REPORT OF THE
JOINT LEGISLATIVE
AUDIT AND REVIEW COMMISSION ON

Organization and Management Review of the State Corporation Commission

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 15

COMMONWEALTH OF VIRGINIA
RICHMOND
1987

Members of the Joint Legislative Audit and Review Commission

Chairman

Senator Hunter B. Andrews

Vice Chairman

Delegate Theodore V. Morrison, Jr.

Senator Peter K. Babalas
Delegate Robert B. Ball, Sr.
Senator John C. Buchanan
Delegate Vincent F. Callahan, Jr.
Delegate Lacey E. Putney
Delegate Ford C. Quillen
Delegate Alson H. Smith, Jr.
Senator William A. Truban
Delegate William T. Wilson
Mr. Walter S. Kucharski, Auditor of Public Acounts

Director

Philip A. Leone

PREFACE

Item 11 of the 1985 Appropriations Act directed JLARC to plan and initiate a comprehensive performance audit and review of the operations of the independent agencies of State government. This report contains the staff findings and recommendations on the State Corporation Commission (SCC).

Considering its administrative and regulatory complexity, the overall organization and management of the SCC are generally sound. The SCC's special fund structure helps to ensure that special funds are not commingled. The organizational structure groups regulatory staff and activities into logical components. A strong personnel system has been developed. And a comparison of SCC regulatory activities to statutory activities indicated that the SCC is in compliance with legislative intent in most instances.

As with any large public organization like the SCC, certain actions can be taken to strengthen agency management and administration. Included in this study are 36 recommendations to improve the SCC's organization and general management, financial management, personnel and staffing practices, and compliance with legislative intent.

I am pleased to note that the SCC Commissioners are in general agreement with our observations in the report and have only minor differences over methodology and extent. In his comments following the JLARC staff briefing on December 8, 1986, Chairman Thomas P. Harwood indicated that the SCC has already begun acting on study recommendations.

On behalf of the JLARC staff, I would like to express our appreciation for the cooperation and assistance provided by the SCC Commissioners and their staff during the course of this review.

Philip A. Leone
Director

December 19, 1986

Organization and Management Review of the State Corporation Commission

December 1986

Joint Legislative Audit and Review Commission

The State Corporation Commission (SCC) is an independent regulatory agency within Virginia State government. Established by the *Constitution of Virginia* in 1902, the SCC exercises legislative, judicial, and executive powers. The SCC regulates the railroad, telephone, telegraph, water, gas, electric, motor carrier, financial institution, insurance, securities, and retail franchising industries in Virginia. The SCC also administers all laws for the regulation and control of corporations doing business in the Commonwealth.

For the most part, the overall organization and management of the SCC are sound. The SCC's special fund structure helps to ensure that special funds are not commingled. The organizational structure groups regulatory staff and activities into logical components. A strong personnel system has been developed. And a comparison of SCC regulatory activities to statutory responsibilities indicated that the SCC is in compliance with legislative intent in most instances.

A number of areas within the SCC require attention to address shortcomings, however. These shortcomings concern financial management, general organization and management, personnel and staffing practices, and the scope of SCC authority and responsibility. These areas are summarized below. Full statements of specific recommendations and supporting details are contained in the text of this report.

A JLARC REPORT SUMMARY

Better Financial Management is Needed (pp. 9-26).

The SCC collected $324 million from various sources during FY 1986. The majority of this money passed through the SCC to the State General Fund and other entities. A portion of SCC collections were raised through earmarked regulatory taxes and assessments. These monies were retained by the SCC and maintained in five special funds to support SCC operations.

A review of SCC financial management indicated that the SCC is out of compliance with legislative intent in two areas. First, the SCC maintains excessive balances in two of its special funds. For example, the SCC likes to keep at least a six-month reserve in the valuation fund. (The valuation fund covers the cost of utility regulation.) The average balance throughout FY 1986, however, was nearly $8 million, which would fund 17 months of operation. This occurs despite statutory reference to the maintenance of "reasonable" financial reserves and a legislative transfer of $3.2 million out of the valuation fund in 1982.

Second, the SCC allows savings and loan associations, credit unions, and possibly

"For the most part, the overall organization and management of the SCC are sound."

consumer finance companies to subsidize the regulation of banks. This practice violates sections of the *Code of Virginia* which specify that financial institutions' assessments shall relate to their assets and other relevant factors.

The following recommendations are made:

- the SCC should establish a formal, written policy regarding special fund balances in the valuation, insurance, and financial institution areas;
- the SCC should adopt a three-month financial reserve for the valuation and insurance special funds. Rates should also be reduced in the next assessment cycle to bring balances down to the three-month levels; and
- the SCC should take immediate action to comply with legislative intent by revising assessment schedules in the Bureau of Financial Institutions to eliminate subsidization between the various types of financial institutions.

A number of additional concerns exist in the financial management area. First, while the SCC has clear authority to maintain a financial reserve in one fund, its authority in two other instances is unclear or non-existent. Second, although the SCC would like to be credited for the interest earned on its fund balances, State practices in this area do not support this course of action. Third, the timing of the corporate operations fund reversion should be adjusted. This would eliminate the unnecessary financial transactions and paperwork currently associated with the revenue anticipation loan secured by the SCC each year.

Fourth, some subsidization occurs in the utility area due to statutory provisions and current operational procedures. Fifth, a revised mechanism appears to be necessary to more closely link collections from the securities industry with the costs of regulation in that area. And sixth, several formulas used to allocate staff costs to ensure that each special fund is charged appropriately need revision.

The following recommendations are made:

- the General Assembly may wish to consider providing the SCC with clear authority for maintaining financial reserves in the financial institutions and insurance special funds;
- the SCC should continue to conform to the general State practice regarding interest and income earned on special fund balances. Interest and income should continue to be credited to the General Fund;
- the General Assembly may wish to consider amending §58.1-2804 of the *Code* by changing the date upon which the corporate operations fund balance must revert to the General Fund. This would allow the SCC to operate without securing a revenue anticipation loan each year;
- the General Assembly may wish to consider eliminating subsidization which occurs in the regulation of utilities. A provision similar to §58.1-2661 could be placed in statute stating that, to the extent possible, regulatory revenue taxes shall not exceed estimates of expenses to be incurred in regulating individual utility industries;
- the General Assembly may wish to consider amending the *Code* to specify

that revenues collected from the securities and retail franchising industries be used for 'the purpose of regulating these industries; and

- the SCC should revise six of its staff cost allocation formulas or procedures to ensure that its special funds are appropriately charged for staff support.

SCC Organization and Management Structure is Generally Sound (pp. 27-45, 50-56).
In general, the current organization and management structure of the SCC is sound and logical. Several problems are apparent in the high-level management structure, however. These primarily concern the routine activities of the Commissioners and an underutilized Executive Director whose responsibilities are not clearly defined.

The following recommendations are made:

- the SCC Commissioners should limit their involvement in daily administrative matters and concentrate on high-level activities and matters that cannot be resolved at a lower level of the organization;

- the SCC Commissioners should create three law clerk or paralegal assistant positions to assist them with their judicial responsibilities; and

- the SCC Commissioners should clarify the role and responsibilities of the Executive Director, and delegate the position greater administrative authority. If necessary, the title of the position should be revised.

Several divisions also exhibit structural and management weaknesses which warrant attention. These weaknesses center around the departmentalization of function, designation of line and staff units, chain of command, and span of control.

The following recommendations are made:

- the SCC should monitor the corporate operations and utility finance areas very closely to ensure that coordination and communication are maintained and that duplicative or overlapping functions do not develop. Efforts should continue to realign res-ponsibilities between the Clerk's Office and the Corporate Operations Division. And the Division of Accounting and Finance should be renamed to reflect its reduced responsibilities in the finance area;

- the SCC should redesignate the Division of Support Services as a staff unit and place the division under the Executive Director for general oversight and supervision;

- the SCC should establish a procedure whereby the costs associated with Economic Research and Development projects done for non-utility divisions are allocated to and recovered from those divisions;

- the SCC should clarify the chain of command within the Division of Accounting and Finance;

- the SCC should closely examine the spans of control in eight divisions and offices. Units should be reconfigured and positions abolished to eliminate managerial spans of control of zero, one, and two;

"The SCC Commissioners should clarify the role and responsibilities of the Executive Director."

- the SCC should create a Roanoke field office for the Bureau of Financial Institutions;

- the SCC should take steps to strengthen internal communications; and

- the SCC should develop written policies and procedures to guide organizational operations and decision making in areas where these are lacking. A specific policy should be drafted regarding employee conduct when dealing with a regulated entity in which a relative is employed.

Organization and Management of the Bureau of Insurance are Weak (pp. 45-50).

While several divisions showed signs of weakness in one or three organization and management areas, the Bureau of Insurance exhibited weaknesses in all areas. The bureau's examination process is fragmented, and the two major departments carrying out examinations have experienced coordinative difficulties. Line and staff functions are not well delineated. The bureau has a dual leadership structure which could be strengthened through consolidation, and the chain of command is not consistently adhered to.

The bureau has a large number of high-level managers, some with very narrow spans of control. Communication between some managers and subordinates has been a pervasive problem. There is also a high rate of turnover in the bureau. Nearly half of the bureau's employees left over the 1984-86 biennium. These factors indicate an urgent need for strong executive leadership, better employee communication, and effective conflict resolution.

While the extent and type of problems exhibited here would be serious in any division, they take on a special significance in the Bureau of Insurance. Unlike a number of other areas regulated or examined by the SCC, there are no federal agencies which regulate insurance. If the SCC fails to do a thorough and comprehensive job in this area, there are no other entities that will provide a back-up. Sound organization and management are essential to maximize the Commonwealth's efforts in the area of insurance regulation.

"The SCC Commissioners should place a high priority on addressing the structural, management, and operational weaknesses in the Bureau of Insurance."

The following recommendation is made:

- the SCC Commissioners should place a high priority on addressing the structural, management, and operational weaknesses in the Bureau of Insurance. Actions should be taken to revise and consolidate the examination process, reorganize the bureau, eliminate the position of first deputy commissioner, broaden spans of control, transfer agent licensing to the Department of Market Regulation, consolidate support functions in the Department of Administration, and strengthen the chain of command.

Personnel and Staffing Practices Need Improvement (pp. 57-74).

The SCC interprets §2.1-116 and §12.1-18 of the *Code of Virginia* to mean it is exempt from the State Personnel Act. Although the General Assembly determines the agency's maximum employment level, the Commission has developed its own personnel and staffing policies and procedures.

The SCC's personnel policies and procedures are generally thorough and well designed. Several provisions should be added to the official personnel manual, however. And an allowance for severance pay and one situation under which positive recruitment is allowable should be discontinued.

Regarding the implementation of personnel policies, positive recruitment appears to have been employed inappropriately in a number of instances. And while efforts have been made to recruit minorities through an affirmative action program, minority employment levels at the SCC are below Statewide averages. Finally, SCC staff appear to be generally satisfied with available training opportunities.

The following recommendations are made:

- the SCC should make several changes in its personnel policies which would add sections on garnishment, safety and health, and unemployment compensation to the policy manual; discontinue severance pay; discontinue the use of positive recruitment to hire part-time, temporary, or seasonal em-ployees into full-time positions; and more narrowly define the specialized skills condition for positive recruitment. In addition, the conditions for the application of positive recruitment should be strictly adhered to in all situations;

- the SCC should begin an accelerated open recruitment effort to increase the minority applicant pool;

- the SCC should eliminate the adjustment bonus when the performance bonus is implemented. In addition, the Commissioners should begin to formally evaluate division directors as a means of justifying performance bonus awards to these personnel.

A review of SCC staffing practices showed that the agency needs to do more systematic manpower planning, and that turnover is high in a number of divisions. In addition, there is considerable inconsistency in the way titles are assigned to high-level management positions within the divisions.

The following recommendations are made:

- the SCC should strengthen its manpower planning process; and

- the SCC should assess its classification scheme for directors, managers, deputy directors, assistant directors, deputy commissioners, and assistant commissioners. Clear and consistent guidelines should be established regarding when each classification is to be employed and what the associated salary should be.

Regulatory Activities Are Generally in Compliance With Legislative Intent (pp. 75-90).

The authority and responsibility of the SCC are very broad. The SCC carries out a number of regulatory activities in numerous areas. A review of the SCC's enabling statutes and regulatory activities showed that the SCC, for the most part, is in compliance with legislative intent. Only four instances of non-compliance were identified.

The following recommendations are made:

- the SCC should initiate investigations of the economic conditions affecting the business of premium finance companies on two-year cycles;

- the General Assembly may wish to consider amending §56-128 of the *Code* to state that the SCC may examine railroad works and equipment in Virginia;

- the General Assembly may wish to consider amending §56-141 of the *Code* to allow the SCC to distribute compilations of common carrier statutes upon request; and

- the SCC should comply with §59.1-21.25 of the *Code* by notifying the public of rights created under Virginia's Equal Credit Opportunity Act.

Two additional areas also require attention. The first area concerns motor carriers. Motor carriers are regulated by five Virginia agencies. Coordination and duplication among these agencies has been a long-standing concern. A motor carrier "working group" was formed in 1984 for the purpose of improving motor carrier regulation. Although the agencies have started to share information, none of the recommendations formulated by the working group have been implemented. The SCC should initiate a number of actions which would eliminate some duplication and strengthen regulation in this area.

The following recommendations are made:

- the SCC should work with the Department of Motor Vehicles to develop a joint audit program;
- the General Assembly may wish to consider granting the SCC the authority to enforce motor carrier safety regulations;
- if discernible progress is not made to increase coordination and eliminate duplication in the motor carrier area, the General Assembly may wish to consider consolidating related motor carrier functions being conducted by the SCC and Department of Motor Vehicles; and
- the SCC should schedule motor carrier investigators to provide coverage during highest volume periods. Schedules should also be varied to reduce the potential for truckers to anticipate inspection times.

The second area requiring attention concerns financial institutions. A number of Virginia banks and savings and loan associations are examined by both federal authorities and the SCC. The SCC is planning significant changes in the way these institutions are examined which will require significant additional financial resources. For example, 10 to 12 new examiners and a $600,000 budget increase are anticipated to be necessary to carry out planned changes in savings and loan association regulation alone.

The following recommendation is made:

- the SCC should conduct a detailed analysis of proposed changes in financial institution regulation. The General Assembly may wish to require the SCC to present its proposed plan to the various legislative committees concerned with financial institutions.

TABLE OF CONTENTS

I. INTRODUCTION

The State Corporation Commission (SCC) is an independent regulatory agency within Virginia State government. Established by the *Constitution of Virginia* in 1902, the SCC was originally created to issue corporate charters and to regulate railroad, telephone, and telegraph companies. Today, SCC responsibilities include regulation of the railroad, telephone, telegraph, water, gas, electric, motor carrier, financial institutions, insurance, and securities industries. The SCC also administers all laws for the regulation and control of corporations doing business in the Commonwealth.

The SCC has broad powers. Created as an independent agency outside the three branches of State government, it exercises legislative, judicial, and executive powers as set out in the *Constitution of Virginia*. In this capacity, it represents a departure from the separation of powers doctrine which affects the role and organization of the rest of State government.

The SCC is a moderately large agency with a total of 527 authorized staff positions. Three Commissioners with equal powers head the agency. The Commissioners ultimately control all aspects of agency operations while also serving as judges with powers of a court of record. A recently created Executive Director position oversees selected areas of agency administration.

The majority of the Commission's staff are organized into 14 line divisions and six staff offices (Table 1). Divisions carry out day-to-day administrative and regulatory activities. Offices provide support services in the personnel, finance, systems, public information, legal, and hearing examination areas.

The SCC is a special fund agency and derives all of its operating revenues from special assessments and fees paid by regulated industries. Since the 1976-78 biennium, the SCC's operating budget has increased more than 100 percent to the 1986-88 biennium total of $58.5 million.

BACKGROUND AND HISTORY OF THE SCC

The SCC evolved out of a need to improve modes of transportation in the Commonwealth. Its roots can be traced to the Board of Public Works created in 1816 (Figure 1). At that time, transportation was heavily dependent on canals and waterways. When railroads became the predominant means of transportation, legislators became concerned about the railroad industry's power and its potential harmful effect on the public interest.

Legislative attempts to regulate railroads and provide for a commission to promulgate and enforce railroad regulations occurred frequently during the 19th century. Boards, commissioners, and commissions were repeatedly created, modified, and abolished. Most of these efforts to control the monopolistic activities of the railroads through regulatory action were ineffective. It was not until creation of the SCC in 1902 that a long-standing and independent regulatory mechanism was finally established.

Table 1

SCC Divisions and Offices

Division/Office	# Authorized Positions	FY 1986 Expenditures	Major Responsibilities
Accounting & Finance	29	$1,768,717	- Studies and analysis for utility rate cases. - Routine audits of utility companies. - Review utility company applications for the issuance of securities, affiliates transactions, and the transfer of utility assets.
Communications	13	826,417	- Monitor and make recommendations on telephone, radio carrier, and cellular carrier utility rates. - Consumer complaints. - Assess quality of telephone service. - Assess utility depreciation rates.
Energy Regulation	19	1,242,508	- Monitor and make recommendations on electric, gas, water, and sewer rates. - Monitor utility construction programs and perform gas pipeline safety inspections. - Consumer complaints.
Economic Research & Development	15	829,610	- Economic research and analysis on regulatory issues.
Public Service Taxation	11	659,608	- Assess public service company property for state and local taxation. - Distribute rolling stock taxes to localities. - Collect gross receipts and pole line taxes from public service companies.
Clerk's Office	13	351,373	- Custodian of SCC records. - Issue corporate charters and collect license fees.
Corporate Operations	27	1,736,624	- Record and maintain all data relevant to corporations filed with Clerk's Office. - Public inquiries. - Collect registration fees.
Uniform Commercial Code	6	266,947	- Central filing office in Virginia for federal tax and other liens.
Support Services	14	[698,002]	- Document control. - Mail and supplies. - Microfilming. - Reproduction. - General correspondence center.
Financial Institutions	82	3,959,971	- Regulate and examine State chartered banks, savings and loan associations, industrial loan associations, credit unions, and consumer finance companies. - Oversee money order sellers and non-profit debt counseling agencies.

Table 1 (Continued)

SCC Divisions and Offices

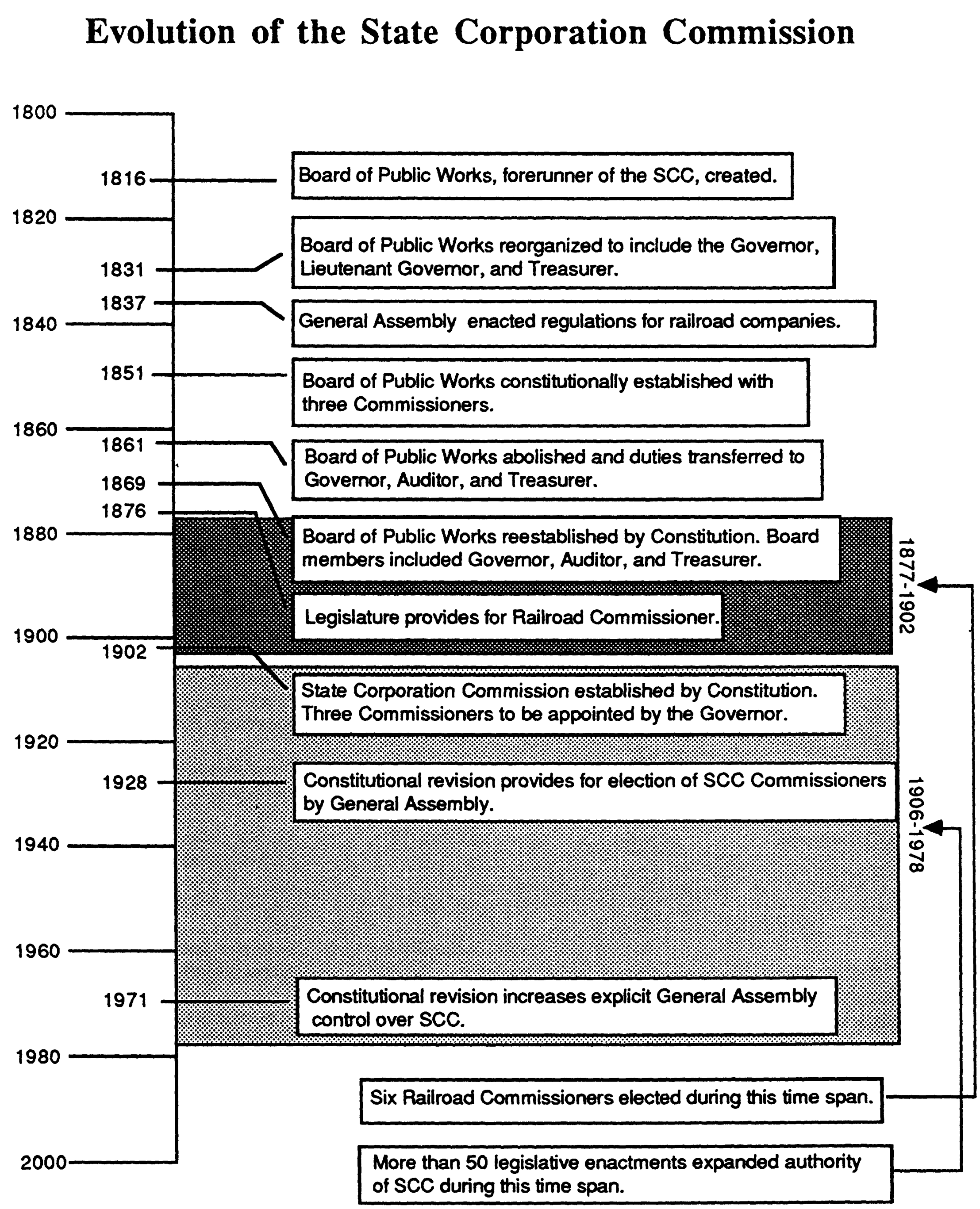
Division/Office	# Authorized Positions	FY 1986 Expenditures	Major Responsibilities
Insurance	122	$5,604,457	- Regulate and examine insurance agents, brokers, and companies. - License companies and agents. - Approve policies and forms. - Make recommendations on certain rates.
Motor Carrier	94	4,419,858	- Annual registration and issuance of permits to motor carriers. - Collect road taxes. - Audit and examine carrier records for compliance. - Field investigation and enforcement for registration, taxation, and insurance requirements.
Railroad Regulation	5	281,851	- Railroad track safety. - Investigate complaints. - Oversee railroad regulations and rates.
Securities & Retail Franchising	21	976,586	- Authorize sale of securities. - Investigate complaints. - License securities brokers and sales persons. - Takeover bid disclosure. - Trade and service mark registration. - Regulate franchises.
General Counsel	25	[1,061,130]	- Provide legal advice and analysis to divisions and Commissioners.
Hearing Examiners	4	[158,920]	- Conduct hearings and make recommendations to Commissioners.
Personnel	5	[176,197]	- Administer SCC personnel policy.
Fiscal	6	[311,337]	- Prepare and implement SCC budget. - Ensure fiscal control and integrity.
Planning & Development	4*	[421,721]	- Oversee and coordinate SCC computer systems operations and development.
Information Resources	5*	[109,619]	- Public information and response to inquiries. - Liaison with General Assembly, Congress, other governmental agencies, and community and industry groups.

*These are actual figures which are above authorized as per FY 1986 - 87 Financial Proposal. Authorized are: Planning and Development (3) and Information Resources (3).

Notes: Ten positions are also assigned to Central Administration which had a FY 1986 expenditure of $776,724. Figures shown in brackets [ ] are charged out to the line divisions and are included in line division expenditure amounts.

Source: Compiled by JLARC from SCC "Red Book", SCC Cost Center Report (7/22/86) and data from SCC Executive Director.

Figure 1



Source: Data from Preston C. Shannon, "The Evolution of Virginia's State Corporation Commission," William & Mary Law Review Vol. 14 #1, 1972.

Creation in 1902

The 1902 *Constitution of Virginia* created the SCC and vested it with executive, legislative, and judicial functions. Among the specific powers granted by this early Constitution were the powers to: (1) grant charters of incorporation in Virginia and administer corporate laws, (2) regulate the rates and services of railroads and telephone and telegraph companies, and (3) regulate certain other transportation companies.

The three original SCC Commissioners were appointed by the Governor, and confirmed by a joint session of the General Assembly. Between 1919 and 1926, Commissioners were elected by the voting public. It was not until 1928 that the present form of selection - election by the General Assembly - was implemented.

Expansion of Authority

The 1902 Constitution made provisions for the granting of additional responsibilities through statute, and the General Assembly has made use of this provision over the years. Between 1906 and 1978, a total of 58 additional responsibilities were assigned to the SCC through statute (Appendix C).

For the most part, these assignments have added significantly to the SCC's scope of authority and workload. For example, regulation of the insurance industry was added in 1906. Banking regulation was assigned in 1910. And regulation of transportation by motor vehicles was assigned in 1923. SCC staffing levels have consequently grown from a staff of seven (including the three Commissioners) in 1902 to the FY 1987 authorized level of 527.

Constitutional Revisions in 1971

The *Constitution of Virginia* was significantly revised in 1971. Although numerous sections on rate-making practices and other regulatory specifics were deleted, the basic structure and regulatory and chartering functions of the SCC were reaffirmed and continued.

In the revision, however, the General Assembly was given increased and more explicit control over the jurisdiction and work of the SCC. For example, the General Assembly was given power to (1) increase the number of Commissioners, (2) provide for the removal of responsibilities for the regulation of railroad, telephone, gas, and electric company facilities from the SCC, and (3) amend, modify, or set aside the Commission's rules or substitute rules of its own (Exhibit 1).

Commission on State Governmental Management

In the mid-1970s, the Commission on State Governmental Management (Hopkins Commission) was formed to assess State government management and organization. A major portion of the Commission's efforts were focused on the SCC. The Hopkins Commission examined the executive functions of the State Corporation Commission in an attempt to determine if some of these functions could be better or more appropriately performed by executive agencies.

Exhibit 1

EXPLICIT CONSTITUTIONAL POWERS GRANTED TO THE GENERAL ASSEMBLY OVER THE SCC IN 1971

Increase the number of Commissioners from three to no more than five,

Make provisions for the retirement of Commissioners,

Make provisions for appointing and removing SCC employees (excluding division heads and assistant heads of divisions),

Establish requirements for issuing corporate charters, and for regulating rates, charges, and services of utility companies,

Provide for the removal of responsibilities for the regulation of railroad, telephone, gas, and electric company facilities from the SCC, and

Amend, modify, or set aside the Commission's rules or substitute rules of its own.

Source: A. E. Dick Howard, Commentaries on the *Constitution of Virginia*, 1969 - 1970.

In 1975, the Hopkins Commission recommended a number of changes in the functions of the SCC (Appendix D). It advocated that most executive functions be separated from the SCC's legislative and judicial functions, and transferred to the executive branch. Most of the recommendations stemmed from concerns regarding separation of powers.

Of the 12 major recommendations made by the Hopkins Commission, two have been implemented. The Division of Aeronautics was transferred from the SCC and established as the Department of Aviation. The Fire Marshal Division was transferred to the Department of Housing and Community Development.

JLARC REVIEW

Item 11 of the 1985 Appropriations Act directed JLARC to plan and initiate a comprehensive performance audit and review of the operations of the independent agencies of State government (Appendix A). These agencies include the SCC and the Department of Workers' Compensation (Industrial Commission).

Language in the Appropriations Act directed JLARC to review:

- The appropriations and programs of these agencies to assess compliance with legislative intent,

- Issues relating to management, organization, staffing, programs, and fees, and

- Such other matters relevant to agency appropriations "as the Commission may deem necessary."

This report presents staff findings and recommendations on the SCC only.

Issues

The mandate expressed the legislature's interest in the SCC's organization, management, and operations. Consequently, a broad study was designed to evaluate the following areas:

- Agency funding and financial management,
- Organization, staffing, and management of the SCC,
- Personnel policies and practices, and
- Scope of SCC regulatory responsibility and activity.

Methods

A number of research methods were employed during this study to collect and analyze data. These include a large number of structured and unstructured interviews, a telephone survey of a small sample of states, document reviews, and fund and cash flow analyses.

A total of 377 interviews were conducted with SCC staff members, other Virginia officials, regulated industry representatives, and commissioners of public utility commissions in six states. Two hundred and eighty-one of these interviews were structured. Ninety-six interviews were unstructured. During the interviews, data were collected regarding all issues in the study.

Included in the above count of structured interviews is an organization, operations, and management review conducted early in the study. Major chains of command were identified within the SCC, and individuals at various levels in each chain were selected for interviews. Data were collected on a number of topics, and responses were analyzed to identify areas of convergence or discrepancy.

Numerous documents, including budget exhibits, annual and weekly reports, SCC orders, policy manuals, exit interviews, regulations, and relevant sections of the *Code* were reviewed and analyzed. And finally, fund and cash flow analyses were performed to assess the "integrity" of the SCC special funds and the reasonableness of cash balances retained in those funds.

Additional research activities were also undertaken. These are outlined in the technical appendix to the report which is available at the JLARC office.

Report Organization

This chapter has provided a brief overview and history of the SCC. Chapter II analyzes SCC funding and financial management. In Chapter III, the SCC's organization and management are assessed. Chapter IV examines the SCC's personnel and staffing policies and practices. Finally, Chapter V reviews the scope of the SCC's regulatory responsibilities and activities.

II. FINANCIAL MANAGEMENT

The SCC raises large amounts of revenue each year. SCC records show that $324,313,723 was collected by the SCC during FY 1986. The majority of this money passes through the SCC and is deposited in other State funds.

A portion of the revenues raised by the SCC is collected as regulatory taxes or assessments. The *Code* specifically authorizes collection of these revenues to support the operations of the SCC. These funds are budgeted under the normal State appropriation process, and are maintained in five special funds.

A review of SCC management of these special funds indicates that the SCC is out of compliance with legislative intent in two areas. First, the SCC maintains excessive balances in two of its special funds. This occurs despite statutory reference to the maintenance of reasonable financial reserves and a legislative transfer of $4 million out of the SCC in 1982. Second, the SCC allows savings and loan associations, credit unions, and possibly consumer finance companies to subsidize the regulation of banks. This practice violates sections of the *Code* which specify that financial institutions' assessments shall relate to their assets and factors relating to their respective supervision. Provisions are not made for subsidies in this area.

A number of additional concerns exist in the financial management area. First, the SCC lacks a formal financial reserve or fund balance policy. Second, while the SCC has clear authority to maintain a financial reserve or fund balance in one fund, its authority in two other instances is unclear or non-existent. Third, although the SCC would like to be credited for the interest earned on its fund balances, State practices in this area do not support this course of action. And fourth, the timing of the corporate operations fund reversion should be adjusted to eliminate unnecessary financial transactions and paperwork.

In addition, some subsidization occurs in the utility area. A revised mechanism appears to be necessary to more closely link collections from the securities and franchise industries with the costs of regulation in that area. Finally, several formulas used to allocate staff costs should be revised.

SCC REVENUES

The SCC is a significant source of General Fund and other revenues. It is the fifth largest State agency in terms of net revenues deposited into the State Treasury (Table 2). The *Code of Virginia* specifically grants the SCC authority to collect these monies through a variety of mechanisms.

The bulk of the SCC's revenue collections flows through to the General Fund, State special funds outside the SCC, localities, and other

Table 2

AGENCIES WITH FY 1986 NET REVENUES GREATER THAN THE SCC

Agency	Amount
Department of Taxation	$3,405,491,884
Department of Motor Vehicles	740,166,663
Department of Highways and Transportation	470,955,443
Department of Medical Assistance Services	348,750,682
State Corporation Commission	324,313,723

Source: SCC figure from SCC Depositing Function Report, 7/22/86. Other figures from Detail Agency Net Revenue Fund Reports, June 1986.

entities. A portion of these collections, however, is earmarked to fund SCC operations. These earmarked revenues are maintained in five special funds and are derived through special assessments or charges.

SCC Revenue Collections

Revenues are collected by the SCC in the form of taxes; interest and penalties on delinquent taxes; regulatory assessments; fees for special items or activities such as licenses, corporate charters, and special audits; and copy, certification, and publication charges. The SCC also receives funds through two federal grant programs.

Authority to collect these revenues is cited in over 60 sections of the *Code*. The following examples illustrate the types of authority granted to the SCC.

> *§58.1-2501 of the Code directs the SCC to levy an annual license tax on insurance companies. Depending on company characteristics, the tax ranges from 1% to 2.75% of the company's direct gross premium income. During FY 1986, $131,180,942 was collected by the SCC under this provision. These revenues flowed into the State General Fund.*
>
> * * *
>
> *§38.2-400 of the Code states that the expenses of the Bureau of Insurance shall be assessed annually against insurance companies and surplus lines brokers as set out in this title. The assessment shall not exceed one-tenth of one percent of the direct gross premium income of the company. During FY 1986, $3,935,404 in assessments were collected to fund the operations of the bureau.*

During FY 1986, $269,397,751 was routed to the General Fund (Table 3). A total of $32,907,328 was retained by the SCC to fund its operations. Remaining monies were routed to the Highway Maintenance and Construction Fund ($18,454,758), Literary Fund ($1,020,415), insurance companies writing uninsured motorist coverage ($1,964,882), and local jurisdictions ($542,219).

SCC Special Funds

The SCC is a non-general fund agency. It receives no support from the State General Fund. All SCC activities are supported from revenues derived from specified regulatory assessments or other earmarked revenue sources.

These earmarked revenues are maintained in five special funds (Table 4). Revenues in the corporate operations and motor carrier funds are derived from flat charges for certificates, charters, and other items. Revenues in the financial institutions, insurance, and valuation funds are primarily derived from regulatory assessments or regulatory taxes. These are assessments levied against regulated industries for the specific purpose of covering the cost of their regulation.

FUND MANAGEMENT

During the financial management review, five concerns arose regarding management of the SCC special funds. First, the SCC lacks a formal financial reserve or fund balance policy. Second, in light of the absence of a formal policy, balances in several special funds appear to be excessive. This practice is contrary to legislative intent. Third, the SCC does not appear to have authority to maintain a fund balance in one area, and authority in another area is not clear. Fourth, the SCC would like to retain the interest earned on its special fund balances. This practice, however, is contrary to State procedure. And fifth, a fund reversion mechanism imposed by the *Code* causes unnecessary accounting transactions and paperwork.

Fund Balance Policy

The primary benefit of allowing the SCC to exercise independent authority to set regulatory assessment rates is to allow the SCC to react quickly to changes in the regulatory environment. Potential disadvantages, however, include over-assessments and the accumulation of excessive fund balances.

A clear and well thought out fund balance policy would ensure that (1) sufficient funds are available to carry out the SCC's regulatory responsibilities, including unanticipated emergencies, but that (2) industries are not over-assessed, resulting in excessive fund balances.

The SCC fiscal director stated that the SCC does not have a formal fund balance policy, but the Commission likes to maintain a minimum balance equal to six months of expenditures in the valuation and insurance funds. Three months of operating expenses is maintained in the financial institutions fund.

Table 3

SCC Revenue Collections FY 1986

REGULATED AREA	ENTITY RECEIVING REVENUES: General Fund	SCC Special Funds	Highway Maintenance and Construction Fund	Literary Fund	Localities	Insurance Companies	TOTAL
Corporations	$ 3,365,782	$ 11,605,945	$ 2,784	$ 5,340	$ --	$ --	$ 14,979,852*
Securities	3,393,820	--	--	230,000	--	--	3,623,820
Uniform Commercial Code	813,535	--	--	--	--	--	813,535
Financial Institutions	--	4,203,494	--	--	--	--	4,203,494
Insurance	131,236,102	8,772,923	--	421,800	--	--	140,430,825
Utilities	130,588,512	4,337,041	--	--	542,219	--	135,467,772
Motor Carriers	--	3,987,925	18,451,974	363,275	--	--	22,803,174
Uninsured Motorists	--	--	--	--	--	1,964,882	1,964,882
TOTAL	$269,397,751	$ 32,907,328	$ 18,454,758	$ 1,020,415	$ 542,219	$ 1,964,882	$324,287,354 **

* Does not reflect transfer to General Fund of $ 8,470,098 from SCC special funds.
** Does not include the following special fund revenues: lunchroom ($4,340), surplus property ($13,504), and insurance recovery ($8,525).

NOTE: Figures may not add due to rounding.

SOURCE: SCC Revenue Reports, FY 1986.

Table 4

SCC FUND STRUCTURE

Fund	Divisions Directly Supported	Statutory Authority
Corporate Operations	Clerk's Office Corporate Operations Uniform Commercial Code Securities and Retail Franchising	§58.1-2804
Financial Institutions	Financial Institutions	§6.1-98 et al.
Insurance	Insurance	§38.2-1024
Motor Carrier	Motor Carrier	§56-275.01
Valuation	Energy Regulation Communications Public Service Taxation Railroad Regulation Economic Research And Development Accounting and Finance	§58.1-2665

Source: SCC interviews and *Code of Virginia.*

According to the SCC fiscal director, a six-month balance would cover all cash flow needs and provide funds for "regulatory emergencies" that could occur in the utility and insurance areas. "Emergency expenditures", as the fiscal director described them, include the unanticipated use of expert testimony for major rate cases or the use of outside auditors in the event of a major corporate failure.

* * *

According to the Commissioner of Financial Institutions, fund balances for the financial institutions fund are set to cover 90 working days. This practice provides the bureau with sufficient funds to respond to emergencies or sudden changes which may occur with the State's financial institutions.

The fund balance policy itself is not documented, nor is any assessment the SCC may have done to determine necessary reserve levels. An analysis of 1984-86 biennium collections and expenditures also shows that this informal policy has not been followed for any of the three special funds which carry their balances forward.

Recommendation (1). The SCC should establish a formal, written policy regarding fund balances in the valuation, insurance, and financial institutions special funds.

Excessive Fund Balances

Three of the five funds (valuation, financial institutions, and insurance) roll their ending balances forward from one year to the next. Funds not used in the year that they are collected are used to fund activities in a future period. If the assessment rates do not accurately and aggressively incorporate the effect of unexpended funds on the account balance, funds will accumulate over time. This has happened in the SCC.

The valuation fund primarily covers the cost of regulating utilities. In 1982, the valuation fund had enough money to fund two fiscal years of operations without the need to generate additional revenue. This fact was not unnoticed by the General Assembly, which directed the SCC to transfer $4 million ($3.2 million from the valuation fund and $800,000 from the banking fund) to the General Fund.

> *In 1982, the financial institutions fund end-of-year balance was $2.3 million. The General Assembly directed that $800,000 be transferred to the General Fund, leaving the fund with $1.5 million. As indicated by available documentation, it appears that members of the banking community considered bringing a lawsuit against the SCC. Their objections centered around the use of the special funds, which had been collected from the banks for the purpose of supporting bank regulation, being used to support other State programs. The financial institutions commissioner also stated that a number of banks threatened to seek national bank charters if it happened again. Because of the fund transfer, the Bureau of Financial Institutions developed an informal fund balance policy calling for an end-of-year balance of $750,000, equivalent to three months' operating funds.*

* * *

> *In 1982, the valuation fund end-of-year balance was $9.9 million dollars. The General Assembly determined that this was excessive, and directed that $3.2 million be transferred to the General Fund, leaving the fund with a balance of $6.7 million. Although the SCC had already notified utilities of assessment rates for the year, the SCC immediately approved a higher assessment rate. The SCC then billed the industries using the higher rate to recapture the revenues that were being transferred. Account balances have remained high. The FY 1985 and FY 1986 end-of-year balances were $11.4 million and $9.9 million.*

An analysis of fund balances shows that end-of-year balances, as well as average monthly and lowest-month balances, exceed the thresholds that the SCC's informal policies set for the three special funds. The valuation fund has the most excessive balances, however.

End-of-Year Balances. A review of end-of-year fund balances shows that the balance in the valuation fund has grown significantly (Figure 2). The SCC has kept the financial institution and insurance funds at more reasonable levels. Because of the irregular timing of revenues, an analysis of monthly balances is necessary to draw conclusions in this area, however.

Average Monthly and Lowest-Month Balances During the Year. An assessment of average monthly and lowest-month balances shows several things (Table 5). First, each fund's lowest-month balance exceeds the SCC's informal policy. (As previously stated, the informal policy is to maintain a six-month operating reserve for valuation and insurance, and a three-month operating reserve for financial institutions at all times.) These excesses range from two-tenths of a month to 7.3 months.

Second, calculations done on average monthly balances show significantly higher excesses than do calculations done with the lowest-month balances. This means that during one or two months each year the balance in the financial institutions and insurance funds is close to the three- and six-month threshold specified in the informal policy. For the remaining ten or eleven months of the year, the balances are significantly above these thresholds. The valuation fund has been significantly above the six-month threshold at all times.

Legislative Intent. The legislature's intent in this area is toward reasonable but low balances. Statutory references to fund balances, or financial reserves, stress reasonableness. For example, §58.1-2664 makes provisions for "a reasonable margin in the nature of a reserve fund" within the valuation fund. And the legislature's actions in 1982 indicate that balances of $2.3 million and $9.9 million in the financial institutions and valuation funds were not low enough.

In view of these legislative "directives", the SCC's special fund balances are not in compliance with legislative intent. Immediate actions are necessary in this area.

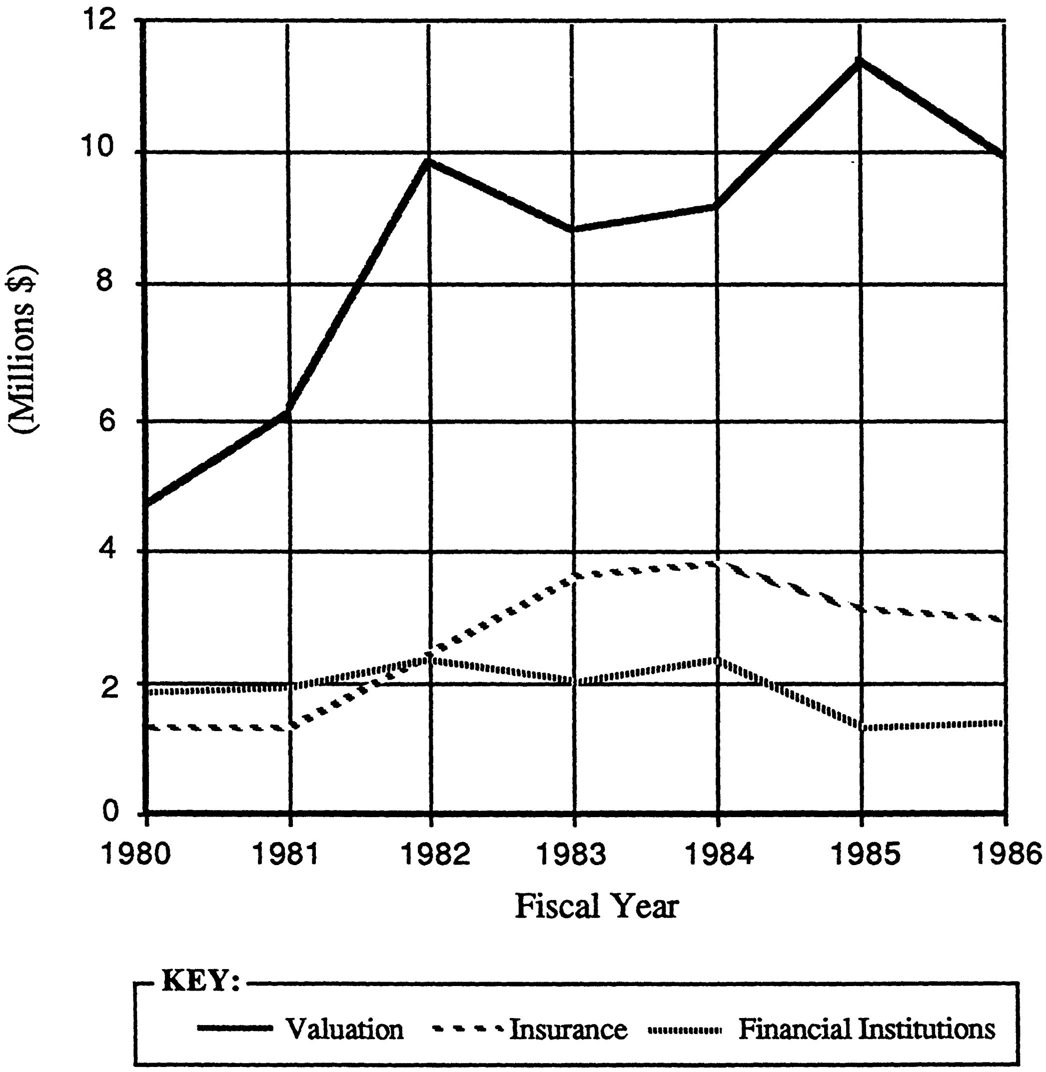
Recommendation (2). The SCC should adopt a three-month financial reserve for the valuation and insurance special funds. Rates should also be reduced in the next assessment cycle to bring balances down to the three-month levels. These actions should bring the SCC into compliance with legislative intent in this area.

Inconsistent Authority To Maintain Fund Balances

Although the SCC maintains balances or reserves in the three special funds, it does not have specific authority to do so in all three instances. As previously mentioned, §58.1-2664 provides for "a reasonable margin in the nature of a reserve fund" for the valuation fund. There is no mention in statute, however, of authority for an insurance reserve. And a reference in the financial institutions area is very unclear as to its intent:

Figure 2

End-of-Year Fund Balances
FY 1980-86



Notes: Valuation includes railroad regulation.
The FY 1986 insurance balance does not include $2.67 million in fire program funds collected during FY 1986 which was transferred to the Department of Fire Programs.

Source: JLARC depiction of data from SCC Revenue Reports, FY 1980-86.

Table 5

Monthly Fund Balances

1984-86 Biennium

Fund	Fiscal Year	Average Balance	Operating* Equivalent	Lowest Balance	Operating* Equivalent
Valuation	1985	$ 6,229,800	14.5	$ 4,093,406	9.5
	1986	7,986,776	17.1	6,193,163	13.3
Insurance	1985	3,525,903	8.3	2,660,069	6.2
	1986	3,288,892	7.0	2,896,929	6.2
Financial Institutions	1985	2,256,739	7.6	1,245,910	4.2
	1986	2,398,405	7.3	1,382,553	4.2

* Approximate months of operation that could be funded with balance based on FY 1986 expenditures.

Source: SCC monthly revenue reports and data from the Bureau of Insurance.

> §6.1-2. Additional fees for examination and supervision -- In order to provide additional funds for the operation of the Bureau of Banking, the Commission is hereby authorized to increase the fees and assessments for the examination and supervision of banks, savings and loan associations, individual loan associations, credit unions and small loan licensees to the extent of fifty per centum of the fees and assessments provided for in §6.1-94, 6.1-195.65, 6.1-221, 6.1-237 and 6.1-299 of the *Code of Virginia*.

Recommendation (3). The General Assembly may wish to provide the SCC with clear authority for maintaining fund balances or financial reserves in the financial institutions and insurance special funds.

Interest and Income on Special Fund Account Balances

Another area related to fund balances concerns the interest and income earned on those balances. Although the current practice is to credit these amounts to the General Fund, the SCC would like to be credited for the interest and income earned on its special fund balances.

According to the Office of the State Treasurer, State practice in this area is to credit special fund interest to the General Fund. The General Assembly has consistently supported the use of special fund interest as a source of General Fund revenue. Only seven of the hundreds of State special funds retain some or all of their interest.

Recommendation (4). The SCC should continue to conform to the general State practice regarding interest and income earned on special fund balances. Interest and income should continue to be credited to the General Fund.

Fund Reversions

The motor carrier fund and the corporate operations fund are hybrid forms of a special revenue fund. At the end of each fiscal year, funds not spent on regulation are transferred to other funds. Excess corporate operations funds are reverted to the General Fund, while excess motor carrier funds revert to the Highway Maintenance and Construction Fund. The timing of the revenue transfer for the corporate operations fund creates unnecessary fiscal transactions and paperwork for the SCC, Department of Planning and Budget, and other agencies.

Section 58.1-2804 of the *Code* specifies that the corporate operations fund must revert all unexpended revenues to the General Fund on June 30 of each fiscal year (Exhibit 2). Because of the timing of revenue receipts, this leaves the corporate functions of the SCC without operating revenues for an eight-month period.

Exhibit 2

STATUTORY PROVISIONS GOVERNING SCC FUND REVERSIONS

Area	Statute
Corporate Operations	§58.1-2804 - The projected excess of fees collected over the costs of administration so incurred shall be paid into the General Fund prior to the close of each fiscal year, based on the unexpended balance at the end of the prior fiscal year. An adjustment of this transfer amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.
Motor Carriers	§56-304.4 - ...Any excess over such cost of administration shall be paid into the Highway Maintenance and Construction Fund and used for the maintenance and construction of highways.

Source: *Code of Virginia*.

The SCC therefore requests a revenue anticipation loan to carry them over. The loan becomes available on the first day of the fiscal year and is repaid the following March after a sufficient amount of revenue has been collected to repay the loan (Figure 3).

This process requires unnecessary administrative work for what is basically a paper transaction. The SCC, Department of Planning and Budget, Department of Accounts, and Treasurer all become involved in the transaction. Other special funds that revert monies, such as the motor carrier fund, are allowed to retain unexpended funds in the special revenue account until new revenues come in to continue funding operations. This practice allows the agency to maintain an operating balance and eliminates unnecessary paperwork.

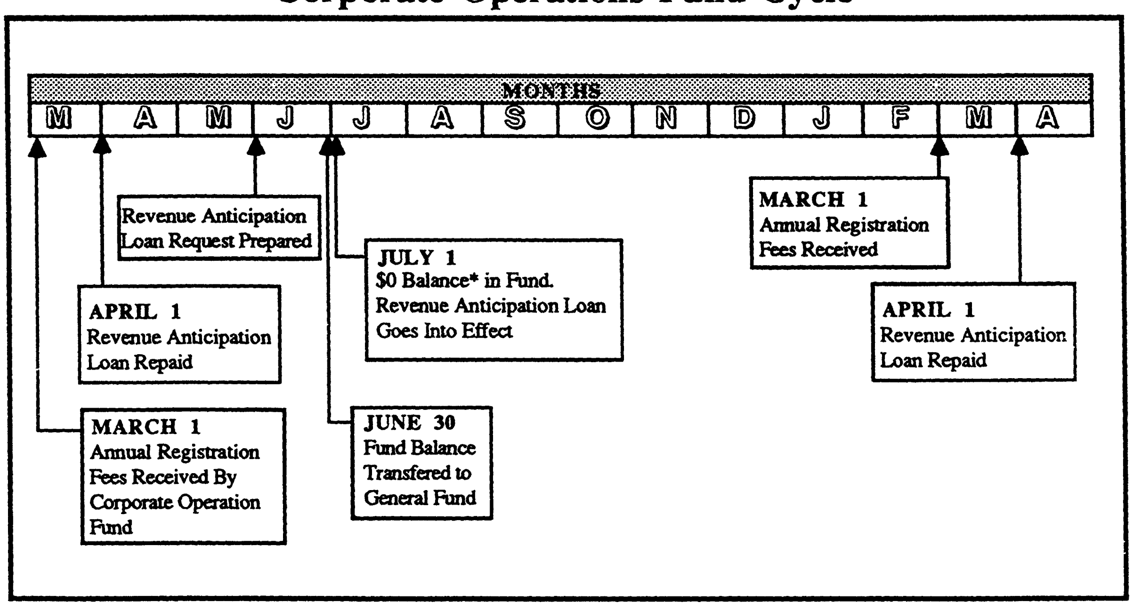
Recommendation (5). The General Assembly may wish to amend §58.1-2804 of the *Code* by changing the date upon which the corporate operations end-of-year fund balance reverts to the General Fund. The SCC would then be allowed to temporarily retain a portion of the unexpended corporate operations funds to cover immediate operational expenses. The entire end-of-year balance would still be forwarded to the General Fund, but this transaction would be delayed until new revenues were deposited into the fund. This would allow the SCC to operate without a revenue anticipation loan.

FUND INTEGRITY AND SUBSIDIES

Fund integrity is a generally accepted concept related to special funds. Under fund integrity, monies collected for a specific purpose or from a

Figure 3

Corporate Operations Fund Cycle



* The June 30 transfer is an estimate. The July 1 balance may therefore be greater than $0. This amount, however, must be transfered to the General Fund prior to October 1.

Source: JLARC depiction of data from SCC fiscal director.

specific group are in turn expended for that purpose or group. The monies are not to "subsidize" other purposes or activities.

This concept is especially relevant when reviewing SCC funds. The SCC is a non-general fund agency. Agency operations are supported by revenues collected by the SCC for that purpose. A clear distinction is maintained between General Fund and SCC non-general funds for State budgeting and accounting purposes.

In addition, five separate funds are established within the SCC to further ensure integrity. Monies collected from the insurance industry are not intended to fund motor carrier regulation and vice versa. This applies to each area of SCC regulation. The special fund mechanism establishes a budget and accounting framework to achieve this objective.

Creation of the special funds has avoided subsidization and commingling at a broad level within the agency. Assessment of SCC financial and accounting records indicates that the SCC maintains integrity between the five funds. However, an analysis of revenues and expenditures within the special funds shows that some subsidization does occur within the financial institutions and utility areas. In addition, the method of funding the Securities and Retail Franchising Division, and the statutory provisions governing this area, should be altered to ensure that the securities and retail franchising industries are treated the same way as are other industries. And finally, several allocation formulas should be revised to more accurately assign staff division costs to the special funds.

Industry Subsidization

While integrity is maintained between the five funds themselves, a further analysis of regulatory assessments and expenditures shows that subsidization does occur between some industries within funds. Subsidization does not appear to occur in the motor carrier or insurance areas. The nature of these industries, as well as statutory treatment of them in terms of how they are to be regulated and assessed, supports the expenditure and accounting structures currently in place. The corporate operations fund, with the exception of the Division of Securities and Retail Franchising as will be discussed later in this chapter, also appears to be free of subsidization.

Subsidization does occur within the utility and financial institutions areas. Although related industries have been appropriately grouped in these two funds, a stronger relationship between revenues and expenditures is necessary in each area.

Utility Regulation. Regulatory taxes are deposited into the valuation fund for the supervision and administration of laws relative to public service companies. Once money is deposited into the fund, concerns regarding subsidization appear to be abandoned. Except for railroads, there is no relationship between assessment revenues collected from particular industries and the amounts expended by the SCC to administer the laws relative to those industries.

A comparison of collections and expenditures during the 1984-86 biennium shows that these industries are not being treated equitably in terms of assessments being correlated with regulatory costs. Communications companies paid 21 percent more in regulatory taxes than was expended for regulation in that area (Table 6). In comparison, industries regulated by the Energy Division overpaid by only 12 percent. Railroads underpaid by 13 percent. (The negative difference for railroads does not require subsidization because the railroad account had a fund balance of nearly $600,000 as of June 30, 1984. Distinct and separate accounting for railroad revenues and expenditures ensures that the industry pays for its own regulation.)

To date, the legislature has acted to ensure assessments are in line with expenditures for one type of public service corporation. Section 58.1-2661 of the *Code* states that the assessment on railroads shall not exceed an estimate of the expenses incurred by the SCC and Department of Taxation attributable to railroads. Similar provisions appear to be warranted for the utility industries. To comply, the SCC would have to more closely account for staff time in several of the utility divisions. While these procedures would require some extra effort on the part of the SCC, the outcome would be true fund integrity and an elimination of subsidization in this area.

Table 6

COLLECTIONS AND EXPENDITURES - VALUATION FUND
1984-86 Biennium

Area	Collections	Expenditures*	$ Difference	% Difference
Communication	$3,229,350	$2,677,171	$552,179	21%
Energy				
electric	6,980,460			
gas	1,183,403			
water & sewer	40,045			
Total	8,203,908	7,344,185	859,723	12
Railroads	488,799	561,615	(72,816)	(13)

*Includes apportioned costs of the Accounting and Finance, Economic Research and development, and Public Service Taxation Divisions as estimated by the directors of these divisions.

Note: Does not include motor carrier or Virginia Pilots Association collections.

Source: JLARC calculations with SCC data from cost center reports, interviews, assessment statements, and other documents.

Recommendation (6). The General Assembly may wish to eliminate subsidization which occurs in the regulation of utilities. A provision similar to §58.1-2661 could be placed in statute stating that, to the extent possible, regulatory revenue taxes shall not exceed estimates of expenses to be incurred in regulating individual utility industries. This type of provision would provide a clear directive to eliminate subsidization. It would also allow the SCC to continue using its currently merged resources for electric, gas, and water regulation.

Financial Institutions Fund Subsidies. The financial institutions fund supports regulatory activities for State chartered banks, savings and loan associations, credit unions, consumer finance companies, and other financial entities. In this instance, the *Code of Virginia* (§§ 6.1-94, 6.1-194.85, 6.1-299.1, and 6.1-221.1) specifically directs that assessment schedules for each institution shall bear a reasonable relationship to the assets of individual institutions and to other factors relating to their respective costs for supervision, regulation, and examination. The legislature does not intend for any one institution or type of institution to subsidize others. However, a practice has developed over the last several years where some subsidization does occur.

During the last biennium, credit unions, savings and loan associations, and possibly consumer finance companies paid more than was necessary to cover the cost of their regulation (Table 7). The Bureau of Financial Institutions has been aware of this problem for several years, but as of August 1986 had not yet corrected the situation.

> *An end-of-year fiscal summary for FY 1985 stated: "The most glaring inequity is that savings and loans and credit unions pay far more than necessary to support their supervision and regulation." The memorandum further stated that the assessment schedules had become imbalanced, but as recalculation was laborious, further efforts to revise the schedules would be deferred until their personal computer arrived.*
>
> * * *
>
> *The end-of-year fiscal summary for FY 1986 noted that the banking unit was exhibiting a continuing negative trend with a $177,118 deficit in FY 1986. At the same time, savings and loans and credit unions again showed a large surplus. The memorandum further stated that revised assessment schedules would be prepared by year-end.*

Recommendation (7). The SCC should take immediate action to comply with legislative intent by revising assessment schedules in the Bureau of Financial Institutions. Subsidization between the various financial institutions should be eliminated by bringing assessments in line with regulatory expenditure needs.

Table 7

COLLECTIONS AND DISBURSEMENTS
FINANCIAL INSTITUTIONS FUND
1984-86 Biennium

Subdivision	Collections	Disbursements*	Difference
Research & Structure	$456,685	$ 592,438	$(135,753)*
Banks	4,432,314	5,319,746	(887,432)
Consumer Finance Companies	998,567	752,110	246,457
Savings & Loans & Credit Unions	1,438,901	877,147	561,754

*According to a Bureau of Financial Institutions memorandum, Research & Structure incurs significant expenses preparing the Consumer Finance Supplement to the Annual Report and preparing testimony for consumer finance rate hearings. If these costs were charged to the Consumer Finance Division, the division surplus would be reasonable. These costs are not charged to Consumer Finance because this would require maintenance of a work log and a significant number of accounting adjustments.

Source: Bureau of Financial Institutions FY 1985 and FY 1986 fiscal summary memorandums.

Funding of Securities and Retail Franchising Regulation

The current fund structure, in large part, is a reasonable and logical delineation of industries and regulatory activities into common groups. A question can be raised regarding the way securities and retail franchising regulation is funded, however.

Regulated industries appear to be grouped together on the basis of two factors. A review of activities carried out under each fund shows that the nature and characteristics of the regulated industry, as well as the regulatory activities carried out by SCC staff, are usually similar within each fund. This is especially true of the financial institutions, insurance, and motor carrier funds.

The valuation fund varies somewhat. This fund provides for the regulation of public utilities. Although utilities differ from each other, the small number of entities regulated in some areas, the monopolistic nature of each industry, and the infrastructure intensity of each area makes their combination under one fund logical. (A recommendation for better linkage of revenues to expenditures was made in the previous section of the report, however.)

The corporate operations special fund primarily funds the document, lien, and chartering functions of the SCC. These are highly clerical, registration-type services available to all industries. They are available on a pay-as-you-go basis. Entities seeking these services pay specified fees and charges for the particular service received.

The corporate operations fund, however, also supports the operations of the Securities and Retail Franchising Division. The primary purpose of this division is to protect Virginia investors from fraud by licensing securities brokers and salespersons, investigating complaints and all violations of securities and franchise laws, conducting routine audits of brokerage houses, and registering securities and franchises before they can be publicly offered for sale. Minor portions of time are also expended on trademark and service mark registration and take-over bid disclosure.

The focused nature of these operations, as well as the ability to readily identify regulated parties, calls for separate and distinct funding of this area. This separate funding would establish a direct relationship between collections from regulated entities and amounts expended on regulation as happens in other areas. It would provide an easy mechanism for ensuring that the regulated industry pays its own way. At this time, revenues collected by the division exceed division expenditures (Table 8.) All excess balances would revert to the General Fund.

Recommendation (8). The General Assembly may wish to amend the *Code* to specify that revenues collected from the securities and retail franchising industries be used for the purpose of regulating these industries. A

Table 8

SECURITIES AND RETAIL FRANCHISING DIVISION
COLLECTIONS AND EXPENDITURES
FY 1986

	Amount
Division Collections	
Securities Act	$3,250,944
Fines	230,000
Trademark-Service Mark Act	15,776
Retail Franchising Act	127,100
TOTAL	$3,623,820
Division Expenditures	976,586
Difference	$2,647,234

Source: SCC Depositing Function Report and Sub-Cost Center Report, 7/22/86.

separate special fund could be established, or the SCC could simply monitor expenditures and revenues through its accounting system as is currently done in the railroads and financial institutions areas.

Allocation of Staff Costs

Another important consideration in the maintenance of fund integrity is the allocation of staff office costs to the five special funds. Staff offices, as well as the offices of the Commissioners and Executive Director, have no direct sources of revenue. These offices do not levy assessments or charges on regulated industries.

Cost allocation formulas have been developed for 12 staff functions (Exhibit 3). The staff offices apportion their expenses to the line divisions through these formulas. While six of these formulas appear to be based on sound criteria, six formulas do not incorporate factors or time estimation procedures which appear to best approximate allocation of time. Problems with the six formulas are described below.

Exhibit 3

FACTORS USED IN ALLOCATING STAFF COSTS TO LINE DIVISIONS

Office	Allocation Formula or Factor	Adequate?
Office of General Counsel (OGC)	Estimate of Time Spent on Division Cases	No
Central Administration	Mirrors OGC Breakout	No
Information Resources	Mirrors OGC Breakout	No
Fiscal Office	Fiscal Transactions	Yes
Personnel Office	Algorithm Based on Personnel Related Factors	Yes
Planning and Development	Size of Division Budget	No
Hearing Examiners	Number of Cases	No
Support Services		
-Document Control	Algorithm Based on Documents	No
-General Correspondence	Usage Log	Yes
-Mail & Supply Rooms	Mail and Supply Logs	Yes
-Reproduction	Usage Log	Yes
-Microfilm	Usage Log	Yes

Source: Data from SCC Fiscal Director and other SCC staff interviews.

Office of General Counsel. "Time spent on division cases" is an appropriate factor to use in allocating expenses of the Office of General Counsel (OGC) to other divisions. However, an unsystematic methodology is used to derive time figures. No standard methodology for estimating time is set out, and each attorney decides how to estimate and allocate his or her own time. To avoid inconsistencies and ensure accurate allocation, all OGC staff time should be allocated on the basis of time sheets or work logs.

Central Administration. It is unclear if central administration time (Commissioners and their secretaries) should be apportioned using the OGC formula. Commissioner activities are much broader in scope than those of OGC. However, short of having the Commissioners complete weekly time sheets, there does not appear to be a better method of allocating their time.

The Executive Director, however, is also allocated as part of central administration. It is clear that his time should not be allocated in accordance with the OGC formula. The Executive Director focuses on agency administrative matters and has no involvement in regulatory cases. For this reason, the time of his office should be allocated based on another factor, such as number of staff in each division.

Information Resources. Division of Information Resources staff time is also allocated on the OGC formula. Although a portion of the Information Resources workload is influenced by OGC cases, other factors weigh very heavily here also. For example, one of the division's major responsibilities is to serve as legislative liaison for the agency. Consequently significant portions of time are allocated to legislative matters and legislative liaison work and do not have a direct relationship to OGC casework. This office's expenses should therefore be allocated on the basis of time sheets or work logs.

Planning and Development. The current formula, based on the size of each division's budget, bears no relationship to the proportions of the Office of Planning and Development's resources spent on each division. This office's expenses should therefore be allocated on an algorithm considering such factors as number of systems incident reports and division systems expenditures.

Hearing Examiners. The current factor, number of cases heard, gives no indication of the time required for each case. For this reason, time sheets or work logs would again serve as a better basis for allocation.

Support Services. Although usage logs are used to apportion most of this division's costs, the salaries of the director and systems manager are fully charged to the Document Control Center. These costs should be apportioned between the five subdivisions based on time sheets or work logs.

Recommendation (9). The SCC should revise six of its staff cost allocation formulas or procedures to ensure accurate allocation. Revisions are needed in the following areas:

- Office of General Counsel,
- Central Administration,
- Information Resources,
- Office of Planning and Development,
- Hearing Examiners, and
- Document Control Center.

III. ORGANIZATION AND MANAGEMENT

The current structure of the SCC is basically sound and serves as a logical framework through which the agency can carry out its regulatory responsibilities. However, some problems are apparent in the current high-level management structure as well as the divisions. Realignment of responsibilities and reorganization of some areas in the agency would help resolve these problems and consequently enhance operations.

The high-level management structure of the SCC is comprised of the SCC Commissioners, an Executive Director, and 20 division directors. This management structure should be maintained, but the Commissioners should focus more on judicial activities and increase the downward delegation of responsibilities to enhance organizational management.

At the division level, most SCC divisions are structured appropriately to respond to regulatory needs. However, a number of divisions have structural weaknesses which warrant some reorganization and management attention. These weaknesses concern: departmentalization of functions or how activities are aligned and organized within the SCC, designation of line and staff divisions, the chain of command, and the span of control exercised by some managers and supervisors. A wide range of organization and management concerns were evident in the Bureau of Insurance which necessitate close attention by the SCC Commissioners.

HIGH-LEVEL STRUCTURE AND MANAGEMENT

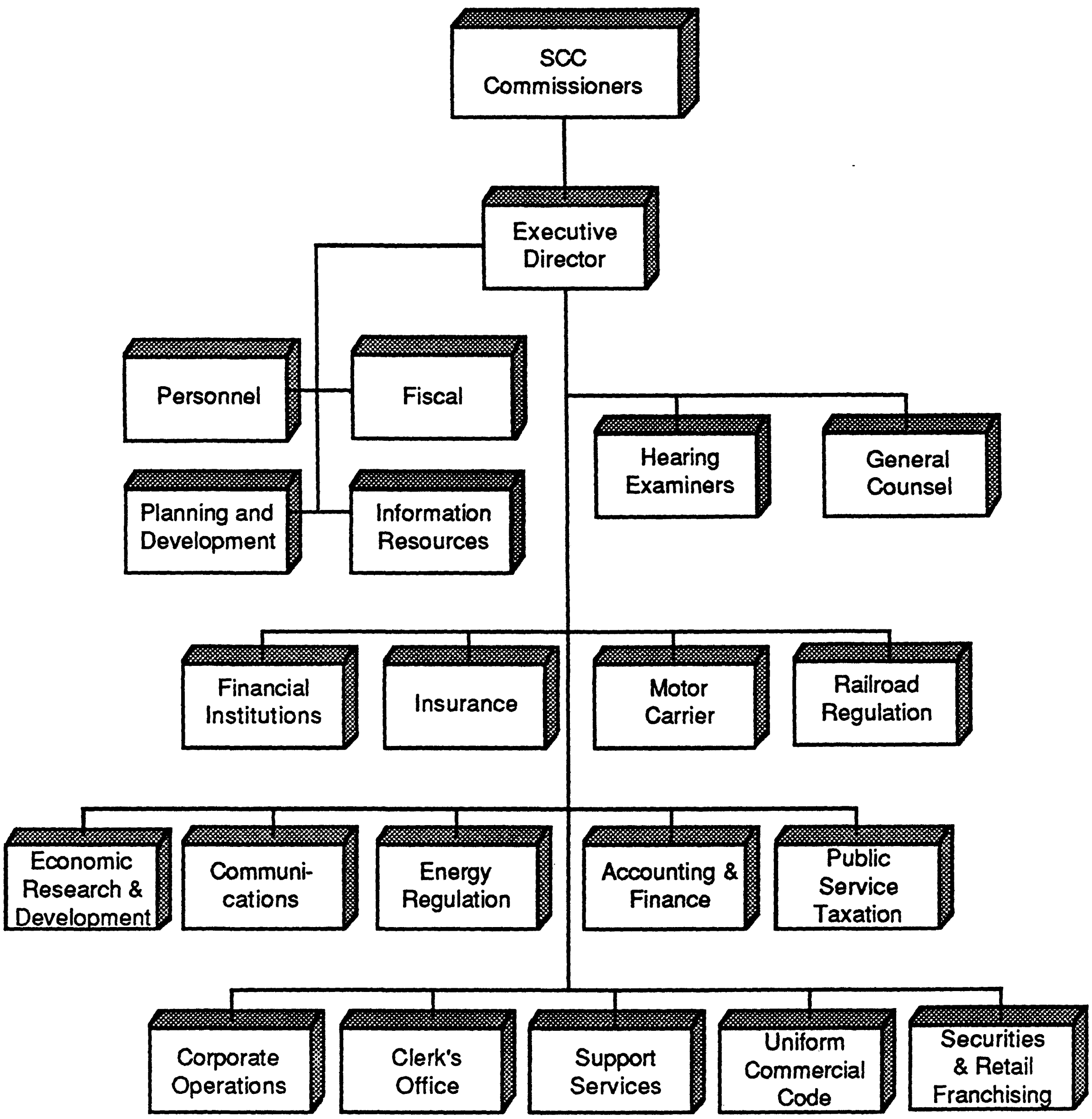
The SCC is headed by a management "team" with a number of players. Three Commissioners head the agency. An Executive Director aids the Commissioners in agency administration. And 20 division heads manage the daily regulatory activities of individual divisions and offices (Figure 4).

Overall, the executive management framework seems logical and sound. Changes in four areas, however, would serve to strengthen SCC management. First, greater focusing of Commissioner activities, coupled with more delegation of authority, is needed. This would force operational responsibilities downward in the organization and provide the Commissioners with more time for their unique responsibilities as agency heads as well as judges with the powers of a court of record. Second, the Commissioners should hire three law clerks or paralegals to assist them with their judicial responsibilities. Third, strengthening and clarifying the responsibilities of the Executive Director and renaming the position would eliminate organizational confusion regarding his role. And fourth, clarification and better use of the chain of command would promote smoother operations.

It is important to note that there are two fairly distinct areas of management within the SCC. These areas concern administration and regulation. Many of the recommendations in this section will pertain to administrative management.

Figure 4

Organization of the State Corporation Commission



Source: JLARC redraft of SCC organization chart.

Administrative activities are carried out by staff offices to support the line divisions. These activities involve budgeting, personnel administration, systems development, public information, and legal support. Directors of staff offices, the Executive Director, and the Commissioners are all active in managing this area.

Regulatory activities are carried out by line divisions to fulfill the mission of the agency. These activities include assessing utility rate requests, licensing insurance agents, and so on. While the three Commissioners oversee these areas, directors of line divisions are the primary managers here.

As a means of managing workload, the Commissioners have divided the line divisions among themselves for oversight of regulatory activities (Exhibit 4). Two of the Commissioners oversee six divisions apiece, while the third oversees the two largest divisions in the SCC.

Commissioner oversight of the regulatory divisions, as well as the assignment of specific divisions to each Commissioner, appears to be appropriate and necessary. Regular oversight of the divisions allows the Commissioners to keep abreast of developments in regulated areas. This is essential in their role as an "expert body" as defined by the Virginia Supreme Court. Assignment of specified divisions relieves each Commissioner of having

---

Exhibit 4

Divisions Overseen By Each Commissioner

Commissioner One	Commissioner Two	Commissioner Three
Accounting & Finance (29)	Clerk's Office (13)	Insurance (122)
Energy Regulation (19)	Corporate Operations (27)	Motor Carrier (94)
Communications (13)	Securities & Retail Franchising (21)	
Economic Research & Development (15)	Uniform Commercial Code (6)	
Public Service Taxation (11)	Support Services (14)	
Railroad Regulation (5)	Financial Institutions (82)	

Notes: Figures in parenthesis show number of positions as of July 1986.
Only line divisions are divided between the Commissioners for direct oversight. All three Commissioners oversee each of the staff offices.

Source: SCC administrative order, case no. CLK851003, June 20, 1985 and SCC budget documents.

---

to closely follow developments and practices in every regulatory area. This allows the three-member Commission as a whole to develop a broader and more detailed knowledge of regulatory matters.

High-Level Management Structure

Several parameters of the high-level management structure are determined by the *Constitution of Virginia* and *Code of Virginia*. For example, the Constitution provides that:

- There shall be three to five Commissioners,
- The Commissioners shall be elected by the General Assembly,
- The Commissioners shall serve for six-year terms,
- At least one Commissioner shall have the qualifications of a judge of a court of record, and
- The Commissioners shall annually elect one of themselves chairman.

The SCC is in compliance with these and other constitutional and statutory provisions relating to the high-level management structure.

Two provisions warrant further elaboration. First, although the Constitution provides for three Commissioners, the General Assembly may increase the number of Commissioners up to five. Three Commissioners still appear to be most appropriate for several reasons.

The three-member Commission allows for decision- and policymaking based on deliberative discussions, as was intended when the Commission was originally established. Each of the current Commissioners strongly supports the three-part structure over other alternatives. Reasons cited include better decisions through joint decisionmaking, relative ease in scheduling, and the existence of a check and balance system. Reasons cited against increasing the number of Commissioners include difficulties scheduling meetings and discussions, and lack of indications that current decisions are inadequate or that the input of five Commissioners would improve decisionmaking. Further, the three-member Commission appears to be a tested and satisfactory structure, as a total of 36 states employ three Commissioners.

Second, a practice has developed whereby the chair position rotates annually between the three Commissioners. The chair position is largely ceremonial, with the chairman primarily leading staff meetings and responding to correspondence. In administrative and regulatory areas, however, the Commissioners share equal powers.

There is no compelling rationale for altering this practice. The rotation, coupled with equal administrative and regulatory powers, promotes a balance of power among the Commissioners. This was a primary concern of the 1902 legislature, which wanted to create an impartial regulatory body -- one that was dominated by regulatory expertise and reasoned inquiry, not by any one person or point of view.

The SCC Commissioners should therefore continue to rotate the chair position and the General Assembly should retain a three-member Commission. Both appear to be well suited to the SCC's needs at this time.

Focus of High-Level Management

The SCC Commissioners are vested with broad responsibilities that affect virtually all citizens of the Commonwealth. The *Constitution of Virginia* gives the Commissioners legislative, judicial, and executive powers. This means they issue rules and regulations that have the force of law, set rates, carry out many functions of a court of record, rule on violations of regulation and law, and carry out various executive functions.

Given the scope and importance of these responsibilities, it is essential that Commissioner efforts and energies be directed toward high priority activities - those that others in the organization are not capable of carrying out. Items of lesser importance or lower priority should be delegated.

In large part, the Commissioners are successful in focusing their efforts on essential and appropriate areas. However, further refinement in this area, coupled with greater delegation, appears to be necessary.

High Priority Activities. Large portions of the Commissioners' time are focused on policy matters and judicial activities such as reading case materials, hearing arguments, and writing and revising opinions. Several considerations support this need for concentrating on high-level activities.

First, the scope and magnitude of the judicial decisions rendered by the Commissioners are broad. It is essential that adequate time be available for case preparation and decisionmaking, given the impact of SCC orders. Second, the SCC's case load is increasing (Table 9). Total caseload has increased nearly 150 percent since 1980. Third, two of the three Commissioners stated that they have a heavy workload. All three indicated that they work anywhere from 45 to 60 hours each week. And fourth, the Commissioners have very few personal staff to assist them with their direct responsibilities.

Need to Refocus Responsibilities. The Commissioners, however, are still involved in some activities in which they may not need regular involvement. These areas primarily involve routine administrative functions. For example:

> *The SCC has about 150 parking spaces to accommodate its approximately 500 employees. One Commissioner maintains direct control in this area. Parking requests are filtered through to him, and he makes decisions regarding the allocation and award of parking spaces.*
>
> * * *
>
> *One Commissioner has been holding weekly meetings with data processing systems users for years. The Commissioner chairs the meeting which is attended by*

Table 9

SCC Case Load

Year	Number of Cases	% Increase
1980	1,883	Not Available
1981	2,503	33
1982	3,225	29
1983	3,852	19
1984	4,068	06
1985	4,587	13

Source: SCC Case Management System.

the Executive Director, the director of planning and development, the fiscal director, and representatives from each of the divisions. The majority of the meeting is devoted to discussion of routine systems operations and problems which are the responsibility of the director of planning and development.

This type of administrative involvement was most likely necessary and desirable in the past. It does not appear to be necessary now. The SCC has not always employed managers under whom these types of responsibilities would fall. The SCC now employs an Executive Director and a director of planning and development who earn from $47,000 to $58,000 annually. Given that the SCC followed its own recruitment and hiring policies of selecting the best qualified candidate for each job, these professional managers should possess the skills necessary to fully direct their areas.

Conclusion. Management styles will always, to some extent, be based on personal preferences and interests. Limited involvement in daily operations, however, would promote (1) the best use of Commissioners' time, (2) organizational consistency, (3) strong definition of mid-level managers' responsibilities, and (4) a clear understanding on the part of staff of the chain of command.

Recommendation (10). The SCC Commissioners should limit their involvement in daily administrative matters of the agency to instances where problems cannot be resolved at a lower level. The Commissioners should critically review their activities and responsibilities, and articulate for themselves "rules of thumb" to use in this area. Where possible, routine activities should be formally delegated to subordinates. For example, the director of planning and development should be given clear authority for all routine systems activities.

Law Clerks

As noted in the previous section, the Commissioners employ very few personal staff. Each Commissioner has one secretary. The Executive Director functions as a staff assistant in the administrative area. Summer law clerks have also been employed to assist the Commissioners with their judicial responsibilities.

There appears to be a need for each Commissioner to have a law clerk or paralegal assistant to work directly for them. This individual would assist each Commissioner with his or her judicial functions by reviewing, summarizing, and organizing testimony and other documents for cases, indexing and organizing cases and opinions, and carrying out special projects.

These positions appear logical and necessary for three reasons. First, Commission caseload has increased almost 150 percent since 1980. Second, all three Commissioners expressed the need for this type of assistance. The Commissioners appear to have discussed the possibility of establishing such a position, but have not moved in this direction since provisions were not made in the current budget. Their opinions also appear to vary somewhat on the number of clerks that may be necessary.

Third, the law clerks or paralegal assistants would provide assistance that the Office of General Counsel (OGC) is not designed to provide. OGC works with the SCC divisions and represents them in court proceedings. OGC submits testimony that is considered by the Commissioners in their deliberations. The use of a law clerk or paralegal assistant, independent from OGC, could avoid any awkward situation that could develop when OGC has presented staff testimony, and then may be called to provide a different analysis or opinion at a later stage in a case.

Recommendation (11). The SCC Commissioners should create three law clerk or paralegal assistant positions to assist them with their judicial responsibilities.

Executive Director

The Executive Director position was created in April 1985 to aid the Commissioners in the administration of the SCC. Given the tripartite leadership and Commissioners' legislative and judicial responsibilities, they need this type of executive support. Virginia is following the example of 33 other states with this action. For example, Maryland, North Carolina, Delaware, Florida, California, and Kentucky all employ executive directors.

There appear, however, to be problems with the way the position has been established within the SCC. The authority and responsibility of the position are not clearly defined, and staff are unclear as to the Executive Director's role. The label "Executive Director" itself appears to be a misnomer. The position is underutilized because it is granted very little authority, and as such can not significantly reduce the scope of the Commissioners' workload.

Unclear Definition and Understanding of Role. The role of the Executive Director is ill-defined and unclear. The organization chart (Figure 4) shows the Executive Director in the chain of command above all SCC divisions, indicating full and direct supervisory responsibilities . The label "Executive Director" itself connotes responsibility for agency control and direction.

The Executive Director job description is confusing and not consistent with the organization chart. It stresses involvement in administrative (as opposed to regulatory) functions, while hinting at the notion of control over line divisions:

> This is highly responsible professional and executive work in *managing the administrative functions* for the Commission.
>
> Work involves the overall responsibility for the State Corporation Commission's administrative tasks by *directing and coordinating these activities as they are performed by each division.* [emphasis added]

The job description illustrates work which is directly in conflict with activities and responsibilities assigned to the fiscal, planning and development, and information resources directors. For example, both the fiscal director and Executive Director are assigned responsibility for reviewing and finalizing the budget. And while the Executive Director's job description states that he "coordinates the Commission's legislative program," this responsibility is also assigned to the information resources director. The Commissioners, however, have stated that the Executive Director has no involvement in this area.

These types of conflicts lead to confusion on the part of staff regarding roles and reporting relationships. For example, during the review, several division directors stated that they were not exactly sure what the Executive Director is responsible for or what he does.

In actual practice, the Executive Director functions in the administrative arena. A clear and consistent articulation of his authority and responsibility in this area would accomplish two things. First, it would ensure that items do not "slip through the cracks." Second, it would allow for strict accountability for agency administration. At this time, this is not possible. For example:

> *The SCC has a serious space problem which has existed for a number of years. Some staff work in very cramped quarters and do not have space for filing or meetings. For example, Bureau of Insurance space averages about 121 square feet/person which is significantly below the state average (235 square feet/person) and the national average (228 square feet/person). This is being addressed through building renovation, space reallocation, and a space study. The space study, however, will be carried out after the renovations and reallocations have been completed. This sequencing represents questionable planning.*
>
> *The assignment of clear authority for all administrative and supportive functions, such as space planning, to the Executive Director would make one individual responsible for short- and long-term agency support. It would also*

provide a clearly defined area for which the Commissioners could hold the Executive Director accountable.

Recommendation (12). The SCC Commissioners should clarify the role and responsibilities of the Executive Director. If the intent of the Commissioners is to have the position serve as an administrative secretary or director, rather than an Executive Director, the title of the position should be revised. If the intent is to have the Executive Director wield power over all divisions, the current title should be retained. The following should also be undertaken:

(1) Job descriptions should be revised to clearly spell out the Executive Director's responsibilities and reflect supervisory/subordinate relationships with the staff offices and line divisions as appropriate,

(2) Organization charts should be revised to accurately reflect the Executive Director's role as well as expected reporting relationships, and

(3) The clarified definition of the role of the Executive Director and reporting relationships should be communicated to all SCC employees.

Limited Authority. The authority exercised by the Executive Director is very limited. Rather than serving in a director capacity, he serves more as a personal assistant to the Commissioners.

The Executive Director has no decision-making authority. This is clearly stated by the Commissioners. It is also supported by statements in the job description defining tasks in terms of "representing the Commission" and "monitoring." And although the job description states that he is to manage the administrative functions of the agency, no reference is ever made regarding oversight of the personnel function. These factors, in combination with ambiguous role definition, serve to make the position less useful than it could be in the organization.

The Executive Director meets with the Commissioners each week, and receives many of his assignments through these meetings. Examples of the Executive Director's assignments include:

- Coordinating with SCC divisions and contractors regarding an asbestos removal project,
- Receiving weekly reports from the divisions and forwarding them to the Commissioners,
- Drafting memos to divisions at the direction of the Commissioners,
- Mediating disagreements between divisions,
- Planning a management retreat for the fall, and
- Initial planning for a staff picnic.

All final decisions regarding personnel transactions, budget and finance, systems development and operations, and public information are made by the Commissioners themselves.

Although he does not have decisionmaking authority in these areas, the Executive Director works closely with two of the staff offices. He routinely interacts with the Commissioners on behalf of the personnel and systems development divisions. Yet the fiscal director continues to work directly with the Commissioners, as does the information resources director. (The Office of General Counsel and hearing examiners also work directly with the Commissioners. This direct interaction appears appropriate given the regulatory, as opposed to administrative, nature of their work.)

The Executive Director position is underutilized. The assignment of greater authority would be proper and logical, and would allow the Executive Director to be of more assistance to the Commissioners.

Recommendation (13). The SCC Commissioners should delegate greater administrative authority to the Executive Director. This would include the authority for routine decisionmaking regarding personnel transactions, budget transactions, public information activities, and systems development and operations activities.

DIVISION STRUCTURE AND MANAGEMENT

SCC divisions were assessed to determine the soundness of their organization and management structures. In general, organization and management structures within most SCC divisions should be maintained in their current forms. However, several SCC divisions exhibit some organizational weaknesses affecting: (1) the departmentalization of functions, (2) the designation of certain divisions or units within them as line or staff, (3) the existence of and adherence to clear chains of command, and (4) the span of control exercised by top division management (Table 10). Some organizational adjustments are necessary to address these problems.

While some divisions showed weaknesses in one or two areas, the Bureau of Insurance revealed widespread weaknesses in its management and organizational structure. The extent of these weaknesses indicates a need for critical oversight by the SCC Commissioners. Some reorganization of the bureau also appears necessary.

The last section of the chapter reviews three concerns related to organization and management. These concerns relate to agency needs for (1) a field office for Bureau of Financial Institutions staff in the Roanoke area, (2) better internal communication, and (3) written policy and procedure to guide staff operations and decisionmaking.

Departmentalization of Functions

A central concept of organizational theory is that functions should be organized and aligned (departmentalized) so that unrelated functions are separated and interrelated functions are combined in organizational units.

Table 10

Structural Weaknesses Within SCC Divisions

Division/Office	Departmentalization of Functions	Line & Staff Designation	Chain of Command	Span of Control
Accounting & Finance	X		X	X
Communications				
Energy Regulation				X
Economic Research & Development				X
Public Service Taxation				X
Railroad Regulation				
Financial Institutions				
Insurance	X	X	X	X
Clerk's Office	X			
Corporate Operations				
Uniform Commerical Code				
Securities & Retail Franchising				X
Motor Carrier				X
Support Services		X		
Fiscal				X
Personnel				
Planning & Development				
Information Resources				X
General Counsel				
Hearing Examiners				

Source: JLARC assessment of SCC organization and structure.

Departmentalization accomplishes a number of objectives. Duplication and overlapping effort can be avoided. One supervisor or manager can oversee similar activities. And accountability can be enhanced.

Decisions regarding the organizational structure and how departments are to be configured should be based on the characteristics of the work and work-related processes. Personalities should not be the determining factor when aligning and organizing departments.

Assessment of the SCC's organizational structure shows that most functions are departmentalized in a logical fashion. Recent functional realignments in the Clerk's Office and the Accounting and Finance Division appear to have been undertaken to primarily address personality problems, however.

Until 1983, Corporate Operations and the Uniform Commercial Code Divisions were subdivisions of the Clerk's Office. (The Support Services Division had also been under the Clerk's Office, but portions had been realigned prior to 1983.) Interviews with SCC staff indicate that the subdivisions were taken out of the Clerk's Office and given separate division status because of the poor health of the clerk at that time and the automated nature of portions of the operation.

Since the 1983 realignment, several problems have surfaced regarding the delineation of functions between the Clerk's Office and Corporate Operations and the ability of the Clerk to control SCC documents. The SCC is currently reviewing statutes and shifting some functions back into the Clerk's Office to alleviate future problems in this area.

In July 1985, the finance section of the Accounting and Finance Division (A&F) was transferred to the Division of Economic Research and Development (ERD) because of serious personality problems between the staff and manager of the section. The manager remained in A&F. The functions of the finance section appear to fit more logically with A&F. However, there have been no apparent problems in coordinating finance functions between A&F and ERD to date.

Recommendation (14). The SCC should monitor the corporate operations and utility finance areas very closely to ensure that coordination and communication are maintained and that duplicative or overlapping functions do not develop. Efforts should continue to realign responsibilities between the Clerk's Office and the Corporate Operations Division. And the Division of Accounting and Finance should be renamed to reflect its reduced responsibilities in the finance area.

Designation of Line and Staff Divisions

Another major organizational concept concerns the designation of units as line or staff divisions. Units concerned with external operations, or which directly carry out an agency's service mandates, are generally designated as line divisions. Units concerned with internal or support operations are generally designated as staff divisions (or offices as is the case at the SCC).

A line/staff designation helps employees and others understand the role of a division. It can also help distinguish how a division is to be supervised and how costs are to be accounted for.

In all but one instance, the SCC has appropriately designated its organizational units as line divisions or staff offices. The Division of Support Services, which is currently designated as a line division, should be redesignated as a staff office. And although the Division of Economic Research and Development (ERD) is appropriately designated, it should employ a cost allocation methodology similar to ones used by the staff offices to recover the cost of services provided to certain other divisions.

Support Services Division. The Support Services Division is considered to be a line division within the SCC. The division is headed by a manager who reports directly to one of the SCC Commissioners. An assessment of the division and its operations shows that its functions are supportive in nature and most similar to staff activities.

This division supports all SCC divisions through the operations of its five centers -- document control, microfilm, general correspondence and the high speed printer, duplication, and the mail and supply rooms. Each center's expenses are recovered through the allocation of its costs to divisions using the services.

Recommendation (15). Because of its internal support functions, the Division of Support Services should be redesignated as a staff unit and placed under the Executive Director for general oversight and supervision.

Economic Research and Development. A review of the major functions of ERD indicated that it is appropriately designated as a line division. However, steps should be taken to ensure that the costs associated with special projects for non-utility divisions are allocated to those divisions and recovered.

ERD's major function is to provide research support to the SCC on utility matters, and it is therefore supported by the valuation fund. ERD provides staff testimony on such matters as energy demand forecasts of electric companies. It also develops staff positions on methodologies used by utility companies in calculating some of their costs, conducts policy studies as directed by the Commission, and issues reports used by other utility divisions.

A small percentage of ERD's work involves special projects for divisions outside the utility area. For example, ERD has: (1) developed a forecasting model for the Bureau of Insurance for projecting insurance premium volume and revenue, (2) developed the algorithms used by Support Services for allocating the costs of each of its centers, (3) written spreadsheet formulas for divisions to use in conjunction with computer software packages, and (4) performed salary surveys covering positions throughout the agency.

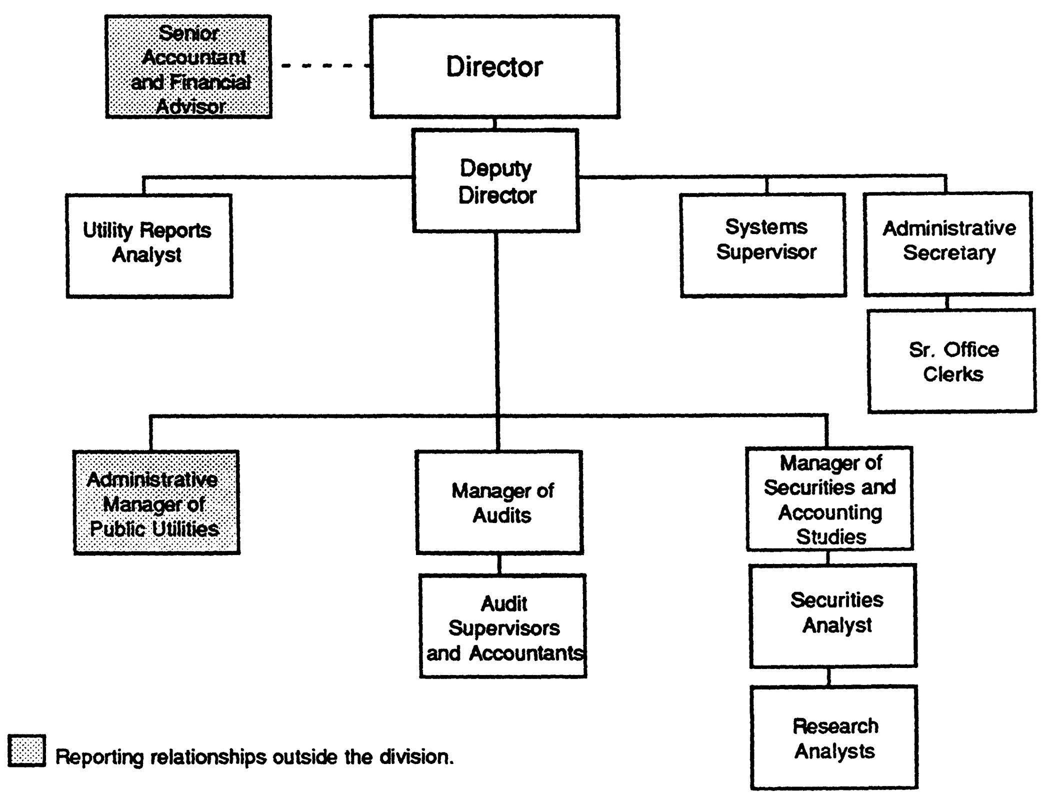
Recommendation (16). The SCC should take steps to ensure that the costs associated with Economic Research and Development projects done for non-utility divisions are allocated to and recovered from those divisions.

Chain of Command

A third area where organizational structures often encounter difficulties concerns the chain of command. The chain of command refers to the line or lines of authority within an agency. Well defined chains allow for smooth and orderly transfer of information and maintain staff accountability by identifying who is responsible for making decisions and assignments, setting priorities, and evaluating performance. They also help the manager define the parameters of his authority and help him decide if a problem situation falls within his jurisdiction. An assessment of chains of command within the SCC revealed significant difficulties within the Division of Accounting and Finance (A&F).

The top management structure of A&F consists of a director, senior accountant and financial advisor, deputy director, and three managers (Figure 5). Two of these positions - the administrative manager of public utilities and the senior accountant and financial advisor - report outside the division. This practice is not followed in any other SCC division. And, the senior accountant and financial advisor's responsibilities overlap with the director's. Both of these conditions have undermined the authority of the division director. In addition, reporting relationships and responsibilities for audit management should be clarified.

Figure 5
Organization of the Division of Accounting and Finance



Source: JLARC redraft of SCC organization chart.

Administrative Manager of Public Utilities. The administrative manager of public utilities coordinates utility rate cases, monitors consultant projects, and performs special utility management studies. Although he is shown on the organization chart as reporting to the deputy director of A&F, the manager has reported to and received direction from the Commissioner who oversees the utility area as well as the Director of A&F.

Repeated problems have arisen with utility case coordination. Because of the manager's unique reporting situation, no immediate superior was available to monitor activity in this area and to intervene to head off difficulties. The Executive Director has been called in to resolve difficulties in this area in the past.

Senior Accountant and Financial Advisor. The senior accountant and financial advisor position was created in the mid 1970's to troubleshoot for the Commissioners on special utility problems and provide them with independent accounting advice. Prior to this time, the incumbent had served as the accounting division director. When the division was reconfigured, a new director was appointed. The advisor position was then created, and the old director assumed that position. This position also reports to the Commissioner over the utility area.

This position is problematic because it encroaches on the routine operations of the division but is not under the director's oversight. In some instances, the actions of the advisor overlap with the responsibilities of the director and other division staff.

> *The advisor stated that a portion of his time is spent working on reviews of problem utility companies. Often he has worked with personnel in the Energy Regulation Division to work out solutions to the accounting problems facing small gas or water companies. While the director of energy regulation and his staff work directly on these problems, the advisor appeared to fulfill this function for A&F.*
>
> * * *
>
> *Another responsibility of the advisor is gathering and assembling data on cases before the Commission. However, the employees in A&F serve as the Commission's expert staff on all public utility accounting matters. They have the most indepth knowledge regarding these matters since they examine company records and analyze rate applications. These responsibilities of the advisor duplicate those of other division staff.*
>
> * * *
>
> *One section within A&F experienced serious personnel problems last year. The division director was aware of the problems and had spoken to the personnel involved.*

The problems were brought to the attention of one Commissioner, who had the advisor call in the employees to discuss the problems.

* * *

Some staff within A&F reported periodically receiving work assignments from the advisor. This is inappropriate since (1) it undermines the authority of the division director in setting work priorities and assigning responsibilities to staff, and (2) the advisor position was created to act independently of A&F.

The individual holding the senior accountant and financial advisor position retired June 30, 1986. This position should be abolished. Activities formerly carried out by the advisor can be performed by the division director or delegated to subordinates. This would enhance the director's accountability for all accounting-related activities and eliminate overlap and duplication.

Audit Management. The A&F utility reports analyst currently reports to the deputy director. This position should be placed under the supervision of the manager of audits because it is responsible for: auditing public utility companies' annual reports, keeping the accountants informed of any report discrepancies prior to the audit of a company, and participating in some utility company audits. This placement would clarify the reporting relationship between this position and the audit section of the division and ensure sound communication and coordination.

Several staff also indicated that there is some confusion over who is directly in charge of audits conducted by the staff. This confusion arises because both the division director and manager of audits provide guidance during the audit process. Audit management should be the direct responsibility of the audit manager. The chain of command should be strictly adhered to and reporting relationships should be clarified in this area.

Recommendation (17). The SCC should take the following steps to establish an appropriate and clear chain of command within the Division of Accounting and Finance:

- Eliminate the position of senior accountant and financial advisor,
- Ensure that the public utilities administrative manager reports through the division director, and
- Strengthen the audit manager position by realigning the utility reports analyst position under the audit manager and clarifying responsibility for audit management.

Span of Control

A fourth organizational area reviewed during the study focused on span of control. Span of control refers to the number of subordinates managed or directed by one person. Span of control is an important aspect of an organization's structure because management effectiveness, as well as overall agency efficiency, is related to having the necessary number of managers to get the job done. An organization will not function efficiently if there are too many or too few managers.

In practice, span of control will be dictated by the particular tasks and responsibilities of a work group or unit. The American Management Association has formulated general span of control guidelines, however (Table 11). These guidelines suggest that for highly complex tasks, a person should manage from three to seven subordinates. For more routine tasks, the span of control is considerably wider. A wider span of control allows supervised employees to exercise more independence and promotes a greater sense of achievement.

A review of supervisor/subordinate ratios within SCC divisions revealed very small spans of control in eight divisions. Two divisions and two offices have assistant or deputy director positions which appear to be unnecessary given the small size of these organizational units and the very small spans of control. These include: Economic Research and Development, Public Service Taxation, the Fiscal Office, and Information Resources (Table 12).

The following examples further elaborate on two of these situations.

The Public Service Taxation Division has a total of 11 positions. This includes a director, deputy director, eight utility appraisers and a secretary. The division is configured so that the director has a span of control of two, while the deputy director has a span of control of five. The elimination of the deputy director position would leave the director with a span of control of six.

Table 11

SPAN OF CONTROL GUIDELINES

Type of Work Supervised	Span of Control
Technical and analytical jobs	3-7
Semi-analytical, non-technical jobs	4-8
Administrative jobs	6-10
Clerical routine tasks	10-20
Manual routine tasks (without a lead worker)	12-25

Source: American Management Association.

Table 12

DIVISIONS WITH SMALL DIRECTOR AND DEPUTY DIRECTOR SPANS OF CONTROL

Division	Full-Time Staff	Director's Span of Control	Deputy's Span of Control
Economic Research and Development	15	1	3
Fiscal Office	6	1	4
Information Resources	5	2	1
Public Service Taxation	11	2	5

Source: SCC organizational charts.

> *This appears reasonable given the routine nature of the tasks carried out by this division.*

* * *

> *The Information Resources Office is staffed by a director, assistant director, three full-time employees, and one part-time employee. The director supervises the assistant director, the information resources coordinator, and the part-time employee. The assistant director has a span of control of one, although he does work with the information resources coordinator to ensure that work flow is smooth. The information resources coordinator functions as an office manager and has a span of control of one.*

> *The size and spans of control within this division do not appear to warrant an assistant director position. This position could be reclassified to reflect its actual responsibilities in the public information area.*

Four other divisions have middle managers with very small spans of control. These are the Divisions of Accounting and Finance, Energy Regulation, Motor Carrier, and Securities and Retail Franchising.

> *The administrative manager of public utilities within the Division of Accounting and Finance does not supervise any personnel, although the position is designated as a*

manager. This position is primarily responsible for coordinating rate case testimony, conducting special utility management studies, and monitoring contracts with vendors in the public utility area. The position description, title, and compensation level should be evaluated and revised to reflect the current supervisory level and actual job responsibilities.

* * *

Three mid-level management positions within the Division of Energy Regulation have inappropriate spans of control. Each of these positions supervise two subordinates. Organizational realignment should be considered to widen the spans of control of these supervisors.

* * *

The Motor Carrier Division has a director and five deputy directors. Two deputy directors supervise only one employee each. The three other deputy directors supervise between four and ten employees. The division should assess these positions and consider eliminating them or consolidating their functions within another section to expand spans of control.

* * *

The director of the Division of Securities and Retail Franchising exercises a span of control of two. Three mid-level managers also exercise control spans of two each. Reorganization of some of the functions within this division could result in wider spans of control and may alleviate the need for some supervisory positions within the division.

Small spans of control should be closely examined in the SCC. In instances where spans deviate from generally accepted guidelines, the SCC should evaluate the position using the following criteria to determine if it is appropriate: (1) the number of subordinates directly supervised by the position, (2) the nature of tasks performed (routine or complex), (3) the number of functional areas managed by the position, (4) the management skills of the incumbent, and (5) the level of experience of subordinates.

Recommendation (18). The SCC should closely examine spans of control in eight of its divisions and offices. Units should be reconfigured and positions abolished to eliminate managerial spans of control of zero, one, and two.

Bureau of Insurance

In contrast to other SCC divisions, the Bureau of Insurance (BOI) showed evidence of weakness in all four areas which were assessed.

Management and structural problems surround the departmentalization of functions, designation of line and staff units, chain of command, and span of control. In addition, there is a need for better communication and dispute resolution on the part of bureau management. These problems indicate a need for immediate attention by the SCC Commissioners. Some reorganization of functions is also necessary to address the problems within the bureau.

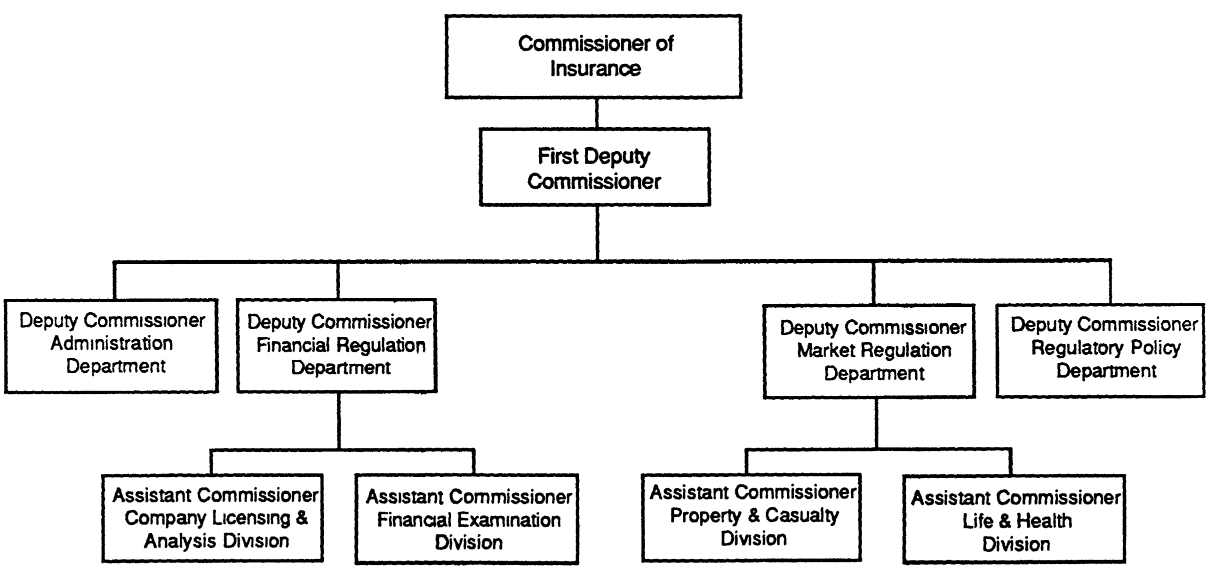
Departmentalization of Functions. Regulatory functions within the Bureau of Insurance are divided into departments according to the nature of the work -- financial analysis and examination, market practice assessment and examination, legal research and regulation drafting, and bureau administration (Figure 6). This structural configuration mirrors the regulatory process in place in the bureau. This process and structure may not be the most effective for regulating the insurance industry in today's environment.

The bureau's examination process is fragmented. The bureau conducts two separate examinations of insurance companies. One group of examiners looks at the financial soundness of companies, while another looks at the market practices of domestic and out-of-state companies. These departments do not coordinate their examinations, nor do they work together to ensure that they are developing a comprehensive assessment of insurance companies that are examined.

In addition, coordinative problems are evident between the Department of Financial Regulation and the Department of Market Regulation. For example:

Figure 6

Management Structure of The Bureau of Insurance



Source: JLARC redraft of SCC organizational chart.

Financial examinations are completely separate from market conduct examinations. One deputy director has made attempts to alter this situation by incorporating some aspects of the market conduct exam with the financial exam. However, this activity was discouraged because the other department felt the deputy director had overstepped his authority. A joint examination would alleviate the requirement for a company to submit to two separate examinations.

* * *

A statute regarding the registration and disclosure of continuing care facilities (CCF) was passed during the 1985 session. The statute went into effect July 1, 1985. Continuing care providers in existence prior to the effective date of the statute were required to comply with its provisions within six months of the effective date (December 31, 1985).

The Financial Regulation licensing section was to examine the financial disclosure statements of the facilities. The contracts were to be examined by one rates and forms section in Market Regulation. If the disclosures were disapproved, the companies had until December 31, 1985, to assemble the proper information and resubmit it to the bureau.

Coordination between the two sections was poor from the start. Coordinative problems continued until the responsibility for the review of CCF contracts was taken out of Market Regulation. This responsibility was eventually shifted in late November 1985 to a staff member working under the first deputy commissioner.

Only two facilities were licensed by the statutory deadline. The coordinative problems contributed to the bureau not responding to the disapproved disclosures until mid-December 1985. This did not allow some facilities the needed time to respond. The bureau granted six-month extensions for these facilities.

The disjointed examination process for insurance differs significantly from the process and structure employed by the Bureau of Financial Institutions in its assessment of financial institutions. The Bureau of Financial Institutions has moved away from a fragmented approach in the regulation of financial institutions and has developed a more comprehensive approach to the regulation of each institution.

Bank examinations have been consolidated so that one team of examiners conducts several different types of examinations at one time. For example, the electronic data processing, trust, and commercial examinations are *all completed by one team at one time. In this way, the Bureau of Financial Institutions can thoroughly assess the condition of the institution and obtain a comprehensive and more accurate view of it.*

Although the specific items examined by the Bureau of Insurance differ somewhat from the items examined by the Bureau of Financial Institutions, attempts should be made to strengthen insurance regulation by consolidating and coordinating examination efforts where possible. Unlike a number of other areas regulated or examined by the SCC, there are no federal agencies which regulate insurance. If the SCC fails to do a thorough and comprehensive job, there are no other entities which will provide a back-up. For this reason, the SCC needs to reassess how the Bureau of Insurance examines insurance companies and how functions are departmentalized. The SCC should consider reorganizing the Bureau of Insurance, using the Bureau of Financial Institutions as a model for addressing both structural and procedural weaknesses.

Designation of Line and Staff Units. A review of line and staff activities within the Bureau of Insurance showed that these are not well delineated. Some line functions carried out by the Department of Administration should be placed in other departments. And administrative functions located elsewhere should be consolidated within the Administration Department.

The Administration Department is primarily responsible for budget activities, collection of fees and taxes, and bureau personnel transactions. These activities distinguish this department as a support unit within the Bureau of Insurance. However, the department is also responsible for agent licensure by developing insurance agent qualification exams and manuals and administering agent exams.

This function should be transferred out of Administration for two reasons. First, agent examination is a line function and should be assigned to a line department. This function should be lodged in the Department of Market Regulation because it is responsible for monitoring the practices of insurance agents and conducting insurance agent investigations.

Second, the Department of Administration has encountered significant difficulties managing the agent licensure process. A recent management audit by Arthur Young and Company found inadequate policies and perceptions of inconsistent decisionmaking in this area. The SCC Commissioner responsible for overseeing the bureau also found it necessary to set up an evaluation committee to address the problems in this area.

The placement of administrative functions within the Bureau's organizational structure is also fragmented. Although the Department of Administration has primary responsibility for most administrative functions, until September 1986, systems management and other data input personnel were supervised by the first deputy commissioner. At the direction of one SCC Commissioner, three data input personnel primarily concerned with agent licensure were placed back in the Department of Administration. Two systems management personnel were placed in the Market Regulation Department. Since the systems management personnel perform support functions, they should be located within the Department of Administration.

Chain of Command. The current structure of the bureau creates a large number of high-level managers and long chains of command. The structure includes a Commissioner of Insurance, a first deputy commissioner, four deputy commissioners who oversee the four departments of the bureau, and four assistant commissioners.

The bureau functions with a dual leadership structure which lengthens the chain of command. The Commissioner of Insurance has delegated all operational and management responsibilities to the first deputy. The commissioner serves more in a liaison and public relations role, and is involved in the following activities:

- Formulation of policy with groups such as the National Association of Insurance Commissioners, legislators, and industry groups (approximately 50% of time),
- Public relation activities (approximately 25% of time), and
- Review of deputy commissioner decisions (approximately 25% of time).

The first deputy commissioner functions as an executive director of the bureau. In this role, the first deputy commissioner is responsible for managing the daily activities of the bureau.

This type of structure has not provided for strong bureau management and leadership. The SCC Commissioners look to their bureau commissioners and division directors to manage their respective areas. In the insurance area, this authority and responsibility gets diffused and confused, resulting in problems being elevated to the highest level of the SCC for resolution. The agent licensure problems discussed in the previous section are an example of this, as is the following:

> *One deputy commissioner and assistant deputy commissioner within the bureau have had strong disagreements over the installation and use of personal computers within their department. The deputy commissioner would not forward the plans for consideration by top management and the assistant continually circumvented the chain of command in attempts to get approval for the equipment. This conflict affected other personnel in the department, making it a difficult environment in which to work.*
>
> *This conflict was brought to the attention of the first deputy commissioner. The Commissioner of Insurance never became involved in the matter. The problem was never settled by bureau management, and one SCC Commissioner eventually settled the dispute. Personality conflicts continue to exist between the deputy and assistant deputy commissioners, however, affecting morale and hindering department communications.*

Bureau leadership and management should be strengthened through consolidation. To achieve this, the position of first deputy commissioner should be abolished. This would shorten the chain of command, centralize responsibility in one position, and enhance accountability for overall bureau management.

In addition, the bureau's chain of command breaks down when staff frequently feel the need to circumvent the chain of command (or middle management levels) to discuss concerns or problems with top management in the bureau. Management failure to rectify chain of command and relationship problems may lead to poor employee morale, a possible cause of the nearly 20 percent turnover observed in the bureau during FY 1986. (This appears to be especially significant since turnover for the previous year was also 20 percent. Nearly half the bureau's employees departed over the 1984-86 biennium.) It can also effect the ability of the organization to conduct regulatory operations.

Span of Control. As already mentioned, the structure of the bureau creates a large number of high-level managers. The structure also causes span of control to be very narrow in some instances. The dual leadership structure narrows the commissioner's span of control to one. In addition, two deputy commissioners and one assistant commissioner oversee two positions apiece.

Recommendation (19). The SCC Commissioners should place a high priority on addressing the structural, management, and operational weaknesses in the Bureau of Insurance. The following actions are necessary:

(1) Revising the current examination process to achieve more comprehensive and unified examinations,

(2) Reorganizing the bureau to:

- Facilitate a unified examination process,
- Eliminate the first deputy commissioner position and other commissioner positions as necessary, and
- Broaden spans of control,

(3) Transferring responsibility for agent licensure from the Department of Administration to the Department of Market Regulation,

(4) Consolidating all administrative or supportive functions within the Department of Administration, and

(5) Strengthening the chain of command within the bureau.

ADDITIONAL STRUCTURE AND MANAGEMENT RELATED CONCERNS

Three additional concerns related to structure and management became evident during the course of the review. These concern a field office for Bureau of Financial Institutions staff in the Roanoke area, better internal communications within the SCC, and agency-wide written policies and procedures.

Field Office for Roanoke Area Staff

While the majority of SCC employees work in or from Richmond, the Bureau of Financial Institutions has ten examiners assigned to Roanoke. The creation of a Roanoke field office would assist these examiners in the conduct of their jobs.

The Roanoke examiners live within a 25-mile radius of Roanoke, and primarily examine financial institutions throughout the central and southwestern section of the State. The SCC does not provide office space for these examiners who work from their homes.

Roanoke examiners used to travel to Richmond to conduct a pre-analysis prior to the "on site" examination of an institution and to finalize examination reports. This process has been modified so that the pre-analysis materials are sent to the examiners, and both the pre-analysis and report finalization are done in Roanoke. This saves on travel, lodging, and meal expenses previously incurred.

A telephone survey of the Roanoke examiners found that (1) the notion of a Roanoke field office has been entertained for years but has not been formally assessed, and (2) all ten examiners expressed a strong need for an office. The reasons cited include:

- Distractions that occur when working at home, especially in the summer when children are out of school,
- Difficulties in finding a place where the entire examination group can meet and work when not in an institution,
- Difficulties in circulating periodicals and other materials when there is no central base of operations, and
- Lack of storage space for supplies and equipment.

Maintaining the professional image of the bureau was also mentioned. For example, the examiners must use their home or public phones for business. A banker could question the SCC's professionalism if there is excessive household noise in the background.

Recommendation (20). The SCC should create a Roanoke field office for the Bureau of Financial Institutions.

Agency Communications

The complex mission of the SCC requires that well developed and strong communication mechanisms exist within the SCC. Dividing tasks among divisions encourages communication among staff in the division but can inhibit communication between staffs in different divisions.

Communications in General. Interviews with SCC employees indicate that communication within the SCC is generally adequate. However, a number of specific areas were identified where communication should be strengthened. For example:

Before 1985, the SCC had a regulation in place requiring service corporations of savings institutions to pay a per diem examination fee. Under the SCC regulation, service corporations were charged directly for the cost of examining them incident to the Bureau of Financial Institution's (BFI) examination of the parent savings institutions. When new legislation was enacted in 1985, which made alternative provisions to cover these costs, the SCC repealed its regulation. Although the SCC was without statutory authority to do so and had repealed its own regulation concerning the matter, BFI continued to assess service corporations for the cost of their examination in 1986. When this was pointed out to the individual making the assessments during the course of the JLARC review, he indicated that this was an oversight and assessments would be refunded. Had the repeal of the regulations been properly communicated to the appropriate staff, the erroneous assessments would not have been made.

* * *

Staff meetings provide an opportunity for staff members to learn about matters affecting the organization as a whole and make them feel a part of the organization. Not all divisions have meetings involving all division employees, however. The SCC Commissioners should encourage all divisions to have periodic staff meetings involving all division employees. The frequency, length, and structure of the meetings would be dictated by the material to be covered.

* * *

Disputes between employees can affect communications and the flow of information within divisions. In the Bureau of Insurance, a supervisor and subordinate do not get along and communicate infrequently. The problem has persisted for several years. Bureau managers are aware of the problem, but have not taken steps to rectify it. While employees within an organization cannot be forced to like one another, they should be required to interact and communicate on a professional level.

* * *

Within the past four years, the SCC has implemented three major organizational changes of line divisions. Division managers sometimes are not informed or are inadequately informed about the changes beforehand. For example, before the Clerk's Office was reorganized in 1983, it included what are now the Divisions of Corporate Operations, Support Services, and Uniform Commercial Code. During interviews, several senior managers stated *that the decision to divide the Clerk's Office was made without informing senior management or involving them. Failing to inform or consult with senior managers concerning major changes in their divisions is frustrating and makes transition to the new organization more difficult. Open communication before and during these types of situations is essential.*

By addressing problems such as these, the SCC can be sure that communication is optimal within the SCC as a whole and between employees within each division.

Communication Between the Office of General Counsel (OGC) and SCC Divisions. The relationship between OGC and SCC divisions is similar to that of the traditional attorney-client relationship. Attorneys are responsible for presenting and defending the division's position concerning a matter before the Commission. SCC operations can be significantly affected if communications between divisions and OGC are not strong. Existing problems in this area, such as the following, should be addressed.

The Securities and Retail Franchising (SRF) Division is responsible for identifying violations of securities laws, and OGC is responsible for prosecuting any violations before the Commission. In addition, SRF staff often ask OGC for official interpretations of law such as whether a securities violation has occurred. As of September 1, 1985, OGC had 36 files and cases that had been forwarded for action. Approximately one third of these items had not been acted on for two years. As of August 1, 1986, OGC had 35 SRF files and cases of which approximately one quarter had not been acted on for over three years. At the time of the JLARC review, OGC was unable to locate two of these files.

Most of the backlog occurred prior to September 1, 1985, when only 60 per cent of one attorney's time was devoted to securities cases. This low priority for SRF cases had not been clearly communicated to SRF. SRF therefore did not have an opportunity to voice its concern about the consequences of such a low-priority ranking.

* * *

SCC staff often must decide in what manner laws will be enforced or construed. Opinions from OGC provide SCC staff with direction as to how they should proceed. Division staff complain that legal opinions are typically oral rather than written opinions. Staff prefer written legal opinions because they provide a record for future reference and reduce the risk of misunderstanding counsel's position. Only infrequently, however, are legal opinions written. Even opinions of major significance are sometimes oral. For example, the SCC's Bureau of Insurance planned to begin market conduct examinations *as recommended by the National Association of Insurance Commissioners. The Bureau sought the advice of counsel as to whether the SCC had statutory authority to perform market conduct examinations and the statutory requirements for the examination. Counsel gave an oral opinion that the bureau did have the authority to perform the examinations.*

Ideally, all legal opinions to staff should be written. However, if attorneys were required to give only written opinions, their workload would increase dramatically and unnecessarily. To assure that written legal opinions are given when necessary, the SCC should develop criteria to determine when a legal opinion should be written.

Recommendation (21). The SCC should take steps to strengthen internal communications. The Commissioners should encourage staff meetings; division managers should not allow disputes between staff to impair division communication; and senior managers should be informed of major organizational developments. Communications between OGC and divisions should be strengthened. OGC should also develop criteria to determine when legal opinions should be in writing.

Written Policies and Procedures

Policies and procedures are necessary to guide ongoing operations and assist with management and staff decisionmaking. While the SCC has developed written policies and procedures which guide most administrative and some regulatory decisions, the agency still depends on memos, word-of-mouth, and long tenure of employees for communication and retention of policies and procedures in other areas.

Written policies and procedures are necessary for several reasons: (1) to ensure uniform treatment of regulated entities, (2) to ensure compliance with statute, and (3) to provide a framework for the training and development of personnel. The SCC currently has written policies and procedures guiding several areas of operations, including personnel, procurement, and rules of practice before the SCC. The SCC should develop a written policy covering potential conflict of interest when an employee's relative works for a regulated industry, however, and several divisions should develop or revise policies and procedures covering primary responsibilities.

The SCC lacks a written policy regarding conflict of interest when a relative of an SCC employee is employed by a regulated company. Several SCC employees have family members who work for regulated companies. For example:

One high ranking employee in the Bureau of Insurance has a spouse working in a management position within a regulated insurance company. Because the Bureau of Insurance is responsible for examining the financial and market conditions of insurance companies, it is possible that a conflict of interest could arise. This situation is *especially serious in light of §38.2-1318 of the Code which says that the examining staff of the SCC may not be connected with any insurance company that is examined except in any manner other than as a policy holder.*

While no problems appear to have been encountered in the past, it is important that the SCC ensure that decisions affecting these companies are unbiased and free from the appearance of any conflict of interest. Therefore, it is necessary for the SCC to develop a policy covering this matter.

Most divisions in the SCC have some policies and procedures in place to assist them in carrying out their regulatory responsibilities. However, in some divisions, critical functions are not covered by written policies and procedures, or the existing policies and procedures need revision (Table 13).

Recommendation (22). The SCC should develop written policies and procedures to guide organizational operations and decision-making in areas where these are lacking. A specific policy should be drafted regarding employee conduct when dealing with a regulated entity in which a relative is employed.

Table 13

SCC Division Policies and Procedures

Division Policy and Procedure	Needs to be developed	Partially covered by written document	Needs revision or update
ACCOUNTING & FINANCE			
Rate case audit procedures, including accounting adjustments with journal entry illustrations.	●		
BUDGET			
Budget development procedures.		●	
CLERK'S OFFICE			
Procedures guiding the examination of corporate charters.	●		
COMMUNICATIONS			
Procedures for estimating changes in rates for telephone exchange service extensions or reductions, equipment testing, and the handling of customer complaints.	●		
ECONOMIC RESEARCH & DEVELOPMENT			
Procedures for finance section operations, such as factors used in determining utility company cost of capital, how to compile testimony & format reports.	●		
ENERGY REGULATION			
Complaint handling and processing.		●	
Gas safety inspection procedures.	●		
FINANCIAL INSTITUTIONS			
Administrative procedures.		●	
Examination procedures for State-chartered banks, savings & loan institutions, credit unions, consumer finance companies and industrial loan companies.	●		
Procedures for economic investigations of financial institutions.	●		
Procedures guiding written report formats.	●		
INFORMATION RESOURCES			
Daily operations.	●		
INSURANCE			
Adminstrative procedures.	●		
Licensure of health maintenance organizations and continuing care facilities.	●		
Financial examiner training procedures.	●		
Financial examination procedure manual.			●
Life & Health agent's investigation procedure manual.			●
Life & Health market conduct examiner training procedures.			●
Property & Casualty investigator's procedure manual.			●
PLANNING & DEVELOPMENT			
Operational policies & procedures.		●	
Incident reporting system.			●
PERSONNEL			
SCC personnel policies and procedures.		●	●
PUBLIC SERVICE TAXATION			
Estimation of quarterly taxes.	●		
Preparation of tax reports.	●		
Appraisal of motor carrier rolling stock.	●		
SECURITIES & RETAIL FRANCHISING			
Computer system procedure manual.			●
Broker-dealer field examination procedures & complaint investigations.	●		

Source: JLARC review of SCC policies and procedures.

IV. PERSONNEL AND STAFFING PRACTICES

The SCC interprets §2.1-116 and §12.1-18 of the *Code of Virginia* to mean that it is exempt from the State Personnel Act. Although the General Assembly determines the agency's maximum employment level, the Commission has developed its own personnel, staffing, and training policies and procedures.

The SCC's personnel policies are generally thorough and well designed. Several provisions should be included in the official personnel manual, however. And an allowance for severance pay and one situation under which positive recruitment is allowable should be discontinued.

Regarding the implementation of personnel policies, positive recruitment appears to have been employed inappropriately in a number of instances. And while efforts have been made to recruit minorities through an affirmative action program, minority employment levels at the SCC are below statewide averages. Finally, SCC staff appear to be generally satisfied with available training opportunities.

A review of SCC staffing practices showed that the agency needs to do more systematic manpower planning and that turnover is high in a number of divisions. In addition, there is considerable inconsistency in the way titles are assigned to high-level management positions within the divisions.

PERSONNEL POLICIES

SCC personnel policies are well written and cover most of the areas that are considered essential by personnel experts. In addition, the SCC's policies compare favorably with State personnel policies to the extent that, in many cases, there is little discernable difference between the two.

Clarity of Policies

The SCC's personnel policy manual appears to be clearly and professionally written. The manual is well organized and has numerically subdivided chapters. There is a complete index, and revised policies are dated and distributed to all divisions in the agency.

Responses from a majority of the division directors, and a review of the manual by a professional editor, were both positive and indicate that editing the manual would only marginally improve its readability and effectiveness. Therefore, the general format and style of the manual should be maintained.

Comprehensiveness of Policies

SCC personnel policies appear to address most personnel situations that have or might arise. The policies are thorough and allow sufficient latitude for division managers. In addition, the policies include most items suggested by personnel experts as well as those found in State personnel policies.

Table 14 lists 19 essential personnel policy areas suggested by personnel experts. The SCC's personnel policies and procedures cover most of these areas. Action should be taken to address five areas however. These areas concern time sheets, garnishment of wages, safety and health, unemployment compensation, and severance pay.

Time Sheets. There is no Commission policy regarding employee time records. Time sheets are important for effective management and manpower planning as well as for accurate allocation of staff costs. All SCC employees should be required to record their hours on standardized, agency-wide time sheets. A more complete discussion of time sheets is found in the staffing section of this chapter.

Garnishment, Safety and Health, Unemployment Compensation. In three areas, employee garnishments, safety and health, and unemployment compensation, policies are in effect without being written into the policy manual. However, the employee's handbook does address each of these issues. The handbook, which is distributed to all Commission personnel and is supposed to reflect SCC policy, states that the SCC complies with State and federal laws in these areas. Since procedures are already in place regarding these areas, policy statements should be drafted by the SCC and included in the official personnel manual.

Severance Pay. There is no formal policy in the personnel manual regarding severance pay. However, the performance evaluation handbook for SCC supervisors states that division directors have the option of granting severance pay in certain situations, such as termination for consistently failing to meet job requirements.

The option of granting severance pay should be discontinued. Severance pay is prohibited for all executive branch employees except agency heads, who do not earn annual leave and would therefore have no leave time to utilize immediately following a termination notice. Since SCC personnel, including division directors, earn annual leave, there does not appear to be any compelling reason to allow severance pay as part of any termination process.

PERSONNEL PRACTICES

Most often, SCC personnel policies appear to be applied consistently throughout the agency. Two areas were found, however, concerning applications of positive recruitment and a low proportion of minority employees, that indicate a need for more attention to process by the Personnel Office and the agency as a whole. SCC practices in the salary and benefit areas, however, appear to be satisfactory, as do most areas of staff training except division orientations.

Table 14

Comparison of SCC Personnel Policies to Recommended Policies

Recommended Policy	Contained in SCC Manual: yes	no	partial	Specific SCC Policy
Absence (Absenteeism)	x			Absence without Leave
Benefits	x			Health Coverage and Life Insurance, Holidays, Retirement
Civic Duty (Jury duty, Voting)	x			Civil Leave
Complaint Procedure	x			Complaints, Grievances
Discipline	x			Discplinary Action, Demotion
Employment (Orientation)	x			Appointment, Orientation
EEO (EEO complaint procedure)	x			Affirmitive Action Plan, Equal Employment Policy
Expatriates			x	Out-of-State Differential
Leave of Absence	x			Leaves of Absence
Pay, Records (Workday, Time records, Overtime, Garnishment, Severance pay)			x	Hours of Work, Compensation Plan, Confidentiality of Records, Compensatory Time, Overtime
Performance Appraisal	x			Performance Evaluation, Bonus
Promotion and Transfer	x			Promotion, Reallocation, Transfer
Safety and Health		x		—
Temporary Employment	x			Temporary Employment
Terminations	x			Separation
Training and Development	x			Educational Opportunity, Training
Unemployment Compensation		x		—
Vacations	x			Annual Leave
Workers' Compensation	x			Workers' Compensation

Source: Mary F. Cook, Human Resource Director's Handbook; and SCC personnel policies manual.

Positive Recruitment

Positive recruitment is a non-competitive recruitment process under which normal requirements for posting notices of vacancies, developing applicant pools, and competitive interviewing are suspended. SCC policy allows positive recruitment and, when needed as part of that process, contracting with professional recruitment firms. The State Personnel Act, on the other hand, allows neither positive recruitment nor payment of fees to any professional recruiting firm to find and offer interviews to prospective applicants.

SCC policy allows positive recruitment under four conditions: when there is an opportunity to hire a recognized expert; when a position requires specialized skills; when recruiting at colleges or universities; or to hire a part-time, temporary, or seasonal employee into a full-time vacant position at the same class or level.

Two problems were found with SCC positive recruitment. First, positive recruitment appears to have been used inappropriately in the past. Second, one condition under which positive recruitment is allowed should be abolished and another should be modified.

Inappropriate Use. Positive recruitment appears to have been used improperly in a number of instances. For example:

> *In late 1983 a senior research analyst was hired in the Bureau of Insurance through positive recruitment. This position did not require skills that are generally unavailable in the marketplace, nor was the person a recognized expert in research. In fact, there was nothing in the applicant's work history to suggest that the person's particular skills even matched the requirements of the position.*

* * *

> *In December 1985 the Office of General Counsel used positive recruitment to fill a recently created position. The recruited candidate had graduated in 1984 with a law degree but had not worked as a lawyer previous to being hired by the SCC. This employee's personnel record did not contain any justification stating why the person should have been hired over any other potential candidate. There does not appear to be anything significant in this applicant's experience that qualified the person as a positive recruitment candidate.*

These examples from the SCC's personnel files illustrate improper use of positive recruitment. In these cases, the recruited employees were not recognized experts, did not possess specialized skills that are difficult to find in a pool of applicants, were not hired as a result of a recruitment drive at a college or university, and were not part-time employees moving into full-time positions.

SCC documents indicated that there were 44 positive recruitments between 1981 and 1985. Thirty-two positive recruitments, representing 73 percent of the total, were reviewed. Approximately 22 percent of these appeared to involve questionable applications of the positive recruitment policy. In many cases, the records lacked proper documentation, making it impossible to determine who requested a positive recruitment or why some people were hired.

Conditions Under Which Positive Recruitment is Allowable. The use of positive recruitment under very limited and very competitive circumstances appears appropriate. For example, the SCC uses positive recruitment to recruit engineering graduates at universities. In these instances, the SCC is competing with industry which can make job offers on the spot. Two of the conditions under which positive recruitment is allowed should be modified or abolished, however.

First, the hiring of part-time, temporary, or seasonal employees into full-time positions is not a valid use of positive recruitment. These positions generally do not require a high level of expertise or education. Applicants for these positions should be interviewed competitively, and personnel who have been employed on a part-time, temporary, or seasonal basis should be encouraged to compete.

Second, the condition concerning specialized skills should be very narrowly defined to require "highly specialized skills that are not readily available in the job marketplace." As currently set out, this provision could be used to justify the hiring of any skilled professional such as a lawyer or an accountant.

Recommendation (23). The SCC should revise its personnel policy manual to:

(1) Include the Commission's policies on garnishment, safety and health, and unemployment compensation,

(2) Discontinue severance pay,

(3) Discontinue the use of positive recruitment to hire part-time, temporary, or seasonal employees into full-time positions, and

(4) More narrowly define the specialized skills condition for positive recruitment to require "highly specialized skills that are not readily available in the job marketplace."

In addition, the conditions for the application of positive recruitment should be strictly adhered to in all situations.

Equal Employment Opportunity and Affirmative Action

Written SCC policies and procedures support the Commission's commitment to affirmative action and equal employment opportunity (EEO), but the agency does employ a low proportion of minorities (Table 15). The SCC has lower proportions of minorities in some EEO occupation groups than

Table 15

Proportion of Minority Employees in Selected State Agencies* FY 1985 and 1986

AGENCY Occupation Group	Total Employment Level FY 1985	FY 1986	Percent of Minority Employees FY 1985	FY 1986
STATE CORPORATION COMMISSION				
Administrators	40	41	0.0 %	0.0 %
Professionals	237	241	8.4	7.9
Technicians	53	58	11.3	8.6
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES				
Administrators	119	123	0.8	0.8
Professionals	75	78	8.0	7.7
Technicians	240	247	6.3	4.5
DEPARTMENT OF EDUCATION				
Administrators	73	74	20.5	23.0
Professionals	335	315	25.7	26.7
Technicians	16	16	18.8	31.3
DEPARTMENT OF INFORMATION TECHNOLOGY				
Administrators	43	43	2.3	2.3
Professionals	203	242	10.3	12.4
Technicians	138	118	36.2	36.4
STATE TOTALS				
Administrators	4,977	5,324	12.0	12.4
Professionals	16,903	17,469	14.0	15.3
Technicians	6,497	6,493	23.0	23.7

* These agencies were selected because they are similiar in size to the SCC.
Source: Department of Personnel and Training PM7250.

other State agencies of similar size and is significantly lower than the Statewide average. In addition, these proportions have decreased while total SCC staffing has increased.

For example, during FY 1986, none of the SCC's administrative positions were filled by minorities, and only 8.6 percent of the SCC's technical positions were held by minorities. The Statewide averages for these two categories were 12.4 percent, and 23.7 percent, respectively.

The SCC should follow the recommendations of its own 1985 EEO Summary and begin an accelerated open recruitment effort to increase the minority applicant pool. This effort should be focused on increasing the number of qualified minorities employed in professional classifications. (Professional classifications account for 59 percent of the SCC's total employment.)

SCC personnel policies require that EEO policy and the affirmative action plan be communicated internally and externally. Externally, the policy is communicated by the personnel office to recruitment sources, secondary schools and colleges, and in all employment advertisements. Internally, EEO requirements are communicated to the divisions primarily through the personnel manual. The affirmative action policy is also posted on division bulletin boards.

Adequate rules seem to be in place in the SCC's applicant review process to ensure that applications are reviewed on the basis of qualification, not on the basis of race or gender. The SCC personnel manual includes guidelines, regarding lawful pre-employment inquiries, that advise staff who interview job applicants of types of questions they may and may not ask prospective employees. In addition, the Personnel Office requires that division directors justify their hiring recommendations. Divisions have repeated the interview process when hiring recommendations were suspect.

EEO issues are also discussed in staff meetings. However, the Personnel Office does not usually offer in-house management training as required by SCC policy. Programs designed to enhance SCC employees' knowledge of EEO and affirmative action, and of EEO topics such as sexual harassment, should be conducted to heighten staff awareness of these issues and to ensure that all employees know the Commission's position in this area.

Recommendation (24). The SCC should follow the recommendations of its 1985 EEO Summary and begin an accelerated open recruitment effort to increase the minority applicant pool.

SCC Salaries

According to salary survey data, SCC salaries are generally competitive with the State system and other states' regulatory agencies. This salary survey data also indicates that SCC salaries are sometimes lower than private sector employers located in Virginia and nearby states.

Approximately one-third of departing SCC employees who completed exit interviews as part of their termination process left to take jobs in the private sector. Forty-two percent of these departing employees went to higher paying jobs.

Comparison with State Salaries. The majority of the SCC's positions are specialized and most accurately compared to positions in other states' regulatory agencies. However, some classifications, mainly technical and clerical positions, can be compared to State classifications. Most often, these positions are paid comparably to, and sometimes higher than, other State employees (Table 16).

Comparison with Regulatory Agencies in Other States. Salary survey data from 1984 indicated that the SCC paid 29 of its top 33 administrative positions above the average of other states' regulatory agencies. Two administrative positions were paid below the national average at that time, but have been adjusted to the average since then.

Professional and technical positions at the SCC were split equally above and below the national average of other regulatory agencies. Forty-eight, out of 154 SCC positions that were compared in the salary survey, were paid above the national average. Thirty-two of these positions were within two salary steps, or between two to four thousand dollars, of comparable positions. Another 49 SCC positions were paid below the national average. However, 40 of these were within two salary steps of comparable positions.

As a result of the 1984 salary survey, the SCC Personnel Office recommended that 23 classes be regraded upward. The Commission approved salary regrades for 17 of these classes.

Comparison with Private Employers. Data from the 1984 salary survey also indicated that many SCC classifications were paid less than similar positions in the private sector. Professional and technical personnel in 41

Table 16

Comparison of SCC and State Salaries

SCC Position	Range	SCC Salary	State Position	Range	State Salary
Fiscal Director	19	$44,650-60,998	Fiscal Director B	16	$34,183-46,683
Assistant Fiscal Director	17	37,363-51,036	Fiscal Director A	14	28,602-39,068
Senior Fiscal Accounting Technician	8	16,757-22,885	Fiscal Technician Senior	8	16,757-22,885
Fiscal Accounting Technician	7	15,326-20,934	Fiscal Technician	6	14,016-19,146
Office Clerk	3	10,727-14,655	Office Services Aide	2	9,813-13,414
Senior Office Clerk	4	11,735-16,021	Office Services Assistant	4	11,735-16,021
Principal Office Clerk	6	14,016-19,146	Office Services Supervisor	6	14,016-19,146
Public Utility Accountant	10	20,020-27,347	Accountant	9	18,312-25,028
Senior Utility Accountant	12	23,936-32,682	Accountant Senior	11	21,889-29,898

Source: SCC Pay Plan 7/1/86 and DPT Compensation Plan 7/1/86.

classifications and administrators in eight classifications were paid lower than similar positions from regulated industries. Only 17 of these classes, however, were paid more than two steps below the average for the private sector employees. The Commission approved four of these classes for regrades.

Salary Survey Methodology. The SCC has done several salary surveys since 1980. Salary surveys are very difficult to design to ensure a high degree of validity and reliability. SCC positions and positions in regulated industries do not always make good comparisons. In addition, a low level of returned surveys or missing data on returned surveys makes accurate data analysis even more difficult. These conditions present problems with identifying missing data, and in determining whether the missing data effect results by inflating or deflating salary averages.

SCC salary surveys have had a significant reliance on industry positions and also have had relatively low overall response rates. The 1984 SCC survey had an additional methodological problem, in that it compared the actual average salaries paid by responding employers to the approximate mid-point of SCC salaries for each class. Thus, this method compared actual salaries paid by other employers with estimated SCC salaries. A more accurate method would have been to use the average of actual SCC salaries with the average of actual salaries paid by responding employers.

Future salary surveys should be designed to overcome these methodological problems. Specifically, future surveys conducted by the SCC should ensure that follow-up contacts are made with the survey population in an attempt to increase the response rate, and that actual SCC salaries are compared with actual salaries from other employers.

SCC Benefits and Bonuses

Classified employees of the SCC have the same benefit package as employees in the State service. This includes Virginia Supplemental Retirement System participation, annual and sick leave, health insurance, and an opportunity to participate in the State Employees' Credit Union, optional insurance programs, and the State's deferred compensation plan.

The SCC has a generous bonus system that has two different types of awards. A third type, a pay for performance plan similar to one proposed for other State employees, is scheduled to go into effect July 1987.

Achievement Bonus. SCC employees may earn a one-time, lump sum "achievement bonus" for significant achievement. Cash awards include $500 for clerical personnel, $1000 for technical personnel, or $1500 for professional or managerial personnel. During FY 1985 and FY 1986, a total of 16 achievement bonuses were awarded at the SCC (Table 17).

This bonus provides an incentive for employees to earn a professional certification, a college degree in a work-related field, or to complete a project in an outstanding manner. Recommendations for an achievement bonus are usually made by the employee's division director.

Table 17

SCC Achievement and Adjustment Bonuses

Achievement Bonuses	FY 1985	FY 1986
Accounting and Finance	1	2
Insurance	3	1
Corporate Operations	0	3
Economic Research and Development	0	1
Motor Carrier	0	1
Planning and Development	0	1
Securities and Retail Franchising	0	3
TOTAL	**4**	**12**
Adjustment Bonuses		
Accounting and Finance	1	4
Insurance	0	1
Communications	0	1
Economic Research and Development	2	1
Energy Regulation	0	5
Financial Institutions	0	2
Fiscal Office	1	0
General Counsel	0	4
Information Resources	0	2
Motor Carrier	0	4
Public Service Taxation	0	1
Contract Administration	1	1
TOTAL	**5**	**26**

Source: SCC personnel transaction files.

Adjustment Bonus. A second type of bonus recognizes exceptional on-the-job performance. During FY 1985 and FY 1986, a total of 31 adjustment awards were made (Table 17). Adjustment bonuses are either requested by division directors or initiated by the Commissioners. The Commissioners must approve all bonus awards.

Division directors recommending adjustment awards submit letters or memoranda to the Personnel Office documenting the reasons. These requests are inserted into the employee personnel file. When the Commissioners initiate these awards, justifying documentation does not usually appear in personnel records.

Adjustment bonuses appear to be a method for Commissioners to grant general salary increases for staff, such as division directors, who do not have formal performance evaluations. Five division directors received such adjustment bonuses in July 1985.

The adjustment bonus generally consists of a one step increase within the employee's salary range, but some awards in this category have been for two or more steps. The following case example illustrates:

> *The Commissioners awarded a four step bonus to an employee in June 1985. This employee had received a job offer at a higher rate of pay from the private sector. The Commissioners authorized a four step bonus in order to retain this employee.*

Performance Bonus. The SCC's pay for performance plan will take effect in July 1987. The bonus will be in the same lump sum payments that staff receive for the achievement bonus.

Recommendations for the performance bonus will be made by division directors, but the final decision will be made by the Commissioners. Up to 20 percent of the agency's employees will be eligible for a lump sum cash award each year, based upon ratings that they receive on performance evaluations.

The pay for performance bonus appears to duplicate the adjustment bonus as a method for rewarding exceptional on-the-job performance. The current adjustment bonus may provide a greater award, but the pay for performance plan seems to provide more readily documented rationale for granting performance-based awards to staff.

Recommendation (25). The SCC should eliminate the potential for duplication in its bonus program by eliminating the adjustment bonus when the performance bonus is implemented. In addition, the Commissioners should begin to formally evaluate division directors as a means of justifying performance bonus awards to these personnel.

Training

SCC staff have the opportunity to participate in three basic types of training and education. These include: in-house training, courses sponsored by professional associations or the State, and courses at nearby colleges and universities. Interviews with SCC staff and a review of training data indicate that much training is available and staff are generally satisfied with this training. The SCC's orientation program should be strengthened however.

New employees receive an agency orientation which overviews personnel policies and employee benefits. A brief slide show is included which describes the agency and its operations. All new employees are required to attend this orientation, which appears to adequately inform new personnel about SCC employee benefits and about the "do's" and "do nots" of being an SCC employee.

Only six divisions provide new employees with a division-level orientation. This orientation usually consists of introductions to other staff in the division, an overview of division policies and processes, and a description of the division's role in relation to the SCC. In divisions with no orientation programs, new employees are usually introduced to other staff and then assigned to a supervisor who is responsible for their training. Divisions that do not offer an orientation may deprive their new employees of an early chance to put their new environment into perspective.

The Personnel Office should design a model orientation outline to be followed by the divisions. Divisions would modify the orientation to fit their own needs and "fill in" the outline with division specific information. At a minimum, the orientation should include: a thorough overview of division operations, an organization chart, a review of division policies and procedures, introductions to other division personnel and the type of work that they perform, and written examples of the products that the division turns out.

STAFFING PRACTICES

A comprehensive staffing analysis was not undertaken during the SCC review. Several indicators were examined, however, to assess staffing practices in the SCC. A review of staffing practices and patterns at the SCC revealed problems in manpower planning, turnover in particular divisions, and inconsistencies in the classification and assignment of titles to some management positions.

Manpower Planning in the SCC

Systematic manpower planning is necessary for efficient use of staff and to prevent over- or under-staffing of critical regulatory functions. Two weaknesses found in existing SCC practices indicate a need for a more systematic manpower planning process. These weaknesses include: (1) staffing requests which are not based on objective, measurable criteria, (2) and little use of time sheets to record employee work hours.

Criteria for Determining Staffing Levels. For the most part, SCC divisions do not base requests for additional staff on quantifiable, objective measures. Divisions use justifications that are often intuitive and vague, and do not measure current productivity or workload. In other instances, justifications may depend upon crisis oriented language to demonstrate need. For example:

> *The Bureau of Insurance submitted a staffing request for six additional positions within its Department of Financial Regulation. Stated justifications for adding four financial examiners included the need to examine insurance-related companies more frequently, increased statutory responsibilities, and participation in examinations with the National Association of Insurance Commissioners. Also, the new positions were said to enable examiners to respond to problems as they arise.*

* * *

> *The Bureau of Financial Institutions submitted the following justification for its budget request for additional staff. ...The potential consequences of not, or inadequately, providing the services is the failure of one or more institutions, the loss of confidence in other institutions possibly resulting in a loss of deposited money by citizens. ...The [addendum] appropriations request is to support an additional 5 FTE. The additional personnel are required because of increased service load.*
>
> *Bank assets have increased from $16.1 billion in 1982 to $22.2 billion in 1984. ...The examining staff is being stretched thinner and thinner in a period of industry deregulation and at a time when nationwide bank failures are approaching record levels.*

The criteria used by both bureaus in the above instances does not reflect consideration of any measures regarding the number of examiners needed to conduct examinations, the number of person-hours spent on examinations, the increased number of exams which would be needed to satisfy additional statutory requirements, or exactly how many "problem" companies or institutions staff must deal with.

Time Sheets. The SCC does not require its employees to keep time sheets or worklogs. Time sheets serve as an important mechanism for assessing manpower needs within an agency. They can be used to track hours spent on major activities or projects, and assess overtime worked by employees. This information allows management to assess the workload and productivity of employees, and serves as a basic measure on which to base future staffing requests. As discussed in Chapter II, information from time sheets is also essential for accurately allocating costs incurred by SCC staff offices to line divisions.

Only three divisions in the SCC use any type of time sheet to record time spent on work activities. The Motor Carrier Division has enforcement and audit staff account for their activities and hours. Staff in the Economic Research and Development Division use time sheets. And the Office of the General Counsel has its attorneys estimate time spent on major projects. The SCC does record overtime worked by employees covered under the Fair Labor Standards Act. However, this provision applies to only about one-third of the SCC's employees, and only hours worked in excess of 40 hours per week are recorded.

Recommendation (26). The SCC should strengthen its manpower planning process by:

(1) Requiring that requests for additional staff positions be based on quantifiable, objective measures, and

(2) Requiring that staff keep time sheets or work logs.

Turnover

On the whole, the SCC's turnover rate is higher, but not significantly so, than other State agencies of similar size. According to Department of Personnel and Training calculations, the SCC has an overall turnover rate of 12.3 percent (Table 18). Examination of turnover within divisions, however, reveals some higher rates which should be examined by SCC management to determine whether it is functional or dysfunctional.

Analysis of SCC division turnover reveals rates of 20 percent or greater for FY 1986 in six SCC divisions and offices. These include: Economic Research and Development, Information Resources, Support Services, Personnel, Securities and Retail Franchising, and Insurance (Table 19).

Table 18

SCC and Other State Agency Turnover FY 1986

Agency	Number of Employees[1]	Turnover Rate	Type of Separation
State Corporation Commission	470	12.3%	49 resignations 6 retirements 3 others[2]
Department of Education	403	10.7	22 resignations 13 retirements 1 removal 7 others
Department of Information Technology	480	8.6	22 resignations 11 retirements 1 removal 5 others
Department of Agriculture	606	6.1	22 resignations 2 retirements 1 removal 14 others
Statewide	70,374	11.7	6,228 resignations 1,158 retirements 587 removals 254 others

[1] Number of employees derived by taking the average of the number of filled positions at the ending month of FY 1985 and FY 1986.

[2] Includes deaths, layoffs, and transfers to other State agencies.

Source: Department of Personnel and Training PME460 report, FY 1986.

Table 19

SCC Division Turnover Rates

FY 1986

Large Divisions[1]	Employees Leaving	Average # of Employees	Turnover Rate*
Securities and Retail Franchising	4	19.0	21%
Insurance	21	105.5	20
Energy Regulation	3	15.5	19
Financial Institutions	9	75.5	12
Accounting and Finance	3	27.5	11
General Counsel	2	20.5	10
Motor Carrier	6	89.0	7
Corporate Operations	1	26.0	4
Small Divisions[2]			
Economic Research and Development	5	10.5	48
Information Resources	1	3.5	29
Support Services	3	12.5	24
Personnel	1	4.5	22
Communications	1	10.0	10
Commissioners' Staff	1	11.0	9
Planning and Development	0	3.5	0
Uniform Commerical Code	0	6.0	0
Public Service Taxation	0	11.0	0
Clerk's Office	0	8.5	0
Railroad Regulation	0	5.0	0
Fiscal	0	6.0	0
Hearing Examiners	0	3.0	0

*Calculated by dividing the number of employees leaving each division by the average filled positions in each division.
[1]Divisions with over 15 authorized positions.
[2]Divisions with 15 or fewer authorized positions.

Source: Department of Personnel and Training PME080, June1985 - June 1986.

The SCC should regularly monitor turnover rates to assess whether there are patterns evident in particular divisions or classifications that may indicate agency problems. Monitoring should be done by the Personnel Office, and the results should be used in conjunction with other personnel data to identify the reasons for turnover. This information could be then made available to SCC management to address problem areas within the agency.

Manager Classification and Titles

SCC divisions are directed by personnel with a variety of different titles (Exhibit 5). Several staff titles are set out in statute. These include:

Exhibit 5

High-Level Management Titles Within SCC Divisions July 1986

Title	Division/Office
Commissioner Deputy Commissioner Assistant Commissioner	Financial Institutions
Commissioner First Deputy Commissioner Deputy Commissioner Assistant Commissioner	Insurance
Director Deputy Director	Securities and Retail Franchising Accounting and Finance Public Service Taxation Motor Carrier
Director Assistant Director	Energy Regulation Economic Research and Development Fiscal Information Resources
Director	Communications Railroad Regulation Planning and Development Personnel
Manager	Corporate Operations Uniform Commercial Code Support Services
Clerk First Assistant Clerk	Clerk's Office
General Counsel	General Counsel
Senior Hearing Examiner	Hearing Examiner

Source: Department of Personnel and Training PME080, July, 1986.

the Commissioners of Financial Institutions and Insurance, the Clerk of the Commission, and the First Assistant Clerk. Other high-level management titles vary without a clear rationale as to why. Position titles under question cover directors, managers, deputy and assistant directors, and deputy and assistant commissioners.

Division Directors and Managers. Almost all SCC divisions are managed by directors. Three divisions, Corporate Operations, Uniform Commerical Code, and Support Services, are directed by managers. While these titles may be appropriate given the responsibilities of these divisions compared with other line divisions, no policies or criteria exist which: (1) define when a division should be managed by a director or manager, and (2) differentiate between the responsibilities exercised by directors and managers. In addition, salary surveys conducted for the SCC have been critical of the lack of precision in setting standards in this area.

Compensation for most directors in the SCC varies from grade 19 to 23 ($44,650 through $63,768). However, the compensation level for the director of information resources, at pay grade 16 ($34,183 through $46,683), is equal to levels set out for managers and deputy directors, grades 16 to 20 ($34,183 through $66,674). This may indicate that the position is inappropriately titled as a director.

Deputy and Assistant Directors and Commissioners. Four line divisions have deputy directors, while two others have assistant directors. However, deputy and assistant directors receive compensation in the same salary range and job description responsibilities appear comparable. Division size does not appear to influence whether or not the title is designated as a deputy or an assistant. For example:

> *The Public Service Taxation Division is staffed with a director and deputy director. The division has 11 full-time authorized positions. The Division of Economic Research and Development has 14 authorized positions and is staffed with a director and an assistant director. The Communications Division has only a director and 11 authorized positions. Although it is similar in size to the Public Service Taxation Division, it does not have a deputy or assistant director.*

In addition, deputy and assistant commissioner titles within the Bureaus of Financial Institutions and Insurance are not consistently applied. For example:

> *The Bureau of Financial Institutions employs an assistant commissioner to manage and direct its administrative section. However, the Bureau of Insurance has designated a deputy commissioner to head its administrative section. Responsibilities of both positions appear similar with one exception. The deputy commissioner of administration in the Bureau of Insurance is responsible for one regulatory function. As described in Chapter III of this report, this responsibility is inappropriately vested with the deputy commissioner.*

> *Once this function has been transferred out, the classifications of these positions should be assessed so as to provide equal compensation and title for equal responsibility.*

Recommendation (27). **The SCC should assess its classification scheme for directors, managers, deputy directors, assistant directors, deputy commissioners, and assistant commissioners. Clear and consistent guidelines should be established which would identify when each classification is to be employed and what the associated salary should be.**

V. AUTHORITY AND RESPONSIBILITY

The authority and responsibility of the State Corporation Commission is very broad. As discussed in Chapter I, the SCC regulates insurance, motor carriers, financial institutions, utilities, corporations, securities, franchises, and railroads. It also serves as the central filing place for financing statements and tax liens. The SCC's authority to act in these areas is set out in numerous sections of the *Code of Virginia.*

Attention is necessary in three areas related to authority and responsibility. First, an assessment of the SCC's enabling statutes showed that the SCC, for the most part, is in compliance with legislative intent. Only four instances of non-compliance were identified. Second, greater coordination and closer working relationships between a number of State agencies and the SCC Motor Carrier Division would strengthen Virginia's regulation of motor carriers. And third, plans for significant expansion and modification of financial institution regulation should be carefully assessed at this time.

SCOPE OF AUTHORITY AND RESPONSIBILITY

The powers held by the SCC in concert with the breadth of the SCC's jurisdiction give the agency very broad authority and responsibility. In terms of powers, the SCC is one of four constitutionally established "departments" of Virginia government. The other departments are the executive, judicial, and legislative branches. Only eight other states have regulatory commissions with constitutional foundations. The SCC is also one of only four regulatory commissions in the United States with the powers of a court of record. Thus, it is one of four with the power to enforce its own rulings.

In terms of jurisdiction, the SCC has no rival in the country. No other state regulatory commission oversees as many areas as does the SCC. Most states assign the regulation of insurance and banking, as well as the chartering of corporations, to executive branch agencies. Most also do not assign such functions as the collection of motor carrier taxes or the enforcement of securities laws to their utility commissions. And only California regulates more types of utilities (water, gas, electric, telephone, and so on) than does Virginia through the SCC.

Most of the industries regulated by the SCC are also regulated by federal authorities (Exhibit 6). For some industries, such as the banking and savings and loan industries, SCC and federal regulation is similar. For others, such as the electric industry, SCC and federal authorities regulate different aspects of the industry. SCC and federal regulation are often distinguishable in that SCC regulation usually involves intrastate matters while federal regulation usually involves interstate matters. Regulation of some industries, such as insurance, is left solely to the SCC.

Exhibit 6

Areas of Shared Regulatory Responsibility

Area Regulated by SCC	Federal Regulator
Banking	Federal Reserve Board Federal Deposit Insurance Corporation
Savings and Loans	Federal Home Loan Bank Board Federal Savings and Loan Insurance Corporation
Securities	Securities and Exchange Commission
Motor Carriers	Interstate Commerce Commission
Electric Utilities	Federal Energy Regulatory Commission Nuclear Regulatory Commission
Gas Utilities	United States Department of Transportation
Telephone Utilities	Federal Communications Commission
Railroads	Federal Railroad Administration Interstate Commerce Commission

Source: 1984 NARUC Annual Report and interviews with SCC staff.

Overview of Regulatory Activities

The SCC's jurisdiction encompasses nine major industry areas (Table 20). Regulatory activities in these areas vary. Some regulatory activities require extensive field work. For example, railroad track inspectors "ride the rails" and assess the condition of the rails and track beds. A communications utility specialist goes into the field and uses electronic equipment to test the quality of telephone service.

In other instances, the SCC regulates by reviewing documents and maintaining records. For example, insurance companies submit their policy forms to the SCC's Bureau of Insurance for the bureau's review. Accountants check documentation submitted by utilities and submit testimony as part of rate increase proceedings.

Several hundred statutes, located in five volumes of the *Code of Virginia,* set out the SCC's authority for these activities. Although authority is

Table 20

Primary Functions of the State Corporation Commission

Industry (Related *Code* Provisions)	Set rates	Maintain rate filings	Serve as filing place for liens	Charter corporations	Approve entry into industry	License or register individuals or companies	Approve documents before their use in Virginia	Examine, audit, or monitor operating practices	Examine for financial soundness	Inspect or test facilities and services	Investigate complaints	Collect taxes
Financial Institutions (§6.1 - 1 et seq.)	●				●	●		●	●		●	
Uniform Commercial Code (§8.9 - 101 to 507)			●									
Corporations (§13.1 - 601 to 800)				●		●						●
Securities (§13.1 - 501 to 527.3)					●	●	●	●	●		●	
Retail Franchises (§13.1 - 557 to 574)					●		●				●	
Insurance (§38.2 - 101 to 4917)	●	●			●	●	●	●	●		●	●
Utilities (§56-1 et seq.) (§58.1 - 1 et seq.)	●	●			●	●		●		●	●	●
Motor Carriers (§56 - 273 to 338.103)	●*	●			●	●		●			●	●
Railroads (§56 - 339 to 451.2)	●*	●				●				●	●	●

* Only when contested.

Source: *Code of Virginia* and interviews with SCC staff.

scattered through the *Code*, this does not appear to inhibit SCC operations. *Code* citations generally correspond to organizational units, making it relatively easy for SCC staff to reference relevant statutes.

Specific Regulatory Activities

This section provides additional detail on regulatory activities carried out in the SCC's major regulatory areas. The areas are listed from largest to smallest in terms of number of employees devoted to the area.

Insurance Regulation. The SCC is vested with the responsibility of regulating insurance companies, agencies, and agents in Virginia. There are approximately 1,300 insurance companies, 7,400 insurance agencies, and 67,000 insurance agents doing business in Virginia. The SCC licenses, investigates, and examines insurance companies, agencies, and agents. Insurance companies must have their policies approved before issuing them in Virginia.

Motor Carrier Regulation. Motor carriers must register with the SCC before operating in Virginia. Registration assures that motor carriers have obtained liability insurance and that carriers pay their road use taxes. The SCC is also responsible for issuing certificates of convenience and necessity to certain motor carriers. A certificate of convenience and necessity authorizes a carrier to pick up and deliver goods over a set route to the exclusion of all other non-certified carriers.

SCC staff work at truck weigh scales and patrol highways to ensure that motor carriers traveling through Virginia are registered to operate in Virginia and that appropriate loads are being carried. The SCC also audits motor carriers to verify that they have paid their full share of road use taxes.

Utility Regulation. The SCC regulates all public service companies doing business in Virginia with respect to all matters relating to the performance of their public duties, their charges, and any abuses caused by these companies. Regulated utilities include electric companies, gas companies, water and sewer companies, and telephone and other telecommunications companies.

Utility regulation involves considering whether to grant utility requests to change rates and monitoring utility operations and business practices. (See Appendix E for an explanation of procedures followed when applications for rate increases are filed.) In addition, the SCC appraises and assesses utility property so that localities may levy and collect real estate and other local taxes. The SCC also assesses, bills, collects, and deposits gross receipts taxes.

Regulation of Financial Institutions. The SCC is responsible for regulating 124 banks, 33 savings and loan associations, 124 credit unions, 312 consumer finance companies, and 12 industrial loan companies. In addition, the SCC regulates 11 money order sellers and six non-profit debt counseling agencies.

Before a financial institution may do business in Virginia, it must obtain permission from the SCC. The SCC determines whether the financial institution is needed by the public and whether its proposed directors and managers are qualified to operate the financial institution. In addition, the SCC grants approval for such financial institution actions as changing locations and opening branches.

Within certain limitations, the SCC may set reserve requirements for financial institutions. Moreover, the SCC examines accounts and records of financial institutions as well as reviewing their lending and investment practices. Banks, savings and loan associations, credit unions, and consumer finance companies are examined at least twice in every three-year period. Industrial loan associations are examined once every year.

Regulation of Corporations. The SCC is responsible for incorporating new Virginia corporations and for registering corporations domiciled in other states that do business in Virginia. Persons wishing to incorporate a business in Virginia must file the appropriate documents, fees, and taxes with the Clerk's Office. If the documents meet statutory requirements and appropriate fees and taxes are filed, the clerk signs a charter of incorporation and the corporation comes into being. Companies incorporated by another state who wish to do business on a regular basis in Virginia must register with the SCC and pay filing fees and taxes.

Securities and Retail Franchise Regulation. Individuals and corporations wishing to sell securities or franchise rights in Virginia must first register with the SCC. SCC staff review the registration documents for compliance with Virginia law. Persons or corporations wishing to employ sales agents to sell securities in Virginia must register with the SCC as broker-dealers. The SCC reviews broker-dealer applications to be sure that the broker-dealers meet Virginia's financial, character, and other requirements. SCC staff investigate suspected violations of Virginia's securities and franchise laws.

The SCC also serves as the registrar of trademarks and service marks for businesses operating in Virginia, and has enforcement responsibilities under Virginia's Take-Over Bid Disclosure Act.

Uniform Commercial Code. The SCC serves as the central filing place for financing statements and tax liens recorded pursuant to the *Uniform Commercial Code*. Creditors may file documents with the SCC to establish the priority of their liens on property other than real estate. Government taxing authorities wishing to protect their interests in debtors' property may also record documents with the SCC.

Railroad Regulation. The SCC is responsible for maintaining records of intrastate railroad rates, inspecting railroad tracks to ensure they are maintained in accordance with federal standards, and approving track and station abandonments. The SCC may not set intrastate railroad rates except in special circumstances. Passage by Congress of the 1980 Staggers Act preempted most State regulation of railroad rates.

COMPLIANCE WITH LEGISLATIVE INTENT

To assess compliance with legislative intent, statutes granting authority and responsibility to the SCC were compared to SCC staff activities.

This analysis indicates that the SCC is in compliance with most of these statutes. However, the SCC is not complying with provisions governing premium finance companies, railroad equipment inspections, common carrier statute distribution, and notifying the public of rights under Virginia's Equal Credit Opportunity Act.

Investigations of Economic Conditions Affecting Premium Finance Companies

Section 38.2-4705 of the *Code of Virginia* requires that the SCC periodically investigate the economic conditions affecting the business of insurance premium finance companies (PFCs) to set the maximum interest rate and service fee that PFCs may charge. The SCC, however, does not appear to be investigating premium finance companies as frequently as necessary.

PFCs are lending institutions which lend money to individuals so that they may pay their insurance premiums. There are 46 PFCs in Virginia. In 1981, the General Assembly set the maximum interest rate and service fee PFCs may charge and provided that the SCC was to set them thereafter. A maximum interest rate of one percent per month charged in advance upon the entire amount and a maximum service charge of $15 were established in 1981.

The Bureau of Insurance is responsible for regulating PFCs. In 1974 and 1980, the bureau investigated the economic conditions affecting the business of premium finance companies. In each case, the study was requested by the premium finance company industry because they felt the rates were too low.

By comparison, the SCC is required to periodically investigate the economic conditions affecting consumer finance companies (CFCs). Both CFCs and PFCs are lenders whose operations are most likely to be affected by many of the same factors, in particular by fluctuations in interest rates. The Bureau of Financial Institutions regulates CFCs and believes that economic factors change frequently enough to warrant an economic investigation every two years.

Section 38.2-4705 of the *Code* directs the SCC to conduct periodic investigations concerning PFCs, but the SCC appears to be conducting these studies based only on the initiative of the regulated entities. With the dramatic fall in interest rates that has occurred since 1981, economic conditions have changed. It is unlikely that PFCs will request an SCC investigation when the investigation may result in a lowering of the maximum allowable rates and charges.

Recommendation (28). The SCC should comply with § 38.2-4705 of the *Code* by initiating investigations of the economic conditions affecting the business of premium finance companies on two-year cycles.

Railroad Equipment Inspections

Section 56-128 of the *Code* requires the SCC to examine all railroad works and equipment and to keep informed as to their physical condition and the manner in which they are operated. The SCC participates in the federally sponsored railroad track safety inspection program and inspects railroad track located within the State. The SCC does not, however, inspect railroad equipment as required by the statute.

Railroad regulation is the responsibility of the SCC's Railroad Regulation Division. Division staff are unaware of any time since the statute was enacted in 1919 that the SCC regularly inspected railroad equipment. The division has only five employees, and it is unlikely that they would be able to implement a Statewide railroad equipment inspection program.

For several years, the Federal Railroad Administration has been inspecting railroad equipment. Two federal equipment inspectors are located in Virginia. Because the federal government is involved in equipment inspections, and given the limited resources of the division, it does not appear to be necessary for the SCC to begin conducting railroad equipment inspections.

Recommendation (29). The General Assembly may wish to amend § 56-128 of the *Code* to change the SCC's responsibility for examining all railroad works and equipment in Virginia from a mandatory provision to a permissive one.

Distribution of Copies of *Code* Provisions

Section 56-141 of the *Code* requires the SCC to publish a compilation of statutes governing common carriers and to furnish a sufficient number of copies to each railroad and transportation company so that they may keep a copy posted in every passenger and freight depot. This statute was enacted in 1919 when railroads had little competition from other means of transportation. The statute no longer seems necessary.

The SCC provides members of the public, including railroads, with copies of common carrier statutes, but only if copies are requested. (Full distribution to all railroad and transportation companies would involve 575 to 700 copies for each distribution.) This appears to be adequate notification to the public of the statutes governing common carriers.

Recommendation (30). The General Assembly may wish to amend § 56-141 of the *Code* to allow the SCC to distribute compilations of common carrier statutes upon request.

Equal Credit Opportunity Act

Virginia's Equal Credit Opportunity Act, which was passed in 1975, prohibits discriminatory lending practices. The SCC is required to use any means available to it to notify the public of rights created by the act, and is authorized to investigate complaints arising under this act.

Notice has not been given to the public, however. SCC staff are unaware of any complaints being filed with the SCC to be investigated. The SCC's failure to notify the public of rights created by Virginia's Equal Credit Opportunity Act may be part of the reason why no complaints have been filed.

Section 59.1-21.25 of the *Code* provides that notice given pursuant to the Federal Consumer Credit Protection Act (FCCPA) is deemed to satisfy the SCC's notification requirement under the Virginia act. The FCCPA does not address notification to the public by state or federal agencies of rights under the act, however. Because notification has not been given under the FCCPA, the SCC is still obligated to use any means available to it to notify the public of rights created by the Virginia act.

Recommendation (31). The SCC should comply with § 59.1-21.25 of the *Code* by notifying the public of rights created under Virginia's Equal Credit Opportunity Act.

MOTOR CARRIER AND FINANCIAL INSTITUTION REGULATION

Regulatory activities of the Motor Carrier Division and the Bureau of Financial Institutions warrant further discussion in this chapter. Coordination of motor carrier regulatory activities has been a matter of concern for a number of years. At this time, several actions could be taken to enhance coordination in this area.

In the financial institutions area, the SCC is currently considering regulatory changes which would significantly increase the scope, frequency, and expense of institution examination. A detailed assessment on the part of the SCC appears to be warranted here to ensure that changes are absolutely necessary and that unwarranted duplication or overlap does not occur with federal regulators.

Motor Carrier Regulation

The SCC is not alone in regulating motor carriers in Virginia. Motor carriers are regulated by five State agencies -- the SCC, Department of Motor Vehicles (DMV), Department of State Police, Department of Highways and Transportation, and Department of Waste Management (Table 21). The SCC is primarily responsible for issuing motor carrier permits, collecting road use taxes based on fuel expenditures and consumption, and enforcing motor carrier laws. Licensing of drivers and motor carriers and fuel tax collection is DMV's responsibility. The State Police enforce safety and other laws. Trucks driving through Virginia must pass through weigh scales administered by the Department of Highways and Transportation. Trucks picking up or delivering hazardous wastes in Virginia must be authorized to do so by the Department of Waste Management.

The agencies have made strides towards a unified approach to motor carrier regulation by sharing information, but a number of additional areas exist where more coordinated motor carrier regulation could be undertaken. First, SCC and DMV auditors could eliminate duplication by coordinating audits and sharing audit information. Second, SCC motor carrier enforcement investigators could perform a more comprehensive regulatory function if they were granted authority to cite carriers for violations of motor carrier safety laws. Third, if DMV and the SCC do not show steady progress toward more coordinated regulation, the General Assembly may wish to consider merging related motor carrier functions into one State agency.

Another motor carrier related concern is also discussed in this chapter. Scheduling of motor carrier enforcement investigators should be

Table 21

Major Responsibilities of State Agencies Responsible for Regulation of Motor Carriers

Responsibility	Agency: State Corporation Commission	Highways and Transportation	Motor Vehicles	State Police	Waste Management
Permitting	✓	✓			
Economic Regulation	✓				
Registration			✓		
Enforcement	✓			✓	
Fuel Tax Collection	✓		✓		
Safety				✓	
Size and Weight Limits		✓			
Hazardous Wastes					✓

Source: Issue paper of Virginia's Working Group on Motor Carrier Requirements, August 1985.

adjusted to provide coverage during peak traffic hours, but should also vary to reduce the potential for carriers to anticipate inspection times.

Motor Fuel and Road Use Tax Audits. DMV and the SCC independently audit motor carriers and other fuel users. Examination of motor carriers in Virginia could be more efficient if DMV and the SCC were to consolidate certain audit functions.

DMV is responsible for issuing license plates to motor carriers domiciled in Virginia. Virginia is one of 33 states participating in the International Registration Plan (IRP). Virginia motor carriers may obtain a license plate from DMV which is accepted by the other 32 IRP states. Virginia motor carriers may travel in other IRP states without having to obtain different license plates for each state. DMV divides the license plate fees it collects among the other IRP states based on the estimated mileage Virginia carriers will travel in those states.

DMV periodically audits Virginia motor carriers to determine the accuracy of their estimated and actual miles traveled in Virginia and in the other states participating in the IRP. To conduct an audit, DMV personnel travel to the motor carrier's offices and review mileage log books and trip log books. If inaccuracies or irregularities are discovered, the carrier is penalized accordingly.

The SCC is responsible for collecting motor carrier road use taxes. Motor carriers traveling in Virginia must pay a road use tax equaling 17 cents per gallon of motor fuel used in Virginia with a credit of 15 cents per gallon for every gallon of fuel purchased in Virginia. The SCC audits both Virginia and non-Virginia carriers, which total over 44,000. SCC auditors also go to motor carrier offices and review log books to determine the number of miles driven as well as the gallons of fuel purchased in Virginia and throughout the country. From this information, SCC auditors determine the number of gallons of fuel used in Virginia and the amount of road fuel taxes due.

The audit activities of DMV and SCC auditors are very similar. With additional training, each group of auditors could perform broad audits that would cover both the SCC's and DMV's needs. This type of joint audit program would most likely result in reduced personnel and travel expenses for the State. It would also reduce the number of audits to which carriers would be subjected.

Recommendation (32). The SCC should work with the Department of Motor Vehicles (DMV) to develop a joint audit program. Under the joint audit program, audits would be coordinated and auditors cross-trained to perform both SCC and DMV audits.

Safety Inspections of Motor Carriers. Virginia statute authorizes only the State Police to enforce motor carrier safety regulations. To broaden safety regulation and enable the motor carrier enforcement investigators to carry out a more comprehensive regulatory function, the SCC could be authorized to enforce Virginia's safety regulations.

SCC enforcement investigators routinely stop trucks to verify that the trucks are operating under the appropriate authority and are registered to pay road use taxes. Investigators also make sure the driver and truck are properly licensed. When violations of motor carrier laws are discovered, enforcement investigators may issue a summons to the driver to appear in the locality's General District Court. Because enforcement investigators deal with motor carriers on a daily basis, they are familiar with motor carrier equipment and can identify obvious safety violations. For example:

> *During a routine check of trucks at the Sandston weigh scale, an SCC investigator noticed a truck that had pulled over to the side of the road to balance its weight. The truck's air valve was leaking thereby creating a potential safety problem. The investigator was unable to issue a summons or take the unsafe truck out of service despite the obvious safety problem.*

The State Police have developed a training program in which a selected group of officers receive extensive training in motor carrier safety. Twenty-one officers have received this specialized training. The training program involves all aspects of motor carrier operations and the mechanics of motor carrier equipment. The officers in this group also receive training in and are responsible for enforcing hazardous materials regulations.

If the responsibilities of the 27 SCC enforcement investigators were expanded to include motor carrier safety, it would not be necessary for them to be trained as extensively as the State Police. The motor carrier enforcement investigators would not need to enforce hazardous materials regulations. Motor carrier enforcement investigators would only need the authority and training to enforce obvious operational and mechanical violations encountered as part of their routine duties. This would include citing carriers for such violations as worn tires and inoperative tail, head, or brake lights.

If the General Assembly were to grant the SCC authority in this area, the State Police should be responsible for training and certifying the SCC enforcement investigators. State Police responsibility for training and certification would ensure uniformity in enforcement of safety laws.

Recommendation (33). The General Assembly may wish to consider granting the SCC the authority to enforce motor carrier safety regulations. SCC motor carrier enforcement investigators would be able to cite carriers for safety violations observed while carrying out their routine enforcement activities. The State Police would train and certify the enforcement investigators in this area.

Agency Coordination. Over the last several years, the motor carrier regulatory agencies have begun sharing information as a form of coordination. The SCC routinely receives information from the State Police concerning traffic violations involving motor carriers. The SCC can use this information to establish that certain carriers must pay road use taxes. Cooperation of this nature leads to more efficient regulation of motor carriers.

In 1984, the Secretary of Transportation and Public Safety established a motor carrier working group. The purpose of the working group was to "address the vital issues facing the Commonwealth regarding the regulation and taxation of heavy trucks." Representatives of the SCC, DMV, State Police, the Department of Highways and Transportation, and several motor carrier trade organizations are members of the working group. The group meets periodically to discuss ways of enhancing communication, improving computer systems, and improving agency operations. To date, the working group has put forth very few recommendations. None have been implemented.

Recommendation (34). If discernable progress is not made to increase coordination and eliminate duplication in the motor carrier area, the General Assembly may wish to consolidate related motor carrier functions being conducted by the SCC and Department of Motor Vehicles.

Motor Carrier Enforcement Scheduling. One of the responsibilities of the Motor Carrier Division is to verify that trucks and other motor carriers are complying with Virginia's motor carrier laws and regulations. Enforcement supervisors assign their investigators to various weigh stations throughout the State from April through November to inspect for appropriate permits, payment of motor carrier fees and taxes, and authorized loads.

According to the Motor Carrier Division, enforcement supervisors schedule investigators to work at the weigh scales based on the supervisor's experience as to when truck traffic is heaviest. However, an examination of data collected by the Department of Highways and Transportation indicates that this may not always be the case. For example:

> *On June 20, 1985, enforcement investigators worked from 8 a.m. to 4 p.m. at the Alberta weigh scales on Interstate 85. A vehicle count conducted at the Alberta scales by the Department of Highways and Transportation showed that enforcement investigators had the opportunity to inspect 1,003 trucks and tractor-trailers between the hours of 8 a.m. and 4 p.m. Had the investigators provided evening coverage from 3 p.m. to 11 p.m., however, they would have had the opportunity to inspect 1,106 trucks and tractor-trailers, a 10% increase. The level of motor carrier traffic per hour was greater between the hours of 7 p.m. and 10 p.m. than at any other period during the day.*

An analysis of enforcement investigator road check schedules for the period July 1985 through June 1986 indicates that 90 percent of the time investigators are assigned to eight-hour shifts between the hours of 7 a.m. and 6 p.m. (Table 22). Regularly scheduling inspections in this manner could allow truckers to anticipate the hours investigators will be conducting inspections, and thus avoid passing through during inspections. This could greatly reduce the effectiveness of the enforcement activities of the division. For example:

> *An informal interview with an out-of-state truck driver revealed that when carrying an unauthorized or illegal load, he routinely drove through Virginia during the late evening and early morning hours. The truck driver stated that this was solely to avoid being caught by SCC enforcement personnel.*

Recommendation (35). The SCC should schedule motor carrier investigators to provide coverage during highest volume periods. Schedules should also be varied to reduce the potential for truckers to anticipate inspection times.

Regulation of Financial Institutions

Virginia banks and savings and loan institutions are examined by both federal authorities and the SCC. Depending on the size of the institution, examinations may last from several days to several weeks. Interviews with financial institution representatives revealed that institutions generally favor examinations. Examinations provide them with second opinions concerning the nature of their lending and investment practices and other operations.

The SCC is in the process of expanding the frequency and scope of bank and savings and loan institution examinations. The SCC should carefully

Table 22

SCHEDULED HOURS FOR MOTOR CARRIER ROAD CHECKS
FY 1986

Scheduled Shift	Frequency of Assignment	Percent of Total
7:00 AM to 3:00 PM	8	4%
7:30 AM to 2:30 PM	1	-
8:00 AM to 4:00 PM	98	46
9:00 AM to 5:00 PM	39	18
10:00 AM to 6:00 PM	46	22
11:00 AM to 7:00 PM	1	-
12 Noon to 8:00 PM	1	-
1:00 PM to 9:00 PM	2	1
2:00 PM to 10:00 PM	8	4
2:30 PM to 9:30 PM	1	-
4:00 PM to 12:00 PM	9	4
TOTAL	214	99%*

*Figure does not add to 100% due to rounding.

Source: SCC Motor Carrier Road Check Schedules, July 1985 - June 1986.

assess its plans in this area to ensure that unnecessary duplication by State and federal regulators does not occur and that the planned level of State activity is necessary.

Bank Regulation. State-chartered banks who are members of the Federal Reserve System are regulated by the SCC and the Federal Reserve Board (FRB). Prior to 1986, most banks were examined a minimum of two times every three years by both the SCC and FRB. Thus, banks were examined a least four times in a three-year period. In 1986, the FRB adopted a policy that would reduce federal responsibility while increasing the SCC's. Under this policy, certain small banks in sound financial condition could be examined by the SCC once a year for three years with the FRB conducting one examination in the fourth year. The SCC plans to implement this policy.

The FRB policy will reduce the total number of bank examinations and will provide greater frequency of examinations by one regulator, namely the SCC. Banks will benefit from the new policy because they will have to devote fewer resources to accommodating examiners. The SCC will be required to increase the frequency of its examinations, however, and will incur greater expenses for additional staff and travel.

Savings and Loan Institution Regulation. State-chartered savings and loan associations are regulated by the SCC and the Federal Home Loan

Bank Board (FHLBB). SCC and FHLBB examiners have always conducted joint examinations of savings and loan associations in the past. Joint examinations are the least disruptive means of examining institutions because State and federal regulators conduct one examination to fulfill the requirements of both entities.

According to SCC staff, the SCC plans to begin conducting independent examinations of savings and loan associations because of problems it perceives in the savings and loan industry, difficulty of scheduling joint examinations with the FHLBB, and failure of the FHLBB examination to thoroughly assess the financial condition of institutions. Virginia statute requires the SCC to examine savings institutions at least twice in every three-year period. The SCC will have to increase its examination staff significantly to begin conducting independent examinations.

According to the Deputy Commissioner for Safety and Soundness, 10 to 12 new examiners and a $600,000 budget increase are necessary to effectively carry out independent savings and loan examinations. Assessment rates would have to be adjusted upward to support this new level of regulation.

Further Analysis Necessary. Efforts to maintain the integrity of Virginia's financial institutions are extremely important. At the same time, care must be taken to ensure that unnecessary duplication does not occur in the regulatory process and that planned expansions and changes are essential. The SCC is planning significant undertakings which will require additional financial resources. Changes of this magnitude should not be undertaken without a thorough analysis of all factors related to regulation of these entities.

It appears that the SCC has not undertaken this level of analysis. The SCC has not prepared a detailed written analysis supporting its plans in these areas. In fact, information obtained from the Bureau of Financial Institutions regarding federal actions in Virginia directly conflicts with information obtained from the federal regulator:

> *During an interview regarding the bureau's plans for initiating independent examinations of savings and loan associations, the Commissioner of Financial Institutions stated that the FHLBB would not be committing additional staff to examine Virginia institutions. Interviews with the FHLBB field manager for Virginia, however, revealed that the FHLBB had four examiners assigned to Virginia at the beginning of 1986. This number is planned to be increased to 10 at the end of 1986, and will increase to 17 at the end of 1987. Although examiners located in Virginia may be called on to examine savings institutions outside of Virginia as the need arises, the FHLBB expects the frequency of examinations and the number of examination-hours devoted to Virginia savings institutions to increase significantly by the end of 1987.*

Recommendation (36). The SCC should conduct a detailed analysis of proposed changes in financial institution regulation. The analysis should include assessments of current federal activities and resources, proposed increases or decreases in federal activities and resources, and the general condition of Virginia's institutions. The analysis should specifically identify deficiencies in the current regulatory structure and how proposed changes in Virginia's practices will address these deficiencies.

The analysis should be based on quantifiable and other data and a written report should be presented to the SCC Commissioners. Because the proposed changes represent a fairly significant departure from past practices in this area, the General Assembly may wish to require the SCC to present its proposed plan to the various legislative committees concerned with financial institutions.

APPENDIXES

APPENDIX A

SCC STUDY MANDATE

"Immediately upon the passage of this Act, and pursuant to the powers and duties specified in Section 30-58.1, *Code of Virginia,* the Joint Legislative Audit and Review Commission shall plan and initiate a comprehensive performance audit and review of the operations of the independent agencies funded in this section, to ascertain that sums appropriated have been, or are being, expended for the purposes for which such appropriations have been made, and to evaluate the effectiveness of the programs in accomplishing legislative intent. Such audit and review shall consider matters relating to the management, organization, staffing, programs and fees charged by the independent agencies and such other matters relevant to these appropriations as the Commission may deem necessary. The Commission shall report on its progress to the 1986 session of the General Assembly and to each succeeding session until its work is completed. In carrying out this review, the Auditor of Public Accounts and the independent agencies shall cooperate as requested and shall make available all records and information necessary to the completion of the work of the Commission and its staff."

Source: Item 11, Chapter 619, 1985 Acts of Assembly.

APPENDIX B

AGENCY RESPONSES

As part of an extensive data validation process, each State agency involved in a JLARC review and evaluation effort is given the opportunity to comment on an exposure draft of the report.

Appropriate technical corrections resulting from the written comments have been made in the final report. Page references in the agency responses relate to the exposure draft and may not correspond to page numbers in the final report.

Included in this appendix are formal responses from the following:

- State Corporation Commission
- Department of Motor Vehicles
- Department of State Police

Additional written comments submitted by SCC staff are on file at the JLARC office.

COMMONWEALTH OF VIRGINIA

THOMAS P. HARWOOD, JR.
CHAIRMAN
ELIZABETH B. LACY
COMMISSIONER
PRESTON C. SHANNON
COMMISSIONER

GEORGE W. BRYANT, JR.
CLERK OF THE COMMISSION
BOX 1197
RICHMOND, VIRGINIA 23209

STATE CORPORATION COMMISSION

November 25, 1986

The Honorable Philip A. Leone, Director
Joint Legislative Audit and Review
Commission
Suite 1100
General Assembly Building
Richmond, Virginia 23219

Dear Mr. Leone:

We have reviewed the report, "Organization and Management Review of the State Corporation Commission," and have only a few general comments to make.

We thank you and your staff for the thorough, courteous, and professional manner in which the study was conducted over the past year and a half.

The report, issued under the direction of the project director, Barbara Newlin, reflects thoughtful consideration and understanding of the regulatory responsibilities and procedures of the State Corporation Commission.

We especially appreciate the discussions with us and our senior staff following the exposure draft. As related to you in those discussions we are in general agreement with your observations and only have minor differences over methodology and extent.

Again, thank you for your time and assistance.

Sincerely,

Thomas P. Harwood, Jr.

Thomas P. Harwood, Jr.
Chairman

Preston C. Shannon
Commissioner

Elizabeth B. Lacy

Elizabeth B. Lacy
Commissioner

COMMONWEALTH of VIRGINIA
Department of Motor Vehicles
2300 West Broad Street

DONALD E. WILLIAMS
COMMISSIONER

MAIL ADDRESS
P. O. BOX 27412
RICHMOND, VIRGINIA 23269

November 21, 1986

Mr. Philip A. Leone
Deputy Director
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Richmond, Virginia 23219

Dear Phil:

I have conducted a review of the exposure draft of the State Corporation Commission Study. I appreciate the opportunity to be able to respond to the findings and recommendations pertaining to the Department of Motor Vehicles.

Recommendation 32(1) - Develop a joint audit program.

I concur that, when feasible, joint audits should be conducted. DMV and the SCC have held informal discussions along these lines. These discussions indicate that DMV's IRP audits are conducted mainly on Virginia based carriers and conducted within Virginia. The SCC audits both Virginia and non-Virginia carriers, with most audits conducted out of state. While the audit activities may appear similar in scope, the actual audits are conducted at very different locations. Discussions indicate that duplication of effort may not be as extensive as first thought. Exploration of this issue will continue between DMV and the SCC to determine specific audit targets that would meet the intent of this recommendation.

Recommendation 32(2) - Develop an agreement under which DMV could register carriers and issue SCC decals on behalf of the SCC when DMV issues IRP license plates.

There are two groups of carriers (interstate and intrastate) that need to be addressed in considering this recommendation. It is our feeling that interstate carriers enjoy a "one-stop" shopping environment with the SCC. Our studies reveal that the extension of the

SCC wire room facilities to a 24 hour, 7 days a week operation would more than adequately serve the interstate carrier. Perhaps an area of service opportunity that has not received enough attention is that pertaining to the intrastate carrier. Through continued discussions with the SCC, DMV intends to explore expanded service to intrastate carriers where feasible.

Recommendation 33 - Granting authority for SCC to enforce motor carrier safety regulations.

We see no problem with this recommendation, but do suggest that DMV's Transportation Safety Administration continue in its current role regarding carrier safety.

Recommendation 34 - Consolidate related motor carrier functions.

The working group established in 1984 has been active and has produced results that may not be evident in the issue paper completed by this group. Of significant importance is the increased level of communication and cooperation that now exists between the agencies responsible for administering the motor carrier regulations. This extends to a better understanding of industry problems and concerns and a forum to address and work on those issues. A recent National Governors' Association Study identified Virginia as one of three states who have models of good administration of motor carrier requirements. This survey included members of the Motor Carrier Industry.

It is felt that perhaps we can continue to improve in our relationship with the industry and implement recommendations that are deemed relevant by formalizing and establishing by law, a Motor Carrier Advisory Committee. This body should be comprised of representatives of the motor carrier industry and state officials responsible for administering motor carrier programs. A state level motor carrier advisory committee creates an opportunity for state and industry representatives to meet, discuss and better understand each other's concerns. Issues affecting the state and industry can be discussed before they become problems.

The committee also provides an arena where work can begin on solutions to real problems that may develop. The goal of the committee is to provide the type of business climate both parties need for effective and efficient operations. I believe that the Virginia working group has built this foundation upon which we can build an even better motor carrier/state relationship.

Phil, I appreciate the opportunity to respond to the recommendations. I apologize for the delay in forwarding my comments. If you have any questions, please call me.

Sincerely,

Donald E. Williams
Commissioner

DEW:ew

COMMONWEALTH of VIRGINIA

COLONEL R.L. SUTHARD
SUPERINTENDENT

DEPARTMENT OF STATE POLICE

P. O. Box 27472, Richmond, Virginia 23261-7472

November 10, 1986

Mr. Philip A. Leone
Director
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Richmond, Virginia 23219

Dear Mr. Leone:

This acknowledges your memo of October 31, 1986, in which you requested my review and comments on a portion of the JLARC exposure draft Organization and Management Review of the State Coporation Commission. I will address each of the recommendations separately.

RECOMMENDATION #32:

I will address Item (1) in comments on Recommendation #33. Item #2 - Some consideration should be given to providing this service at permanent scale locations.

RECOMMENDATION #33:

The Motor Carrier Safety Program was originally established by the Department of State Police to enforce the Hazardous Materials regulations; however, with the adoption of CFR 49 (Hazardous Materials Regulations) motor carrier safety regulations were included (Parts 390-397) due to their essential compatibility. These regulations were so complex and the revisions and addendums written so often, the Superintendent of State Police elected to assign 21 troopers to this program full-time and restrict enforcement of the regulations to this special group of troopers. One of the most serious highway safety problems today is the safe transportation of hazardous materials/hazardous waste and the safe mechanical condition of the transport vehicle is imperative for this function. It is also imperative these regulations be enforced uniformly; otherwise, the motor carrier industry will rebel and the Motor Carrier Safety Program will not fulfill its purpose to the Virginia citizen. This aspect of Motor Carrier Safety mandates the inspectors be well trained in criminal investigation, hazardous materials regulations, motor carrier safety regulations, uniform driver/vehicle inspection procedure, and post crash investigation technique. Integrating these functions with other routine duties will adversely affect the effectiveness of the Safety Program.

It is imperative that every person charged with the enforcement of Motor Carrier Safety Regulations be trained and knowledgeable in the investigation and enforcement of the Hazardous Materials Regulations. In order to provide competent service to the public, these personnel should receive at minimum Level I, Level II and Level III entry training. The major portion of all training has been received through external agencies. We have just this year received certification for instructors from the Office of Motor Carrier Safety to provide basic and in-service training for Uniform Driver/Vehicle Inspection Procedure; however, our program will be monitored by the Department of Transportation. We still depend on external agencies for basic and in-service training for hazardous materials response. The Department of State Police does not have the funding, personnel, facilities, or capability in-house to provide all of the training required for a competent inspector. MSCAP funds could not be used for this unless the personnel trained are dedicated to 100% MCS regulation enforcement duties.

To maintain a quality and uniform enforcement program, all enforcement should be under the control of one agency. We have weight enforcement officers assigned to the permanent scale locations twenty-four (24) hours per day, seven (7) days per week that enforce Title 56 in conjunction with their other duties. We could consider utilizing these officers to enforce motor carrier regulations; however, this would require additional personnel. In any event, the most cost effective and assurance for quality control mandates the investigation and enforcement of these regulations be under the control and supervision of one agency, preferably a full service law enforcement agency.

Safety to the individual inspector is of major concern. We subscribe to a complete inspection which requires inspectors to go under trucks, in, and around trucks. It is unsafe for one inspector to attempt a roadside inspection. Roadside inspection teams should be comprised of a minimum of two qualified inspectors. Eighteen per cent of all commercial vehicles are transporting hazardous materials. This fact reinforces the necessity of inspectors working in teams, especially when leaks are encountered. Thus, the observation that empowering the 27 SCC enforcement investigators with Motor Carrier responsibilities would double the number of inspectors is not a totally accurate observation.

There is a growing need to audit motor carrier records for compliance with regulations. We are currently exploring this function. Recommendation #32 alludes to developing a joint audit program. I believe the auditing of the Motor Carrier Regulations should be considered with the Audit Program addressed in Recommendation #32 and would be a more cost effective utilization of the 27 SCC investigators.

For fiscal year 1987, the Department of State Police has qualified for approximately one and one-half million dollars through MCSAP funding. All indicators point to the fact that this funding will increase for the next 4 years, and assuming we continue to qualify by meeting our agreement to execute our SEP, we will qualify for approximately 5 million dollars per year by fiscal year 1990. One prerequisite for awarding this funding is that personnel must be assigned full-time (100%) to the enforcement of Motor Carrier Safety Regulations.

The lack of personnel for the Department of State Police is a major factor; therefore, if the 27 SCC Investigators are to be utilized for the enforcement of Motor Carrier Safety Regulations, their positions should be converted to 27 trooper positions for the purpose of enforcing Motor Carrier Safety and Hazardous Materials Regulations so that we can take full advantage of the available MSCAP funds for which we may qualify. The addition of 27 troopers would necessitate increasing an already understaffed supervisory staff. This additional supervisory staff should be drawn from State Police ranks to assure on-going maximum efficiency and service.

The Motor Carrier Safety Act of 1984 mandates fixed facility inspections for commercial vehicles. In July 1986, the Department of State Police implemented this requirement in our Annual Motor Vehicle Inspection Program. To enhance this program, we are now requiring all troopers assigned to the supervision of motor vehicle inspection stations to complete the National Uniform Driver/Vehicle Inspection Course. The training for inspection station supervisors enhances their expertise and assures the perpetual maintenance of a well trained source from which to draw personnel to perform motor carrier safety duties.

Success of any inspection program (fixed facility and roadside) is measured by the number of accidents resulting because of failure of defective components. All of our troopers assigned to the enforcement of Motor Carrier Safety and Hazardous Material Regulations are trained and competent in post crash investigations. We believe this authority and capability is essential to a successful program and any inspector conducting roadside safety inspections should be qualified to perform this function.

RECOMMENDATION #34:

Our Department has designed an addendum to the FR-300P report which provides statistical information to be utilized by the Department of Solid and Hazardous Waste, DMV, State Police, SCC, Department of Highways and Transportation, and the Federal Office of Motor Carrier Safety. We propose these reports should be properly stored with DMV accident reports and accessible to the above agencies to be used by them in fulfilling their various responsibilities.

We have been providing the SCC with our Motor Carrier Safety Reports for several years. We propose the agency responsible for the enforcement of Motor Carrier Safety and Hazardous Materials Regulations generate reports and make them accessible to the above agencies. This would eliminate any duplication of accident or inspection reports while making the information available to all interested agencies.

RECOMMENDATION #35:

The State Police Motor Carrier Enforcement personnel have been working a two (2) shift schedule seven (7) days per week in Northern Virginia since September, 1986. We intend to expand this type schedule throughout the State when sufficient personnel are authorized. Our nighttime enforcement efforts are seriously hampered because of inadequate facilities and equipment. We are; however, addressing this with the Department of Highways and Transportation and have been negotiating with the Federal Highway Safety Administration, Office of Motor Carriers, to obtain additional equipment that will enhance our nighttime operations.

I appreciate the opportunity to comment on this matter. Please contact me if I cen be of further assistance.

Sincerely,

Bob

Superintendent

RLS/di

APPENDIX C

ADDITIONAL RESPONSIBILITIES CONFERRED UPON THE SCC THROUGH STATUTE 1906 - 1978

Year	Responsibility
1906	- Regulation of insurance.
1910	- Valuation of public utility property for local taxation, and assessment of State taxes on them. - Regulation of banking.
1914	- Fixing the rates of public utilities, and regulating their services.
1915	- Taxation of the rolling stock of car line companies.
1918	- Administration of the Blue Sky Law.
1923	- Regulation of transportation by motor vehicle.
1924	- Fixing rates of pilotage.
1928	- Licensing of dams.
1930	- Recording of corporate charters.
1932	- Collection of gross receipts tax on common carriers by motor vehicle.
1934	- Regulation of the issuance of securities by public utilities. - Regulation of contracts between public utilities and affiliates.
1940	- Assessment and collection of the motor fuel road tax. - Supervision of Blue Cross and Blue Shield contracts.
1946	- Fixing the maximum charges of small loan companies.
1948	- Registration of trademarks. - Regulation of household goods carriers.
1950	- Adoption of safety regulation of liquefied petroleum gas. - Issuance of certificates of public convenience and necessity to public utilities.
1952	- Regulation of petroleum tank truck carriers.

Year	Responsibility
1954	- Issuance of identification tags for commerical vehicles. - Issuance of certificates of convenience to small loan companies. - Functions relating to service of process on corporations. - Collection of surtax on motor fuel used in the State by heavy vehicles. - Regulation of sight-seeing carriers. - Regulation of transportation of explosives. - Licensing of automobile clubs.
1958	- Administration of uninsured motorists' fund. - Registration of service marks. - Registration of laundry marks.
1960	- Regulations for installation of boilers.
1964	- Regulation of insurance premium finance companies. - Regulation of the leasing of motor vehicles. - Central filing office, Uniform Commerical Code. - Publish motor vehicle reciprocity agreements and decide whether a motor vehicle carrier is entitled to reciprocity. - Register Interstate Commerce commission authority of motor carriers. - Assessment for local taxation of petroleum pipeline companies.
1968	- Administration of Take-Over-Bid Disclosure Act. - Regulation of sight-seeing and charter party boats. - Regulation of Basic Property Insurance Inspection and Placement Plan.
1970	- Regulation of Radio Common Carriers. - Regulation of Virginia Insurance Guaranty Association. - Administration of Virginia Industrialized Building Unit and Mobile Home Safety Law.
1971	- Mediate controversies between public service companies and their employees and patrons.
1972	- Administration of the Retail Franchising Act.
1973	- Regulation of insurance holding companies.
1974	- Licensing of persons engaged in business of selling money orders, imposition of certain fees, penalties for violations.
1975	- Regulations governing non-profit debt counseling agencies. - Rules governing advertisement of accident and sickness insurance.

Year	Responsibility
1976	- Equal credit opportunity regulation. - Regulation of electronic banking facilities. - Regulation of legal services insurance. - Supervision of Life, Accident and Sickness Insurance Guaranty Association. - Supervision of the Medical Malpractice Joint Underwriting Association. - Approval of expenditures of electric utilities for construction of generating facilities.
1977	- Enforcement of safety requirements of vehicles used to transport railroad employees.
1978	- Promulgation of rules for submetering electricity.

Source: Eighty-First Annual Report of the State Corporation Commission 1983.

APPENDIX D

COMMISSION ON STATE GOVERNMENTAL MANAGEMENT RECOMMENDATIONS ON THE SCC

1. That the SCC continue in its constitutional role of setting rates, issuing certificates of convenience and necessity, regulating the services of public service companies, and administering corporation laws.

2. That the Division of Aeronautics be transferred to the proposed Office of Transportation (with the SCC retaining rate-making and rule-making authority with respect to airlines).

3. That the Fire Marshal Division be transferred to the proposed Office of Public Safety.

4. That the Motor Carrier Enforcement Division be transferred to the proposed Office of Public Safety.

5. That the tax assessment and collection responsibilities carried out by the Motor Carrier Taxation Division and the Public Service Taxation Division be transferred to the Office of Administration and Finance.

6. That the Securities Division be transferred to the proposed Office of Agriculture, Commerce, and Labor.

7. That the Accounting Division be transferred to the proposed Office of Agriculture, Commerce, and Labor.

8. That the Public Utilities Division be transferred to the proposed Office of Agriculture, Commerce, and Labor.

9. That the Motor Transportation Division be transferred to the proposed Office of Public Safety.

10. That the Bureau of Banking be transferred to the proposed Office of Agriculture, Commerce, and Labor (but with certain decision-making related to banking laws, such as decisions on branch bank applications, being retained by the SCC).

11. That the Bureau of Insurance be transferred to the proposed Office of Agriculture, Commerce, and Labor (but with certain decision-making related to insurance laws, such as the setting of rates, being retained by the SCC), and

12. That the Office of General Counsel and the Office of Commerce Counsel be retained in the SCC, but with their authority to prosecute cases before the SCC being transferred to the Attorney General's Office.

APPENDIX E

PROCEDURES FOLLOWED BY THE SCC
WHEN APPLICATION IS MADE FOR A RATE INCREASE

Companies providing utility services in Virginia that wish to be granted a rate increase must file an application with the SCC. Prior to filing the actual application, however, the utility must notify the Commission in advance in writing and state the nature of the rate relief desired.

Filing requirements vary based on the type of company and the type of rate relief requested. When the actual rate adjustment application is received, an audit team is assigned. The team conducts an audit at the utility's offices by analyzing and checking company revenues and expenditures.

Once the audit process is completed, a formal hearing is held in most cases. Hearings are usually conducted by a hearing examiner. At the conclusion of the hearing, the hearing examiner submits a report with recommendations to the Commissioners. The Commissioners then issue an order setting forth their decision.

Filing Requirements

There are several different procedures that the Commission uses to assess utility rate increase filings. The procedure used depends primarily upon the type of utility and type of increase that the utility seeks.

The six main types of utilities are:

- Large investor-owned electric, gas, and water and sewer companies earning more than $1 million per year;
- Large investor-owned telephone companies earning more than $10 million per year;
- Electric cooperatives;
- Telephone cooperatives;
- Small investor-owned water and sewer companies earning less than $1 million per year; and
- Small investor-owned telephone companies earning less than $10 million per year.

A company may seek either expedited or general rate relief. In filing for expedited rate relief, the company must use the same return on equity and the same accounting methodology that it used in its last rate case. All other accounting adjustments must be filed as general rate relief. Expedited rates can be put into effect within 30 days of filing.

Under general rate relief, the company can make accounting adjustments or change its rate of return on equity. General rate relief allows a utility to make accounting adjustments that are different from its last rate case. The Commission usually suspends rates under general rate relief for a period of 150 days. If the case should continue beyond this time period the company may put the rates into effect under bond, subject to refund if the Commission orders a change in the rates that the company has requested.

Investor-Owned Companies Earning More Than $1 Million Per Year. Electric, gas, and water and sewer companies in this category may file for either expedited or general rate relief. These companies must notify the Commission 60 days in advance of filing a rate case, and must state whether the case will be for expedited or general rate relief. Companies that file for rate relief use "test year" calculations which are actual expenditures from a recent 12-month historical period.

Investor-Owned Telephone Companies Earning More Than $10 Million Per Year. Large investor-owned telephone companies in this category follow the same procedures for rate relief as other investor-owned utilities earning more than $1 million per year.

Electric Cooperatives. Electric cooperatives may also file for expedited or general rate relief. However, due to the nature of the company as a not-for-profit enterprise, there is a different rate standard that applies. Investor-owned utilities may file for rate relief based on the costs of doing business and earning a profit, while electric cooperatives file on the basis of their total expenses plus adequate interest coverage.

Electric cooperatives use a Times Interest Earned Ratio (TIER) to determine their rate needs. TIER calculates the cooperative's total margins (revenue and costs of service) plus long term debt, then divides the total by long term debt, in order to determine the amount of rate increase.

Rates that are sought in expedited relief cases may take effect immediately upon application. The cooperative must, however, notify its members prior to filing the relief case. Rates that are sought in general relief cases are usually suspended and the case goes to a hearing.

Telephone Cooperatives. Companies in this category use the same rate standard as electric cooperatives, but do not use the TIER methodology to calculate the reasonableness of their rate requests. Telephone cooperatives must notify the Commission 45 days in advance of filing a rate relief application. Customers of the cooperative must be notified 30 days in advance of the filing. If 20 or more customers protest the rate increase within 30 days prior to the rate application, the Commission will either suspend the rates for 150 days, or put them into effect on an interim basis, and hold a formal hearing on the rate increase.

Small Water and Sewer Companies. Companies in this category are investor-owned enterprises with less than $1 million in annual revenues. Companies in this category must notify both the Commission and their customers 45 days in advance of filing a rate relief application.

If 25 percent or 250 of the utility's customers, whichever is less, protest the rate increase, the Commission will hold a formal hearing within 30 days of the rate filing. However, there are no statutory provisions for the Commission to suspend the rates pending this hearing. Therefore, the requested rates may go into effect immediately upon filing the rate application.

Small Investor-Owned Telephone Companies. Companies in this category have the same file and use process for rates, upon application, that applies to small water and sewer companies. These telephone companies must notify the Commission 45 days, and their customers 30 days, in advance of rate filings. If 5 percent or 150 customers, whichever is less, protest the proposed rates within 30 days prior to the rate filing, the Commission may suspend the rates for 150 days and hold a formal hearing.

Application Process

Within the first seven days after the utility actually files a rate adjustment application, the Commission staff reviews the application for compliance with filing requirements. Applications for rate relief must include: company identification and the name of its counsel, a statement of the facts that the company intends to prove in support of the rate request, a statement of the objective sought by the company, all the direct testimony that the company expects to support its case, and financial exhibits (up to a total of 36 different schedules, depending on the type of company and the type of rate relief requested) from a recent 12-month historical test period. Applications that are not in compliance with filing requirements will not be considered filed until they are brought into compliance.

Staff Audit

For rate filings which require a formal hearing, the Commission staff at this point usually begin an audit of the utility and a review of its service record. Staff from the Accounting and Finance Division are assigned to the case, design the audit program (the scope of the review), and hold a pre-audit meeting with the Division's manager of audits. The audit team meets with the other utility divisions to discuss the audit, and concerns or needs of other division staff. The team then conducts the audit at the utility's offices, analyzing and checking company revenues and expenses to ensure that the company used the correct formulas to obtain figures submitted with the application. The auditors check to determine if the company's rate payers or stockholders should absorb the costs of any additional expenditures that the utility has incurred.

The auditing team works primarily from two documents -- the utility's balance sheet and expense report. Some of the items that are examined include: plant and equipment, construction work in progress, materials and supplies, deferred accounts, salaries, legal fees, CPA fees, and insurance premiums paid. They also examine how items are booked compared to the company's last rate case filing to determine if the accounting method has changed.

The utility must include a cost detail analysis for any revenues or expenses that have increased 10 percent over the previous year. This requires a variance analysis explaining why items have increased. The audit team determines who should pay, rate payers or company stockholders, based upon the nature of the items. For example, the utility may make adjustments for expenses such as repair of damage caused by an electrical storm. If the team finds that this kind of damage last occurred five years ago, the company might be allowed to amortize the damage over a five-year period. Usually utilities are allowed to amortize extraordinary adjustments over a three- to five-year period.

The utility may not submit CPA audits as independent verification of its figures or as an alternative to an SCC audit of the company's books. CPA firms test the booking methods of a company for compliance with generally acceptable accounting principles. They do not look at the details which make up the figures, whether they should be allowable, or who should bear the cost for the items.

After an audit is complete, the staff reviews the audit findings with the manager of audits and meets again with other utility divisions. The testimony of the staff is then prepared. Staff will meet with lawyers from the Commission's Office of General Counsel to review the testimony and make changes if necessary.

Rate Hearing

The formal hearing is conducted by a hearing examiner assigned to the case. During the hearing, the utility, the Attorney General's Consumer Counsel, and interested parties, including members of the public, may present testimony and be subject to cross-examination. Commission staff are not generally a party to the hearing, but may be called by the hearing examiner or other parties to the case to give testimony and be cross-examined.

Hearing Examiner's Report

The Hearing Examiner prepares a report, based upon evidence from the hearing and any additional evidence that may have been obtained through post-hearing briefs. The report contains findings and recommendations and is subject to review and comment by parties to the hearing within 15 days of its issue. The report and any exceptions or comments made by other parties, along with a transcript of the hearing, are forwarded to the Commissioners for a final decision on the rate case. A draft of a proposed order prepared by the Commission's General Counsel is also forwarded to the Commissioners.

Commission Decision and Appeals

The Commissioners may choose to adopt the hearing examiner's report and recommendations and General Counsel's proposed order, or they may choose a different course of action. The Commissioners then advise the utility of their decision and when it must issue revised rate schedules or take other actions.

The utility or another party may file a petition of reconsideration to the Commission within 21 days after entry of its order, or it may file an appeal within 30 days to the Supreme Court of Virginia. Petitions of consideration are not usually granted. Parties appealing the order must file notice of the appeal with the Clerk of the Commission and each party to the appeal.

JLARC STAFF

RESEARCH STAFF

Director

Philip A. Leone

Deputy Director

Kirk Jonas

Division Chiefs

● Barbara A. Newlin
Glen S. Tittermary

Section Managers

John W. Long, Publications & Graphics
Gregory J. Rest, Research Methods

Project Team Leaders

Stephen W. Harms
Clarence L. Jackson
Charlotte A. Kerr
Robert B. Rotz
E. Kim Snead

Project Team Staff

Andrea C. Baird
Andrew D. Campbell
Karen E. Chappell
Nolani Courtney
● Stephen Fox
Thomas J. Kusiak
● Susan E. Massart
Laura J. McCarty
Cynthia Robinson
● Carl Wilson Schmidt
Rosemary Skillin

ADMINISTRATIVE STAFF

Section Manager

Joan M. Irby, Business Management & Office Services

Administrative Services

Maryann Du Val

Secretarial Services

Bonnie A. Blick
Rosemary B. Creekmur
Joanne Harwell
Betsy M. Jackson

SUPPORT STAFF

Technical Services

Timothy J. Hendricks, Graphics
R. Jay Landis, Data Processing

● *Indicates staff with primary assignments to this project*

RECENT REPORTS

Federal Funds: A Summary, January 1981
Methodology for a Vehicle Cost Responsibility Study: An Interim Report, January 1981
Title XX in Virginia, January 1981
Organization and Administration of Social Services in Virginia, April 1981
Highway and Transportation Programs in Virginia: A Summary Report, November 1981
Organization and Administration of the Department of Highways and Transportation, November 1981
Highway Construction, Maintenance, and Transit Needs in Virginia, November 1981
Vehicle Cost Responsibility in Virginia, November 1981
Highway Financing in Virginia, November 1981
Publications and Public Relations of State Agencies in Virginia, January 1982
Occupational and Professional Regulatory Boards in Virginia, January 1982
The CETA Program Administered by Virginia's Balance-of-State Prime Sponsor, May 1982
Working Capital Funds in Virginia, June 1982
The Occupational and Professional Regulatory System in Virginia, December 1982
Interim Report: Equity of Current Provisions for Allocating Highway Construction Funds in Virginia, December 1982
Consolidation of Office Space in the Roanoke Area, December 1982
Staffing and Manpower Planning in the Department of Highways and Transportation, January 1983
Consolidation of Office Space in Northern Virginia, January 1983
Interim Report: Local Mandates and Financial Resources, January 1983
Interim Report: Organization of the Executive Branch, January 1983
The Economic Potential and Management of Virginia's Seafood Industry, January 1983
Follow-up Report on the Virginia Department of Highways and Transportation, January 1983
1983 Report to the General Assembly, October 1983
The Virginia Division for Children, December 1983
The Virginia Division of Volunteerism, December 1983
State Mandates on Local Governments and Local Financial Resources, December 1983
An Assessment of Structural Targets in the Executive Branch of Virginia, January 1984
An Assessment of the Secretarial System in the Commonwealth of Virginia, January 1984
An Assessment of the Roles of Boards and Commissions in the Commonwealth of Virginia, January 1984
Organization of the Executive Branch in Virginia: A Summary Report, January 1984
1984 Follow-up Report on the Virginia Department of Highways and Transportation, January 1984
Interim Report: Central and Regional Staffing in the Department of Corrections, May 1984
Equity of Current Provisions for Allocating Highway and Transportation Funds in Virginia, June 1984
Special Education in Virginia's Training Centers for the Mentally Retarded, November 1984
Special Education in Virginia's Mental Health Facilities, November 1984
Special Report: ADP Contracting at the State Corporation Commission, November 1984
Special Report: The Virginia State Library's Contract with The Computer Company, November 1984
Special Report: The Virginia Tech Library System, November 1984
Interim Progress Report: Review of the Virginia Housing Development Authority, February 1985
Special Report: Patent and Copyright Issues in Virginia State Government, March 1985
Virginia's Correctional System: Population Forecasting and Capacity, April 1985
The Community Diversion Incentive Program of the Virginia Department of Corrections, April 1985
Security Staffing and Procedures in Virginia's Prisons, July 1985
Towns in Virginia, July 1985
Local Fiscal Stress and State Aid: A Follow-up, August 1985
1985 Report to the General Assembly, September 1985
The Virginia Housing Development Authority, October 1985
Special Report: Cousteau Ocean Center, January 1986
Staff and Facility Utilization by the Department of Correctional Education, February 1986
Costs for the Standards of Quality - Part I: Assessing SOQ Costs, February 1986
Proceedings of the Conference on Legislative Oversight, June 1986
Staffing of Virginia's Adult Prisons and Field Units, August 1986
Deinstitutionalization and Community Services, October 1986
The Capital Outlay Planning Process and Prison Design in the Department of Corrections, December 1986
Organization and Management of The State Corporation Commission, December 1986
Local Jail Capacity and Population Forecast, December 1986