certification~~ *licensure* as required by this article as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of the ~~certification~~ *licensure* requirements of this article.

D. *In any locality which requires state certification to engage in backflow prevention device worker activities, no person shall be entitled to assert a lack of certification as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of the locality's certification requirements.*

§ 54.1-2211. Duties; licensing.

A. The Board shall promulgate regulations and standards for the training and ~~certification~~ *licensing* of waste management facility operators. The Board may establish classes of training and ~~certification~~ *licensing* based upon the type of waste management facility for which a waste management facility operator seeks ~~certification~~ *a license*. Training and ~~certification~~ *licensing* requirements may vary for the

classes of ~~certification~~ *license* established by the Board based upon the type of facility and the type of waste managed at the facility. The Board shall consider an applicant's prior experience in determining whether the applicant meets the training requirements imposed by this chapter.

B. Any person may apply to the Board for approval of the training programs it administers to waste management facility operators. Such training programs shall be approved by the Board if they meet the requirements established by the Board. Any person successfully completing a training program approved by the Board shall be deemed to have met the training requirements imposed by this chapter.

§ 54.1-2212. License required.

Effective January 1, 1993, no person shall be a waste management facility operator or represent himself as a waste management facility operator without a ~~certification~~ *license* from the Board.

2. That the provisions of this act shall not effect the validity of any certificate duly issued by the Board for Asbestos Licensing, the Board for Contractors, or the Board for Waste Management Facility Operators before July 1, 1997.