

# 1996 RECONVENED SESSION

ENROLLED

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

Approved

[H 336]

**Be it enacted by the General Assembly of Virginia:**

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

§ 2.1-1.6. State boards.

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

Accountancy, Board for

Aging, Advisory Board on the

Agriculture and Consumer Services, Board of

Air Pollution, State Advisory Board on

Alcoholic Beverage Control Board, Virginia

Apple Board, Virginia State

Appomattox State Scenic River Advisory Board

Aquaculture Advisory Board

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

Art and Architectural Review Board

Athletic Board, Virginia

Auctioneers Board

Audiology and Speech-Language Pathology, Board of

Aviation Board, Virginia

Barbers, Board for

Branch Pilots, Board for

Bright Flue-Cured Tobacco Board, Virginia

Building Code Technical Review Board, State

Catoctin Creek State Scenic River Advisory Board

Cattle Industry Board, Virginia

Cave Board

Certified Seed Board, State

Chesapeake Bay Local Assistance Board

Chickahominy State Scenic River Advisory Board

Child Abuse and Neglect, Advisory Board on

Chippokes Plantation Farm Foundation, Board of Trustees

Clinch Scenic River Advisory Board

Coal Mining Examiners, Board of

Coal Research and Development Advisory Board, Virginia

Coal Surface Mining Reclamation Fund Advisory Board

Coastal Land Management Advisory Council, Virginia

Conservation and Development of Public Beaches, Board on

Conservation and Recreation, Board of

Contractors, Board for

Corn Board, Virginia

Correctional Education, Board of

Corrections, State Board of

Cosmetology, Board for

Criminal Justice Services Board

Dark-Fired Tobacco Board, Virginia

Deaf and Hard-of-Hearing, Advisory Board for the Department for the

Dentistry, Board of

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

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

179 Virginia Veterans Care Center Board of Trustees.  
 180 § 2.1-483.1:2. *Assistance to the Design-Build/Construction Management Review Board.*  
 181 *The Director of the Division of Engineering and Buildings or his designee shall serve as a member*  
 182 *of the Design-Build/Construction Management Review Board (the Review Board) created pursuant to*  
 183 *§ 11-41.2:3. The Division shall provide staff support to the Review Board in the conduct of its duties in*  
 184 *accordance with § 11-41.2:4.*  
 185 § 9-6.25:2. Policy boards, commissions and councils.  
 186 There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the  
 187 following policy boards, commissions and councils:  
 188 Apprenticeship Council  
 189 Athletic Board  
 190 Auctioneers Board  
 191 Blue Ridge Regional Education and Training Council  
 192 Board for Accountancy  
 193 Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects  
 194 Board for Barbers  
 195 Board for Contractors  
 196 Board for Cosmetology  
 197 Board for Geology  
 198 Board for Hearing Aid Specialists  
 199 Board for Opticians  
 200 Board for Professional and Occupational Regulation  
 201 Board for Professional Soil Scientists  
 202 Board for Waterworks and Wastewater Works Operators  
 203 Board of Agriculture and Consumer Services  
 204 Board of Audiology and Speech-Language Pathology  
 205 Board of Coal Mining Examiners  
 206 Board of Conservation and Recreation  
 207 Board of Correctional Education  
 208 Board of Dentistry  
 209 Board of Directors, Virginia Student Assistance Authorities  
 210 Board of Funeral Directors and Embalmers  
 211 Board of Health Professions  
 212 Board of Historic Resources  
 213 Board of Housing and Community Development  
 214 Board of Medical Assistance Services  
 215 Board of Medicine  
 216 Board of Mineral Mining Examiners  
 217 Board of Nursing  
 218 Board of Nursing Home Administrators  
 219 Board of Optometry  
 220 Board of Pharmacy  
 221 Board of Professional Counselors  
 222 Board of Psychology  
 223 Board of Recreation Specialists  
 224 Board of Social Services  
 225 Board of Social Work  
 226 Board of Surface Mining Review  
 227 Board of Veterinary Medicine  
 228 Board on Conservation and Development of Public Beaches  
 229 Chesapeake Bay Local Assistance Board  
 230 Child Day Care and Early Childhood Programs, Virginia Council on  
 231 Child Day-Care Council  
 232 Commission on Local Government  
 233 Commonwealth Transportation Board  
 234 Council on Human Rights  
 235 Council on Information Management  
 236 Criminal Justice Services Board  
 237 *Design-Build/Construction Management Review Board*  
 238 Disability Services Council  
 239 Farmers Market Board, Virginia

- 240 Immigrant and Refugee Policy Council
- 241 Interdepartmental Council on Rate-setting for Children's Facilities
- 242 Library Board, The Library of Virginia
- 243 Marine Resources Commission
- 244 Milk Commission
- 245 Pesticide Control Board
- 246 Real Estate Appraiser Board
- 247 Real Estate Board
- 248 Reciprocity Board, Department of Motor Vehicles
- 249 Safety and Health Codes Board
- 250 Seed Potato Board
- 251 Southside Virginia Marketing Council
- 252 Specialized Transportation Council
- 253 State Air Pollution Control Board
- 254 State Board of Corrections
- 255 State Board of Elections
- 256 State Board of Health
- 257 State Board of Youth and Family Services
- 258 State Health Department, Sewage Handling and Disposal Appeal Review Board
- 259 State Library Board
- 260 State Mental Health, Mental Retardation and Substance Abuse Services Board
- 261 State Water Control Board
- 262 Substance Abuse Certification Board
- 263 Treasury Board, The, Department of the Treasury
- 264 Virginia Aviation Board
- 265 Virginia Board for Asbestos Licensing
- 266 Virginia Fire Services Board
- 267 Virginia Gas and Oil Board
- 268 Virginia Health Planning Board
- 269 Virginia Health Services Cost Review Council
- 270 Virginia Manufactured Housing Board
- 271 Virginia Parole Board
- 272 Virginia Public Telecommunications Board
- 273 Virginia Soil and Water Conservation Board
- 274 Virginia Voluntary Formulary Board
- 275 Virginia Waste Management Board
- 276 Virginia World Trade Council
- 277 (Contingently repealed) Waste Management Facility Operators, Board for.
- 278 § 11-41.2:2. *Design-build or construction management contracts for public bodies other than the*
- 279 *Commonwealth; eligibility requirements; award of contract; records to be kept.*
- 280 A. *While the competitive sealed bid process remains the preferred method of construction*
- 281 *procurement for public bodies in the Commonwealth, any public body other than the Commonwealth*
- 282 *may enter into a contract for construction on a fixed price or not-to-exceed price design-build or*
- 283 *construction management basis provided the public body complies with the requirements of this section*
- 284 *and has obtained the approval of the Design-Build/Construction Management Review Board (the Review*
- 285 *Board) pursuant to § 11-41.2:5.*
- 286 *Prior to making a determination as to the use of design-build or construction management for a*
- 287 *specific construction project, the public body shall have in its employ or under contract a licensed*
- 288 *architect or engineer with professional competence appropriate to the project who shall advise the*
- 289 *public body regarding the use of design-build or construction management for that project and who*
- 290 *shall assist the public body with the preparation of the Request for Proposal.*
- 291 *Prior to issuing a Request for Proposal for any design-build or construction management contract*
- 292 *for a specific construction project, the public body shall:*
- 293 1. *Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation*
- 294 *and award of design-build and construction management contracts. Such procedures shall be consistent*
- 295 *with those described in this chapter for the procurement of nonprofessional services through competitive*
- 296 *negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria*
- 297 *of such construction project in areas such as site plans; floor plans; exterior elevations; basic building*
- 298 *envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical*
- 299 *systems; and special telecommunications; and may define such other requirements as the public body*
- 300 *determines appropriate for that particular construction project. Except as may otherwise be approved by*

the Review Board, such procedures for:

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The Review Board shall have the following duties:

1. Review submissions by public bodies other than the Commonwealth of draft or adopted ordinances or resolutions to determine if the process for the selection, evaluation and award of a design-build or

construction management contract is in compliance with the provisions of subdivision A 1 of § 11-41.2:2;

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

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

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

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

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

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

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

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

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

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

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

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

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