

**STUDY ON
GRANTS OF AUTHORITY
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 13

**COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
RICHMOND
1979**

STUDY ON
GRANTS OF AUTHORITY
TO AGENCIES AND BOARDS OF EXECUTIVE DEPARTMENT

A Report Pursuant to Senate Joint Resolution 58
Adopted by the 1978 General Assembly

Prepared by
The Management Consulting Division of
The Department of Management Analysis and Systems Development

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COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

Charles B. Walker
Secretary of Administration and Finance

January 10, 1979

The Honorable John N. Dalton
Governor of Virginia
State Capitol
Richmond, Virginia

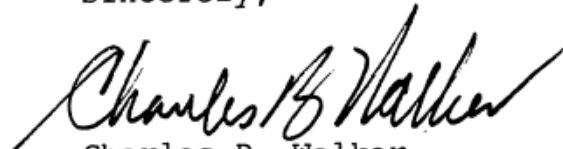
Dear Governor Dalton:

In compliance with Senate Joint Resolution (SJR) 58 (78), I am pleased to submit the attached report which represents the continuation of the study of statutory grants of authority. The initial study was mandated by Senate Joint Resolution (SJR) 96 (77) and the results were published in Senate Document (SD) 11 (78). The continued study was conducted consistently with the previous concerns, findings, recommendations, and methods expressed in those documents.

The SJR 58 report was prepared by the Department of Management Analysis and Systems Development (DMASD) under my direction with the help of the other Secretaries, the Assistants to the Secretaries for Management Services, agency heads, board chairmen, the Attorney General, the Director of Legislative Services, and consultants to this office.

The follow-up effort has: reviewed the implementation of recommendations resulting from the work of the SJR 96 Task Force; identified new problems that have arisen in the interim; and developed this report on the actions taken to resolve each previously identified problem.

Sincerely,



Charles B. Walker

Attachment

SENATE JOINT RESOLUTION NO. 96

Requesting the Governor to review the statutory grants of power to the various boards, councils, commissions, departments and agencies of the executive branch of State government, as well as the rules, regulations, standards, orders or other actions of such bodies, to determine whether the statutes granting such powers are in any instances lacking in adequate guidelines and limitations on the exercise of such powers, and to insure that any rules, regulations, standards, orders or other actions adopted pursuant to such statutory grants of power are consistent therewith and do not exceed such grants; and to present his findings and recommendations to the General Assembly at its nineteen hundred seventy-eight Session.

Agreed to by the Senate, March 4, 1977

Agreed to by the House of Delegates, March 4, 1977

WHEREAS, the General Assembly has granted power to various boards, councils, commissions, departments and agencies within the executive branch of State government, including the power to make rules and regulations, promulgate standards, issue orders, and take other actions of a quasi-legislative nature; and

WHEREAS, these grants of power should be accompanied by guidelines and limitations which adequately circumscribe the exercise of such powers by the various executive bodies; and

WHEREAS, adequate guidelines and limitations on the exercise of these powers are essential to insure accountability and to protect against the usurpation of legislative prerogatives; and

WHEREAS, there should be a systematic and periodic review of the actions taken by the various executive bodies to insure that such actions are consistent with statutory grants of power and do not exceed such grants and any guidelines or limitations accompanying them; and

WHEREAS, the Governor is responsible under the Constitution of Virginia to see that the laws are faithfully executed, and responsible by statute for a review of the programs and activities of all executive bodies each biennium in connection with the formulation and submission of a comprehensive budget to the General Assembly; and

WHEREAS, the Governor is ideally situated to undertake a review of such statutory grants and any actions taken pursuant thereto in connection with the exercise of his other responsibilities; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the Governor is requested to review the statutory grants of power to the various boards, councils, commissions, departments and agencies within the executive branch of State government, to determine whether the statutes granting such powers are in any instances lacking in adequate guidelines or limitations on the exercise of such powers, and to insure that any rules, regulations, standards, orders or other actions adopted pursuant thereto are consistent therewith and do not exceed such grants or any guidelines and limitations accompanying them and to present his findings and recommendations to the General Assembly on or before January eleven, nineteen hundred seventy-eight.

SENATE JOINT RESOLUTION NO. 58

Requesting the continuation of the study of statutory grants of authority to executive branch agencies, conducted by the Task Force appointed pursuant to Senate Joint Resolution No. 96 of the 1977 Session of the General Assembly.

Agreed to by the Senate, February 18, 1978

Agreed to by the House of Delegates, March 6, 1978

WHEREAS, the Governor was requested by Senate Joint Resolution No. 96, adopted at the nineteen hundred seventy-seven Session of the General Assembly, to conduct a study of the statutory grants of authority to all executive branch agencies; and

WHEREAS, the Task Force appointed to carry out such study uncovered a not inconsiderable number of instances in which alteration of statutory provisions might improve agency efficiency, enable better legislative oversight of executive functions, or otherwise improve the effectiveness of State government; and

WHEREAS, one of the remarks contained in the report of the Task Force expressed the desirability of a follow-up study to assist in the implementation of recommendations resulting from the work of the Task Force, and to continue work in areas which required more attention than they could be accorded in a one-year effort; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the General Assembly hereby requests the continuation of the study of statutory grants of authority and other matters, conducted by the Governor's special Task Force pursuant to Senate Joint Resolution No. 96 of nineteen hundred seventy-seven. The continued study is requested to concentrate on, but not necessarily confine itself to, those areas which the Task Force found to be in greatest need of follow-up attention, more detailed investigation, and coordination with the federal government, and to report its findings and recommendations to the General Assembly on or before January ten, nineteen hundred seventy-nine.

INTRODUCTION TO THE STUDIES UNDER SJR 96 AND SJR 58

SJR 96 INITIAL STUDY, STRUCTURE, PARTICIPANTS AND METHOD

Senate Joint Resolution 96, enacted by the 1977 General Assembly, directed the Governor to review the statutory grants of authority to executive department boards, councils, commissions, departments and agencies, and the rules, regulations, standards, orders and other actions of such bodies, to determine whether or not statutes are lacking in adequate guidelines and limitations, and to ensure that rules, regulations, standards, orders or other actions are consistent with and do not exceed statutory grants of power. The Resolution obligated the Governor to present findings and recommendations to the General Assembly by January 11, 1978.

To conduct the study, the then Secretary of Administration and Finance, Maurice B. Rowe, on behalf of the Governor, established a Task Force representing the six secretarial areas in the Executive Department. Mrs. Pat Perkinson, the then Secretary of the Commonwealth, served as Chairman of the Task Force and representative of Secretary Rowe and the agencies in his Office of Administration and Finance. Others named by their respective Secretaries were William E. Breen, MIS Director, representing then Secretary Earl J. Shiflet and the agencies in the Office of Commerce and Resources; Charles A. Brooks, Human Resources Developer, representing then Secretary Woodrow W. Wilkerson and the Office of Human Resources; Jack Heishman, Special Assistant, representing Secretary H. Selwyn Smith and the Office of Public Safety; Dr. Everett B. Howerton, Assistant Superintendent for Administrative Field Services, Department of Education, representing then Secretary Robert R. Ramsey and the Office of Education; Frank W. Sencindiver, Assistant Commissioner, Citizen Services Program, Division of Motor Vehicles, representing then Secretary Wayne Whitham and the Office of Transportation.

Several technical advisors assisted the Task Force. Among them were Robert Perrow, Assistant Attorney General; Edward C. Tosh, Staff Attorney, Virginia Code Commission; Dr. Joseph P. Roberts, Research Supervisor, Division of Education Research and Statistics, Department of Education; William B. Rowland, Jr., Chief Analyst, Department of Planning and Budget; and Mrs. Trudy Gordon, who served as liaison for the Governor's Counsel, Robert D. McIlwaine, III. Mrs. Myra Federspiel, Research Assistant, Office of the Secretary of the Commonwealth, served as secretary to the Task Force.

In the absence of a staff versed in administrative law and the time to review all the agencies' statutes, rules, regulations, policies and actions, the Task Force had no alternative to asking agency heads to conduct in-house studies.

A questionnaire survey was the method chosen for obtaining information from the various agencies, departments, boards, commissions and councils of the executive branch. This was deemed

the best method for three reasons: (1) it allowed for careful construction of questions covering the problem areas the Task Force defined, (2) it provided information which could readily be summarized and followed up and (3) it could be administered in a relatively short time.

During the period in which the questionnaire was being devised, reviewed by the Task Force's advisors and pretested on selected agencies, a memorandum from then Governor Mills E. Godwin, Jr., alerted agency heads to the study and urged them to give the forthcoming questionnaire their personal attention. Agency heads were advised to look particularly for those areas in which adequate statutory authority was lacking, for those in which authority was not clear and precise, for those about which there may have been ambiguity or confusion due to related responsibilities of other agencies. In the case of those agencies and departments which work in conjunction with boards and commissions, the Governor asked that agency heads determine the clarity of the statutes under which they operated with respect to whether power to issue rules, etc., rested with the agency head or with the board and whether the statutes were being executed faithfully. They were advised to involve boards and commissions in the completion of the questionnaire.

Then Governor Godwin made it clear that he expected the study to produce both immediate and longer range effects in the following statement: "It should lead to the immediate correction of any actions for which there is not suitable statutory authority. It should identify areas in which statutory authority is deemed too narrow or too broad to carry out legislative intent."

The questionnaire developed for dissemination to agency heads contained two parts. The first called for submission of information under headings required in the program budget structure in order to elicit problems related to all of an agency's sub-functions, programs, subprograms and other activities. The second requested data on problems associated with the overall operation of the agency and its relationships with other governmental bodies. The questionnaire and instructions were submitted for review to each member of the advisory group, the Director of Legislative Services and the Governor's counsel. Once the questionnaire had been completed by the agency head, his responses were to be reviewed by the Assistant Attorney General assigned to that agency. A copy was to be sent to the chairman of the board, commission or council associated with the agency, if any, for his review and comments.

Upon advice of the Office of the Attorney General, the Governor's Counsel and the former Director of the Commission on State Governmental Management, higher educational institutions and boards of visitors were omitted from the study.

Agency heads, through the questionnaire, were asked to assess agency and board rules, regulations, standards and actions and to provide information on the following:

- *statutory authority for the rules, regulations, etc.
- *clarity and adequacy of statutory guidelines and restrictions relative to the agency's rules, regulations, etc.
- *regularity of review of rules, regulations, etc., for legal sufficiency
- *provisions for public hearings on rules, regulations, etc.
- *ambiguity in statutes which has resulted in overlapping authority, duplication of efforts and other problems between agencies in uncertain division of authority for policy-making and administration between an agency and its board or commission
- *conflicts between the agency's rules, regulations, standards and actions and those of Federal or local government agencies

Each Task Force member was responsible for reviewing and commenting upon the questionnaires returned by agencies under his Secretary. The questionnaires and comments were then reviewed by the Secretary. The Secretaries and Task Force members determined the content of the reports from the agencies found in Senate Document 11 (78).

SJR 58 STRUCTURE, PARTICIPANTS, AND METHOD

Senate Joint Resolution (SJR) 58, enacted by the 1978 General Assembly, directed the Governor to continue the study initially conducted by the Task Force appointed pursuant to SJR 96 of the 1977 General Assembly. The Resolution directed that the study concentrate on, but not necessarily confine itself to, those areas which the Task Force found to be in greatest need of follow-up attention, more detailed investigation, and coordination with the federal government. In addition, the Resolution obligated the Governor to report findings and recommendations to the General Assembly on or before January 10, 1979.

To conduct the continued study, Secretary of Administration and Finance, Charles B. Walker, on behalf of Governor John N. Dalton, assigned the primary responsibility to the Management Consulting Division of the Department of Management Analysis and Systems Development (DMASD). Secretary Walker provided overall guidance and assistance to the DMASD through Messrs. Kenneth Golden, consultant to his office and Robert Kirby, Assistant Secretary of Administration and Finance. The other Secretaries were notified of the DMASD role in conducting the study by memorandum and the DMASD was assisted by the Assistants to the Secretaries for Management Services as follows: Charles D. Miller, for Secretary of Education, J. Wade Gilley; Ralph G. Cantrell for Secretary of Human Resources, Dr. Jean L. Harris; William E. Breen, for Secretary of Commerce and Resources, Maurice B. Rowe; Jack C. Heishman for Secretary of Public Safety, H. Selwyn Smith; and Hiram R. Johnson for Secretary of Transportation, Wayne A. Whitham.

The DMASD elected to use the SJR 96 questionnaire method with minor changes, to obtain current information as comprehensively as possible from the various agencies, departments, boards, commissions, and councils of the executive branch. This was deemed the best method for the three reasons established by the SJR 96 Task Force and the consideration that additional questions would provide a comprehensive current status response to satisfy the follow-up requirements of SJR 58 from each executive branch organization unit.

The modified questionnaire package was distributed to the heads of all executive departments and institutions by memorandum from Secretary of Administration and Finance, Charles B. Walker. Each executive branch organization unit head was requested to devote personal attention to the questionnaire and to respond no later than October 13, 1978. Higher educational institutions and boards of visitors were omitted from the study to be consistent with the SJR 96 study.

Agency heads, through the added modification to the questionnaire, were asked to answer three basic questions for each problem cited in Senate Document (SD) 11 (78). The questions addressing previously cited problems were: (1) what actions, if any, have been taken to resolve the problems cited in SD 11 (78)?, (2) what actions, if any, are contemplated and when is completion expected?, and (3) if no actions have been taken and none are contemplated, explain why.

The SJR 96 questionnaire in its entirety was used to identify new problems that had arisen since SD 11 was published, and to provide consistent response from new agencies or agencies that cited no problems under SJR 96. Three questions addressed the new problems and agency heads were asked to respond in the SJR 96 questionnaire format. Those questions were: (1) what new problems have arisen since the previous study (SJR 96) and issuance of SD 11?, (2) what actions, if any, have been taken or are contemplated to resolve new problems and when is completion expected?, and (3) if no actions have been taken and none are contemplated, explain why. As in the SJR 96 questionnaire, the agency heads were asked to assess agency and board rules, regulations, standards, and actions and to provide information on the following:

- *statutory authority for rules, regulations, etc.
- *clarity and adequacy of statutory guidelines and restrictions relative to the agency's rules, regulations, etc.
- *regularity of review of rules, regulations, etc., for legal sufficiency
- *ambiguity in statutes which has resulted in overlapping authority duplication of efforts, and other problems between agencies in uncertain division of authority for policy-making and administration between an agency and its board or commission

*conflicts between the agency's rules, regulations, standards and actions and those of Federal or local government agencies.

Completed questionnaires were returned directly to the DMASD and copies were sent to the appropriate Secretaries' Offices simultaneously. Draft copies were compiled by the DMASD for each Secretarial area and submitted to those offices for final review. The individual Secretaries agreed with the final content of the report from their respective areas.

CONCLUSIONS OF THE SJR 96 STUDY

*Heads of departments, agencies, boards, commissions, councils and other executive department bodies are aware of the statutory grants of power under which their entities operate and of the limitations and restrictions, expressed or inherent, which accompany those grants. Through the new budget-making process, they are now evaluating, on a biennial basis, their activities and programs to make certain they are within statutory grants of authority.

*Rules and regulations promulgated by most agencies, boards and other bodies are regularly reviewed within the organizations and, for legal sufficiency, by the Office of the Attorney General.

*Agencies would benefit by further directions concerning limitations on rule making under the Antitrust Laws and the First Amendment.

*Agencies are perhaps not as familiar with the Register Act or the Administrative Process Act as they need to be.

*The questionnaire proved valuable in that many problems cited have been resolved or are being resolved administratively within agencies or between agencies.

*Many problems cited evolve from Federal laws and/or regulations that conflict with Virginia's. Affected agencies appear to be attempting to resolve such matters, often through successful challenges to the Federal requirements.

*The most serious problems involve conflicts in and fragmentation of authority, notably in the budget-making area.

*General Assembly studies are dealing with difficulties cited by several agencies. The Attorney General is aiding agencies in resolving a number of other problems.

*In the future, instances of duplication and overlapping of authority in proposed legislation should be minimized by procedures being developed by the General Assembly to require filing of organizational impact statements by the executive branch.

*Time and staff limitations precluded follow-up efforts to this study that the Task Force feels are essential.

ACTIONS TAKEN ON RECOMMENDATIONS MADE BY THE TASK FORCE
UNDER SENATE JOINT RESOLUTION (SJR) 96 OF THE 1977
GENERAL ASSEMBLY

Recommendation: *An appropriately staffed and funded committee should be assigned to evaluate the problems cited in this study and to initiate appropriate action to resolve those problems deemed worthy of consideration.

Action Taken: Senate Joint Resolution (SJR) 58 of the 1978 General Assembly directed the Governor to continue the study and follow-up on the findings and recommendations of the SJR 96 Task Force. On behalf of the Governor, the Secretary of Administration and Finance assigned the Management Consulting Division of the Department of Management Analysis and Systems Development the primary responsibility for the continued effort.

Recommendation: *A memorandum drafted by the Attorney General should be distributed to all State agencies to inform them of their limitations on rule making under the Antitrust Laws and the First Amendment.

Action Taken: A memorandum was prepared in response to SJR 96 by the Office of the Attorney General and distributed to the Assistant Attorneys General assigned to the agencies. However, due to more recent cases which affect the conclusions in that memorandum, an updated version of that document was deemed necessary by the Attorney General. An updated document was prepared and distributed to the Governor's Secretaries.

Recommendation: *The Governor's Secretaries should insure that agencies and boards review thoroughly at least annually all existing rules, regulations, etc., for timeliness, clarity, and legal sufficiency.

Action Taken: The Governor's Policy Memorandum Number 4-78, Annual Review of Agency Grants of Authority, was issued October 23, 1978, and states that:

"Each of the Governor's Secretaries shall conduct an annual review of all such grants of power to the various boards, councils, commissions, departments, and agencies under their respective offices to determine the timeliness, clarity, and legal sufficiency of such grants.

The report on each Secretary's findings and recommendations should be provided to me on or before the first day of October each year beginning in 1979."

In that memorandum, the Governor also directed the Secretary of Administration and Finance to "...develop and implement the final process".

The decision was made by the Secretary of Administration and Finance to include the Annual Review of Statutory Grants of Authority Procedures in the Legislative Coordination Procedures as the first step in the Pre-Session Phase at the agency level. The final procedure will be developed and issued in ample time for use in the Pre-Session Phase preceding the 1980 session of the General Assembly.

The questions in Appendix A to this report are indicative of those to be included in the procedures for the annual reviews of Statutory Grants of Authority and Legislative Coordination.

Recommendation: *In-service sessions should be held regularly for agency management personnel to inform them about such matters as the roles of the Governor and the Governor's Secretaries and requirements of the Register Act and the Administrative Process Act.

Action Taken: The Department of Personnel and Training is presently designing two formats for a half-day orientation program for all new State employees: one format will be targeted toward clerical, technical, and professional personnel; the second will be tailored to managers and supervisors. A section of the format will address the "Organization and Structure of Virginia Government". The Department will incorporate in the design the information addressed in the recommendation of SD 11 to acquaint managers and supervisors with "...the roles of the Governor and the Governor's Secretaries and the requirements of the Register Act and the Administrative Process Act".

The Department intends to have the orientation program "package" developed for distribution to State agencies by January 15, 1979. Agency heads and their training officers will be responsible for immediate implementation of this program within their agencies or incorporating its essential components within the context of established agency orientation activities. The Department of Personnel and Training will evaluate agency implementation of the content and the methodology of this new statewide orientation program, as well as monitor the components for accuracy and current reflection of State policies and procedures.

Recommendation: *There should be a process for agencies to make systematic status reports to the Governor's Secretaries, and through them to the Governor, concerning significant developments and actions.

Action Taken: Review of the current practice indicates that agencies are reporting significant actions and developments to the Secretaries on an occurrence basis. The method of reporting was found to be tailored to the urgency, significance, or potential impact of the development or action. Generally, the Secretaries are advised by telephone followed by written confirmation. Given the current span of control of some Secretaries, it appears that reporting more systematically, or with more formal and less flexible communications requirements could become a burden. It is deemed advisable to continue the current reporting methodology under these circumstances.

Recommendation: *In establishing new agencies or programs, legislative intent should be spelled out and appropriate guidelines and limitations should be set forth in the Code in order to establish the proper legal framework for the agency to operate within which the agencies or programs are to operate.

Action Taken: Suggested draft House and Senate Resolutions expressing the sense of the House of Delegates and the Senate of Virginia concerning the setting forth of legislative intent, policy, guidelines, and limitations in the Code of Virginia in order to establish the legal framework within which the programs and activities are to operate are presented as Appendices B and C to this report.

Recommendation: *Consideration should be given to providing for uniform terminology in describing operations and officials. Such words as department, division, commission, director, commissioner, etc., vary in meaning and some of the terminology is outmoded and obsolete.

Action Taken: A resolution was introduced at the 1978 session of the General Assembly which, if adopted, would have expressed the sense of the General Assembly for consistency in terminology. The resolution was passed by indefinitely in House General Laws. It would seem that no further action by the executive branch is necessary on this recommendation.

Recommendation: *The General Assembly should consider reviewing the status and accountability of 500 authorities, commissions, public corporations and other bodies described in the Code as political subdivisions and operating on behalf or under the authority of the Commonwealth. Such a study seems advisable for the following reasons: (1) these entities have financial and programmatic impact on the State and its citizens; (2) very few of them comply with the Code requirement that they file annual reports with the State; (3) the stipulation that State funds be withheld from political subdivisions failing to file the report is not enforced; and (4) in the absence of an up-to-date list of political subdivisions, State agencies cannot comply with requirements in the Administrative Process Act that political subdivisions be notified of proposed changes in rules and regulations.

Action Taken: The current Secretary of the Commonwealth, in response to the SJR 58 questionnaire, stated that "Since the forms for submitting information pursuant to § 2.1-71 are mailed out each year from this office, the current Secretary does not perceive this is a problem. Inquiries for the information have been at the rate of about one a year, and can be handled by telephone. It is, therefore, deemed unnecessary to take any action in this area."

Recommendation: *When Federal laws and regulations come into conflict with State laws and policies, agency heads should be encouraged to express their frustrations to the Governor or the appropriate Secretary. The decision should then be made as to whether an appeal for an exemption to the Federal regulation or an amendment to the Federal law should be sought.

Action Taken: The Governor's Policy Memorandum Number 1-78 was issued October 23, 1978. It sets forth the policies and procedures for coordination of communications with the Federal government and the government of other states. The language of both the Governor's policy memorandum and the supporting procedures specifies applicability to proposed Federal legislation. It was determined, however, that only minor changes would be required to make both documents applicable to communications related to conflicts arising from already existing Federal and State laws. The Director of Intergovernmental Affairs indicated that the resources are not currently available to deal with the entire spectrum of existing Federal versus State law conflicts. However, agency heads can find encouragement and the mechanism for expressing their frustrations to the Governor through the appropriate Secretary in accord with the policies and procedures for proposed Federal legislation.

RESULTS OF SJR 58 CONTINUED STUDY

The following information, arranged by Secretarial area, highlights the data supplied on the questionnaire survey forms by heads of agencies and departments and chairmen of boards, commissions and councils in the executive branch.

The follow-up of actions taken on problems identified in Senate Document 11 was provided in the answers to three basic questions which were:

1. What actions, if any, have been taken to resolve the problems cited in Senate Document 11?
2. What actions, if any, are contemplated and when is completion expected?
3. If no actions have been taken and none are contemplated, explain why.

New problems (SJR 58) and recommended actions were identified using the same forms that were used by the SJR 96 Task Force for the sake of consistency in data collection.

Statutory citations throughout the report refer to the Code of Virginia.

Following is an explanation of the format used throughout this document.

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *This is a sequentially numbered verbatim restatement of each problem previously identified in Senate Document (SD) 11; the SJR 96 Task Force Report.

Action Taken: Statements from the agencies, reviewed by the respective Secretaries, in response to questions designed to determine the current status of each previously cited problem.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: New problems identified by the agencies, and reviewed by the respective Secretaries are stated.

Recommended Action: Statements from the agencies which were reviewed by the respective Secretaries are set forth as recommendations to resolve the new problem.

OFFICE OF ADMINISTRATION AND FINANCE

Most of the agencies and boards reporting through the Secretary of Administration and Finance indicated they were not aware of any problems of the nature covered by Senate Joint Resolution (SJR) 96. The continued study under SJR 58 revealed that fewer agencies cited problems that had arisen since the completion of the SJR 96 Task Force effort. A tabular comparison is presented below:

SJR 96	SJR 58	ORGANIZATION UNIT TITLE
No	No ¹	Department of Accounts
No	No ²	Art Commission
	No ²	Department of Computer Services
Yes	No	Department of General Services
Yes	No	Department of Intergovernmental Affairs
No	No	Department of Management Analysis and Systems Development
No	No	Department of Personnel and Training
Yes	No ¹	Department of Planning and Budget
No	No ¹	Division of Property Records and State Insurance Board
No	No ¹	Division of Purchases and Supply and Board of Purchases and Supply
No	No	Department of Taxation
No	Yes ²	Department of the Treasury
	No ²	Office of Employee Relations Counselors
Yes	No	Secretary of the Commonwealth
Yes	No ³	State Board of Elections
No	No ³	State Commission on Local Debt
No	Yes ²	Treasury Board
	No ²	Virginia Liaison Office
Yes	No	Virginia Public Telecommunications Council
No	No	Virginia Supplemental Retirement System

STATE BOARD OF ELECTIONS

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Pursuant to SJR 85 as adopted by the 1977 General Assembly, the Joint Privileges and Elections Committees are conducting studies of certain procedures in Title 24.1 regarding the conduct of elections.

¹Relocated under Department of General Services.

²Organization units did not exist under SJR 96.

³Response included with Treasury Board under both SJR 96 and 58.

Action Taken: Follow-up actions revealed that such studies are constantly in progress from year to year to maintain updated procedures under constantly changing conditions. No statutory authority problem existed.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported

Recommended Action: None required.

DEPARTMENT OF GENERAL SERVICES

Division of Engineering and Buildings

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Public Buildings statute § 2.1-486, should be amended to indicate that there are nine members (rather than "eight" as incorrectly used in the drafting of amendments to the act creating the new department).

Action Taken: § 2.1-486 was amended to provide for the nine members in the 1978 session of the General Assembly.

2. SJR 96 Problem: *§ 11-17-23.4 requires bids on contracts exceeding \$2,500. It is suggested that the minimum be raised to \$5,000 to reflect the current reality that all but a few minor contracts exceed this amount.

Action Taken: The suggestion was considered and rejected by the 1978 session of the General Assembly. No further action is contemplated because the legislative committee indicated that it did not wish to raise the limit at that time.

3. SJR 96 Problem: *Duplication of assignments to the Division of Engineering and Buildings in § 2.1-503 - 512 appear in statutes granting authority to other agencies. Among these are:

§ 37.1-16 - 18 giving the Department of Mental Health and Mental Retardation responsibility for disposing of surplus property.

§ 29-11 giving the Department of Game and Inland Fisheries authority to sell or lease property without coordination or approval of the Division of Engineering and Buildings.

§ 23-4.1 giving institutions of higher education the right to lease or sell real property.

§ 23-9.1 empowering institutions of higher education to grant easements with the approval of the Governor. It is suggested that such proposals be submitted to the Director of the Division of Engineering and Buildings for review and recommendations to the Governor.

§ 23-18 giving institutions of higher education the authority to borrow funds, sell bonds, etc., which seems to circumvent the intent of the Appropriations Act.

Action Taken: § 37.1-16-18 problem was resolved through Chapter 770 of the 1978 Acts of the General Assembly.

§ 29-11 problem was addressed by Chapter 545 of the 1978 Acts of the General Assembly regarding the sale of timber. However, Chapter 545 does not dictate coordination for the sale or lease of property with the Division of Engineering and Buildings. If the Commission of Game and Inland Fisheries continues to cooperate so as to give the Division of Engineering and Buildings the necessary data for maintaining accurate records, amending legislation will not be necessary to exercise this control centrally.

§ 23-41 was addressed by Chapter 545 of the 1978 Acts of the General Assembly regarding the sale of timber. However, Chapter 545 does not dictate coordination for the sale or lease of property with the Division of Engineering and Buildings. It follows that, unless the institutions of higher learning cooperate through coordination so as to give the Division of Engineering and Buildings the necessary data for maintaining records accurately, amended legislation will become necessary to exercise this control centrally.

§ 23-9.1 The decision was made to continue to try implementation through Executive Branch administrative direction rather than amend the Code.

§ 23-18 is not a problem because actions under it and related sections of the Code require the approval of the Governor.

4. SJR 96 Problem: *Substantial duplication of effort exists with respect to authority to promulgate standards to ensure access by handicapped persons: The Division of Engineering and Buildings, (§ 2.1-516), the State Board of Education, for public school facilities (§ 2.1-518), and the State Board of Housing for other places of public accommodation (§ 36-124). Only the last mentioned standards are set forth in the Statewide Building Code. In addition, local governing bodies must promulgate standards for their buildings (§ 2.1-517). The standards adopted by HEW pursuant to the Rehabilitation Act of 1973 will undoubtedly preempt any less stringent standards of any recipient of Federal financial assistance.

Action Taken: No action has been taken because as far as the Division of Engineering and Buildings is concerned, it can accept or reject any set of standards submitted to it on the basis of suitability or it can develop and promulgate its own standards. The final course of action will be established based upon further developments by State and Federal agencies.

5. SJR 96 Problem: *The Division has encountered problems in reconciling State and Federal requirements associated with contract specifications for construction financed in part with Federal funds. An example is the Federal government's insistence on deductive alternates in contracts while the State uses the additive alternate method.

Action Taken: None. The Division sees no way that the problem can be addressed other than at the Federal level. The Division reflects further that it could be an insurmountable task to get the Federal government to accede to State regulations and requirements.

6. SJR 96 Problem: *Consideration should be given to establishing a statewide policy on parking fees for employees and students such as that set forth in § 2.1-531 authorizing the Division of Support Services to levy fees for parking at the seat of government.

Action Taken: A committee consisting of the Directors of the Departments of General Services, Planning and Budget, and Personnel and Training has been formed to develop a statewide policy for submission to the Secretary of Administration and Finance by January 31, 1979.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

Division of Consolidated Laboratory Services

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The implementing regulations accompanying such Federal legislation as the Clinical Laboratory Improvement Act and the Safe Drinking Water Act have the potential of dictating personnel classification specifications and mandating additional expenditures on the part of State government.

Action Taken: In response to a Division Director's letter, the Secretary of Administration and Finance wrote members of Congress from Virginia expressing concern about the impact of the Clinical Laboratory Improvement Act. At the time of writing this report, the Act had failed to pass the Congress and will not be considered an active problem unless it is reintroduced to the future sessions of Congress.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

VIRGINIA TELECOMMUNICATIONS COUNCIL

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Virginia Telecommunications Council's inclusion in Title 2.1, Chapter 32, establishing the Department of General Services, was suspended by the Governor upon request to the Council to afford an opportunity to seek changes in the statute at the 1978 session.

Action Taken: The 1978 General Assembly amended and re-enacted §§ 2.1-421 and 2.1-454 of the Code of Virginia to add, in Title 22, a chapter numbered 16.1, and to repeal Article 4 of Chapter 32 of Title 2.1.

In addition, the 1978 General Assembly created the Telecommunications Study Commission. Completion of the Study Commission's work is due on or before December 1, 1979.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

DEPARTMENT OF INTERGOVERNMENTAL AFFAIRS

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Office on Volunteerism, now operating under Governor Godwin's Executive Order #25, should be established under § 2.1.

Action Taken: The Advisory Committee to the Office on Volunteerism recommended legislation to establish the Office by statute. It will be submitted in the 1979 session of the General Assembly if approved by the Secretary of Administration and Finance and the Governor.

2. SJR 96 Problem: *The Community Services Agency, which evolved from the old Office of Economic Opportunity in the Governor's Office under § 2.1, should be transferred to the new Department of Housing and Community Development, established under § 36-131 et seq.

Action Taken: The majority of the responsibilities of the Community Services Agency are being transferred to other agencies. No funds were appropriated for the second year of the 1978-80 biennium. The office will go out of existence June 30, 1979.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required

DEPARTMENT OF PLANNING AND BUDGET

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Governor is required to plan and recommend a budget for all State programs. Under recent amendments to the Code which establishes management responsibilities for the Secretaries, the Secretaries are responsible for directing the planning and development of a comprehensive program budget for all agencies assigned to the Secretarial areas. The Department of Planning and Budget is the central agency for providing assistance to the Secretaries and coordinating the budget preparation. It is recognized that the delegation of authority by the General Assembly to the Secretaries establishes clear responsibility. There are provisions of the Code which tend to

verlap and dilute the role of the Secretaries. While these provisions are considered secondary to the more recent legislation dealing with the role of the Secretaries, it would appear important to amend the Code to remove these references to budget planning and coordination where such appear in conflict with more recently adopted provisions of the statute. Some of these are as follows:

§ 10-184.1(4) The Council on the Environment is required to present a comprehensive budget for environmental programs; the Secretary of Commerce and Resources is required to prepare a comprehensive program budget for the functional area which includes the environmental programs. Both require the same information and both operate within the same time frame, using the same materials.

§ 2.1-552(D) The Division for Children to be established July 1, 1978, in the "Office of the Governor," and the Secretary of Human Resources have similar review requirements in the area of children and youth programs.

§ 2.1-64.24 The Council on Criminal Justice and the Secretary of Public Safety are the participants in a similar review situation regarding administration of justice programs.

§ 23-9.9 The State Council of Higher Education and the Secretary of Education are the participants in a similar review situation in the area of higher education programs. In this area, however, there is an additional complication which deserves attention: the Council reports to both the General Assembly and the Governor, placing it in the position of an executive agency which may be called upon to argue for its proposals in conflict with those of the Chief Executive.

*The following is an area of inconsistent scheduling.

§ 2.1-392, 2.1-483 The Division of Engineering and Buildings capital outlay budgeting schedule for six-year projects is not congruent with the operating expense projection schedule or the revenue projections schedule.

The Department is proposing legislation to amend Title 2.1, Chapter 27, Code of Virginia to eliminate inconsistencies in timing for the filing of six-year expenditure plans and six-year revenue plans and to simplify reporting requirements regarding program authority and levels of effort and clarify terminology.

Action Taken: The 1978 session of the General Assembly clarified the timing inconsistencies. The dates were changed to be congruent with other budget cycles. The requirement for six-year revenue projections was dropped from the Code. Legislative proposals have been prepared for the 1979 session of the General Assembly. These proposals were designed to address program authority, levels of effort, clarification of terminology, and other problems caused by recently imposed coordination requirements.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

SECRETARY OF THE COMMONWEALTH

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Governor's proclamations are required by law to be published in the Annual Report of the Secretary of the Commonwealth, but the more significant Executive Orders are not published. To insure ready access to Executive Orders, they should be available as a supplement to the report.

Action Taken: The necessary actions are being taken to publish an interim supplement to the Report of the Secretary of the Commonwealth, which will contain Executive Orders, updates on officials, and gubernatorial appointments, etc., through December 31, each calendar year.

2. SJR 96 Problem: *§ 2.1-71 requires each county, city and town and each authority, commission, district or other political subdivision to which any State money is appropriated or which collects or expends public monies to file an annual report with the Secretary of the Commonwealth, who must publish it in the Secretary's Annual Report. To make the information available to disbursing agencies more expeditiously, two changes are suggested: (1) publish the form in the Code so it will be readily available for use by political subdivisions, upon whom the responsibility for filing rests, and (2) require that the information be published in a supplement to the Annual Report.

Action Taken: No action taken. Since the forms for submitting information pursuant to § 2.1-71 are mailed out each year from this office, the current Secretary does not perceive that this is a problem. Inquiries for the information have been at the rate of about one a year, and can be handled by telephone. It is, therefore, deemed unnecessary to take any action in this area.

3. SJR 96 Problem: *The Administrative Process Act, § 9-6.14:1 through § 9-6.14:20, requires regulatory agencies to notify political subdivisions of proposed changes in regulations that would affect those entities in certain ways. While § 2.1-71 requires the Secretary of the Commonwealth to publish the reports, there is no assurance that such a compilation would encompass all of the authorities, commissions, districts, etc., set up under the law as political subdivisions. The Director of Legislative

Services will recommend legislation to facilitate the collection of data required in § 2.1-71 and § 9-6.14:1 et seq.

Action Taken: None by this office since Senate Document (SD) 11 indicated that the Director of Legislative Services would recommend legislation to facilitate the collection of data required in § 2.1-71 and § 9-6.14:1 et seq.

4. SJR 96 Problem: *§ 30-28.5:1 says post-session lobbyists' and employers' reports must be filed with the Secretary of the Commonwealth within 60 days following adjournment sine die of the General Assembly. With the backing of the Attorney General's office, the Secretary has held that reports should be in the office by close of business on the 60th day and has so informed lobbyists and employers at the time of registration and well before the deadline. In view of the recently enacted \$50 a day late-filing penalty, the law should be amended to state clearly that reports must be in the office by the deadline.

Action Taken: Proposed legislation has been submitted clarifying the requirement that the information be filed in the Office of the Secretary by the 60th day of the session and further strengthening the penalties for nonreporting or failure to pay fines for late reporting.

5. SJR 96 Problem: *The only statutory qualification for notaries public (§ 47-1 et seq.) is the requirement that the applicant be 18 years of age. The application form used by the Secretary of the Commonwealth requires the signatures of a character reference and an official (member of the General Assembly, judge, clerk of court, or assistant clerk) who recommends that the Governor commission the individual. It further asks whether the applicant has been convicted of a felony and, if so, whether his political disabilities have been removed. (The latter inquiry is a holdover from the time the Constitution required that an applicant possess the same qualifications as a voter.) It may be advisable to write more restrictions into the law. The anachronistic reference to notaries public as "conservators of the peace" should be deleted.

Action Taken: Legislation has been submitted which would enable the Governor to administer a test to applicants through the local Clerks of the Circuit Courts. If this legislation is passed, the Office of the Secretary is prepared to go forward with a simple test (probably open book) aimed at forcing each applicant to be familiar with the rudimentary requirements of his office.

A new handbook for notaries public has been published, containing in plain English, an explanation of the duties of a notary public, as well as a partial compilation of notary statutes.

No action has been taken at this writing to request legislation striking the anachronistic reference to notaries public as

"conservators of the peace". However, it is planned that legislation will be submitted to the 1979 session of the General Assembly.

6. SJR 96 Problem: *The General Assembly should designate the Code Commission or other appropriate agency within the legislative branch to review the statutes dealing with appointments by the Governor to make them consistent with § 2.1-41.2, § 2.1-42.1 and § 906.23. Many are outdated by the 1977 Commission on State Governmental Management legislation which requires that the Governor appoint nearly all department heads and board and commission members and that all such appointments be subject to confirmation by the General Assembly; establishes that appointees serve at the pleasure of the Governor and may be removed under certain circumstances; and prohibits service of General Assembly members on certain executive department boards to which they were formerly named by the House Speaker and Senate Privileges and Election Committee.

Action Taken: The recommendation made previously was that the General Assembly designate the Code Commission or other legislative branch agency to review these statutes.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

DEPARTMENT OF THE TREASURY

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported in Senate Document 11.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: § 55-210.1 - § 55-210.29 inclusive that govern the disposition of unclaimed property are in need of revision or amendment to close certain loopholes and to become more comparable to the laws of other states.

Recommended Action: Proposed changes were submitted to the Secretary of Administration and Finance for introduction at the 1979 session of the General Assembly.

TREASURY BOARD

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported in Senate Document 11.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: § 2.1 dealing with the statutes that grant authority are in need of revision to update and more clearly define the duties and responsibilities of the Treasury Board. The Assistant Secretary for Financial Policy should be added to the Board as an ex-officio member without vote.

Recommended Action: Consideration of proposed changes submitted to the Secretary of Administration and Finance, to the Governor, and to the General Assembly in the 1979 session.

OFFICE OF COMMERCE AND RESOURCES

Results of the responses indicating problems under SJR's 96 and 58 are shown in tabular form below:

SJR 96	SJR 58	ORGANIZATION UNIT TITLE
No	No	Commission of Game and Inland Fisheries
No	No	Commission of Outdoor Recreation
Yes	Yes ¹	Council on the Environment
No	Yes ¹	Department of Agriculture and Consumer Services and Board of Agriculture and Commerce
Yes	Yes ²	Department of Commerce and Board of Commerce
Yes	No	Department of Conservation and Economic Development
Yes	Yes ³	Department of Housing and Community Development
Yes	Yes ⁴	Virginia Housing and Development Authority
Yes	Yes	Department of Labor and Industry
No	No	Department of Industrial Development
No	No	Gunston Hall
No	No	Jamestown - Yorktown Foundation
Yes	No	Marine Resources Commission
No	No	Milk Commission
No	No	State Safety and Health Code Commission
Yes	No	State Air Pollution Control Board
No	Yes	State Office of Minority Business Enterprises
Yes	Yes ⁵	State Water Control Board
No	Yes ⁵	Virginia Agriculture Foundation
No		Virginia Apprenticeship Council
No	No	Virginia Independence Bicentennial Commission
No	No	Virginia Historic Landmarks Commission
Yes	No	Virginia Institute of Marine Science
Yes	No	Virginia Outdoor Foundation
Yes	No	Virginia Soil and Water Conservation Commission
No	Yes	Virginia World War II Memorial Commission

¹ Formerly Department of Agriculture and Commerce and Board of Agriculture and Commerce.

² Formerly Department of Professional and Occupational Regulations.

³ Department became operational July 1, 1978, and Office of Housing transferred from Administration and Finance.

⁴ Transferred from Administration and Finance.

⁵ Problem and recommended action reported under Department of Agriculture and Consumer Services.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: § 3.1 sections are in need of amendment or revision under the Commission Merchants Law to better assure the proper handling, sale, accounting, and payment for farm products; especially as it relates to tobacco auction markets. The needs are indicated below.

§ 3.1-709 needs to be amended to make it clear that the Commissioner has the authority to delay the issuance of a license.

§ 3.1-709 (M) needs an addition to give the Commissioner authority to refuse or revoke a license when the licensee fails or refuses to comply with the Commissioner's request.

§ 3.1-709 (N) needs an addition to give the Commissioner authority to refuse or revoke a license when the licensee violates any section of the Act.

§ 3.1-713 (H) needs an addition to clarify the responsibility of the farmer, buyer and market personnel to require sequentially numbered tickets and to require altered tickets to be signed. § 3.1-716 should be amended to require all Commission Merchants to maintain their records for a period of two years. This would bring the record retention in line with what is required of livestock auction markets. It would also provide sufficient time to review tobacco records after the close of the tobacco season.

§ 3.1-718 should be amended to clarify the person who may be charged with a violation.

§ 3.1-718 (E) needs amendment to clarify when the warehouse can purchase growers tobacco without written authority from the grower. As it is now written it is interpreted that the warehouse cannot purchase growers tobacco in his absence at time of auction without written authority from the grower. This amendment would permit the warehouse to purchase growers tobacco in his absence at time of auction without written authority. The warehouse would have to have written authority to purchase growers tobacco before and after the auction.

§ 51-66 needs revision to transfer the power of making rules and regulations from the Administrator of Consumer Affairs to

the Board of Agriculture and Consumer Services. Proposed revisions will place the process and program responsibility at the same level which exists for other Department programs.

Policies (A-2) and Procedures (A-2.1) in the Department of Agriculture and Consumer Services Rules, Regulations and Standards need to be updated to meet current needs and practices.

Recommended Action: The Department has prepared and will propose to the 1979 session of the General Assembly certain actions as expressed below:

Commercial Feed Law -- The Agribusiness community wishes to exclude feed manufacturing operations of integrated poultry producers from the fees imposed by the commercial feed law. Originally the fees were imposed for inspection services.

Pull-Tab Legislation -- The 1976 General Assembly passed legislation outlawing detachable pull tabs. The legislation is to be effective January 1, 1979. Controversy arose when it was discovered that the law not only covered beer and soft drinks, but also small juice cans. The Department has prepared several alternative pieces of legislation for consideration by Delegates Jones and Bagley.

Agricultural Foundation -- The Agricultural Foundation is managed by a Board of appointed citizens. One sentence of the law calls for 15 members; another for 12 members. Legislation has been drawn to correct this conflict. The legislation calls for 17 members; 15 to be appointed by the Governor; two, the Commissioner of Agriculture and Consumer Services and the Dean of the College of Agriculture and Life Sciences, VPI and SU to serve as ex officio members. This proposed change reflects current practice.

Foreign Investment in Virginia's agricultural land -- The Commissioner has requested a proposal for requiring non-resident aliens to register their land purchases with the Virginia Department of Agriculture and Consumer Services (VDACS). Legislation of this type has already been adopted in several states and by the U. S. House Committee on Agriculture.

Charitable Solicitation Act Amendment -- The Department will request a housekeeping amendment transferring the enforcement and rule-making powers of the Charitable Solicitation Act from the Administrator of Consumer Affairs to the Commissioner and Board of VDACS respectively.

Regulation of Endangered Flora -- The Department will propose legislation to control and regulate the harvest of endangered flora. Of particular interest is a proposal to regulate the gathering of wild ginseng. By international treaty, ginseng has been placed on the endangered species list. In order for Virginia to continue to export wild ginseng, a control program is required by the U. S. Department of Interior.

Margarine Law -- The Commissioner has approved the concept of repeal of Virginia's margarine law. The law is currently in conflict with FDA regulations. No proposal has yet been drawn, however.

Commission Merchants Law -- The proposed legislation will remove the necessity for the Commonwealth to prove mens rea in license cases brought under this law. The proposal will make the licensee responsible for the acts of his employees and give the Commissioner of VDACS greater latitude in dealing with violators.

STATE AIR POLLUTION CONTROL BOARD

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Although a conflict seems to exist in regulations published by the State and those promulgated by the Environmental Protection Agency, differences are always resolved. In the end, Federal regulations will take precedence over State regulations.

Action Taken: No action can be taken. The Clean Air Act is deliberately written so that the Environmental Protection Agency (EPA) can step in and supercede any action of any state at any time. A continued conflict in this area can be expected to protect the citizens of the Commonwealth from the Federal regulatory powers.

2. SJR 96 Problem: *The language in the Clean Air Act is much more specific than that of the present air pollution control law of Virginia. Action has been taken with the Attorney General's office to develop amendments necessary to effect needed changes in the Code of Virginia.

Action Taken: Senate Joint Resolution (SJR) 37 formed the Air Pollution Control Study Commission and they were specifically charged with providing legislative guidance and assistance. They were reviewing the necessary legislation for presentation to the 1979 session of the General Assembly which, if passed, should alleviate the problem.

3. SJR 96 Problem: *Amendments to the Clean Air Act contain a new non-compliance penalty which will require a change by the General Assembly. Action is being taken with the Attorney General's office to determine what is required to effect a change.

Action Taken: Legislation was prepared and presented to the SJR 37 Commission as above.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

DEPARTMENT OF CONSERVATION AND ECONOMIC DEVELOPMENT

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The law governing coal surface mining, Chapter 17 of Title 45.1, contains vague language such as "to the maximum extent practical" and "probable cause" which does not convey necessary statutory guidance to effectively draft regulations. This problem is currently being studied by the General Assembly in connection with the recent passage of the Federal Coal Surface Mining Act. The entire program and related laws will have to be restructured.

Action Taken: The 1978 session of the General Assembly passed; (1) House Joint Resolution (HJR) 95 to continue a Joint Subcommittee to study the effects of coal surface mining on various areas and to examine the current regulatory program of the Department of Conservation and Economic Development, and (2) House Bill (HB) 400 to allow the Commonwealth, Department of Conservation and Economic Development to adopt regulations, etc., for compliance with the interim standards of P.L. 95-87 (The Federal Surface Mining Control and Reclamation Act of 1977).

2. SJR 96 Problem: *P.L. 95 - 493, Surface Mining Control and Reclamation Act of 1977 will require the Commonwealth to change its surface coal mining laws. A State task force in conjunction with the Department of Interior is drafting new regulations under the current law.

Action Taken: No further action taken or results reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: In the 1979 session of the General Assembly the Commonwealth (Governor and General Assembly) must decide whether or not to enforce the permanent regulatory program mandated by P.L. 95-87 to control surface mining and surface effects incidental to underground coal mining.

Recommended Action: In the event that the decision is positive the following acts are recommended: (1) submit a proposed program development plan to the Department of Interior

no later than August 3, 1979, to be effective June 30, 1980, and (2) appropriate an additional \$345,000 in general funds to continue the State program at its current level as required by P.L. 95-87.

COUNCIL ON THE ENVIRONMENT

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Council on the Environment is composed of a selective membership from various State boards but does not include all agency boards that are involved with, or have an interest in, the environment. It is recommended that all State boards having an environmental interest or involvement be a part of the Council or that the Council be composed of seven (7) interested citizens from the public sector. In either case, assuming the Council remains under the Secretary of Commerce and Resources, the Code should be changed to require that the Council's administrator act as the secretary to the Council. The chairman should be selected from the Council or appointed.

Action Taken: Amendments to Title 10, Chapter 17 (Virginia Environmental Quality Act), have been drafted for submission to the 1979 session of the General Assembly. These amendments propose to expand membership of Council to include other interested agencies (§ 10-181) and to separate the role of Administrator from that of the Chairman (§ 10-181).

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: There is duplication of effort in that to a great extent the Department of Planning and Budget's (DPB) review and analysis of agency budget requests duplicate the Council's coordination responsibility for budget submission of environmental agencies.

Recommended Action: Perhaps this duplication is a further check. In that case, no action is needed.

2. SJR-58 Problem: Circumvention of Council during Environmental Impact Statement Review occurs when individual agencies occasionally reply directly to federal agencies on environmental impact statements rather than submitting these comments to the Council on the Environment. Council is thereby rendered ineffective.

Recommended Action: None offered.

3. SJR 58 Problem: Inconsistencies and conflicts exist related to Permit Coordination and Assistance. Disparate deadlines and other processing time requirements among agencies at both the federal and State levels make coordination of permit procedures difficult.

Recommended Action: The Secretary of Commerce and Resources has ordered compliance with deadlines.

4. SJR 58 Problem: There is unclear division of authority for policy making and administration related to Environmental Impact Statement (EIS) Reviews. The proper role of the Council in formulating state responses to the EIS's has never been fully addressed, i.e., does Council have to approve staff responses to federal agencies and if so, how could it do so realistically? (This conflict does not involve legislative changes.)

Recommended Action: None offered since the conflict does not involve legislative changes.

DEPARTMENT OF LABOR AND INDUSTRY

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *United States Department of Interior coal mine safety laws and Virginia State laws overlap. This does not pose a serious problem to the Commonwealth and no change is suggested.

Action Taken: None.

2. SJR 96 Problem: *There are two sections of Title 40.1 which are in conflict, § 40.1,1-51.4 and § 40.1-6(9). Under the provisions of Title 40.1 both the Commissioner of Labor and Industry and the Safety and Health Codes Commission have the same authority. Contact will be made with the Attorney General's office to develop changes to Title 40.1 to eliminate this conflict.

Action Taken: Referred to a Senate House Joint Subcommittee studying the safety law. Revised legislation is being proposed for action by the 1979 session of the General Assembly.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: There are conflicts between the Federal Child Labor Regulations and Virginia Child Labor Laws with respect to hours, ages and occupations that are permitted by law.

Recommended Action: To be determined by an already appointed subcommittee to study the conflicts in State and Federal Child Labor Laws. (House Joint Resolution No. 78) Changes in Child Labor Laws should be such that Virginia employers will not be in violation of Federal regulations when they are subject to the provisions of the Federal Fair Labor Standards Act. (Child Labor Provisions)

2. SJR 58 Problem: There is conflict between the Virginia Boiler and Pressure Vessel Rules and Regulations and the Uniform State Building Code (B.O.C.A.) adopted by the State Office of Housing. In Article 5, Section M 500 the B.O.C.A. sets forth that boilers and pressure vessels, with certain exceptions, be inspected and certified. The B.O.C.A. Code is less stringent than the boiler and pressure vessel regulations.

Recommended Action: This matter will be reviewed by the Department of Labor and Industry and the Department of Housing and Community Development, and meetings held between the two Agencies and their legal representatives from the Attorney General's Office to develop possible solutions.

3. SJR 58 Problem: § 45.1 as it relates to mining safety is overlapped by the U.S. Department of Labor mining safety laws and regulations. This is a new activity for the Department of Labor since mine safety was formerly under the U.S. Department of the Interior.

Recommended Action: Since the new Mine Safety Act places upon the mine owners the responsibility for continued and rather extensive training requirements, perhaps the State should give consideration to providing more training in mine safety and leave more of the inspection responsibility to the federal government.

4. SJR 58 Problem: § 40.1-6(9) and § 40.1-54.4 are in conflict. § 40.1-6(9) provides that the Commissioner shall make rules governing granting variances from safety standards. § 40.1-54.4 provides that the Safety and Health Codes Commission has this authority. Through administrative action assurance was given the U. S. Department of Labor under the State Plan that the Commissioner would exercise the authority with the Codes Commission, hearing any appeals of the Commissioner's decision.

Recommended Action: § 40.1-54.4 should be repealed, and is being considered by a Senate-House Joint Subcommittee.

5. SJR 58 Problem: § 40.1 - § 49.2 which address the enforcement of Occupational Safety and Health is not totally clear relating to the types of violations (serious, non-serious, willful, and repeated), and the monetary penalties provided.

Recommended Action: To be determined by the actions of a Senate-House Joint Subcommittee considering the problem.

6. SJR 58 Problem: There is duplication between the State and Federal standards for Occupational Safety and Health. The State is required by the State Plan for Occupational Safety and Health to adopt standards identical to Federal standards. Therefore, the standards are duplicated.

Recommended Action: None, to maintain consistency with the State Plan.

MARINE RESOURCES COMMISSION

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Law enforcement by Marine Resource inspectors searching boats for illegal fish, crabs, etc., is hampered by the necessity of first obtaining a search warrant, however this is the law and the Commission must comply.

Action Taken: A new law enforcement chief is researching the legal aspects of this question.

2. SJR 96 Problem: *United States Army Corps of Engineers has taken positions on Federal dredge and fill permits that are inconsistent with the Marine Resources Commission on same project. These differences are worked out on a case-by-case basis and no change is recommended.

Action Taken: A joint application and guide has been developed and is currently in use by multiple agencies thus simplifying the process and improving services to the citizens.

3. SJR 96 Problem: *The Commission is having some difficulty in interpreting its regulatory authority in that it is subject to § 28.1-23 et seq., and § 9-6.14:6 et seq. The lengthier provisions of § 9-6.14:6 et seq., are inappropriate to the operations of an agency dealing with the seasonal and oftentimes immediate dynamics of a natural resource such as fisheries. In particular, the thirty-day waiting period after adoption of regulations is very burdensome to the industry which often requests and deserves immediate action. An exemption from § 9-6.14:6 et seq., such as is granted the Commission of Game and Inland Fisheries for similar reasons, is recommended.

Action Taken: None reported.

4. SJR 96 Problem: *It has been a general recommendation that the Code was too specific in some of the marine resource laws and that more general authorities, policies, guidelines, etc., should be in the Code with details and specifics left to the regulatory power of the Commission. No specific recommendation is made here, but the matter will be discussed with appropriate legislators.

Action Taken: None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: Strict Federal guidelines on Federal Grants are difficult to administer.

Recommended Action: Grants Management classes for agency personnel have been initiated.

VIRGINIA INSTITUTE OF MARINE SCIENCES

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Now under study is the question of whether Virginia Institute of Marine Sciences (VIMS) professional personnel should be considered faculty members or remain under the classified act.

Action Taken: A study requested by the Council of Higher Education at the request of the Governor and the Joint Legislative Audit and Review Commission, as a part of an overall review of Marine Science Education in Virginia. The Council was to present its report in early December, 1978.

SJR 58 PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

VIRGINIA OUTDOORS FOUNDATION

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *§ 10-159 et seq., establishes the Virginia Outdoors Foundation to facilitate the preservation of open-space lands. The Code gives the Foundation certain powers which include accepting, acquiring, holding and administering gifts and bequests of money, securities or other property, and appointing and prescribing duties of officers, agents and employees as may be necessary to carry out its functions. The law makes no mention

of a relationship with any other State agency. Apparently by tacit agreement with the General Assembly at the time the Foundation was established, the Foundation was not to be set up as a separate entity but was to be lodged in the Commission of Outdoor Recreation. In effect, the Director of the Commission oversees the Foundation's operation, appoints and supervises the Foundation's staff and approves all monetary transactions involving State appropriations by the Foundation's director. Further complicating the picture is the fact that § 10-163(g) dealing with the Foundation's power to appoint officers to carry out the activities of the Foundation, is superseded by § 2.1-41.2, enacted by the 1977 General Assembly, giving the Governor the power to appoint all agency heads with a few specifically defined exceptions. The Attorney General at first ruled that the Governor should appoint the Director of the Foundation but rescinded that ruling upon learning of the General Assembly's apparent intention to house the Foundation with the Commission of Outdoor Recreation. The Chairman of the Foundation feels that the Governor should appoint the Executive Director of the Foundation and that the Foundation should be autonomous. It is the opinion of the Director of the Commission of Outdoor Recreation that the problem can be resolved by a change in the appropriations bill to appropriate funds directly to the Virginia Outdoors Foundation.

Action Taken: None. The Foundation's appropriation will remain with a host agency unless changed by the General Assembly.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

DEPARTMENT OF COMMERCE AND BOARD OF COMMERCE

Board of Commerce

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: It is felt that some confusion and inefficiency results due to the fact that statutory provisions relative to the Board of Commerce are not consolidated in the Code.

Recommended Action: Amend the Code to place in one section all of the provisions relative to the Board of Commerce.

Department of Professional and Occupational Regulation

Statutes and regulations of this agency have undergone a thorough examination during the past three years and many inconsistencies have been remedied by administrative and board action following consultation with the Office of the Attorney General.

1. SJR 96 Problem: *Delineated below by each professional area.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: There is a question concerning the authority of the Department to issue administrative subpoenas in the course of an investigation and to conduct investigation.

Recommended Action: Legislation is being proposed to the 1979 session of the General Assembly to correct the problem.

State Board of Accountancy

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *§ 58-372.1 is subject to conflicting interpretations. The interpretation of the State Tax Commissioner and of the Attorney General's office is that a person licensed is a person in practice. The Board's opinion is that a licensed employee of a CPA firm is not practicing if he or she limits his or her accounting activities to those performed for the employing firm. Since all sole proprietors are required to register as such with the Board, and since any moonlighting employee is required to so register, it is suggested that § 58-372.1 be amended in part to read as follows: "Every certified public accountant registered in this State as a sole proprietor, as a member of a ~~practicing~~ CPA partnership or as a shareholder in a CPA professional corporation, in addition, etc." This should result in the revenue license being mandatory for all CPAs who derive income other than salary from accounting activities, which is, the Board maintains, the intent of the law.

Action Taken: Deferred action by the Board which, in 1980, will probably seek amendment to § 58-372.1 as indicated. The

Board deferred seeking remedial legislation in the hope that the Attorney General's office would change its own interpretation of how law now on the books should be applied.

2. SJR 96 Problem: *To preclude discriminating against foreign CPA professional corporations, the State Board of Accountancy should be empowered to permit practice in Virginia by such firms just as it permits practice by foreign firms which are unincorporated. This can be corrected only by amending Title 13.1, Chapter I, Code of Virginia, 1950, as amended.

Action Taken: § 13.1-544.2 eliminated discrimination against foreign professional corporations.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: Conflict exists between the provisions of § 6.1-551 (Virginia Bank Audit Regulation) and the responsibility of the State Board of Accountancy to regulate the practice of accounting pursuant to § 54-84. The State Corporation Commission has thus promulgated a regulation allowing persons other than CPA's to exercise the attest function with respect to certain financial statements. This is in direct conflict with POR. 3-401.C of the Regulations adopted by the State Board of Accountancy pursuant to § 54-1.10.C and § 54-84. The State Tax Commissioner has taken the position that a person licensed is a person in practice. Under Board regulations a licensed employee is not in practice and should not be subject to the revenue tax. The Bureau of Financial Institutions has qualified, or is about to qualify noncertified accountants to exercise the attest function.

Recommended Action: Amendment of § 6.1-55.1 to delete the language "... or other person whose qualifications have been approved in advance by the Commission...". It is further recommended that this action be deferred until the 1980 session of the General Assembly because the change was too new and unexpected for the Board to adequately respond in the 1979 session of the General Assembly.

State Board of Architects, Professional Engineers and Land Surveyors

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *As presently drafted the Uniform Statewide Building Code allows local building inspectors to accept plans and specifications for any building from individuals who have not been licensed as architects or engineers as required in statute

and regulation and who have not met requirements of minimum competency to engage in such work. Many other states require that plans bear the seal of a licensed architect or engineer. The Board of Architects, Engineers and Land Surveyors recommends that the State Board of Housing require building officials to accept plans and specifications only when they bear the seal of a licensed individual.

Action Taken: The State Board presented its views and recommended approval of Section 127.2 (proposed) of the Uniform State-wide Building Code during a public hearing to the State Board of Housing. The adoption of 127.2 by the State Board of Housing would have corrected the problem. The proposal was not adopted.

The State Board of Housing adopted an amendment to the B.O.C.A. (Section 112.7) which notifies Building Officials that if certification of a proposed building is believed necessary, Title 3, Chapter 54 of the Virginia Code prevails.

State Board of Examiners for Nursing Home Administrators

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: Regulation POR. 18-13 (B) as stated is felt to be too restrictive.

Recommended Action: No action is recommended at this time.

The Virginia Collection Agency Board

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: POR. 21-15 (L) language needs clarification. To "threaten", needs to be clarified or guidelines need to be established.

The Virginia Board of Examiners for Audiology and Speech Pathology

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: § 54-83.1:7 (b). References to the term fee need amendment because it is felt that as written, this provision is misleading regarding interpretation.

Recommended Action: Delete or amend this provision for clarification.

The Virginia Board of Examiners of Professional Hairdressers

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: POR. 13-22 is not clear regarding the beauty school withholding creditable hours until all fees are paid.

Recommended Action: A public hearing was scheduled to air this matter on October 18, 1978.

Virginia State Board of Barber Examiners

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: § 54 requires the Department of Commerce to inspect shops for proper licensure. The Health Department checks shops for sanitary conditions and it appears that one consolidated check would be more efficient.

Recommended Action: A cooperative effort by both Departments to result in a consolidated inspection based upon possible changes in regulation.

State Registration Board for Contractors

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: § 54.121, § 54-127, and § 54-132 require amendment or revision to more properly establish the authority for this Board.

Recommended Action: Action by the 1979 session of the General Assembly proposed as follows:

- § 54-121. Delete "Secretary-Treasurer"
- § 54-127. Delete in its entirety
- § 54-132. Delete in its entirety

2. SJR 58 Problem: § 54-17.1 (1)(b) defines the "practice of architecture" as the application of the principles and methods of architecture. § 54-17.1 (2)(b) defines the "practice of engineering" as the application of the principles and methods of engineering. Nowhere, in either case, is either term itself defined and neither is what constitutes an act in violation of licensing requirements. It is believed that both architecture and engineering can be defined as it relates to the exercise of police power by the State.

Recommended Action: A charge by the General Assembly to the State Board to define the two terms and recommend a revision to § 54.17.

VIRGINIA SOIL AND WATER CONSERVATION COMMISSION

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *State statutes provide for a voluntary soil and water conservation program. It is anticipated that Federal regulations will require mandatory control of non-point sources of water pollution from agriculture operations. At the propitious time legislation will be introduced to comply with Federal regulations.

Action Taken: The State is developing best management practices to control non-point sources of pollution from agricultural activities under a voluntary program. Conditional Environmental Protection Agency (EPA) approvals of the voluntary approach is expected. No further action is contemplated unless required by the EPA.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

STATE WATER CONTROL BOARD

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The State Water Control Board's monitoring and surveillance programs are oriented towards maintaining all beneficial uses of the groundwaters of the Commonwealth and therefore are of much broader scope and of more detail than the State Department of Health's program, which is primarily concerned with assuring water quality standards are maintained solely for public health. To avoid duplication and conflict, § 62.1-44.86 of the Code should be amended to give the State Water Control Board the total responsibility for the administration and enforcement of the Ground Water Act.

Action Taken: A letter of agreement was being developed between the Board and the State Department of Health to resolve the problem of duplicated efforts.

2. SJR 96 Problem: *In the event that local political subdivisions fail to adopt, enforce, and administer flood plain management ordinances for citizens living in flood plain areas in such a manner that would enable citizens living in flood prone

areas to avail themselves of the opportunity to indemnify themselves from flood losses through the purchase of flood insurance program of the National Insurance Act of 1968, as amended, there probably should be a provision for a unit of State government to administer such programs. The General Assembly mandated guidelines under the Flood Reduction Act. These guidelines must be carried out before a determination is made as to their acceptability in administering flood plain management ordinances.

Action Taken: None reported.

3. SJR 96 Problem: *§ 62.1-44.34.2, which establishes liability for discharge of oil, states that the responsible parties shall be liable to the Commonwealth of Virginia; the Water Control Board has assumed this responsibility. It is recommended that this section be amended to place this responsibility with the Water Control Board.

Action Taken: § 62.1-44.34:2 was amended as a part of a new oil spill section under Article 8. The specific problem of having the State Water Control Board designated as the Commonwealth of Virginia was not changed. However, under § 62.1 -44.34:7 the Virginia Oil Spill Contingency Fund is designated as a fund of the Water Control Board and all reimbursements of cost incurred in the clean-up or containment of oil spills shall be deposited into this fund. Therefore, it is felt that this problem has been indirectly resolved.

4. SJR 96 Problem: *§ 62.1-44.15(11) includes a means for replacement cost of common freshwater species of fish but should be expanded to include endangered species and marine species as well, where replacement cost is unsatisfactory as a measure of value.

Action Taken: Completion of a university study of the endangered or threatened species in the Pigg River will establish a basis for replacement cost. Study completion is expected in mid 1979. The total solution to the problem will take years. The population status of threatened and endangered species will have to be established for each river.

5. SJR 96 Problem: *§ 62-44.83-107 should be amended to permit sounder management of all groundwater uses over a specified amount to be determined by the regulating agency for applicability in each groundwater management area. At the same time, changes to Title 62.1, Chapter 3.4 of the 1950 Code of Virginia should be amended making the Code compatible with the above proposed legislation.

Action Taken: § 62.1 - 44.83-107 were introduced to the 1978 session and carried over to the 1979 session of the General Assembly.

6. SJR 96 Problem: *Chapter 8 of Title 62.1, Dam Safety Provisions should be amended to give authority to the State Water

Control Board to regulate the safety of all dams or other impounding structures as defined in § 45.1-222.

Action Taken: None. The General Assembly needs to allocate funds to administer Dam Safety provisions and amend § 45.1-222 to be consistent with the Corps of Engineers Regulations.

7. SJR 96 Problem: *§ 62.1-44.18 should be amended to eliminate duplication of effort in review of plans and specifications for constructing sewage treatment facilities. All sewage matters should be transferred to the State Water Control Board.

Action Taken: Legislation was presented to the General Assembly which would allow for the transfer of all sewage matters to the Board but was defeated.

8. SJR 96 Problem: *There appears to be a conflict between § 21-293 and the Water Control Board's Wetland Policy. § 21-293 states: "Drainage considered essential - It is hereby declared that the drainage of the surface water from wet agricultural lands is essential for the successful cultivation of such lands and the prosperity of the community, and the reclamation of overflowed swamps and tidal marshes shall be considered a public benefit and conducive to the public health, convenience, utility and welfare." This section can be viewed as being in contradiction to the State Water Control Board's Wetland Policy which states in part: "It shall be the Board's policy to minimize alteration in the quantity or quality of the natural flow of water that nourishes wetlands and to protect wetlands from adverse dredging or filling practices, solid waste management practices, siltation, or the addition of pesticides, salts, or toxic materials arising from non-point source wastes and through construction activities, and to prevent violation of applicable water quality standards from such environmental insults." If, in fact, it is determined that a contradiction does exist, corrective measures should be taken by amending Title 21, § 21-293 to conform with the Board's Wetland Policy to remove the apparent contradiction.

Action Taken: None. There has been no challenge raised to challenge the Board's Wetland Policy.

9. SJR 96 Problem: *§ 15.1-292 should be reviewed because of possible conflicts with State Water Control Board's National Pollutant Discharge Elimination System (NPDES) permit program. § 15.1-292 states in part: "Such governing body may also prevent the pollution of water and injury to waterworks for which purpose their jurisdiction shall extend to five miles about the same." This section implies that the governing bodies - towns, cities, and counties - can prevent a discharger from locating its effluent within a five-mile stretch upstream of the governing body's raw water intake. The State Water Control Board's National Pollutant Discharge Elimination System Permit allows a discharger to locate its discharges for all practical purposes, on almost any stream so long as the discharger complies with the

effluent limitations prescribed in the NPDES Permit. These effluent limitations are based on effluent guidelines and/or water quality standards. Thus, a discharger should be allowed to locate on any stream, even within five miles of a raw water intake, so long as it complies with the NPDES effluent limitations.

Action Taken: It has been determined that no conflict exists between the NPDES Permit Program and § 15.1-292.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

STATE OFFICE OF MINORITY BUSINESS ENTERPRISE

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: There is a concern that the State Office of Minority Business Enterprise has no source of revenue to carry forth its work on a continuing basis, to stabilize its personnel, and to provide services to its users. Senate Bill 471 (1975) carried no provisions for support of this agency.

Recommended Action: Legislation designed to provide agency funding to service twenty percent of Virginia's population and its more than eight thousand minority business firms.

Virginia Agriculture Foundation

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: The enabling legislation contains a conflict as to the number of members.

Recommended Action: Legislative corrective action which was drafted for submission to the 1979 session of the General Assembly.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Virginia Housing Study Commission was to offer at the 1978 General Assembly amendments to:

Amend § 36-55.40 (4) to clarify the provisions of the Act relative to the pledge customarily given by the Virginia Housing and Development Authority (VHDA) to the purchasers of its notes and bonds and to facilitate the pledging of mortgage loan notes, without actual physical delivery thereof, in commercial borrowing transactions.

Revise § 36-55.31 to provide that loans for energy saving devices may be secured by a mortgage or unsecured to persons or families eligible under VHDA's rules and regulations.

Action Taken: Statutory amendments to § 36-55.31 duly enacted by the 1978 General Assembly.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: Bond counsel has expressed reservations about the implementation of additional powers granted to VHDA by § 36-55.30:1 of the Code adopted by the 1978 session of the General Assembly. Further findings and declarations of public purposes are required by Bond Counsel as a prerequisite to an approving opinion for the issuance of bonds to finance housing for persons of medium and higher income. Also, a broader definition of cities eligible to receive VHDA assistance under § 36-55.30:1 is needed.

Recommended Action: Bond counsel preparation of proposed amending legislation for consideration by the 1979 session of the General Assembly, which is in progress at this writing.

OFFICE OF HOUSING

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Duplication of authority, and in some cases direct conflict, exists with the Department of Labor in the area of construction of boiler and pressure vessels. Local building officials enforce the provisions of the Uniform Statewide Building Code with respect to construction, however, these same officials have no authority to make periodic inspections to determine if the equipment is being used in a safe manner. The Office of Housing recommends that consideration be given to amending Chapter 3.1 of Title 40-1 and § 36-98 of the Code of Virginia, deleting the portion of the Boiler and Pressure Vessel Safety Act superseded by the Uniform Statewide Building Code and clarifying the authority of the Department of Labor and Industry to inspect such equipment.

Action Taken: This matter will be reviewed by the Department of Labor and Industry and the Department of Housing and Community Development, and meetings held between the two Agencies and their legal representatives from the Attorney General's Office to develop possible solutions.

2. SJR 96 Problem: *Duplication of authority exists with the Department of Health with respect to standards for the construction of hospitals, nursing homes, day care centers, etc. The basic question appears to be this: Which of the two agencies involved in this conflict is most knowledgeable about the construction of these types of facilities? The Health Department maintains it possesses the expertise, and specific exemptions to § 36-98 are being proposed through the recodification project of Title 32. The Office of Housing contends that construction of these facilities should be regulated by the agency authorized to enforce the Uniform Statewide Building Code (BOCA). (The conflict is highlighted in litigation involving the construction of a nursing home under BOCA standards rather than nursing home construction standards.)

Action Taken: In an effort to alleviate this conflict, the Department of Health and the Code Section of the Division of Housing met. After several meetings, the Department of Health has deleted all reference to construction standards that conflict with the Uniform Statewide Building Code.

Additional decisions are scheduled in an effort to define the role and authority of each group involved. Upon the resolution of this conflict, local building officials will be informed.

3. SJR 96 Problem: Some local jurisdictions have failed to repeal local ordinances pertaining to construction of buildings which were in direct conflict with § 36-98 of the Code of Virginia. Through regional seminars, monthly meetings with local enforcement officials and dissemination of information, this problem is being resolved and local jurisdictions gradually are coming into compliance with State legislation.

Action Taken: As indicated above, this problem appears to be working itself out. The Division of Housing continues to conduct regular seminars and the participation rate of local building officials is high.

4. SJR 96 Problem: There exists a potential for conflict over what agency has the authority to promulgate rules and regulations regulating individuals who prepare construction drawings. Any such rules and regulations adopted by the State Board of Housing would appear to be in conflict with those of the State Board of Architects, Professional Engineers and Land Surveyors. This matter has been referred to the Attorney General's Office for resolution. Legislation to clarify which agency is responsible for regulation of this area may be deemed appropriate.

Action Taken: In alleviating this conflict the problem was reviewed by the Attorney General's Office for further clarification. Upon review by that Office, the Board added the following to the Uniform Statewide Building Code. This can be found in 112.7 of that Code.

Note: Chapter 3 Title 54 of Virginia governs the requirements for architects and engineers practicing in Virginia.

The Board believes that the building official should not be required to make a determination regarding the definition of an architect or engineer. The Board believes, instead, that the building official should be left with applying the objective criteria of the Uniform Statewide Building Code.

5. SJR 96 Problem: § 36-139N should be amended to conform with revisions made to § 36-124(6) relating to the definition of "places of public accommodation" for the purposes of accessibility by the physically handicapped.

Action Taken: In resolving this problem, the Virginia Housing Study Commission recommended amending § 36-139N of the Code. Those amendments were passed by the General Assembly and signed into law by the Governor.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problems: The corrective actions above are not meant to imply that concerns no longer exist. Some concerns remain and they are being carefully considered.

Recommended Action: None required.

VIRGINIA WORLD WAR II MEMORIAL COMMISSION

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: § 9-88-05. The Commission feels that the present name of the Commission does not properly reflect the de facto recognition of wars or conflicts other than World War II.

Recommended Action: Enlargement of the original memorial legislation to change the name of the Commission to Virginia War Memorial Commission instead of the present name covering World War II exclusively. Appropriate legislation is being proposed by the Vice Chairman for action by the 1979 General Assembly.

OFFICE OF EDUCATION

Almost half of the agencies and boards reporting through the Secretary of Education indicated that they were aware of no problems of the nature included in the SJR 96 questionnaire survey. That response is compared to SJR 58 response below:

SJR 96	SJR 58	ORGANIZATION UNIT TITLE
Yes	No	Department of Education
No	Yes	State Council of Higher Education for Virginia
No	No	The Virginia Schools for the Deaf and Blind
Yes	No	Virginia Community College System
No	No	The Science Museum of Virginia
Yes	Yes	Virginia Commission of the Arts and Humanities
No	Yes	Virginia Museum of Fine Arts
No	No	Virginia State Library
Yes	No	State Education Assistance Authority
No	No	Virginia College Building Authority
Yes	No	Virginia Education Loan Authority
No	No	Virginia Public School Authority
No	No	Virginia Truck and Ornamental Research Station

VIRGINIA COMMISSION OF THE ARTS AND HUMANITIES

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Virginia Commission of the Arts and Humanities is authorized to receive and disburse funds provided from Federal and other sources for the encouragement of interest and participation in the arts and humanities as provided in § 9-84.01 - 9-84.07. This agency receives and disburses funds received from the National Endowment for the Arts. (Funds from the National Endowment for the Humanities are received and disbursed through the Virginia Foundation for the Humanities and Public Policy.) It is recommended that the word Humanities be deleted from Title 9, Chapter 9.1 to eliminate public confusion.

Action Taken: On December 4, 1978, the Virginia Advisory Legislative Council Study Committee on the Virginia Commission of the Arts and Humanities agreed to recommend a name change. Legislation has been drafted and will be introduced to the 1979 General Assembly by Chairman, Delegate Warren White.

2. SJR 96 Problem: *Requested further is clarification of the reversion provisions regarding those endowment funds which at the end of a biennium revert to the general fund. It is recommended that the Office of the Attorney General review the prerogatives of retaining endowment funds similar to the manner in which such funds are retained in institutions of higher education.

Action Taken: The Attorney General's Office reviewed the situation and mutual agreement was reached that there is no relevant issue. The matter has been dropped.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: The statutes which grant authority for this agency are in need of clarification to change the name and clarify the authority to formulate policies, and procedures and/or rules and regulations. It is unclear whether the Commission is subject to the procedural requirements of the Administrative Process Act (§ 6.14.1) when it adopts guidelines governing the award and administration of available federal and State money. The Attorney General ruled to the contrary in 1974, opining that the Commission did not have rule making authority. However, since then, the Act has been legislatively broadened. It may now encompass the rules and regulations of the Commission.

Although the Commission does not have any express rule making authority, it would appear that § 9-84.03 empowers the Commission by implication. Accordingly, it would be helpful if the enabling statutes § 9-84.01 et seq. clarified these issues.

Recommended Action: The issue has been brought before the Virginia Advisory Legislative Council Study Committee on the Commission of the Arts and Humanities. A Deputy Attorney General offered the opinion that the Commission on the Arts and Humanities had implicit power to adopt policies and procedures as required. No further action was deemed necessary.

VIRGINIA MUSEUM OF FINE ARTS

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: *At the present time, the Museum's long standing "Arts-in-Residence" program is being duplicated by a similar Virginia Arts and Humanities program. At public hearings in the fall of 1978, under SJR 16 (1978 session), to study the VCAH there appeared to be growing emphasis on the need for VCAH to become involved in Statewide programming. This is clearly a function of the Museum as provided in legislation forty two years ago.

Recommended Action: The Virginia Advisory Legislative Council Study Committee has discussed the issue. No formal recommendations have been developed. The answer to the problem is the control exercised by the Secretary of Education through the budgetary review process.

VIRGINIA COMMUNITY COLLEGE SYSTEM

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Virginia Community College System administers in cooperation with the Virginia Council of Higher Education the activities of the 23 community colleges throughout the Commonwealth as provided in Title 23. The authority of the State Board for Community Colleges, although at variance to some degree, is similar to that held by the individual boards governing public four-year colleges and universities. Differences of opinion arise frequently with regard to a delineation of responsibilities between the Community College System and the Council of Higher Education. Particular reference was given to budgetary matters and the determination of program course offerings. The heads of both agencies in concert with the Secretary of Education are aware of the possible overlapping responsibilities and are attempting to resolve them.

Action Taken: None specifically stated. The agency restated its position under SJR 58 as follows:

"The problems identified on page 22 of Senate Document 11 may have been perceived as problems, but in fact do not exist. The law has always provided that...'the State Board shall adhere to the policies of the State Council of Higher Education for the coordination of higher education as required by law'..., and has existed under Section 23-221 of the Code of Virginia. The State Board for Community Colleges and the Virginia Community College System, as an institution of higher education, now as it has in the past, continues to adhere to those policies established by law, and the Director of the State Council on Higher Education and the Chancellor concur that there are no problems."

"The questions raised about duplication and overlapping authority are complex questions and cannot be answered with a yes/no nor can they be replied to without a complete and thorough analysis entailing indepth legal research."

"Nevertheless", the agency response continued "we have learned to work with these regulations and are pleased to continue to do so."

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Council of Higher Education for Virginia is the coordinating agency for State-supported institutions of higher education, as well as for all post-secondary educational programs for health professions and occupations as provided in Title 23, Chapter 1.1. The Council suggests that consideration be given to amending § 23-9.6:1(c) whereby the Council studies and submits its recommendation to the Governor and the General Assembly regarding the proposed escalation of any public institution to a higher degree-granting level. Recommended was a procedure whereby the Council would make a determination with regard to any escalation, report to the Governor, and delay effectiveness until thirty (30) days after the adjournment of the session of the General Assembly next following the filing of such report.

Action Taken: Senate Bill 520 (SB) (1978) addressed the problem cited in Senate Document 11 concerning approval of public institutions to move to higher degree granting levels, and two other matters. Of the latter two, one change simply added Christopher Newport College to the list of institutions coordinated by the Council; the other dealt with the Council's authority to review organizational changes in institutions of higher education. These were identified by the Council of Higher Education after the review of its legislation conducted in accordance with Senate Joint Resolution 96 had already been submitted.

The problem identified in the course of the Senate Joint Resolution 96 review was the third change proposed by SB 520.

During the 1978 legislative session the two sections of SB 520 dealing with organizational and degree approval changes were deleted from the bill on the Senate floor and the bill was then carried over in the House. It can be expected to pass the House as it stands, simply adding Christopher Newport College to the Council's legislation. The House Education subcommittee considering SB 520 suggested that the other two sections be re-introduced as separate bills. The Council of Higher Education has not yet directed the staff on what action to take, but the staff is of the opinion that a bill should be introduced on the organizational changes section.

The section relating to approval of moving to a higher degree granting level which was discussed in Senate Document 11 is still a problem. Council staff asked the Attorney General's office for another review of this legislation, and the Attorney General's office has informally advised the Council staff that the legislation may be in need of further scrutiny. At present Council staff is waiting for an official communication from the Attorney General's office in this regard, and therefore the Council staff can make no recommendation at this time.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: Section 23-9.6:1(c) is possibly in conflict with Section 23-9. Under Section 23-9, the Council must approve the granting of any degree by any college or university. Under Section 23-9.6:1(c), the Council studies and submits its recommendation to the Governor and the General Assembly regarding the proposed escalation of any public institution to a higher degree granting level.

Recommended Action: It is recommended that Section 23-9.6:1(c) be amended as follows:

§ 23-9.6:1(c) To review and approve any proposed escalation of any public institution to a degree granting level higher than that level to which it is presently restricted. The Council shall make a report to the Governor and the General Assembly with respect to any such escalation which it has approved; provided, however, that no such escalation shall become effective until thirty days after the adjournment of the session of the General Assembly next following the filing of such report.

VIRGINIA DEPARTMENT OF EDUCATION

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The State Department of Education is under the direct supervision of the Superintendent of Public Instruction. The Board of Education is a constitutional body vested with the general supervision of the public school system. The powers and duties of the Board of Education are numerous and occasionally conflict with those held by the local school boards established in each locality. Litigation arises frequently with regard to the exercise of these powers affecting both Federal and local authorities. The Department states that this trend is not unusual when examined in the context of events occurring in other states. Regulations promulgated by the Board of Education frequently have fiscal impact on each of the various political subdivisions of the Commonwealth, therefore the Administrative Process Act is followed. A number of clarifications were cited as requiring review, especially as they appear in Title 22.

These discrepancies have been transmitted to the Code Commission which has been charged with the responsibility of reviewing and updating Title 22 consistent with required Federal and State mandates and making its recommendations to the 1979 session of the General Assembly.

Action Taken: Inconsistencies between Federal and State statutory references have been provided to the extent known, to the Code Commission reviewing Title 22. The report of the Code Commission is scheduled to be available in December, 1979.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

STATE EDUCATION ASSISTANCE AUTHORITY

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The State Education Assistance Authority is authorized to guarantee to participatory lenders a portion of loans made to students for attendance at approved institutions of higher education and vocational schools throughout the United States as provided in Title 23, § 23-9.2:1 and Chapter 494. Cited as a conflict are the procedures for the collection of defaulted student loans by the Office of the Attorney General.

Action Taken: The State Education Assistance Authority uses private attorneys to make collections from students who have defaulted on their loan. The Attorney General's Office is only used for these cases where legal action is necessary.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

VIRGINIA EDUCATION LOAN AUTHORITY

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Virginia Education Loan Authority is authorized to make loans to students at institutions of higher education and vocational schools, and to fix interest charges and fees as provided for in Title 23, Chapter 4.3. Cited as a legal conflict is the prohibition against the use of social security numbers as set forth in the Virginia Privacy Protection Act and the necessary usage for required identification. The use of the social security number appears essential to the effective management of student loans, therefore it is recommended that appropriate amendments to the Virginia Privacy Protection Act be submitted through the established procedure.

Action Taken: Sufficient supporting legal evidence was located with the aid of an Assistant Attorney General to substantiate that VELA has the authority to request the Social Security number of a student applicant. No further action is required.

2. SJR 96 Problem: *There are conflicts between the regulations administered by the Virginia Education Loan Authority and those administered by the State Education Assistance Authority. It is recommended that a review of regulations, procedures, and practices be undertaken by the Secretary of Education.

Action Taken: The State Guarantee Loan Act does not permit a guarantee agency to also serve as a lender. The fact that the social security number of a loan applicant can be requested on the application form permits the guarantee agency and the lender agency to have information that eliminates conflicts. The Secretary of Education will continue to oversee the regulations, procedures, and practices of both agencies. No additional action is required.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

OFFICE OF HUMAN RESOURCES

Agencies and boards reporting through the Secretary of Human Resources indicating how they were aware of problems of the nature covered by both questionnaires included:

SJR 96	SJR 58	ORGANIZATION UNIT TITLE
No	No	Commission on the Status of Women
Yes	No	Department of Health
Yes	Yes	Department of Health Regulatory Boards
Yes	Yes	Department of Mental Health and Mental Retardation
Yes	Yes ¹	Department of Rehabilitative Services
Yes	Yes ²	Department of Welfare
	No ²	Division of Children
No	No	Office on Aging
No	No	Virginia Commission for the Visually Handicapped
No	Yes	Virginia Council for the Deaf
No	No	Virginia Developmental Disabilities Planning Council
	Yes ³	Virginia Developmental Disabilities Protection and Advocacy Office
No	No	Virginia Employment Commission

DEPARTMENT OF HEALTH

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Title 32 is undergoing a thorough examination by the Code Commission and the Department staff. Recodification is expected to remedy archaic language and lack of specificity in the Code. It should also reflect the changes of mission for the Board of Health from an advisory role to an increasingly regulatory role, particularly in environmental matters, in accordance with recent General Assembly sentiment. Among the changes anticipated are a clarification of the legal basis for the Department, now lacking in the statutes; a shift of authority for rules and regulations from the Commissioner to the Board of Health; resolution of a three-way problem over industrial waste disposal involving § 15.1-282, § 32-9.1 and Board and Health Regulations; and clear establishment of the Board's authority in construction standards for hospitals, nursing homes,

¹Includes former Department of Vocational Rehabilitation.

²Includes former Virginia Commission for Children and Youth.

³New agency not in existence under SJR 96.

migrant labor camps, wastewater treatment plants and drinking water works, deemed to be an inappropriate function of the Office of Housing. Consideration should also be given to amending the Uniform Statewide Building Code to make it consistent with Title 32.

2. SJR 96 Problem: *There is a conflict between the Federal Health Planning and Resources Act and the State Certificate of Need Law as regards Federal regulations that allow any person to have standing in appeal procedure in certificate of need decisions; no change in the State law is anticipated.

3. SJR 96 Problem: *The Federal Environmental Protection Agency has adopted regulations permitting use of "flow-through" marine sanitation devices on boats. The Federal Food and Drug Administration has said such devices will not adequately protect shellfish waters. Consequently all State shellfish waters around marinas would have to be closed unless a remedy is provided. The State Water Control Board's Regulation 5 would require holding tanks on boats in Virginia. The General Assembly was then considering a solution.

4. SJR 96 Problem: *The Federal government enacted in 1976 the Resource Conservation and Recovery Act to deal with solid and hazardous waste problems. The State must amend its current law, § 32-9.1, and adopt a parallel statute in order to participate in the EPA program.

5. SJR 96 Problem: *The attorneys for the Department were considering the legal nature of the Statewide Health Coordinating Council (SHCC) which now operates under an Executive Order pursuant to Public Law 93-641 and which plays an integral role in the Department's health planning functions. If it appears that the SHCC has insufficient authority, this matter was to be brought to the attention of the General Assembly.

Action Taken: All problems cited above have been, or will be, resolved in conjunction with the recodification of § 32 to be presented to the 1979 session of the General Assembly. If passed, it will become effective October 1, 1979 and will resolve problems as delineated below:

Recodification of Title 32 will resolve current problems by:

Establishing the legal basis for the Department of Health.

Giving uniformity to the authority of the Board of Health for all rules and regulations; the Commissioner of Health will be the Executive Officer of the Board in administering the laws and regulations.

Resolving the three-way problem over industrial waste disposal by an amendment to Section 15.1-282 and a new article in Title 32 on solid waste disposal.

Clearly establishing the authority of the Board of Health to regulate certain construction standards for hospitals, nursing homes, wastewater treatment plants, etc., by an amendment to Section 32-99.

Substituting for Section 32-9.1 a new article in Title 32.1 on solid waste disposal and resource recovery which will allow the State to assume primacy in the administration of the federal act.

In addition to recodification of Title 32, the following actions have been taken:

Chapter 454 of the Acts of the 1978 General Assembly established a State Health Planning and Resources Development Law (Section 32-211.8 - 32-211.23).

In Senate Document 19 the Senate Agriculture Conservation and Natural Resources Committee recommended that necessary steps be taken to provide for adequate pump-out facilities at marinas in accordance with the rules and regulations of the State Board of Health. The Department has begun implementing this recommendation and the Senate Committee Study is being continued to monitor progress in 1978-79.

The conflict between the Federal Health Planning and Resources Development Act and the Virginia Certificate of Need Law has been resolved by a waiver granted to the Virginia Health Department by the Department of Health, Education, and Welfare of the federal regulations to allow any person to have standing in appeals of certificate of need decisions.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

DEPARTMENT OF HEALTH REGULATORY BOARDS

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *This department came into being on July 1, 1977 as a vehicle for the coordination of the administrative, enforcement, education, and legislative activities of the seven

health regulatory boards which are now a part of it. The intent behind the creation of this department was to enable the boards to more effectively and efficiently discharge their responsibilities with respect to the delivery of health care in Virginia. The new department is undergoing a transitional phase during which it is identifying the issues which it needs to address if it is to respond to its mandate. Central concerns and problems of the individual boards are being studied and a comprehensive plan to deal with them is being developed. It is expected that by early 1978 the mechanisms that will resolve any existing difficulties will be in place and functioning.

Action Taken: Legislative amendments have been prepared for the 1979 session.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

Board of Dentistry

1. SJR 96 Problem: *Consideration should be given to rewording Reg. 7A concerning licensing certification to require that specific notice of offenses relating to unprofessional and unconscionable conduct be given to the licensee. Reg. 7A-4A should define more specifically the legal scope of practice of dental and auxiliary personnel. Reg. 7A-4b should delete as grounds for licensure certification 7b to require dentists to report faulty work to the board.

Action Taken: None reported. This Board offered no specific response to the SJR 58 questionnaire under the Department of Health and Regulatory Boards.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

Board of Funeral Directors and Embalmers

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Board's grant of authority in § 54-260.69 is very broad and in effect unlimited. This broad grant of authority may need to be made consistent with § 54.10 regarding powers and duties of boards. The Attorney General's office advised the Board that under Regulation 10.2 of the Code, the Board has the responsibility for crematories. To date the Board has not adopted regulations for crematories and therefore, at this time crematories are unregulated in Virginia.

Action Taken: None reported. This Board offered no specific response to the SJR 58 questionnaire under the Department of Health and Regulatory Boards.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

State Board of Nursing

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Board Regulation 5.1 (i) and (j) are invalid insofar as they authorize the release of individual test scores to an individual's school. The Privacy Protection Act prohibits the release of such information without the consent of the individual.

Action Taken: None reported. This Board offered no specific response to the SJR 58 questionnaire under the Department of Health and Regulatory Boards.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

Board of Pharmacy

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Board Regulation 12.2 (e) is of questionable validity. It states that any decision of a non-pharmacist owner or supervisor which overrides the decision of a pharmacist is deemed to be the practice of pharmacy. The Board does not have the authority to define the practice of pharmacy.

Action Taken: None reported. This Board offered no specific response to the SJR 58 questionnaire under the Department of Health and Regulatory Boards.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

Board of Veterinary Examiners

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The following sections were inappropriately repealed in 1974. They relate to matters that must or should be contained in the statutes. It is proposed that they be reenacted as statutes instead of rules and regulations:

- § 10.1 pertains to fundamental grants of powers.
- § 10.2 pertains to rule-making authority of boards.
- § 10.9 pertains to the issuance of certificates to applicants who have passed the necessary examination.
- § 10.10 pertains to registration fees.
- § 10.11 requires that license be displayed in office.
- § 10.12 pertains to the authority to revoke or suspend licenses.
- § 10.13 requires that there be a hearing as a prerequisite for suspension of license.
- § 10.14 pertains to the suspension or revocation of license.
- § 10.15 pertains to suspension or revocation of license.
- § 10.16 pertains to the appeal to the court for revocation action.
- § 10.17 pertains to the unlawful practice without a license.
- § 10.18 pertains to who may practice with a license.
- § 10.19 stipulates the qualifications to sit for an examination for a license.

- § 10.20 stipulates the requirements for veterinary license.
- § 10.21 stipulates the requirements for training for veterinary license.
- § 10.23 stipulates the qualifications to practice as an animal technician.
- § 10.24 pertains to the right to waive written examinations for animal technicians.
- § 10.25 pertains to the legal scope of practices for animal technicians.
- § 10.29 pertains to the authority for boards to regulate animal hospitals.

Action Taken: None reported. This Board offered no specific response to the SJR 58 questionnaire under the Department of Health and Regulatory Boards.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Presently, admissions and commitments of mentally ill minors are controlled by the same statutes and criteria that apply to adults. This may be appropriate for mature minors capable of making decisions about their mental health needs, but even in this situation questions arise concerning a hospital's duty to obtain a parent's consent to a voluntary admission by a minor and its duty to advise parents concerning treatment. Also, some minors in need of inpatient treatment may be too immature or otherwise incapable of giving consent, yet they may not be so mentally ill as to meet adult commitment standards; as a consequence, inpatient care, which may be the preferred treatment, is not possible. Therefore the Department suggests that the legislature review the possibility of using a certification process to admit minors to mental health facilities similar to that used in mental retardation cases. The Department in conjunction with the Office of the Attorney General was preparing a draft of such legislation.

Action Taken: The issue concerning the admittance of minors remains. The Department has a draft of corrective legislation. However, as two cases are presently before the United States Supreme Court concerning the criteria and procedures necessary to admit minors to State mental health facilities, both of which have been argued and are pending decision, the Department has

chosen to wait until the 1980 session of the General Assembly and base its recommendations upon these decisions.

2. SJR 96 Problem: *The Department is often handicapped in its efforts to provide treatment and services to its patients and residents because of the lack of a guardian to give permission for the treatment or services. The problem arises most often with a mentally retarded adult who is not competent to make certain decisions on his own and has neither a guardian or committee appointed. The present system for the appointment of committees or guardians provided for in the Virginia Code is time consuming and expensive. When there is no responsible person willing to serve as guardian, the only alternative is to appoint the sheriff under § 376.1-130. It is virtually impossible for the sheriff to have personal knowledge of all the people for whom he serves as a guardian or committee. As a result, the individual's rights are not adequately protected. The ideal statute would provide an easily accessible system for the appointment of someone to make major decisions that the person is incompetent to make but which would not limit the individual in areas in which he is competent.

Action Taken: Legislation was introduced in the 1978 session but was continued over to the 1979 session.

3. SJR 96 Problem: *§ 37.1-65.1 should be amended to provide its own system of procedural due process. The section should also be amended to provide for emergency admissions to mental retardation facilities and respite care. (The current judicial certification procedures for mental retardation facilities provided for in this section superimposes the procedures provided for involuntary commitment in §§ 37.1-67.1 through 37.1-67.4. The application of these procedures to mental retardation certification hearings is awkward and unrealistic. Currently the Department is providing for respite care and emergency admissions by regulation, but this should be spelled out in the statutes.)

Action Taken: § 37.1-65.1 - Legislation was prepared and introduced in the 1978 session and was carried over to the 1979 session.

4. SJR 96 Problem: *§ 37.1-105 should be amended to eliminate the sixty month restrictive liability of parents for their dependent children when such parents move their legal residence to another state leaving their dependent children in a Virginia State facility. Such parents often oppose transfer to the State into which they have moved because that state would require reimbursement, whereas their liability in Virginia has terminated. Isolated from their families, these children become more difficult to deinstitutionalize.

Action Taken: No action taken and none proposed at this time. The issue will be presented to Mental Health and Mental Retardation Committee which was established by the General Assembly and is currently reviewing the Department.

5. SJR 96 Problem: *§ 37.1-110 should be revised to insure that the State and the Department have access to all courts based upon jurisdictional amount as would any other creditor seeking to collect past due amounts. (Clarification of enforcement authority alone would result in at least \$1 million a year in additional revenues resulting from a savings in attorneys' fees and increased ability by the Department to bring legally liable persons before a court. This is especially needed today when the average stay of a patient is now drastically reduced and the amounts owed are more properly collected at the district court level.)

Action Taken: § 37.1-110 was appropriately amended in the 1978 session of the General Assembly.

6. SJR 96 Problem: *§ 37.1-118 should be repealed and reenacted to provide that the Commissioner may prescribe statement forms requiring a complete financial disclosure by all persons legally liable under the provisions of this article as a condition precedent to the Department's agreement to accept less than full payment of expenses incurred. (The present penalty provisions are virtually unenforceable. This approach would provide an administrative procedure which would be much more effective.)

Action Taken: § 37.1-119 - No action taken and none proposed at this time. This issue will be presented to the Legislative Committee reviewing the Department.

7. SJR 96 Problem: *§ 37.1-194(n) should be amended to read "Comprehensive drug abuse and alcoholism treatment programs as provided by Chapter 11."

8. SJR 96 Problem: *§ 37.1-194(p) should be amended to read "And other appropriate mental health, mental retardation and drug and alcohol programs necessary to provide a comprehensive system of services."

Action Taken: § 37.1-194 (n) and (p) - Agency administrative procedures have required a comprehensive system for services for both alcohol and drug abuse. Further legislative action is not presently needed.

9. SJR 96 Problem: § 37.1-205(12) and § 37.1-220(A) should be amended to provide that the appropriate community services board established pursuant to Chapter 10 of Title 37.1 will be responsible for the administration of substance abuse programs. (These three changes relating to substance abuse are desired so that Community Mental Health and Mental Retardation Services Boards will be uniformly responsible at the local level for these services, and possible duplication of services and responsibilities at this level will be avoided.)

Action Taken: § 37.1-205(12) and 37.1-220(A) - Provides possible conflict in the authority at the community level to establish substance abuse programs. Since the role and responsibilities of Community Mental Health and Mental Retardation Services Boards is an area being examined by an active legislative committee, action should be deferred until the committee has completed its study and findings are available for the Department's consideration in recommending legislative action to resolve this conflict.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: There have been various civil rights suits which have alleged various deficiencies in the treatment and care of the Department's patients and residents. None have been successful to date, though some are still pending. These suits and others like them shall continue, and a successful suit is possible unless we continue to improve our services.

Recommended Action: No specific recommendation was presented.

2. SJR 58 Problem: Zoning problems have arisen over the location of residential and day program services for the mentally ill, mentally retarded and substance abuser. These zoning issues have been the subject of litigation and are being handled presently on a case by case basis.

Recommended Action: No specific recommendation was presented.

DEPARTMENT OF REHABILITATIVE SERVICES

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *There are certain portions of the Federal Privacy Act that conflict with the State Privacy Protection act regarding the availability of medical records to an individual or his representative.

Action Taken: The problems were the result of departmental interpretations of Federal Regulations and the Code of Virginia. These have been resolved with assistance from the Office of the Attorney General and the action is considered complete.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: A suit against the Commissioner, Assistant Commissioner, Client Services, and the Director of Special Programs by an employee. The action was initiated by the employee as a result of a demotion for unsatisfactory work. The case is pending in Federal Court.

Recommended Action: No specific recommendation was presented.

DEPARTMENT OF WELFARE

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Some local Community Mental Health and Mental Retardation Boards have been acting as child-placing agencies within the definition of § 63.1-195 of the Code without submitting to licensure. It is recommended that the authority of such boards be clarified by amendments to §§ 37.1-194 and 197 of the Code.

Action Taken: None due to the fact that the Department of Welfare believes that issues involving the authority of local Community Mental Health and Mental Retardation Boards are appropriately the responsibilities of the Department of Mental Health and Mental Retardation and should be resolved by that agency.

2. SJR 96 Problem: *There is an unresolved dispute as to whether the Welfare Department or the Corrections Department is responsible for medical expenses when a child in foster care is placed in a facility operated by the Division of Youth Services.

Action Taken: House Joint Resolution No. 48 was passed by the 1978 session of the General Assembly. This Resolution established a subcommittee of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health to study the medical needs of the children in the custody and care of State and local agencies. This issue of responsibility for medical expenses of foster care children placed in facilities operated by the Division of Youth Services is being studied by the joint subcommittee and the Department is waiting for the results and recommendations from that study.

3. SJR 96 Problem: *The Department of Welfare has been involved in the past twelve months in significant lawsuits relating to food stamps, finance assistance, personnel actions, foster care, work requirements, and general relief. With one exception, a foster care/special education case, all of these cases had been resolved favorably to the Department or were pending.

Action Taken: The Department continues to be involved in significant lawsuits relating to its programs and almost all of these cases continue to be resolved in favor of the Department. The Department does not believe that any action can be taken to prevent the occurrence of such lawsuits, nor does the Department necessarily believe that such an action would be appropriate. It should be noted that the one case which was cited as an exception in Senate Document No. 11 has now been resolved in a manner favorable to the Department of Welfare.

4. SJR 96 Problem: *§ 22-10.8 should be clarified to address the question of jurisdictional responsibility in the case of a child in need for special education services who resides in one jurisdiction while the parents or legal guardians reside in another. There is often a dispute as to which jurisdiction is responsible for administering the tuition grant system for the child. The problem is an operational one of which the Department of Education and the Department of Welfare are aware. It is under review by the Attorney General's office.

Action Taken: Policy interpretation by the State Department of Education recently resolved this problem.

5. SJR 96 Problem: *It often occurs that several pieces of newly enacted legislation will all be required to be implemented on the same date, that is, the date on which the laws normally go into effect after the adjournment of the General Assembly session. This creates an enormous burden on the Department because of the short deadline and the simultaneous implementation of several new or revised programs. This situation could be averted if the General Assembly would set priorities for new programs or revisions by enacting such programs with staggered effective dates for each piece of enabling legislation. Alternatively, it may be appropriate for some legislation to authorize a waiver of implementation dates by the Secretary with responsibility for the Department, as was done with the Privacy Protection Act of 1976, where there is good cause to delay implementation.

Action Taken: The issue of the administrative impact upon the agency for the implementation of newly enacted legislation continues to exist for the Department; however, the Department realizes that this is a constitutional issue in the sense that the Constitution of Virginia specifies the effective dates of legislation enacted. That is, "...all laws...shall take effect on the first day of the fourth month following the month of adjournment of the session of the General Assembly at which it has been enacted, unless a subsequent date is specified or unless in the case of an emergency..." (Article IV, Section 13, of the Constitution of Virginia). Consequently, to resolve this issue the Department is attempting to assess the impact of pending legislation during each General Assembly session to determine if the impact warrants the recommendation that such legislation be amended by the General Assembly to include a later effective date.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: The Department of Mental Health and Mental Retardation is granted responsibility for licensure of facilities which provide care or treatment of mentally ill or mentally retarded persons (Sections 37.1-1, 37.1-179...of the Code of Virginia). Consequently, instances have occurred in which certain facilities have been licensed by both State agencies, resulting in unnecessary duplication of effort. By agreement between the Department of Welfare and the Department of Mental Health and Mental Retardation, the Department of Welfare was given the responsibility to license a certain child-caring institution involved in treatment of children with mental health problems. Five years later, the Department of Mental Health and Mental Retardation licensed that same facility. The Interagency Task Force for the Licensure and Certification of Children's Residential Institutions is attempting to clarify the licensing responsibilities of agencies for such facilities. No similar effort has been undertaken for adult facilities which could help to resolve the issues identified above. Statutory clarification of the issues is another alternative method of resolving them.

Recommended Action: Title 63.1 or Title 37.1 of the Code of Virginia should be amended to clarify this potential duplication of effort. Further limitations or additional exceptions should be added to the definitions of facilities subject to licensure to eliminate the potential duplication of licensure. Other alternatives include the additional authority of the agencies to refuse licensing applications of facilities licensed by other agencies or specific provisions permitting joint licensure of certain components of facility operations.

The Department of Welfare has no plans at this time to submit proposed legislative amendments.

2. SJR 58 Problem: *There are conflicts related to the final authority for the placement of children in cases of child abuse or neglect, children in need of services or delinquent children. The Juvenile Court is granted the authority to transfer custody of such children to the local boards of public welfare. Under certain circumstances, the custody of the children may also be transferred to the Department of Corrections or the local court service unit.

§ 16.1-279 provides that Juvenile courts may transfer custody of certain children to local boards of public welfare. Local boards may place such children in foster homes, child-caring institutions, etc. in accordance with Section 63.1-56 of the Code of Virginia, which also prescribes authority of the State Board of Welfare to establish appropriate rules and regulations. The State Department of Welfare is concerned that certain juvenile court judges are transferring custody of children to local boards of public welfare and then ordering the local boards to place the children in specific facilities. The Department of Welfare believes that this conflict must be resolved by clearly granting

the local board with the final authority to determine the appropriate placement of the child. In support of this belief, the Department is involved in the following case in point.

The custody of a child was transferred to the Hampton Department of Social Services by a juvenile court judge, who ordered the child to be placed in a specific child-caring institution. The Hampton Department did not believe that the placement was in the best interest of the child and sought to resolve the issue with the judge. The judge refused the request of the Department and reordered the placement. The Department appealed to the local circuit court which, after hearing the matter, denied the appeal. The City of Hampton has now appealed to the Virginia Supreme Court, which has not yet ruled as to whether it will hear the case. The State Department of Welfare has entered the case as a Friend of the Court and has submitted information in support of the City of Hampton's position.

In addition, while the Department of Welfare does not believe the legislative intent of this Section is to grant authority for joint custody of the children, certain juvenile court judges have placed custody of some children jointly with the local board of public welfare and either the Department of Corrections or the local court services unit. Clear prohibition of such authority is needed in this section to avoid the legal and supervisory problems which result.

§§ 16.1-293 currently grants the Juvenile Court Judge the authority to place responsibility for aftercare supervision of a child returned to the community by the Department of Corrections with the local department of public welfare and to determine the terms and conditions of such supervision. The State Department of Welfare believes that once the authority for supervision is placed with the local department, the local department should establish and implement the terms and conditions of supervision. To avoid conflicts and confusions which result, this section should be amended to remove the authority to determine the terms and conditions of supervision from the juvenile court judge when the local welfare department has supervisory responsibility.

Recommended Action: Legislative consideration of proposed statutory changes prepared by the State Department of Welfare and submitted to the Governor's Office for approval.

DEVELOPMENTAL DISABILITIES PROTECTION AND ADVOCACY OFFICE

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None. The agency did not exist at that time.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: *This agency's authority was initially established by Executive Order Number 60 (77) which was reissued via Executive Order Number 18 (78). It is felt that clarification or amendment may be in order since (1) persons reading the Executive Order infer that the Protection and Advocacy services cover only those persons in the Department of Mental Health and Mental Retardation facilities, (2) the annual report should be distributed to all agencies serving persons who are developmentally disabled, not just the Department of Mental Health and Mental Retardation as cited in the Executive Order, and (3) the authority of the Office is vague and not well defined.

While it may appear that there is duplication, overlapping, or potential conflict with other governmental bodies, such is not the intent. The Department of Mental Health and Mental Retardation Services Boards provide advocacy services, and local social service agencies (Welfare) provide protective services. The Developmental Disabilities Protection and Advocacy Office makes an effort to work in confluence with local agencies and to avoid duplicated efforts. This agency has difficulty insuring the rights of the recipients of their services. This agency must be independent of the local social service providers to avoid potential conflict of interests.

By virtue of the purpose of this office, when what a local agency has administratively decided may be best for a particular user is incongruent with individual rights, this office represents the user. All court intervention for users is handled by members of private bar (pro bono) or by legal aid societies.

Recommended Action: Clarification of the Executive Order regarding scope of operations. The annual report should be distributed to all agencies serving persons who are developmentally disabled, not just the Department of Mental Health and Mental Retardation as cited in the Executive Order.

VIRGINIA COUNCIL FOR THE DEAF

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: The Council is statutorily concerned about its ability to request and receive data and assistance to properly carry out its activities under § 63.1-85.4.

Recommended Action: Add a section to § 63.1-85.4 as follows:

- "(h) The Council may request and shall receive from any department, division, board, bureau, commission or agency of the Commonwealth or any political subdivision or any municipality thereof, such assistance and data as will enable it properly to carry out its activities under § 63.1-85.4.

OFFICE OF PUBLIC SAFETY

The agencies and boards reporting to the Secretary of Public Safety indicated an awareness of problems of the nature covered by the SJR's 96 and 58 questionnaires as shown below:

SJR 96	SJR 58	ORGANIZATION UNIT TITLE
	No ¹	Commonwealth's Attorneys Services and Training Council
No	No	Criminal Justice Services Commission
Yes	No	Department of Alcoholic Beverage Control
Yes	No	Department of Corrections
Yes	No ¹	Department of State Police
	No ¹	Division of Capitol Police
No	No ¹	Division of Justice and Crime Prevention
	No ¹	Office of Fire Services Training
No	Yes ¹	Rehabilitative School Authority
	No ¹	Virginia State Fire Services Commission

ALCOHOLIC BEVERAGE CONTROL DEPARTMENT

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *This agency did not indicate that the comments discussed under the State Police section were a problem. However, those comments are considered pertinent to the study of this agency.

Action Taken: None but the agency reported under SJR 58 as follows:

"The Department of Alcoholic Beverage Control (ABC) did not indicate that certain comments under the State Police Section in Senate Document 11 were a problem. However, Senate Document 11 noted that those comments were considered pertinent and that a bill would be introduced in the 1978 session of the General Assembly to resolve the matter. Such a bill was introduced and the bill failed to pass. The Department is not aware that any further action is contemplated."

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: *The Department recognizes overlapping concerns and duplicative efforts between Federal, State and local law enforcement officials and the U. S. Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury, the City of Norfolk, and the City of Hampton.

1Agency did not exist under SJR 96.

There is some duplication in the approval of brands, containers and labels for alcoholic beverages sold in the State. The Virginia ABC Commission is usually more strict than Federal authorities, in that all items approved at the Federal level are not approved at the State level. Federal BATF officers and the ABC officers are both concerned with similar criminal enforcement problems, such as illegal manufacture and "tied-house" violations. Generally, the concerned officials cooperate with and assist each other. Local and State law enforcement officers suspecting criminal activities involving licensed establishments, e.g., ABC violations, illegal drug activity, prostitution, "nip-joints", etc., coordinate and cooperate with ABC officers.

The Attorney General has ruled invalid an ordinance of the City of Norfolk regulating through zoning the licensure of alcoholic beverage establishments. In addition, a City of Hampton ordinance imposing excise taxes on alcoholic beverages has been ruled invalid. The principle basis for the ruling is §§4-96.

Recommended Action: The Department of Alcoholic Beverage Control cooperates and welcomes assistance from other law enforcement groups. There is little or no real conflict and such overlapping concerns as there are generally promote and enhance stricter enforcement of the criminal laws. Consequently, no changes are suggested and no action recommended.

2. SJR 58 Problem: *Localities from time to time take actions that are inconsistent with or in conflict with action taken by this agency. However, as illustrated in the examples below resolution occurs on a case by case basis.

In 1975-76 the Board of Supervisors of Loudoun County adopted an ordinance requiring deposits on alcoholic beverage containers. The ordinance was declared contrary to §4-96, and invalid in McLain v. Board of Supervisors (Circuit Ct., Loudoun Co. 1976).

In an opinion to the Honorable Thomas W. Moss, Member, House of Delegates, dated March 17, 1977, the Attorney General ruled invalid a zoning ordinance of the City of Norfolk insofar as it infringed the licensing powers of the ABC Commission.

A City of Hampton ordinance imposing an excise tax on alcoholic beverages was ruled invalid in an Attorney General opinion dated August 5, 1977, to the Honorable John D. Gray, Member, House of Delegates.

3. SJR 58 Problem: *Litigation problems are expected year to year events as the appeal processes in § 4-31(f) and § 4-37(d) are exercised.

An adverse decision of the Circuit Court of the City of Richmond is now pending an appeal to the Supreme Court of Virginia. The case involves the justiciability of the Commissioner's denial of a licensee's request to use a built-in backgammon board as a "table" or "counter" as defined by the Commission.

A suit against Commission members for damages to declare portions of the ABC Act unconstitutional is pending in the U. S. District Court for the Western District of Virginia. The case involves the Commission's denial of an application for a license.

Recommended Action: None.

DEPARTMENT OF CORRECTIONS

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *There are conflicts and ambiguities within the enabling legislation establishing the powers and duties of the Board of Corrections vs. those of the Director of the Department of Corrections. The Director is given all the usual rule and regulation making powers necessary to administer the Department; for example, § 53-19.8 through § 53-19.14 outlines the broad powers of the Director in administering the agency. The Board of Corrections is designated to act in an advisory capacity to the Director and yet is given powers and duties that are more than advisory in nature in § 53-19.34 through § 53-19.36. Furthermore, these powers and duties are, in many cases, identical to those of the Director as to establishing rules and regulations, setting up training for the Department's employees and establishing goals and direction for the Department administratively within its institutions and its main divisions. (A specific example exists in § 53.19.35, where the Board is given the power to establish entrance and performance standards for personnel employed by the Department. This seems to be a task which should be under the control of the Director as the administrative head of the agency, and the section, in fact, appears to be in direct conflict with § 53-19.14 under general powers and duties of the Director.) It is recommended that a comprehensive review of all laws of Virginia relating to Corrections be undertaken and code sections rewritten where necessary. Especially in need of recodification is Title 53 which dates back to the Department's status within the Department of Welfare and Institutions and does not reflect present-day correctional philosophy or practice. (For example, the Penitentiary, in Title 53, is given as the primary correctional facility and rules and regulations used in administering that institution are applicable to all other correctional facilities. This in practice is not the case and philosophically it should not apply.) A comprehensive review of enabling legislation should result in laws relating to Virginia corrections that reflect present-day operating practices within the Virginia Department of Corrections.

Action Taken: The Department has begun a study of its enabling legislation and several model correctional codes in order to determine the best model for Virginia. The Department and the

Board of Corrections continue to work together to avoid conflicts before they arise. The Departments enabling legislation (§ 53) is to be rewritten and submitted to the 1980 session of the General Assembly.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: *None reported.

Recommended Action: None required.

CRIMINAL JUSTICE SERVICES COMMISSION

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported in Senate Document 11.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: *§ 9-111.9 is unclear as to the meaning of "manifest injustice".

Recommended Action: A clarification by the General Assembly will assist the Commission in exercising its duties and responsibilities as they relate to purging criminal history records information. The alternatives would include a policy statement on purges similar to the statement contained in § 19.2-392.1 pertaining to expungement or repeal §9.111.9 as this section in some aspects is duplicative of § 19.2-397.2.

VIRGINIA STATE POLICE

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Although the State Police did not identify it as a problem, the Commission on State Governmental Management has identified some fragmentation, duplications, and overlapping of efforts in the investigative functions of the State Police and the Alcoholic Beverage Control Department. Legislation was introduced during the 1977 General Assembly to consolidate the enforcement and investigative functions of the Department of Alcoholic Beverage Control with the Enforcement Division of the State Police. The bill did not pass, but the Commission had indicated that a somewhat similar bill will be introduced in 1978.

Action Taken: A bill was introduced in the 1978 session of the General Assembly but it failed to pass.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: *None reported.

Recommended Action: None required.

REHABILITATIVE SCHOOL AUTHORITY

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *None reported in Senate Document 11.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: *Due to organizational and operational changes that have evolved over time the statutes which grant authority for this agency are in need of amendment and revision as follows:

§ 22-41.2 establishes the composition of the Rehabilitative School Authority Board. Among the ex officio members are included "...the head of the Division of Adult Services, the head of the Division of Youth Services..." of the Department of Corrections. Through administrative reorganization of the Department of Corrections, these offices no longer exist. The Director of the Department of Corrections has assigned the Assistant Director, Division of Institutional Services and the Assistant Director, Division of Program Development and Evaluation to perform in this capacity.

§ 22-41.6 states that "The powers and duties of the Authority superintendent shall be fixed by the Board of Education in accordance with law." There resides in this statute the potential problem of having the Board of Education (referring to the State Board of Education of the Virginia Department of Education) establish the powers and duties of the Authority superintendent, who serves as the executive officer to a separate board, the Board of the Rehabilitative School Authority.

Recommended Action: § 22-41.2 should be changed to reflect the administrative reorganization. An Administration Bill is proposed for introduction in the 1979 session of the General Assembly to reflect the Department of Correction's reorganization.

§ 22-41.6. A Task Force which is developing a Master Plan for the Rehabilitative School Authority will consider this matter and provide recommendations for legislative change, if required, to the Secretary of Public Safety.

2. SJR 58 Problem: *There is significant overlap, duplication, inconsistency, and conflict between the rules, regulations and statutes granted the RSA and the Department of Corrections as indicated below:

§ 22-41.1 and § 53-33 establish the Rehabilitative School Authority "...which shall be composed of all the educational facilities of all institutions operated by the Department of Corrections..." 53-33 authorizes the Director of the Department of Corrections to "...make such arrangements as are necessary to enable classes to be organized amongst the prisoners, so that those who desire may receive instruction in various lines of educational pursuits. The Director shall utilize, where possible, the services of the prisoners who are sufficiently educated to act as instructors for such classes in education; such services, however, shall be voluntary on the part of the prisoner..." It appears that simultaneous authority is therefore granted to the Rehabilitative School Authority and the Department of Corrections. This duplication exists in the Code, and not among the two agencies.

§ 22.41.1, § 53-128.1, and § 53-128.2 relate specifically to the type of institution provided under 19.1-295.1 et seq. For example, 53-128.1 authorizes the Department of Corrections to "...establish, staff, and maintain an institution for the rehabilitation, training and confinement of persons committed under the provisions of 19.1-295.1 et seq. and determined by the Department to have the potential for rehabilitation which justifies their confinement and treatment therein, when funds and facilities are provided by the General Assembly." 53-128.2 further specifies that "The Department shall establish and maintain as such institution the following: (a) Programs and facilities for counseling, education and vocational training designed for the rehabilitation of prisoners confined therein..."

Recommended Action: § 22.41.1 and § 53-33. Since this duplication exists in the Code and not between the two agencies, no problems currently exist. The matter will be addressed jointly by the two agencies in the development of the RSA Master Plan and revision of § 53, both of which have been previously described.

§ 53-128.1 and § 53-128.2 These situations will be addressed jointly by the two agencies in the development of the RSA Master Plan and revision of § 53 as previously described.

OFFICE OF TRANSPORTATION

The Governor's Council on Transportation indicated it has no problems related to statutory authority and limitations under SJR 96. The table below compares the agency responses to both SJR's 96 and 58 for this office.

<u>SJR</u> <u>96</u>	<u>SJR</u> <u>58</u>	<u>ORGANIZATION UNIT TITLE</u>
Yes	Yes	Department of Highways and Transportation
Yes	No ¹	Division of Motor Vehicles
Yes	No ¹	Department of Transportation Safety
No	No	Virginia Port Authority
Yes	No ²	Virginia Airport Authority
Yes	Yes ²	State Office of Emergency and Energy Services
Yes	Yes	Department of Military Affairs

VIRGINIA AIRPORTS AUTHORITY

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Authority has consistently urged that all of the aviation functions of the Commonwealth be accorded to one agency, such as the Virginia Airports Authority. This concept has been the subject of several legislative proposals, none of which has borne fruit.

Action Taken: None reported

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: No response was received to indicate any problems under SJR 58.

Recommended Action: None required.

¹Absorbed the former Highway Safety Division.

²Includes former Virginia Energy Office.

OFFICE OF EMERGENCY AND ENERGY SERVICES

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *This office reports an appalling lack of coordination between three Federal agencies--the Federal Preparedness Agency, the Civil Defense Preparedness Agency and the Federal Disaster Assistance Agency--and 23 others that have some responsibility for civil emergency work. Duplication, overlapping authority and inconsistencies in funding and implementation of programs make it extremely difficult for the State office to carry out its mandate under § 44-146.17 et seq. The National Governors' Conference, the National Association of State Directors for Disaster Preparedness, and the United States Civil Defense Council have deplored the lack of a well-defined Federal program to counter the effects on the population of enemy attack, natural or man-made disasters, and have recommended that the President of the United States exercise his executive authority to reorganize the Federal Emergency Planning and Response Programs to create a single office under the direction of the President.

Action Taken: On June 19, 1978, the President of the United States transmitted a reorganization plan to the Congress, the objective of which is to establish a new Federal Emergency Management Agency which will group the numerous civil preparedness and disaster relief functions presently scattered in various Federal Departments and agencies. The approval of this plan should resolve the problem cited concerning the difficulty experienced by this office in carrying out its mandate under Section 44-146.17 et seq.

2. SJR 96 Problem: *In litigation, *Boyd v. Commonwealth*, it was charged that the recent gasoline shortage was not of sufficient seriousness to warrant implementing the disaster law to lower the speed limit to 55 miles per hour. The Commonwealth's position was upheld and subsequently the General Assembly changed the law to strengthen the Governor's powers in resource management.

Action Taken: None required since the Commonwealth's position was upheld.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: Several changes are needed to update the legislation which established this agency.

Recommended Action: Legislative changes were recommended and submitted in compliance with Secretary of Administration and Finance Directive Number 8 (78) on September 19, 1978. Among them are:

§ 44-146.16 (3). Delete the words "air raid" from the seventh line. Air raid warning is an obsolete term; warning services is a valid Emergency Services function.

The present definition includes temporary restoration with limitation. However, it makes no provision for recovery and assistance programs which are also Emergency Services functions. Consequently, the following added sentence is suggested: "These functions also include the administration of approved State and Federal disaster recovery and assistance programs."

§ 44-146.18 (a). Since there is no longer a Secretary of Transportation and Public Safety, change the first sentence to read: "The State Office of Emergency Services is hereby established and shall be the responsibility of the Secretary of Transportation for normal administrative functions."

Recognize that as State Director of Emergency Services, the Governor is responsible for emergency preparedness actions and adequate State response to declared or undeclared emergencies. Therefore, he should have direct operational control of the State Emergency Services organization when disaster threatens or occurs. It follows that, the second sentence should be changed to read: "However, during an emergency, this office shall revert to the operational control of the Governor."

§ 44-146.18 (c)(5) should be changed to read "Determining requirements for disaster relief and recovery assistance", to establish responsibility for recovery assistance.

§ 44-146.23 (a). The phrase "disaster services activities" as it appears in the fourth line should be changed to read "Emergency Services activities" since the latter term is defined in the Code and the former is not.

§ 44-146.25. The second paragraph of the oath quoted in this section should be deleted since the Defense Civil Preparedness Agency has been advised that requiring this part of the oath would be a violation of the Constitution.

HIGHWAY SAFETY DIVISION

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Division will seek to have the 1978 session of the General Assembly amend § 18.2-271.1 to give the Division authority to establish standards for the State and local Alcohol Safety Action Programs, evaluate them, and set the fees.

Action Taken: Legislation which resulted in House Joint Resolutions 136 and 102. In addition, two legislative committees were appointed and will report to the 1979 General Assembly. The matter of administrative assignment of responsibilities between state agencies, uniformity and judicial restraints, if any, will be addressed.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *Regulations promulgated by the United States Department of Transportation require the Governor of each state to designate a metropolitan planning organization (MPO) in each urban area, as a condition to the receipt of Federal aid highway funds. Under the regulations, the planning organizations are to draft a transportation plan for their respective areas. Only those transportation projects (public transit, elderly and handicapped, air, highway, etc.) projects included in the plan will be eligible for Federal funds. By statute, the General Assembly has assigned to the Highway and Transportation Department the responsibility for transportation planning, allocation of highway funds, and development of highway projects. The Federal regulations in effect give the MPOs the power to prepare transportation improvement programs in lieu of those State responsibilities. By approving a program of transportation improvements, the MPOs would become implementing, not planning, bodies, and would become for practical purposes a layer of regional government for which there is no provision in the Constitution of Virginia or in State law.

Action Taken: The Commonwealth joined as amicus curiae and filed a brief in the Circuit Court of appeals in the District of Columbia in a California case challenging the propriety of the MPO regulations. In that case, the Commonwealth was unsuccessful in persuading the Court because the Court held against California. The Circuit Court of Appeals has found the MPO's to be a proper organization and that there is no impropriety involved in the regulations. This finding does not, in and of itself, bind the Commonwealth since the Commonwealth joined as an amicus rather than as a party because the fact situation was weak and the Commonwealth did not want to be bound by a finding adverse to California.

Implementation of the program has not been as strict as set out in the federal regulations. Consequently, no factual situation has arisen to form a basis for litigation. In the event that regulations are enforced so that Virginia State law or constitution is infringed then litigation should be seriously considered to question the propriety of regulations. However, it has been found that the federal government has the right to place conditions upon its grants and if the states did not want to abide by the conditions, they could refuse federal aid. State of Oklahoma v. U.S. Civil Service Commission, 330 U.S. 127 (1947).

2. SJR 96 Problem: *In administering environmental legislation enacted by the Congress, Federal agencies have gone far beyond the Congressional intent and have established a confusing array of rules and regulations which themselves sometimes are in conflict. The Department of Highways and Transportation is required to prepare extensive environmental impact statements on every Federal-aid construction project, then must circulate the statements to approximately 30 Federal, State, regional and local agencies for review and comment. The review process generally works smoothly insofar as the State, regional, and local agencies are concerned. It is far different with the Federal agencies, all of which make their reviews and comments independently and without any central coordination at the Federal level. Federal agencies are free to challenge information and conclusions contained in the statements, but rarely assume responsibility for reconciliation of differences. Some recognize the need for highway improvements, others appear bent on obstructing such improvements at all costs. The cost of preparing the Federally required environmental impact statements now amounts to approximately \$2.5 million annually. While there is no quarrel with the importance of protecting the environment, there is considerable room for quarrel with the Federal government's approach to providing that protection. One of the results of the process is that millions of dollars in highway improvements are delayed months and sometimes as much as several years while the federal reviews slowly take their course. Even assuming approval of environmental impact statements by the Secretary of Transportation, some Federal agencies have virtual veto power over all projects at the permit stage by virtue of the Clean Water Act.

Action Taken: Under the present administration there has been an attempt to reorganize the procedures for creating and drafting environmental impact statements. The Council on Environmental Quality (CEQ) has issued proposed regulations in the Federal Register which the states have reviewed and to which some states have voiced objections. The Commonwealth has expressed its position on several occasions to the CEQ. No final determination on the wording of the final regulations has been made.

3. SJR 96 Problem: *The department also has witnessed in recent months an extraordinary interpretation of the Davis-Bacon Act under which wages are established for Federal or Federally-

assisted construction projects. The case in point concerns the wage rates set by the United States Department of Labor for construction of Interstate 66 in Northern Virginia. The Department has ruled that normal highway rates are to be paid to workers involved on what the Labor Department regards as conventional highway work, while "heavy" construction rates--twice as much in most instances--are to be paid those working on aspects of the project which may ultimately accommodate the Metrorail system. This ruling apparently ignores completely the fact that contractors' employees working side by side, having identical experience, using identical equipment, performing what for all practical purposes is identical work would be paid vastly differing wages. The Department of Highways and Transportation took the original ruling to the Labor Department's own Wage Appeals Board. The Board agreed with Virginia's position, and reversed the order for the "heavy" construction rates on the first I-66 project. The Labor Department has again required the dual wages for the second I-66 project, and the Department will appeal again. As in the case of the environmental regulations, the conflict experienced with the wage rates is not in Federal legislation but, instead, in the manner in which the legislation is administered.

Action Taken: The Commonwealth filed an action against the Secretary of Labor in the United States District Court for the Eastern District of Virginia, Alexandria Division, alleging that the Secretary improperly implemented the Davis-Bacon Act on one of the I-66 projects. The Commonwealth's position is that; (1) he wrongfully used an "ultimate use test", (2) he should have found the work that is being done for Metro to be incidental, and (3) he failed to utilize the well established precedent that in determining whether a project is one of similar nature one must look at it in a "construction sense." Trial on this matter was scheduled for November 6, 1978.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

DEPARTMENT OF MILITARY AFFAIRS

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *In litigation is a suit filed on behalf of 18 prior Air Defense technicians who contend that the Adjutant General of Virginia exceeded his authority to conduct the 1974 reduction-in-force action. The reduction-in-force action

resulted in the elimination of positions of 291 full-time Army National Guard Technicians. The plaintiffs are asking for damages of one million dollars, restoration of all personnel actions made subsequent to February 4, 1974, and retroactive implementation of the reduction procedures. The United States District Court denied the complaint and the plaintiffs appealed to the United States Fourth Circuit Court of Appeals. This court reversed the lower court decision and remanded the case to the District Court for entry of an appropriate order directing the defendants to prepare a schedule, subject to the court's approval, offering employment or reemployment to the plaintiffs at no less than the grade each would have had if competition for vacancies had been restricted to the displaced technicians.

Action Taken: Compliance with the above order is proceeding.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: Two Virginia Army National Guard helicopter pilots were killed while crewmembers aboard a Bell UH-1H that crashed on January 23, 1976. Two suits were initiated by the relatives of the deceased pilots (one suit for \$5,000,000 and the other for \$2,000,000) naming the Virginia National Guard and its Adjutant General as third-party defendant. The Virginia National Guard was dismissed as third-party defendant, which was affirmed by the U. S. Court of Appeals but an appeal is pending before the U. S. Supreme Court.

Recommended Action: Wait for the outcome of the U. S. Supreme Court of Appeals.

2. SJR 58 Problem: The threat of litigation exists in connection with the release from initial active duty for training (IADT) of an enlisted member of the Virginia Army National Guard. The enlistee's release was caused by substantial performance and a history of being a slow learner. Degeneration of the enlistee's mental condition occurred after release and may have been the result of the stress oriented training environment and the failure of medical personnel to diagnose and treat the condition properly. The individual submitted a request to have his discharge orders from Fort Jackson revoked and that he be returned to active status. The request was forwarded to the Board of Military Corrections on June 30, 1978. The threat of litigation exists if the Board denies the individual's request.

Recommended Action: Wait for Board action.

3. SJR 58 Problem: A threat of a suit naming the Virginia National Guard as defendant in a situation involving property damage. The party which may enter suit alleges that property damage was incurred when a Virginia National Guard unit trespassed on private property by removing many thousands of cubic yards of dirt by bulldozer for roadway construction adjacent to private property.

Recommended Action: None until the situation develops further.

DIVISION OF MOTOR VEHICLES

SJR 96 PROBLEM STATUS

1. SJR 96 Problem: *The Code provides that the Director of Personnel establish and administer a classification and compensation plan. § 46.1-30 provides for the Commissioner of Motor Vehicles to appoint and fix the compensation of branch office personnel. The Division is of the opinion that the Commissioner should be allowed to exercise this authority as an exception to the Personnel Act.

Action Taken: None because it would require an exception in the Personnel rules and regulations. The matter is being discussed with the Department of Personnel and Training.

2. SJR 96 Problem: *Title 46.1 has not been recodified since 1958. A thorough review should be undertaken to eliminate duplicate or conflicting sections.

Action Taken: None reported.

3. SJR 96 Problem: *Dealer license plates (§ 46.1-101) and Dealer license certificates (§ 46.1-526) should expire on the same date. A bill will be drafted to effect this needed change.

Action Taken: None reported.

4. SJR 96 Problem: *There is some duplication of effort with the State Corporation Commission. Duplication and overlap occur when a carrier is required to register at both DMV and SCC and both agencies produce a registration card for the same vehicle.

Action Taken: None reported.

SJR 58 NEW PROBLEM RECOGNITION

1. SJR 58 Problem: None reported.

Recommended Action: None required.

CONCLUSIONS OF THE SJR 58 CONTINUED STUDY

*The findings, conclusions, and recommendations of the SJR 96 Study have been followed-up, investigated, implemented, or appropriately addressed in other ways as required by SJR 58.

*Incorporation of the Governor's Policy of Annual Reviews of Agency Grants of Authority into the Legislative Coordination Procedures establishes a routine executive branch administrative procedure. This action is designed to achieve, on a continuing basis, comparable benefits to those derived by the studies under SJR 96 and SJR 58.

APPENDIX A

The following questions are indicative of those to be included in the procedures for Annual Review of Agency Grants of Authority as a part of the Legislative Coordination Procedures.

- I. Status Determination of Previously Cited Problems
 - a. What actions, if any, have been taken to resolve previously cited problems?
 - b. What actions if any, are contemplated and when is completion expected?
 - c. If no actions have been taken and none are contemplated, explain why.

- II. Identification of New Problems Within the Organization
 - a. Deficiencies in Statutory Authority for Activity
 1. Are the statutes which grant authority for each agency subfunction, program, or other activity, sufficient and clear?
 2. Given sufficiency and clarity are the statutes for each agency subfunction, program, sub-program, or related activity adequate, too restrictive, too broad, or absent?
 - b. Deficiencies in Regulations and Statutory Authority for Regulations
 1. Is there any question of proper authority for or lack of clarity in any of the rules, regulations or standards related to any subfunction, program, subprogram, or other activity?
 2. Does any other organization within the executive branch of State government or any other State, federal, or local governmental body have rules, regulations, and/or standards which duplicate, overlap, or are inconsistent with the rules, regulations, and/or standards related to any subfunction, program, sub-program, or other activity of the organization?

- III. Identification of New Problems Within the Organization As a Whole
 - a. Jurisdictional Conflicts
 1. Has the organization taken any action which is inconsistent with or in conflict with a prior action taken by another organization within

- the executive branch of State government or any other State, federal, or local governmental body?
2. Conversely, has any other organization within the executive branch of State government or any other State, federal, or local governmental body taken any action which is inconsistent with or in conflict with a prior action taken by your organization?
- b. Litigation Challenging the Agency's Authority
1. Have there been any cases of litigation, impending litigation, or threat of litigation related to an action or actions taken by the organization?
- c. Other Inconsistencies or Conflicts
1. Has the organization encountered any problems resulting from inconsistencies or conflicts between State and federal statutes or between State statutes and local ordinances and are any such problems foreseen?
- d. Deficiencies in Distribution of Funds or Permit Awards
1. Are the conditions attached to funds distributed or permits issued by the organization in conformity with statutory grants of authority?
- e. Deficiencies in Rule Making Review and Adoption
1. Are the rules, regulations, and standards adopted by or for the organization reviewed periodically?
 2. Are proposed rules, regulations, and standards reviewed for legal sufficiency before adoption?
 3. Is the organization subject to or should it be subject to public hearings before proposed rules, regulations, or standards are adopted?
- f. Interagency Policy Making and Administrative Conflicts
1. Have there been any problems due to an unclear division of authority for policy making and administration, e.g., between a board or commission, department or agency?

APPENDIX B

DRAFT HOUSE RESOLUTION

Expressing the sense of the House of Delegates concerning the setting forth of legislative intent, policy, guidelines, and limitations in the Code of Virginia in order to establish the legal framework within which the programs and activities are to operate.

WHEREAS, in nineteen hundred seventy-seven the General Assembly caused to be conducted a review of the statutory grants of power to the various boards, councils, commissions, departments and agencies of the executive branch of State government, as well as the rules, regulations, standards, orders or other actions of such bodies, to determine whether the statutes granting such powers are in any instances lacking in adequate guidelines and limitations on the exercise of such powers; and

WHEREAS, the resulting Study on Grants of Authority published as 1978 Senate Document No. 11, included the recommendation that: "In establishing new agencies or programs, legislative intent and policy should be spelled out and appropriate guidelines and limitations should be set forth in the Code in order to establish the proper legal framework within which the agencies or programs are to operate"; and

WHEREAS, in nineteen hundred seventy-eight the General Assembly caused the continuation of the study of statutory grants and authorities, to concentrate on, but not necessarily confine itself to, those areas which the Task Force found to be in greatest need of follow-up attention; and

WHEREAS, Section 30-28.18 of the Code of Virginia specifies that all requests for the drafting of bills by the Division of Legislative Services shall contain a general statement respecting the policies and purposes which the requestor desires incorporated in and accomplished by the bill; and that bill drafted by the Division shall conform to the statements submitted with the request, or the supplementary written instructions submitted by the person who originally made the request; and

WHEREAS, each of the Secretaries to the Governor is required to direct the formulation of a comprehensive program budget for his office encompassing the program and activities of the agencies assigned to such offices; and

WHEREAS, in nineteen hundred seventy-eight the General Assembly caused to be enacted the Legislative Program Review and Evaluation Act, Sections 30-65 through 30-73, Code of

Virginia, requiring that the functional areas of State government shall be scheduled for legislative review and evaluation by the Joint Legislative Audit and Review Commission, using evaluation criteria that includes: "that legislative intent is being carried out; that intended program outcomes are measurable and have been accomplished"; now therefore, be it

RESOLVED by the House of Delegates, That it is the sense of this body that each member of the House of Delegates in the drafting of bills for introduction into the General Assembly of Virginia, and in the revision of existing statutes, and in all other activities that cause legislation to be enacted, is hereby requested to cause explicit expressions of legislative intent, policy, guidelines and limitations to be written into the Code of Virginia.

APPENDIX C

DRAFT SENATE RESOLUTION

Expressing the sense of the Senate concerning the setting forth of legislative intent, policy, guidelines, and limitations in the Code of Virginia in order to establish the legal framework within which the programs and activities are to operate.

WHEREAS, in nineteen hundred seventy-seven the General Assembly caused to be conducted a review of the statutory grants of power to the various boards, councils, commissions, departments and agencies of the executive branch of State government, as well as the rules, regulations, standards, orders or other actions of such bodies, to determine whether the statutes granting such powers are in any instances lacking in adequate guidelines and limitations on the exercise of such powers; and

WHEREAS, the resulting Study on Grants of Authority published as 1978 Senate Document No. 11, included the recommendation that: "In establishing new agencies or programs, legislative intent and policy should be spelled out and appropriate guidelines and limitations should be set forth in the Code in order to establish the proper legal framework within which the agencies or programs are to operate"; and

WHEREAS, in nineteen hundred seventy-eight the General Assembly caused the continuation of the study of statutory grants and authorities, to concentrate on, but not necessarily confine itself to, those areas which the Task Force found to be in greatest need of follow-up attention; and

WHEREAS, Section 30-28.18 of the Code of Virginia specifies that all requests for the drafting of bills by the Division of Legislative Services shall contain a general statement respecting the policies and purposes which the requestor desires incorporated in and accomplished by the bill; and that bill drafted by the Division shall conform to the statements submitted with the request, or the supplementary written instructions submitted by the person who originally made the request; and

WHEREAS, each of the Secretaries to the Governor is required to direct the formulation of a comprehensive program budget for his office encompassing the program and activities of the agencies assigned to such offices; and

WHEREAS, in nineteen hundred seventy-eight the General Assembly caused to be enacted the Legislative Program Review and Evaluation Act, Sections 30-65 through 30-73, Code of

Virginia, requiring that the functional areas of State government shall be scheduled for legislative review and evaluation by the Joint Legislative Audit and Review Commission, using evaluation criteria that includes: "that legislative intent is being carried out; that intended program outcomes are measurable and have been accomplished"; now therefore, be it

RESOLVED by the Senate, That it is the sense of this body that each member of the Senate in the drafting of bills for introduction into the General Assembly of Virginia, and in the revision of existing statutes, and in all other activities that cause legislation to be enacted, is hereby requested to cause explicit expressions of legislative intent, policy, guidelines and limitations to be written into the Code of Virginia.

