

964413805

HOUSE BILL NO. 1336

Offered January 22, 1996

A BILL to amend and reenact §§ 2.1-116, 9-6.14:4.1, 11-45, 54.1-310, 54.1-2000, 54.1-2002, 54.1-2003, 54.1-2005, 54.1-2006, and 54.1-2007 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 54.1-2002.1, and to repeal § 54.1-2004 of the Code of Virginia, relating to privatizing the activities of the Board for Accountancy.

Patron—Croshaw

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-116, 9-6.14:4.1, 11-45, 54.1-310, 54.1-2000, 54.1-2002, 54.1-2003, 54.1-2005, 54.1-2006, and 54.1-2007 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 54.1-2002.1 as follows:

- § 2.1-116. Certain officers and employees exempt from chapter.
- The provisions of this chapter shall not apply to:
1. Officers and employees for whom the Constitution specifically directs the manner of selection;
 2. Officers and employees of the Supreme Court and the Court of Appeals;
 3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
 4. Officers elected by popular vote or by the General Assembly or either house thereof;
 5. Members of boards and commissions however selected;
 6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
 7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
 8. The presidents, and teaching and research staffs of state educational institutions;
 9. Commissioned officers and enlisted personnel of the national guard and the naval militia;
 10. Student employees in institutions of learning, and patient or inmate help in other state institutions;
 11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;
 12. County, city, town and district officers, deputies, assistants and employees;
 13. The employees of the Virginia Workers' Compensation Commission;
 14. The following officers and employees of the Virginia Retirement System: retirement system chief investment officer, retirement system investment officer, retirement system assistant investment officer and investment financial analyst;
 15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, the Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and The Library of Virginia, and approved by the Director of the Department of Personnel and Training as requiring specialized and professional training;
 16. Employees of the State Lottery Department;
 17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs; and
 18. Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center who are determined by the Department of Personnel and Training to be health care providers; however, any changes in compensation plans for such employees shall be subject to the review and approval of the Secretary of Education. Such employees shall remain subject to the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1; and
 19. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions, shall be deemed to serve on an employment at will basis. An agency may not exceed two employees who serve in this exempt capacity; and
 20. Employees of the Contractor or the Council for Accountancy as those terms are defined in § 54.1-2000.
- § 9-6.14:4.1. Exemptions and exclusions.

INTRODUCED

HB1336

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities, except for those created under Chapter 27 (§ 15.1-1228 et seq.) of Title 15.1.

6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Council on Information Management.

12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.

13, 14. [Repealed.]

15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

18. The Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.

19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

21. The Virginia War Memorial Foundation.

22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-280.3.

24. *The Contractor or the Council for Accountancy as those terms are defined in § 54.1-2000, in the adoption and implementation of rules governing the licensing of certified public accountants pursuant to Chapter 20 (§ 54.1-2000 et seq.) of Title 54.1.*

B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, naval or police functions.

7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.

- 122 8. The conduct of elections or eligibility to vote.
- 123 9. Inmates of prisons or other such facilities or parolees therefrom.
- 124 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as
- 125 well as the treatment, supervision, or discharge of such persons.
- 126 11. Traffic signs, markers or control devices.
- 127 12. Instructions for application or renewal of a license, certificate, or registration required by law.
- 128 13. Content of, or rules for the conduct of, any examination required by law.
- 129 14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter
- 130 14 of Title 2.1.
- 131 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
- 132 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
- 133 published and posted.
- 134 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
- 135 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, Title 28.2.
- 136 17. Any operating procedures for review of child deaths developed by the State Child Fatality
- 137 Review Team pursuant to § 32.1-283.1.
- 138 C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia
- 139 Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:
- 140 1. Agency orders or regulations fixing rates or prices.
- 141 2. Regulations which establish or prescribe agency organization, internal practice or procedures,
- 142 including delegations of authority.
- 143 3. Regulations which consist only of changes in style or form or corrections of technical errors. Each
- 144 promulgating agency shall review all references to sections of the Code of Virginia within their
- 145 regulations each time a new supplement or replacement volume to the Code of Virginia is published to
- 146 ensure the accuracy of each section or section subdivision identification listed.
- 147 4. Regulations which:
- 148 (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no
- 149 agency discretion is involved;
- 150 (b) Are required by order of any state or federal court of competent jurisdiction where no agency
- 151 discretion is involved; or
- 152 (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations
- 153 do not differ materially from those required by federal law or regulation, and the Registrar has so
- 154 determined in writing; notice of the proposed adoption of these regulations and the Registrar's above
- 155 determination shall be published in the Virginia Register not less than thirty days prior to the effective
- 156 date thereof.
- 157 5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of
- 158 this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public
- 159 health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law
- 160 or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of
- 161 the law or the appropriation act or the effective date of the federal regulation, and the regulation is not
- 162 exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in
- 163 writing the nature of the emergency and of the necessity for such action and may adopt such regulations
- 164 with the prior approval of the Governor. Such regulations shall be limited to no more than twelve
- 165 months in duration. During the twelve-month period, an agency may issue additional emergency
- 166 regulations as needed addressing the subject matter of the initial emergency regulation, but any such
- 167 additional emergency regulations shall not be effective beyond the twelve-month period from the
- 168 effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject
- 169 matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace
- 170 the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this
- 171 chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be
- 172 published within sixty days of the effective date of the emergency regulation, and the proposed
- 173 replacement regulation shall be published within 180 days after the effective date of the emergency
- 174 regulation.
- 175 6. [Repealed.]
- 176 7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to
- 177 subsection C of § 10.1-1322.2.
- 178 8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or
- 179 clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board
- 180 meetings and one public hearing.
- 181 Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that
- 182 it will receive, consider and respond to petitions by any interested person at any time with respect to

reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties under the tax laws.
2. The award or denial of claims for workers' compensation.
3. The grant or denial of public assistance.
4. Temporary injunctive or summary orders authorized by law.
5. The determination of claims for unemployment compensation or special unemployment.
6. The award or denial of individual student loans by the Virginia Education Loan Authority.
7. The determination of applications for guaranty of individual student loans or the determination of default claims by the State Education Assistance Authority.

E. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title 62.1 by the Marine Resources Commission shall be in accordance with the provisions of this chapter.

F. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

G. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

H. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

§ 11-45. Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.1-1374 (d).

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. The Executive Director of the Virginia Health Services Cost Review Council may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, and evaluation of patient level data pursuant to Article 2 (§ 9-166.1 et seq.) of Chapter 26 of Title 9, if the Executive Director has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination.

L. The Contractor or the Council for Accountancy as those terms are defined in § 54.1-2000, in the adoption and implementation of rules governing the licensing of certified public accountants pursuant to Chapter 20 (§ 54.1-2000 et seq.) of Title 54.1.

§ 54.1-310. Powers and duties of Board.

A. The Board shall have the following powers and duties:

1. Provide a means of citizen access to the Department.
2. Provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities.

3. Monitor the policies and activities of the Department and have the right of access to departmental information.

4. Advise the Governor and the Director on matters relating to the regulation of professions and occupations.

5. Promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) necessary to carry out its responsibilities.

6. Evaluate constantly each profession and occupation in the Commonwealth not otherwise regulated for consideration as to whether such profession or occupation should be regulated and, if so, the degree of regulation that should be imposed. Whenever it determines that the public interest requires that a profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly next convened a regulatory system accompanied by comprehensive regulations necessary to conduct the degree of regulation required.

7. Advise the Governor and the Director on matters relating to the licensing program for certified public accountants in accordance with § 54.1-2002.

B. Upon the regulation of a profession or occupation as set forth in subsection A, the Board shall have the power and duty to promulgate supplemental regulations necessary to effectuate the purposes and intent of this chapter and to establish regulatory boards to administer the system of regulation and the regulations recommended by the Board and approved by the General Assembly.

§ 54.1-2000. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

"Assurance" means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards.

"Board" means the Board for Accountancy continued by the provisions of this chapter and established by its predecessor under prior law.

"Certificate" means a certificate as a certified public accountant issued by the Board pursuant to this chapter or corresponding provisions of prior law or a corresponding certificate as a certified public accountant issued after examination under the laws of any other state.

"Contractor" means any corporation, association or organization which is recognized by the Commonwealth, through a contract, as an appropriate responsible party to provide services to assist the Commonwealth in complying with this chapter.

"Council" means the Council for Accountancy established under the provisions of § 54.1-2002.1.

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

"Financial statement" means writing or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position of any person, corporation, partnership or other entity.

306 "License" means a license to practice public accounting issued under the provisions of this chapter.

307 "Local accounting firm" means a firm providing certified public accounting services and having one
308 or more offices in the Commonwealth.

309 "National accounting firm" means a firm providing certified public accounting services and which
310 has offices throughout the United States with a least one office in the Commonwealth.

311 "Practice of public accountancy" or "public accounting" means the giving of an assurance, in a report
312 or otherwise, whether expressly or implicitly, unless this assurance is given by an employee to his
313 employer.

314 "Regional accounting firm" means a firm providing certified public accounting services and having
315 at least one office in the Commonwealth and an additional office in one state contiguous to the
316 Commonwealth.

317 "Registration certificate" means a certificate issued to a professional corporation or professional
318 limited liability company that has met all of the requirements for registration under this chapter.

319 "Report" or "reports" when used with reference to financial statements, means an opinion or
320 disclaimer of opinion or other form of language or representation which states or implies any form of
321 assurance or denial of assurance.

322 "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin
323 Islands and Guam.

324 § 54.1-2002. State Board for Accountancy; membership; qualifications; powers and duties of Board.

325 A. The Board for Accountancy shall consist of seven members ~~who shall serve for terms of four~~
326 ~~years. Members of the Board for Accountancy as it existed prior to July 1, 1987, may continue as Board~~
327 ~~members until their individual terms expire.~~

328 As the terms of the members of the Board expire, they shall be replaced by members with the whose
329 appointment shall end June 30, 2000, at which time the Board shall be dissolved. Members shall have
330 the following qualifications: one public member who may be an unlicensed accountant who otherwise
331 meets the requirements of § 54.1-107 (i) and (ii); one educator in the field of accounting; and five
332 practicing certified public accountants, duly certified and licensed, who have been actively engaged in
333 the practice of public accounting for at least three years prior to appointment to the Board. Any certified
334 public accountant member of the Board whose license is revoked or suspended shall automatically cease
335 to be a member of the Board.

336 B. The Board shall have the responsibility for the enforcement of the provisions of this chapter
337 subject to the powers and duties of the Director to oversee the orderly transition of control to the
338 Contractor of the program for certified public accountants as provided for in this chapter. Such
339 transition shall be completed on or before June 30, 2000.

340 The Board for Accountancy shall certify and license persons to practice public accountancy and
341 restrict the practice of public accountancy to those persons who are so certified and licensed. The Board
342 shall also take such actions as may be authorized by this title to aid the public in determining the
343 qualifications of persons who give assurances on financial statements.

344 C. The Board may establish continuing education requirements for the issuance of a license or to
345 assure continued competency of licensees. The Contractor shall conduct the licensing program in strict
346 compliance with the Board's regulations until June 30, 2000. The Contractor shall present to the Board
347 for its approval "Rules for Licensing Certified Public Accountants in Virginia" (the Rules) on or before
348 July 1, 1999. The Board may make any necessary changes to the Rules and shall approve the Rules to
349 become effective July 1, 2000. All subsequent changes to the Rules shall be submitted for review and
350 comment by the Director and the Board for Professional and Occupational Regulation prior to effecting
351 such changes.

352 D. Effective July 1, 2000, the Board for Professional and Occupational Regulation shall monitor the
353 policies, rules and activities of the Contractor. The Contractor shall report to the Board for
354 Professional and Occupational Regulation on a quarterly basis as specified by such Board.

355 E. The Contractor shall collect all fees related to the program under this chapter and shall remit to
356 the Department, an annual fee, as stated in the contract, which shall cover the administrative and
357 compliance costs incurred by the Department.

358 F. The Contractor shall be exempted from the provisions of the Virginia Personnel Act (§ 2.1-100 et
359 seq.) of Title 2.1. However, personnel actions taken by the Contractor shall be without regard to race,
360 sex, color, national origin, religion, age, handicap, or political affiliation. The Contractor shall be
361 exempt from the provisions of the (i) Virginia Public Procurement Act (§ 11-35 et seq.) of Title 11 and
362 (ii) Administrative Process Act (§ 9-6.14:1 et seq.) of Title 9.

363 G. The Contractor shall reimburse the expenses of the members of the Board to cover required
364 participation in licensing activities until June 30, 2000.

365 § 54.1-2002.1. Contracted entities; Council for Accountancy.

366 A. The Director is hereby authorized to enter into a contract effective July 1, 1997, with any
367 qualified Contractor to carry out all necessary activities to comply with this chapter. The selected

Contractor shall take the necessary action to establish the Council on or before December 31, 1998.

B. The Council for Accountancy shall consist of nine members. Members shall serve the terms, as indicated and have the following qualifications: one educator in the field of accounting, to be appointed by the Governor and whose initial term shall commence when appointed and shall end December 31, 2000; one public member, who may be an unlicensed accountant, to be appointed by the Governor and whose initial terms shall commence when appointed and shall end December 31, 2000; one public member, who may be an unlicensed accountant, to be appointed by the Governor and whose initial term shall commence when appointed and shall end December 31, 2001; six regulants of the Council, to be elected by the body at large, one of whom shall be in the practice of public accountancy with a local accounting firm, and whose term shall commence when elected and end December 31, 2000, and one of whom shall be in the practice of public accountancy with a regional accounting firm, and whose term shall commence when elected and end December 31, 2001, and one of whom shall be in the practice of public accountancy in a national accounting firm, and whose term shall commence when elected and shall end December 31, 2002, and one ex-officio member, who shall represent the contractor, with voice and vote.

C. Subsequent terms on the Council shall not exceed four years and a member may not serve more than two consecutive terms. Council members may fill an unexpired term of a departing member and complete two additional terms.

D. The Council shall have the authority to secure any and all services necessary to certify Certified Public Accountants in Virginia and to establish the Rules governing Certified Public Accountants in the Commonwealth. The Council shall have direction, management, control of, jurisdiction and authority over the program under this chapter for Certified Public Accountants in the Commonwealth.

E. The Council shall be exempted from the provisions of the Virginia Personnel Act (§ 2.1-100 et seq.) of Title 2.1. However, personnel actions taken by the Council shall be without regard to race, sex, color, national origin, religion, age, handicap, or political affiliation. The Council shall be exempt from the provisions of the (i) Virginia Public Procurement Act (§ 11-35 et seq.) of Title 11 and (ii) Administrative Process Act (§ 9-6.14:1 et seq.) of Title 9.

F. The Contractor shall pay reasonable expenses for the operation of the Council and reimbursement of expenses for Council members for required participation in program activities.

G. All program activities shall be conducted in accordance with the provisions of this chapter. Any final decision by the Council may be appealed to the circuit court.

H. The selected licensing entity shall demonstrate the following qualifications before a contract may be awarded by the Director:

1. Management and support personnel necessary to carry out the provisions in the contract;
2. Financial resources necessary to carry out the provisions of the contract and an adequate plan of indemnification to protect the Commonwealth and public officials from all claims and losses incurred as a result of the contract. Nothing herein shall be construed to deprive the licensing entity or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on damages;
3. Evidence of past performance in developing and enforcing standards of practice for public accounting;
4. Compliance with all applicable federal and state constitutional standards and federal, state and local laws;
5. Ability to develop and implement procedures and rules to grant, deny and revoke and take other actions as may be necessary in the licensing process;
6. Ability to develop procedures and controls for the accounting of fees required in the licensing process;
7. Ability to provide procedures and rules which protect the safety and welfare of the public and the regulant population;
8. Ability to develop procedures and rules to enforce the provisions of this chapter and any rules established to carry out the requirements of the contract; and
9. Ability to immediately provide upon request any documentation requested by the Director to ensure compliance with the contract.

The licensing entity shall maintain the qualifications stated above for the term of the contract.

§ 54.1-2003. Grant of certificate; restrictions on practice; educational requirements.

A. The ~~Board~~ Contractor shall issue a certificate only to a person who meets the character, education, and examination requirements established by ~~regulations of the Board in rules~~. Before adopting any ~~regulations rules~~ requiring that an individual admitted for examination have more than a baccalaureate degree, the ~~Board~~ Contractor shall submit such proposed ~~regulations rules~~ to the State Council of Higher Education for its review and comment and the ~~Board~~ shall coordinate and consult with the State Council of Higher Education regarding such ~~regulations rules~~. ~~Any such regulations shall not be effective prior to February 15, 1994.~~ A person who holds a valid certificate granted to him by

429 the ~~Board~~ *Contractor* may refer to himself as a Certified Public Accountant or CPA but is not
430 empowered to practice public accountancy until he obtains a valid license to do so.

431 B. For the purpose of meeting the examination requirements referred to in subsection A of this
432 section, the ~~Board~~ *Contractor* may admit for examination graduates of (i) Bristol College, Bristol,
433 Tennessee, using the same criteria for admission as required by the Tennessee State Board of
434 Accountancy and (ii) Benjamin Franklin School of Accountancy and Financial Administration,
435 Washington, D.C., using the same criteria for admission as required by the District of Columbia Board
436 of Accountancy.

437 C. For the purpose of meeting the examination requirement referred to in subsection A of this
438 section, the ~~Board~~ *Contractor* shall admit graduates with a baccalaureate degree with a major in
439 accounting or a concentration in accounting from National Business College of Virginia, who have
440 otherwise completed the course work and credit hours required by the ~~Board~~ *Contractor*.

441 § 54.1-2005. Professional corporations and limited liability companies.

442 A. No professional corporation organized under the provisions of Chapter 7 (§ 13.1-542 et seq.) of
443 Title 13.1 or professional limited liability company organized under the provisions of Chapter 13
444 (§ 13.1-1100 et seq.) of Title 13.1 shall practice, directly or indirectly, public accounting in this
445 Commonwealth unless registered under this chapter.

446 B. A professional corporation organized under the provisions of Chapter 7 of Title 13.1 or
447 professional limited liability company organized under the provisions of Chapter 13 of Title 13.1 shall
448 be issued a registration certificate by the ~~Board~~ *Contractor* upon its application and payment of the
449 required registration fee provided that:

450 1. Each shareholder of the professional corporation or member or manager of a professional limited
451 liability company who will practice public accountancy in Virginia holds a license issued by the
452 ~~Board~~ *Contractor*.

453 2. The name of the professional corporation or professional limited liability company and the conduct
454 of its practice conform with the ethical standards which its shareholders or members and managers are
455 required to observe in the practice of public accountancy and the name includes, as appropriate, such
456 designation of the corporate form as is authorized by Chapter 7 of Title 13.1 and is followed by the
457 description a "Professional Corporation" or "PC," or designation of the professional limited liability
458 company form as is authorized by Chapter 13 of Title 13.1 and is followed by the description
459 "Professional Limited Company" or "Professional Limited Liability Company," or the abbreviations
460 "P.L.C." or "P.L.L.C."

461 C. ~~Professional corporation or professional limited liability company registration certificates shall be~~
462 ~~renewed biennially on the anniversary date if such corporation or professional limited liability company~~
463 ~~meets the requirements for registration and has paid the registration fee. The Board shall establish a~~
464 ~~renewal fee.~~

465 § 54.1-2006. Unprofessional conduct.

466 The ~~Board~~ *Contractor* may revoke or suspend a license or certificate or impose lesser sanctions,
467 *without complying with the Administrative Process Act (§ 9-6.14:1 et seq.),* for any of the following
468 causes:

469 1. The use of fraud, deceit, or misrepresentation about credentials or qualifications for licensure or
470 certification.

471 2. The conviction of any crime involving moral turpitude.

472 3. Unprofessional conduct in violation of the Standards of Practice adopted by the ~~Board~~ *Council*.

473 4. Professional discipline imposed by another state in the practice of public accountancy.

474 5. Dishonesty, fraud, or negligence in the practice of public accountancy.

475 6. Suspension or revocation of the right to practice before any state or federal agency.

476 7. Violation of any of the provisions of this chapter ~~or any regulation promulgated by the Board~~.

477 § 54.1-2007. Prohibited acts.

478 A. A person who does not hold a valid license issued ~~by the Board pursuant to this chapter~~ shall
479 not:

480 1. Claim to hold a valid license;

481 2. Practice or offer to practice public accountancy or public accounting; or

482 3. Make any other claim of licensure, registration, or approval related to the preparation of financial
483 statements which is false or misleading.

484 B. A person who does not hold a valid certificate issued ~~by the Board pursuant to this chapter~~ shall
485 not claim to hold one or describe himself as or assume any of the following titles or designations:
486 certified public accountant, CPA, public accountant, PA, certified accountant, CA, chartered accountant,
487 licensed accountant, LA, registered accountant, RA, independent auditor or auditor.

488 C. A person who does not hold a valid license issued ~~by the Board pursuant to this chapter~~ shall not
489 claim to have used "generally accepted accounting principles," "generally accepted accounting
490 standards," "public accountancy standards," "public accountancy principles," "generally accepted auditing

principles," or "generally accepted auditing standards," in connection with his preparation of any financial statement; nor shall he use any of these terms in describing any complete or partial variation from such standards or principles or to imply complete or partial conformity with such standards or principles.

D. A person who does not hold a valid license issued ~~by the Board~~ *pursuant to this chapter* shall not use the words "audit," "audit report," "independent audit," "attest," "attestation," "examine," "examination," "opinion," or "review" in a report as that term is defined in this chapter, and which expresses assurance on a financial statement.

E. A person who does not hold a valid license issued ~~by the Board~~ *pursuant to this chapter* shall neither state nor imply that he is tested, competent, qualified, or proficient in financial standards established by (i) the American Institute of Certified Public Accountants or any agency thereof, (ii) the Governmental Accounting Standards Board or any agency thereof, (iii) the Securities and Exchange Commission or any agency thereof, (iv) the Financial Accounting Standards Board, or (v) any successor entity to an entity named in this subsection.

F. A person who holds a valid license issued ~~by the Board~~ *pursuant to this chapter* shall not engage in the practice of public accounting under a professional or firm name or designation that contains a name or term other than past or present partners, officers, members, managers, or shareholders of the firm or of a predecessor firm; nor shall any such person engage in the practice of public accounting under a professional or firm name which is deceptive or misleading.

2. That § 54.1-2004 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on July 1, 1997, except that the provisions of §§ 54.1-2002 and 54.1-2002.1 shall become effective in due course.