

Joint Legislative Audit and Review Commission

The Virginia General Assembly

**AN ASSESSMENT
OF THE ROLE OF
BOARDS AND
COMMISSIONS
IN THE EXECUTIVE
BRANCH
OF VIRGINIA**

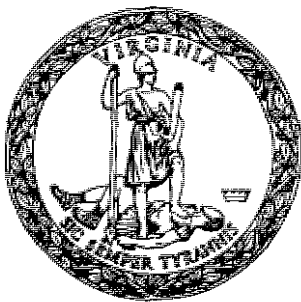
A report in a series on the organization of the
Executive Branch in Virginia

REPORT OF THE

**JOINT LEGISLATIVE AUDIT AND
REVIEW COMMISSION ON**

**An Assessment of the Roles of
Boards and Commissions in the
Executive Branch of Virginia**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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PREFACE

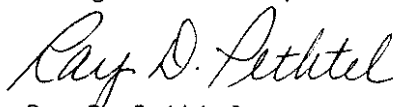
House Joint Resolution 33 of the 1982 General Assembly directed the Joint Legislative Audit and Review Commission to "study the organization of the executive branch for the purpose of determining the most efficient and effective structure". While the resolution itself primarily expressed concern regarding the number and independent status of executive agencies, debates and discussions surrounding passage of the resolution indicated that there was also significant legislative interest in the role of boards and commissions in the Commonwealth.

An interim report outlining areas of inquiry, research, approach, and preliminary findings was issued in December of 1982. A resolution, House Joint Resolution 6, was passed during the 1983 Session of the General Assembly which extended the study through 1983.

This report on boards and commissions in the executive branch of Virginia is the third in a series of four final reports on executive branch structure issued under HJR 33 and HJR 6. The companion volumes in this series are entitled An Assessment of Structural Targets in the Executive Branch of Virginia, An Assessment of the Secretarial System in the Commonwealth of Virginia and Organization of the Executive Branch in Virginia: A Summary Report. The summary report presents a comprehensive summary and analysis of the three parts and highlights each principal finding and recommendation.

Following a staff report to the Commission on November 4, 1983, the reports were authorized for printing and referred to a subcommittee for further consideration.

On behalf of the commission staff, I wish to acknowledge the cooperation and assistance of the board chairpersons and members, and the directors and staff of the State agencies who provided information for this report.



Ray D. Pethtel
Director

December 21, 1983

REPORT SUMMARY

The Commonwealth has a strong tradition of citizen participation on boards. Collegial bodies designated as "boards", "commissions", or "councils" are associated with almost every administrative agency of the executive branch. Their responsibilities may include providing advice to agencies and the Governor, supervising major agencies, and implementing quasi-judicial or quasi-legislative functions.

This review focused on 68 boards with an agency-wide purview. They were selected because their breadth of authority places them in a position to significantly influence agency operations and to exercise policy and oversight responsibilities that parallel those of the Governor's secretaries. Major concerns were the clear assignment and implementation of operational responsibilities among governmental entities and the position of boards in the management hierarchy of State Government.

JLARC Review

This review was called for by House Joint Resolution 33 passed by the 1982 General Assembly and extended by House Joint Resolution 6 of the 1983 Session. The resolution directed JLARC "to study the organization of the executive branch for the purpose of determining the most efficient and effective structure." Discussion of the resolution indicated significant legislative interest in the role of boards and commissions and their relationships to other entities such as the Governor's secretaries and agency directors.

The purpose of this review was to determine if boards' involvement in agency operations are consistent with statute and the management needs of the Commonwealth. Also addressed were the relationships of boards, agency directors, and the Governor's secretaries, and the unique contributions of board members.

Methodology

JLARC staff initially developed a comprehensive inventory of all 222 boards in the executive branch. Then 68 boards with a purview that encompasses the entire mission of an affiliated agency or institution of higher education were selected. These boards were categorized as serving primarily supervisory, policy, or advisory roles. Comparisons were then made of the statutory responsibilities

and reported activities of the three categories of boards in the areas of budget, personnel, monitoring, and policy development.

Written questionnaires were mailed to board chairpersons and a sample of board members requesting information on board activities and responsibilities, reporting relationships, member affiliations, and participation. Survey responses were extensively verified. For seven boards selected as case studies, board chairpersons and agency directors were interviewed and board-related materials reviewed. In addition, board expenditure data was collected from agencies associated with each of the 68 boards.

Board Responsibilities for Agency Operations

Generally boards carry out their responsibilities at appropriate levels. Supervisory boards are involved in agency decisions and advisory boards limit themselves to providing advice. Nevertheless, statutes are not always specific enough to distinguish between the responsibilities of the board and agency directors in budget or personnel areas or for establishing day-to-day operational policy. Partly for this reason, some boards exceed or fall short of expected levels of activity.

Clear definition appears to be needed of the responsibilities of categories of boards and agency directors. This would appropriately fix operational authority and accountability at the board or agency level and strengthen the unique contributions of citizens on boards. Operational or supervisory authority for boards should be assigned, for example, only where explicitly required. In fact, some boards with such authority already function more like policy boards and do not fully serve as the operating head of the agency.

Staff Recommendation 1: The General Assembly should adopt statutory language to clearly establish criteria for determining the need for a board, its level of authority, and complementary responsibilities consistent with the level of authority. Specific categories of boards should be created and each board should be assigned to one of the categories.

Staff Recommendation 2: The General Assembly should repeal supervisory authority for sixteen boards and continue such authority only for the higher education boards of visitors, boards that by law appoint the administrative head of the agency, and the Board of Education. These boards are:

- State Board of Elections
- Commission on Local Government
- State Milk Commission
- Highway and Transportation Commission
- Marine Resources Commission

- Board of Directors, Virginia Truck and Ornamentals Research Station
- State Library Board
- Virginia Public Telecommunications Board
- Board of Agriculture and Consumer Services
- State Air Pollution Control Board
- State Water Control Board
- Virginia Historic Landmarks Commission
- Virginia Commission for the Arts
- Board of the Rehabilitative School Authority
- Virginia Fire Commission
- Virginia Council for the Deaf

Staff Recommendation 3: The General Assembly should clarify or modify the level of authority for five additional boards. These boards are:

- Board of Commerce
- Commission of Health Regulatory Boards
- Board of Housing and Community Development
- Board of Military Affairs
- Board of Visitors of Gunston Hall

Staff Recommendation 4: The General Assembly should ensure that the Governor (or by delegation, the respective Secretary) is clearly responsible for holding agency directors or, under certain circumstances supervisory boards, accountable for the discharge of their powers and duties, except the institutions and agencies responsible for primary, secondary and higher education.

Staff Recommendation 5: The General Assembly should delete the personnel employment authority of the boards that do not appoint their respective agency director. These boards are:

- State Air Pollution Control Board
- Virginia Commission for the Arts
- State Board of Elections
- Virginia Historic Landmarks Commission
- State Library Board
- Commission on Local Government
- State Milk Commission
- Board of the Rehabilitative School Authority
- Virginia Soil and Water Conservation Commission
- State Water Control Board

Staff Recommendation 6: The General Assembly should specifically charge supervisory boards that have authority to appoint the agency head with the authority to approve agency budget requests. All other boards should be authorized only to review agencies' budgets.

Staff Recommendation 7: The General Assembly should specifically define the areas of policy or agency operations that should be monitored by a board in those instances where a board is expected to serve in an oversight capacity.

Role of Boards in Executive Direction

Within the structure of State Government, boards are placed between their respective agencies and the Governor's secretaries. Most Boards predate the secretarial system which was established in 1972. Statutes do not address the role of boards in this hierarchy, but Governors have by executive order brought boards under the jurisdiction of the secretaries. This circumstance coupled with strong emphases on professional management has at times made unclear the role of boards in agency operations and executive direction.

Boards report that they are uncertain about their reporting relationships within the chain of command. A particularly unique situation occurs in the education area where the Board of Education has constitutional powers and boards of higher education are designated in statute as "subject at all times to the control of the General Assembly".

A more consistent understanding of the extent of board, secretarial, and agency director authority appears to be needed. Additionally, consideration should be given to further definition of the characteristics of specially designated citizen board members and the use of special task forces created by executive order.

Staff Recommendation 8: The General Assembly should define the unique category of "citizen" board member in statute to exclude individuals with affiliations related to the purpose of a board.

Staff Recommendation 9: To the extent possible, agencies and their boards should take steps to contain the direct and indirect costs of board meetings.

Staff Recommendation 10: Whenever applicable, the General Assembly, Governor, and agencies should consolidate or eliminate boards to reduce the overall size and complexity of State Government.

Staff Recommendation 11: The General Assembly may wish to explore and specify in statute the extent to which task forces may be created, their duration, and the appropriate use of staff support from State agencies.

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I. BOARDS AND COMMISSIONS: AN OVERVIEW

Collegial bodies, sometimes referred to as the "fourth branch" of State government, are associated with almost every administrative agency of the executive branch. With designations such as "board", "commission", and "council", 222 collegial bodies exercise responsibilities that may include providing advice to agencies and the Governor, supervising major agencies, and implementing quasi-judicial or quasi-legislative functions. Generally, boards can be characterized as serving primarily advisory, policy, or supervisory roles.

To ensure that State government is responsive to the public interest, the Commonwealth has a strong tradition of citizen participation on boards. Nevertheless, a continuing concern has been the appropriate extent of boards' operational authority over agencies. Most boards predate the establishment of the secretarial system and the increased emphasis on professional management of agencies and functional areas of government.

This study takes into account the findings and concerns of previous studies addressing the structure of the executive branch. It focuses specifically on boards with agency-wide purviews. Major areas of review include the correspondence between board activities and statutorily assigned levels of authority, and the clarity with which responsibilities and reporting relationships are assigned among agency directors, boards, and the Governor's secretaries. The study proposals attempt to maximize meaningful citizen participation on boards within an efficient governmental structure.

HISTORICAL PERSPECTIVE

In moving toward a centralized management model for State government, previous reorganization studies commonly attempted to identify ways to enable the Governor to exercise more uniform direction and control of executive branch activities. Recommendations concerning boards generally proposed establishing a manageable span of control by reducing the number of boards and members, and making agencies and boards more directly accountable to a Governor by giving him or her the authority to appoint most members and directors.

Another area of concern was whether part-time lay boards could effectively fulfill administrative responsibilities assigned to them by the Legislature. While studies recognized citizen bodies as important links between State government and the public it serves, they generally recommended limiting the operational role of these bodies.

Agency administration by a single full-time administrator was seen as desirable.

Recommendations on Agency Administration by Boards

Most studies recommended assigning limited operational responsibilities to boards and retaining plural administration only under special circumstances (Table 1). The 1947 Commission on the Reorganization of State Government, for example, determined that plural bodies should be created only when these functions were needed:

- A formal source of administrative advice. Boards could have the power to advise, counsel, or recommend courses of action on matters of policy and procedure, but they should not have the power to carry out the recommended action.
- Quasi-legislative action. To fulfill or amplify enabling statutes, boards should have the power to make substantive rules with external applications, such as health rules but they should not have the power to make regulations for the administration of a department.
- Quasi-judicial action. As derived from enabling legislation, boards could hear and adjudicate controversies involving violations of rules promulgated by a quasi-legislative act.

While the 1940 Chamber of Commerce study recommended the least restricted operational role for boards, this study also indicated that boards usually could not be expected to fulfill administrative responsibilities, as illustrated by the following example:

Previously, six institutions and their governing boards had been placed under the full supervision, management, and control of a single state hospital board (now the Board of Mental Health and Mental Retardation). The Chamber of Commerce study found that in practice the state board was willing to delegate most of its management role and a considerable portion of its control powers to a full-time director. The study concluded that this was the desirable and seemingly inevitable result when part-time, per diem, lay boards were designated for administrative control.

Previous studies also found that a board might delegate its administrative responsibilities to the agency director. The 1927 study Organization and Management of State Government in Virginia, for example, noted the following:

Table 1

PREVIOUS STUDY RECOMMENDATIONS ON BOARDS

<u>Study Commission</u>	<u>Responsibility Recommendations</u>	<u>Accountability Recommendations</u>
1924 Commission on Simplification and Economy of State and Local Government	Departments serving quasi-legislative and quasi-judicial functions (e.g. Industrial Commission and State Corporation Commission) should be administrated by a board. One-person control of agencies is preferred in all other instances.	The number of boards and the number members on each should be reduced. Board members should serve staggered terms. The Governor should appoint most board members and agency directors.
1927 New York Bureau of Municipal Research (<u>Organization and Management of State Government in Virginia</u>)	Boards should not be involved in the administration of agencies. They should be retained only in advisory, quasi-legislative, quasi-judicial or promotional capacities.	Similar to above.
1940 Chamber of Commerce	Plural administration by boards is desired where policy is new or not well defined and where the agency might be otherwise subject to public suspicion or distrust. Boards are useful adjuncts to agencies that serve legislative and judicial functions.	--
1947 Commission on the Reorganization of State Government	Boards and commissions should not have administrative powers. Plural bodies should only be created when needed as a formal source of advice, or to carry out a quasi-legislative or quasi-judicial function.	--
1970 Governor's Management Study	Boards should be limited to advisory powers except when they have quasi-legislative and quasi-judicial powers to establish rates or adjudicate controversies. Boards should have policy powers only when the public interest dictates that a policy-making function should reside in a board, as in the area of education.	--
1973 Commission on State Governmental Management	As a general rule, boards should be restricted to monitoring agency activities, communicating goals and achievements of State agencies to the citizenry, and advising the Governor and agency directors on matters affecting the agency. Only in special circumstances or in the area of education should boards be other than advisory bodies.	The Governor should appoint all administrative heads and board members subject to General Assembly approval. Board member terms should coincide with the Governor's term. Except on special commemorative commissions, legislators should not serve on Executive Branch boards.

Source: Organization Studies of Virginia's executive branch.

The present Board of Health functions well because it is content to delegate a major part of its administrative authority to the commissioner, and to rely on his judgement and counsel in determining administrative policy. It has functioned mainly as an advisory board except when, in conformance with the letter of the law, its official ratification of health policy and procedure has been called for. If the proper function of a Board of Health is to serve in an advisory capacity to a trained and experienced commissioner, there is certainly no warrant in continuing a Board of Health as the administrative head of the State's health work.

Other Recommendations

In addition to proposing reductions in the administrative responsibilities of boards, some studies recommended other legislative actions designed to make the boards more manageable and accountable to the Governor. Among the actions recommended to achieve those results were:

- reducing the number of members on each board and the total number of boards to aid decision-making at the State and agency level;
- staggering terms of board members to ensure continuity of policy;
- gubernatorial appointment and removal of board members and agency directors; and
- removing legislators from most boards.

Legislative Actions. Regarding the various recommendations made over the years, the General Assembly has proceeded cautiously and has made a limited number of changes concerning boards. The number of boards has not been reduced for the most part.

Some of the broader recommendations concerning the composition of boards have been implemented. Section 9-6.23 of the *Code of Virginia*, enacted in 1977, prohibits legislators from serving on executive branch boards except in certain instances (such as commemorative commissions like the Jamestown-Yorktown Foundation). Regarding the debate over continuity of policy versus gubernatorial control, 63 percent of the 121 boards with specified term durations currently contain members with staggered terms. Even so, an incoming Governor fills more than 1,200 appointments to boards and agencies upon taking office and fills an estimated 3,500 throughout the four-year term.

A change in board reporting relationships occurred in 1978. Section 2.1-41.2 of the *Code of Virginia* was adopted to give the Governor rather than boards the authority to appoint agency heads. Numerous boards, many in the area of Education, continue to be exempt from this provision.

Regarding the administrative authority of boards, the General Assembly has acted on a board-by-board basis to address specific problems that have arisen within agencies. For example, a 1980 legislative study commission reported the following regarding the Board of Mental Health and Mental Retardation:

Given the complexity of the Department of Mental Health and Mental Retardation's operations within the structure of State government and the ability of a part-time citizens' body to function within that dynamic framework, the State Board is unable to meet its legislative mandate to be an operational board with wide-ranging responsibilities for the management of the State hospital system. Simultaneously, the Board is largely ineffective in making policy for the mental health, mental retardation, and substance abuse system it is charged with overseeing, because it is too involved in the day-to-day operations of the system. The talents of the men and women of the board are being vastly underutilized, and consequently the system is suffering from a lack of direction. Enabling legislation should be revised to establish the Board as a policy-making body.

Based on findings of the study commission, recent amendments to the *Code* designate the director rather than the board as the supervisor and manager of the agency, and limit the board to a policy and monitoring role (Table 2).

JLARC REVIEW

Previous reorganization studies have raised two common concerns regarding boards that are particularly relevant for this study:

- Is it reasonable to expect part-time lay boards to run State agencies?
- What contributions can boards make to the overall operation of State government?

At the agency level, differences in the operational authority of various boards have been identified and questioned. No comprehensive

Table 2

DIVISION OF GENERAL POWERS AND DUTIES WITHIN THE
DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

<u>Board Responsibilities</u>	<u>Agency Director Responsibilities</u>
1. To develop and establish programmatic and fiscal policies.	1. To supervise and manage the department.
2. To ensure the development of long range plans.	2. To employ personnel.
3. To review and comment on all budget requests and applications for federal funds.	3. To make and enter into all contracts.
4. To monitor the activities of the department.	
5. To advise the Governor, Secretary, and agency head on all matters affecting services.	
6. To make, adopt, and promulgate rules and regulations.	
7. To ensure the development of programs to educate citizens and elicit public support for the activities of the department.	

Source: *Code of Virginia*.

review has been conducted, however, to determine if there are measurable distinctions in the way boards exercise their authority over agency operations. JLARC methods were designed to address these concerns by comparing the activities of the boards with the statutory level of operational authority in such critical areas of agency direction as budgeting, personnel, policy-making, and monitoring. How board responsibilities and contributions mesh with those of the other "directors" of executive branch activities was assessed in terms of the increasing management orientation of Governor's secretaries.

Scope of the JLARC Review

JLARC focused its review on the 68 boards with purviews that encompass the entire missions of their affiliated State agencies or institutions of higher education. These boards, which are listed in Appendix A, were selected because the breadth of their authority places them in a position to substantially influence the operations of State

agencies. Many of these boards also serve as major sources of direction for agencies, a role that sometimes overlaps with that of the Governor's secretaries.

The following examples further illustrate the criteria used to select boards with "agency-wide purviews":

- The Advisory Board on Aging was selected because it is authorized by statute to advise the Governor, secretary, and agency director on matters affecting the aging and on the overall programs provided by the Virginia Department on the Aging.
- In contrast, the State Insurance Advisory Board was not included because it provides advice on only a small portion of the overall mission of the multi-purpose Department of General Services.
- Similarly, individual product commissions within the Department of Agriculture and Consumer Services were not included, but the State Board of Agriculture and Consumer Services, which oversees the entire operations of the Department, was included.
- Only distinct multi-member boards which were listed in the 1983 Appropriations Act and are associated with agencies with directors and staffs were included. For this reason, entities such as the War Memorial Commission, Commission on the Status of Women, and the Virginia Outdoor Foundation were excluded from review. These are multi-member bodies with either no staff or single staff positions to assist them.

Methods

JLARC methods were designed to determine if boards influence the direction of agencies in a manner consistent with their statutory level of authority. Because the 68 boards have a continuum of operational responsibilities ranging from supervision of an agency to providing advice, each board was categorized as having a high, medium, or low level of operational authority based on its powers and duties as specified in the *Code of Virginia* (Table 3).

To identify the level of board activity in such areas as budgeting, personnel, monitoring, policy-making, and regulating, JLARC mailed a questionnaire to each chairperson or senior member of the 68 boards. These functions were identified as having a major influence on agency operations because:

- Participation in the selection, establishment of qualifications, and/or performance review of personnel greatly influences the staffing of agency activities.

Table 3

JLARC BOARD CLASSIFICATION

<u>Type</u>	<u>Number</u>	<u>Level of Operational Authority</u>	<u>Description</u>
Supervisory	45	High	Boards in this category have statutory grants to "manage" or "supervise" the agency and its programs. In addition to this broad mandate, these boards may have a range of other responsibilities for policy-making, allocating funds, budget approval, employing necessary personnel, regulating and others. Fifteen of these are boards of visitors of the State's institutions of higher education.
Policy*	13	Medium	Boards in this category have statutory grants for making or establishing policies, regulations and plans. They may also have other responsibilities such as hearing appeals, issuing licenses and permits, reviewing budgets, and developing standards. Boards in this category do <u>not</u> have statutory authority for agency supervision. This is reinforced by <i>Code of Virginia</i> provisions that give the director of the agency the responsibility for management and supervision of the agency.
Advisory	10	Low	Boards in this category have statutory grants <u>only</u> for advising, coordinating, or advocating. Their enabling legislation contains no authoritative provisions such as regulating, policy-making, licensing, adjudicating, or supervising. As with policy boards, the agency director is responsible for managing and supervising the agency.

*All boards may have a role in developing State policies. This label is traditionally reserved for boards with quasi-legislative or quasi-judicial powers.

Source: *Code of Virginia*.

- Budget decisions affect the distribution of funds to support agency activities.
- Policy-making, although it is a more vaguely defined responsibility, can be used to set priorities and broad direction for agencies. It can also be narrowly applied to establish administrative procedures.
- Regulations promulgated by boards have direct fiscal and administrative impacts on agencies.
- Monitoring the actions and performance of agencies can indicate if the redirection of agency activities is necessary.

JLARC also surveyed 141 board members randomly selected from the 68 boards to identify their affiliations, board related activities, and significant contributions. For seven boards, additional information on their activities was collected through interviews with the chairperson and agency director, and through document reviews of board meeting agendas, minutes, and other materials.

Criteria For Assessment

In determining the types of assessments necessary for this study, JLARC considered the following criteria:

- Board responsibilities should be clearly established to ensure accountability and to differentiate between the responsibilities held by agency directors and the Governor's secretaries.
- Boards should operate within the limits of their authority and in compliance with their statutorily assigned responsibilities.
- Boards serve different purposes and should not necessarily possess identical levels of authority over the operation of their respective agencies.
- Similarities should be evident between boards with similar assignments of responsibility, whereas distinctions should be evident between categories of boards with differing authorities.
- The need for an originally assigned level of board authority may change as the management structure of State government or the mission of individual agencies change.
- Criteria for establishing a board and its level of authority should exist to permit consistent assignment and periodic reassessment of board responsibilities.
- Citizen participation on boards should provide unique contributions to State government.

These criteria are consistent with those used in virtually all earlier studies regarding the role of boards in Virginia State government.

BOARDS WITHIN THE EXECUTIVE BRANCH

The 68 boards selected for this review can be viewed within the context of all collegial bodies established in Virginia. The total of 222 boards have considerable diversity in orientation, funding, composition, and responsibility. A unique category of collegial body is created by executive order to address issues defined by the Governor.

Orientation of Boards.

There are 91 boards, 56 committees, 37 commissions, 31 councils, and 7 miscellaneous collegial bodies in the executive branch. These boards are oriented to addressing such areas as education, occupational and professional regulation, agriculture and economic development, and service to client groups with special needs (Table 4). Eighty-six percent were established in statute by the Legislature, and six percent were created by executive order. Another eight percent were created by other means such as federal law. For example, the Adult Basic Education Advisory Committee and the Vocational Education Advisory Committee were created by the Rehabilitation School Authority in conjunction with the receipt of special federal funds. The Polygraph Examiners Advisory Committee, created by State regulations, is another example in the "other" category.

The purviews of boards also vary. For example, the Board of Commerce makes recommendations on regulatory matters affecting the Department of Commerce, whereas the individual regulatory boards within that department are concerned with regulations for their particular professions only. Similarly, the Board of Conservation and Economic Development has a department-wide orientation, whereas each of the 17 other collegial bodies attached to the agency is concerned with a narrow subject area, such as beach erosion or tourist promotion.

In many instances a number of the boards may be linked to a single administrative agency, as illustrated by the following example:

The Board of Conservation and Economic Development (CED) establishes regulations and policies for the entire Department of Conservation and Economic Development. Seventeen other separate collegial bodies are also attached to the department but have a more narrow focus.

Table 4

SCOPE OF EXECUTIVE BRANCH COLLEGIAL BODIES

Type of Orientation	Number	Examples	Authority			Agency-Wide Purview
			Legislative	Executive	Other	
Education	43	Board of Visitors of George Mason University, Continuing Education Advisory Committee	32	1	10	19
Occupational and Professional Regulation	37	Board of Medicine, Board of Hairdressers	36	0	1	2
Agriculture and Economic Development	26	Milk Commission, Apple Commission, Advisory Board on Industrial Development	22	4	0	7
Miscellaneous	22	Public Records Advisory Committee, Commission on Local Government	16	4	2	7
Natural Resources and Recreation	19	Reforestation Committee, Shenandoah Scenic River Committee	19	0	0	6
Client Groups With Special Needs	16	Advisory Board on Aging, Council for the Deaf	16	0	0	7
State Government Administration	14	State Compensation Board, State Insurance Advisory Board	11	2	1	5
Historic Attractions and Cultural Affairs	12	Board of Trustees of the Jamestown-Yorktown Foundation	11	0	1	5
Health	11	Board of Health, Radiation Advisory Council	10	1	0	1
Environmental Regulation	8	Air Pollution Control Board, State Water Control Board	7	1	0	2
Corrections	7	Board of Corrections, Board of the Rehabilitative School Authority	4	1	2	3
Transportation	7	Highway and Transportation Commission, Virginia Aviation Commission	7	0	0	4
TOTAL	222		191	14	17	68

Source: JLARC Inventory of Executive Branch Entities.

The Governor's Travel and Advisory Committee and the Reforestation of Timberlands Committee serve in advisory capacities to the Board of CED. The Commission on the Conservation and Development of Public Beaches receives accounting support from the department, but the Board has no authority over this commission. Other relationships exist between the Virginia Cave Commission, Breaks Interstate Park Commission, Board of Surface Mining Review, Interstate Mining Compact Commission, and the Governor's Mined Land Reclamation Advisory Committee, all of which are attached to this one State agency.

In addition, the recent merger of the Commission on Outdoor Recreation (COR) into CED brought nine additional collegial bodies to the agency structure. As part of the merger, the collegial body component of the Commission was reconstituted as the Recreation Advisory Committee. The Appomatox Scenic River Committee, the Rivana Scenic River Committee and six other scenic river advisory committees comprise the remaining collegial body additions to CED as the result of the COR merger.

Other agencies with a large number of State boards attached to them include the following: the Department of Commerce, the Department of Agriculture and Consumer Services, the Department of Health Regulatory Boards, and the State Council for Higher Education (Table 5).

Funding

Some boards receive annual appropriations from State general or dedicated special funds. Generally, the appropriation supports the activities of a fully-staffed agency. FY 1984 appropriations ranged from \$1,700 to the War Memorial Commission to \$11.6 million to the Commission of Game and Inland Fisheries (CGIF). The War Memorial Commission does not have staff. Its appropriations cover monument maintenance and board member expenses. The funds for CGIF support the wildlife management activities of a 300-employee State agency.

Occupational and professional regulatory boards and product commissions are examples of boards that receive monies from dedicated special State funds. Licensing fees collected from individuals in regulated professions support the boards and the administrative and enforcement costs of the Departments of Commerce and Health Regulatory Boards. Fees and taxes paid by various agricultural product growers and packers provide funds for the individual product commissions within the Department of Agriculture and Consumer Services.

Table 5

EXECUTIVE AGENCIES WITH MULTIPLE STATE-LEVEL BOARDS

<u>Agency</u>	<u>Number</u>	<u>Description</u>
Department of Commerce	23	A broad focus Commerce board and 22 individual professional regulatory boards.
Department of Conservation and Economic Development (CED)	18	A Board of CED plus 17 other boards related to specific conservation, economic development, or recreation areas.
Department of Agriculture	13	A State Board of Agriculture and Consumer Services, 10 product commissions, a plant pollination advisory committee, and pesticide advisory committee.
State Council for Higher Education	12	A Council and 11 advisory committees on various facets of higher education.
Department of Health Regulatory Boards	11	A broad focus commission and 10 individual professional regulatory boards.

The following agencies also have multiple boards affiliated with them.

<u>Agency</u>	<u>Number</u>	<u>Agency</u>	<u>Number</u>
Department of Health	4	Virginia Employment	2
Department of General Services	3	Department of Highways and Transportation	2
Division of Motor Vehicles	3	Department of Corrections	2
Virginia State Library	3	Department of Housing and Community Development	2
Department of Labor and Industry	3	Department of Personnel and Training	2
Virginia Supplemental Retirement System	2	Department of Social Services	2

Source: JLARC Inventory.

The actual direct cost to support the activities of all boards is unknown. Section 2.1-20.3 of the Code sets a standard \$50 per day reimbursement rate for members of boards with other than advisory, advocacy, or education-related functions. On a 1982 survey conducted by the Secretary of the Commonwealth, 40 boards reported that they received no compensation or reimbursement for expenses.

Agencies associated with the 68 boards selected for this study were able to provide JLARC with estimated costs. Approximately \$800,000 was expended during calendar year 1982 to support these boards. This is a conservative figure, although it includes such expenses as per diem compensations, travel expense reimbursement, and miscellaneous items such as supplies and postage. Many indirect expenses are not tracked or collected. For example, most boards draw extensively on their respective agencies for research, information, and other staff support. If figures were available regarding the extent and dollar equivalent of this support, they would reveal a significantly increased "cost" to support board and commission activities in Virginia.

Appointment to Boards.

Section 2.1-42.1 of the *Code of Virginia* authorizes the Governor to appoint most members of executive branch collegial bodies, subject to the approval of the General Assembly. (The General Assembly does not approve appointments to collegial bodies created by executive order.) There are some exceptions, however. Members of the Board of Commissioners to Examine Harbor Pilots, for example, are appointed by the Circuit Courts in the Tidewater Region. Members of the Pesticide Advisory Committee are appointed by the Commissioner of Agriculture and Consumer Services. Approximately 30 boards have appointees named by more than one source. For example, members of the Board of Trustees of the Jamestown-Yorktown Foundation are appointed by both the Governor and the General Assembly.

Concerned with preserving continuity on boards, the General Assembly has statutorily required staggered terms for members of 79 boards (Table 6).

Composition Requirements and Responsibilities.

Both the General Assembly and Governor have taken steps to ensure that various types of expertise and affiliations are represented on boards. Composition requirements have been specified in statute or executive order for 1,638 of the approximately 2,500 board members. The predominant requirement is for membership in a related profession or professional organization (Table 7).

Table 6

BOARD MEMBER TERM PROVISIONS

<u>Term Specification</u>	<u>Number*</u>	<u>Examples</u>
Concurrent with Governor	3	Virginia Agricultural Foundation
Staggered Terms of 4 years or less	59	Corn Commission
Staggered Terms longer than 4 years	17	Real Estate Commission
Service at the Pleasure of Governor	13	Substance Abuse Certification Committee
Other	28	Marine Resources Commission
Not specified in Statute or Executive Order	<u>101</u>	Student Financial Aid Advisory Committee
TOTAL	222	

*Number of boards

Source: *Code of Virginia* and Executive Orders of the Governor.

A number of boards have ex-officio members. The Long Term Care Coordinating Council, for example, is comprised entirely of ex-officio directors of several human resources agencies and the Secretary of Human Resources. Usually, however, ex-officio members only fill a portion of board positions. In a few exceptional cases, such as the Highway and Transportation Commission and the Marine Resources Commission, the director of the agency also sits as the chairman of the agency's board. Approximately 200 members defined by statute as citizen members are also required on boards.

In some instances composition requirements are not spelled out. Three hundred and fifty-two (18 percent) board positions have no background requirements attached to them. And, composition requirements as well as the number of board members, are not specified for an additional 42 boards.

Responsibilities. Each board is created to serve a unique purpose and therefore charged to fulfill a range of responsibilities to accomplish that purpose. Responsibilities range from advising the agency on various matters to policy formulation to distributing federal funds to issuing licenses. The specific responsibilities assigned to boards and examples of agencies with these responsibilities are illustrated in Table 8.

Table 7

BOARD MEMBER COMPOSITION REQUIREMENTS
DESIGNATED IN STATUTE AND EXECUTIVE ORDER

<u>Requirement</u>	<u>Number of Members</u>
Related profession	377
Other*	296
Citizen	190
Ex-Officio	189
State or Nation Residency	142
Geographic Region	132
Specific Expertise or Interest	123
Trade or Professional Association	113
State Agency Staff	43
Local Official	33
	<u>1,638</u>
Number but no requirement specified	<u>354</u>
	1,992

*Includes diverse requirements such as appointees of the General Assembly, members of another specified collegial body, alumni of a college or university, "non-State employees", and nominees of a trade or professional association.

Source: *Code of Virginia* and Executive Orders of the Governor.

Collegial Bodies Created By Executive Order

Most collegial bodies are created in statute by the General Assembly. A unique category of board, however, is created by executive order of the Governor. Often these are short-term task forces established to advise the Governor on particular issues. Other such bodies do not have specified termination dates and are charged to advise the Governor and a designated agency on a continuing basis. An example of the latter is the Job Training Coordinating Council. The creation of advisory bodies does not appear to be outside of a Governor's authority. However, some attention to their context and staffing may be warranted to avoid unnecessary proliferation of government entities and duplication of functions.

Fourteen collegial bodies have been created by the current Governor during his two years in office (Table 9). Over an eight-year span, the two previous Governors created a total of six. The *ad hoc* groups focus attention and a broad base of expertise on issues such as the economic outlook for Virginia, federal block grants, and physical fitness. More than half of the bodies are short-term task forces.

Table 8

EXAMPLES OF BOARD RESPONSIBILITIES

Policy Making. developing and/or approving agency or program policies. *The State Board of Corrections is charged with developing and establishing programmatic and fiscal policies.*

Budgeting. developing, reviewing, commenting upon, and/or approving the agency's budget. *The Commission on Local Government prepares and submits a budget as directed in statute.*

Regulating. setting regulations which are given the force and effect of law and enforcing such regulations. *The State Board of Medicine establishes regulations that govern the practice of medicine and disciplines violators.*

Licensing & Issuing Permits. deciding upon and issuing licenses and permits. *The Marine Resource Commission issues scientific collection permits to those who would remove marine life from state waters for technical, research, scientific, educational or museum purposes.*

Standard-setting. establishing standards to be applied by the agency in individual cases. *The Historic Landmarks Commission establishes standards for the care and management of certified landmarks.*

Distributing Federal Funds. receiving and distributing federal funds to other agencies. *The Virginia Commission for the Arts accepts and distributes federal funds for the promotion of the arts.*

Coordinating. coordinating the policies and activities of several agencies as those policies and activities relate to a broad program area. *The Long Term Care Coordinating Council develops plans for cooperative programs between state human resource agencies.*

Advising. advising the Governor, Secretary, or agency head but having no direct authority or responsibility. *The Advisory Board on Aging provides advice on the needs of Virginia's elderly.*

Advocating. promoting the interests of a particular group. *The Advisory Board on Industrial Development advocates for programs to encourage new industries to locate in the state.*

Source: Composite from the Commission on State Governmental Management and the 1979 House Appropriations Committee Report on Uniform Compensation for Board Members.

In many cases the charges of these bodies are related to the responsibilities of a number of existing State agencies (Table 10). The Commission on Block Grants, for example, is responsible for reviewing the financial impact of federal block grant programs on Virginia.

Table 9

COLLEGIAL BODIES CREATED BY EXECUTIVE ORDER
SINCE JANUARY 1, 1982

<u>Name</u>	<u>Creation Date</u>	<u>Expiration Date</u>	<u>Purpose</u>
Governor's Economic Advisory Council (E.O. 4/82)	1/22/82	N.S.	Advise Governor on economic affairs of the Commonwealth
Commission on Block Grants (E.O. 5/82)	3/16/82	N.S.	Advise Governor and make recommendations on federal block grant programs
Governor's Council on Physical Fitness and Sports (E.O. 10/82)	4/14/82	N.S.	Advise the Governor on current state of fitness in the Commonwealth and develop plans for improving physical fitness opportunities.
1982 Education Block Grants Advisory Committee (E.O. 8/82)	4/20/82	N.S.	Advise State Board of Education on the allocation, use and oversight of funds received under the 1981 Federal Education Reconciliation Act.
Governor's Task Force to Combat Drunk Driving (E.O. 11/82)	6/7/82	6/15/83	Report to the Governor on the identification and assessment of current efforts to address drunk driving in Virginia and make appropriate recommendations.
Task Force on Science and Technology (E.O. 13/82)	7/1/82	7/15/83	Report to the Governor on current and future efforts to develop the Commonwealth's technological potential.
Governor's Advisory Board of Economists (E.O. 16/82)	7/13/82	6/30/86	Review and evaluate revenue estimates to be used by the Governor in the formulation of the Governor's budget bill.

Governor's Advisory Committee on Small Business (E.O. 19/82)	9/24/82	6/30/86	Advise Governor on actions that may be taken by State government to enhance the growth and development of small business.
Governor's Regulatory Reform Advisory Board (E.O. 20/82)	10/4/82	6/30/86	Advise Governor of opportu- nities for improving the regulatory climate in Virginia.
Juvenile Justice And Delinquency Prevention Council (E.O. 18/82)	10/20/82	6/30/86	Advise the Criminal Justice Services Board and others on matters related to the preven- tion and treatment of juvenile delinquency and the administration of juvenile justice in the State.
Governor's Commission on Virginia's Future (E.O. 29/82)	11/3/82	12/84	Advise the Governor on matters sustaining to the future of the Commonwealth.
Governor's Job Training Coordinating Council (E.O. 31/83)	1/1/83	N.S.	Carry out specified responsibilities related to the Job Training Partnership Act. The Council provides policy directives to the Governor's Employment and Training Division.
Governor's Business and Industry Advisory Committee on Crime Prevention (E.O. 39/83)	5/23/83	6/30/86	Advise the Governor on actions that may be taken by business, industry, and state government to enhance the delivery of crime prevention services.
Governor's Commission to Increase Voter Registration in Virginia (E.O. 37/83)	7/9/83	12/1/84	Examine voting practices across the State and make recommendations to the Governor to increase the number of registered voters.

N.S. = Not Specified

Source: Executive Orders of the Governor.

It reviews the current delivery of human service and education programs, and works with the Governor's secretaries, the General Assembly, and Virginia's Congressional delegation to forward block grant concerns to Washington.

The Department of Planning and Budget has related responsibilities for reviewing and analyzing the federal budget as well as applications and awards for federal financial aid programs. The Departments of Social Services, Mental Health and Mental Retardation, Rehabilitative Services, and other State human service agencies are responsible for reviewing their respective programs in light of federal funding changes. The State-federal liaison role is performed by the Office of Commonwealth-Federal Relations. An additional responsibility of the Commission on Block Grants -- to recommend changes in State programs to eliminate duplication and fragmentation -- is also assigned to the Governor's secretaries as part of their authority to recommend agency reorganizations.

Staff support to bodies created by executive order is usually provided by State agencies or entities. For example, the Block Grant Commission was supported by staff in the Office of the Secretary of Human Resources during 1982. The Governor's Commission on Virginia's Future is currently receiving 4 FTE in support from the Institute of Government at the University of Virginia and from other sources.

The General Assembly may wish to review this area because:

- (1) the responsibilities of the bodies can and do overlap with responsibilities assigned by the General Assembly to State agencies and the Governor's secretaries, and
- (2) staff support is provided by State agencies.

The General Assembly may wish to explore and possibly specify in statute the extent to which these bodies can be created, their duration, and appropriate use of staff support from State agencies.

Table 10

EXAMPLES OF THE SIMILAR RESPONSIBILITIES ASSIGNED
TO GUBERNATORIAL COLLEGIAL BODIES AND STATE AGENCIES

<u>Name</u>	<u>Responsibilities</u>	<u>Entities With Related Responsibilities</u>	<u>Source</u>
Commission on Block Grants	1. Review the financial impact on Va. of federal block grant programs	Department of Planning & Budget	2.1-391 Code
	2. Review the current delivery of human services, education, and community development programs by State, local and non-profit agencies	State Board of Social Services	63.1-24 Code
	3. Recommend to the Governor changes necessary for the State to assume responsibility for the administration of block grant programs	MHMR Board	37.1-10
	4. Recommend to the Governor changes in State programs which are part of the block grant concept to eliminate any duplication and fragmentation of programs	State Board of Health	32.1-11 Code
	5. Recommend to the Governor ways to ensure that the citizens of Virginia are the beneficiaries of sound plans and programs	Department for the Aging	2.1-373 Code
	6. Work with the Governor, Secretaries, General Assembly and the congressional delegation in forwarding concerns to Washington regarding the impact of block grants	Board of Rehabilitative Services	2.1-576 Code
		Council for Deaf	63.1-85.4
		Division for Children	2.1-552 Code
		Board of Education	22.1-18 Code
		Governor's Job Training Coordinating Council	E.O. 31, 1983
Governor's Task Force on Science and Technology	1. Define and assess the current state of technological development in Virginia	Board of Housing and Community Development	36-137 Code
	2. Evaluate the State's assets in attracting technology and examine efforts to expand or recruit such development	Office of Commonwealth-Federal Relations	2.1-567 Code
	3. Determine the educational needs for developing Virginia's human capital resources in science and technology	Governor's Secretaries	E.O. 21, 22, 23, 24, 25, 26
	4. Prepare a report to include recommendations to the Governor and General Assembly	Division of Industrial Development	2.1-64 Code
		Board of Education	22.1-18 Code
		Secretary of Commerce and Resources	E.O. 22, 1982
		Secretary of Education	E.O. 23, 1982

Source: *Code of Virginia* and Executive Orders of the Governor.

II. BOARD RESPONSIBILITIES FOR AGENCY OPERATIONS

Over time, the appropriate extent of boards' operational authority over agencies has been a source of concern. Boards have been variously perceived as not exercising their full prerogatives or as interfering with the operational responsibilities of agency heads. This review of the role and responsibility of boards assesses the current statutory basis for board actions and the actual activities of boards in terms of the management needs of executive agencies.

Generally boards were found to carry out their activities at a level consistent with broadly defined categories of supervisory, policy, and advisory authority. Clear criteria are needed, however, to define the specific responsibilities of types of boards and of agency directors. This would strengthen citizen involvement in public policy development and appropriately fix accountability for major operational and oversight activities.

Assessing Level of Board Activities

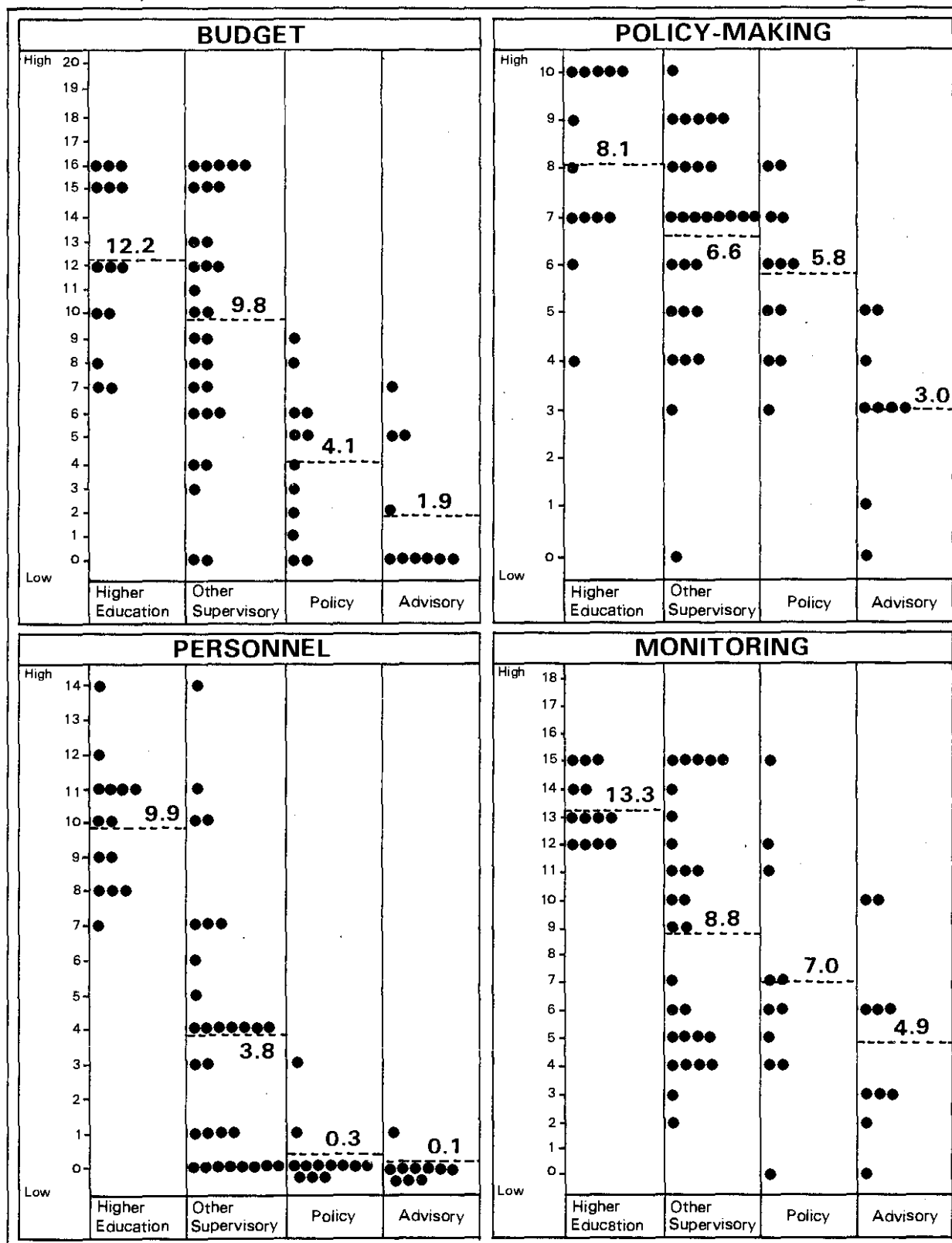
Sixty-eight boards in Virginia are concerned with the overall operations of their respective agencies or institutions of higher education. Language in the *Code of Virginia* is generally clear in restricting ten boards to an advisory role. Forty-five other boards have a general charge to supervise the agency and its programs. The remaining boards, traditionally labeled policy boards, have a number of responsibilities that give them more authority than an advisory board, yet they are not charged with agency supervision.

JLARC's systematic comparison of the three types of boards involved scoring each board's participation in key functions that control the operations of agencies: personnel, budgeting, policy-making, and monitoring (Figure 1). Supervisory boards for higher education were separately identified because these boards are unique in the structure of State government. In accordance with statute they report to the General Assembly rather than the Governor.

Each board's score was calculated based on its responses to survey questions. Boards could, for example, receive a total score of 20 in budgeting. As shown in Figure 1, averages calculated for budget activities ranged from 12.2 for higher education boards to 1.9 for advisory boards. Within each type of board, some boards scored considerably higher or lower than others. For example, a board that received fiscal trend data and reviewed, modified, and approved initial and final budgets was determined to be more involved in budgeting than a board that only reviewed the budget for information purposes.

Figure 1

Boards' Level of Involvement Scores In Four Key Functions That Affect The Direction of Agencies



----- Average score

Each ● represents the score of a single board

Source: JLARC Board Survey

Similar distinctions were made for other activities. A board's level of involvement in monitoring was determined by the type of information it received and the action taken. A board that set goals at a broad policy level and dealt with more narrow budgetary and administrative decisions was determined to be more involved in policy-making than a board involved only on one policy level. A board that appointed the director or staff, or which evaluated personnel performance was determined to be more involved than a board that only received information on personnel changes.

As shown in Figure 1, most boards appear to be involved in activities at a level consistent with their assigned authority. Generally supervisory boards exhibit the highest level of involvement, with lesser involvement for policy and advisory boards. As a group, higher education boards of visitors are more active than other supervisory boards. Variations in activities within each of the types of boards, however, suggest that some individual boards exceed or fall short of the level of statutory authority they are directed to exercise. For example, some supervisory boards establish specific administrative procedures while others do not participate in developing broad goals for the agency.

Two key questions may be addressed using this data and other information regarding the statutory responsibilities of each board:

1. Do boards direct agency operations through personnel, budgeting, policy-making and monitoring functions in a manner consistent with their general level of operational authority?
2. Is statutory language regarding boards' responsibilities in these four key functions adequately detailed to clearly establish the limits of boards' authority over agency operations?

ACCOUNTABILITY FOR PERSONNEL AND BUDGET FUNCTIONS

Although boards generally function at the supervisory, policy or advisory level assigned by the General Assembly, statutes often do not sufficiently define the limits of board responsibility in specific areas. It is not always clear, for example, whether final authority rests with the board or agency director for holding agency staff accountable for their performance or for preparing and approving the agency's budget. In the personnel area, there is potential for conflict, although boards generally do not fully exercise their range of personnel responsibilities. In the budget area, boards interpret vaguely worded statutes as authorizing extensive budget activity. These factors raise questions about the actual need of various boards for personnel and budget approval authority.

Personnel

Considerable control over agency operations is inherent in the authority to appoint personnel and prescribe their duties, qualifications, and salaries. Boards generally do not fully implement their personnel authority. However, retention of such statutory authority, except where clearly warranted, has the potential to confuse lines of authority and reporting within agencies.

Personnel Responsibilities. Higher education boards and supervisory boards are assigned a number of major personnel responsibilities that include appointing agency directors, employing other personnel, approving staff appointed by the director, and establishing salary or personnel standards (Table 11).

Table 11

BOARD PERSONNEL AUTHORITY

<u>Statutory Responsibilities</u>	<u>Number and Type of Board</u>			
	<u>15 Higher Education</u>	<u>30 Other Supervisory</u>	<u>13 Policy</u>	<u>10 Advisory</u>
Appoints Director	15	10	0	0
Employs Other Necessary Personnel	14	18	0	0
Establishes Salary or Personnel Standards	15	7	2	0
*Other Mention	1	7	1	0

*Includes responsibilities such as approving staff appointments by the director, and recommending director candidates to the Governor or Secretary. The VCCS Board is among those boards responsible for approving staff appointments by the Director.

Source: *Code of Virginia.*

In addition, two policy boards, the Board for the Visually Handicapped and the Board of Social Services, are authorized to establish personnel standards for staff. Only one other policy board has a personnel responsibility: the appointment of the Deputy Commissioner of the Department of Health is subject to the approval of the board.

Exercise of Personnel Authority. The exercise of personnel authority among boards is uneven. Sixteen percent of the supervisory

boards are not involved in any personnel activities. Those boards that have statutory authority to appoint the directors exercise this right and periodically review their performance. However, 76 percent of the boards with statutory authority to employ personnel appear to relegate this responsibility to agency directors.

Usually higher education boards of visitors do participate in the hiring of senior administrative staff and faculty, and two other supervisory boards also exercise their authority. The Marine Resources Commission appoints the repletion officer, and the Board of Trustees of the Virginia Supplementary Retirement System hires the investment officer and approves the appointment of the other investment professionals. In a third instance, although the statutes do not mention authority to employ personnel, the Compensation Board selects the executive secretary of the nine-person staff. The remaining supervisory boards with statutory authority for employing personnel do not assume this responsibility, and therefore the agency director actually hires the staff (Table 12).

Table 12

EXERCISE OF STAFF HIRING RESPONSIBILITIES
BY SUPERVISORY BOARDS

Groups of Supervisory Board	Number of Boards		
	Total in Each Group	Authorized to Employ Other Personnel	Actually Hire or Fire Staff
Higher Education Boards of Visitors that appoint their presidents	15	14	6
Other supervisory boards that appoint agency directors	10	7	1
Supervisory boards that do not appoint agency directors	<u>20</u>	<u>11</u>	<u>2</u>
	45	32*	9

*An additional 4 boards, for the Virginia Community College System, the Science Museum, the Port Authority, and the Department of Agriculture and Consumer Services, are authorized to approve staff appointments by the director.

Source: JLARC Board Review.

Although the most active boards in personnel matters are the higher education boards of visitors, they do not exercise their authority to hire personnel in a uniform manner, as illustrated by the following examples:

The rector of the Old Dominion University's board of visitors reports that other than selection and evaluation of the president, he encourages the board not to become involved in the personnel matters of the university. Staff and faculty are appointed and approved by the president. He may, however, call upon board members for interviewing assistance, particularly when recruiting senior administrative staff.

* * *

The board of visitors of Radford University is not involved in the screening or selection process for faculty or senior administrative staff. The board does approve the appointments to these positions.

* * *

At Virginia Polytechnic Institute and State University, the board does not get involved in the hiring of faculty, other than to review and approve the selections made by the vice-president. However, board members participate on a search committee for senior administrative staff. The president eventually narrows the number of applicants to a few finalists, but the board selects the individual to fill each senior administrative staff position.

Accountability for Staff Performance. The management hierarchy and reporting within agencies can be unclear when the Governor appoints the director but the board has authority to appoint other personnel within the agency. As noted in Table 12, 11 supervisory boards have such authority. They are the following boards:

- State Air Pollution Control Board
- Virginia Commission for the Arts
- State Board of Elections
- Virginia Historic Landmarks Commission
- State Library Board
- Commission on Local Government
- State Milk Commission
- Board of the Rehabilitative School Authority
- Virginia Soil and Water Conservation Commission
- State Water Control Board

- Commission of Outdoor Recreation (As of July 1, 1983, this board no longer oversees an independent agency nor is it authorized to employ personnel.)

For these boards, the director is appointed by and accountable to the Governor for the performance of the agency. However, other staff are appointed by and accountable to the board. This has the potential to confuse the authority of the director over agency staff.

Prior to 1978, many of these boards had statutory authority to hire the director and all personnel necessary to fulfill the board's specific statutory duties. Then, through the enactment of Section 2.1-41.2 of the *Code of Virginia*, the Governor rather than the board was authorized to appoint the agency director. Boards' authority to employ other personnel, however, was not affected by the 1978 statute, and therefore remains in effect.

JLARC's 1983 study of The Economic Potential and Management of Virginia's Seafood Industry illustrates that when a board chooses to exercise its authority over personnel decisions, confused accountability and problems in the administration of the agency and the staffing of organizational units can occur:

The Virginia Marine Resources Commission (VMRC) has statutory authority to appoint a repletion officer and approve the appointment of the head of the engineering division. This authority was an issue in the elimination of a necessary fisheries management unit within the agency.

The Commission was uncomfortable with a non-traditional approach, and a repletion officer was dissatisfied with his subordinate role within the unit. The officer appealed to the Commission to remove his position from the unit. Partly because the Commission and not the agency director appoints the repletion officer, the Commission acted on his behalf. JLARC recommended that all VMRC personnel should be appointed by the agency director to ensure clear reporting relationships and lines of authority.

It appears that such problems can be avoided without loss of a board's ability to influence agency activities. Boards can provide direction by holding a single administrator accountable for agency performance. Only when agency directors have authority to employ agency personnel, however, can they exercise full responsibility for staff performance.

To promote direct line reporting relationships between agency directors and their staffs, the General Assembly may wish to give agency directors explicit statutory authority for hiring all agency

personnel. Only the higher education boards of visitors and others that appoint their agency directors should retain personnel authority. Because few other boards exercise their personnel prerogatives, this action would serve to eliminate current problems and clarify future relationships. Board involvement in the day-to-day personnel matters of the agency would be clearly limited.

Budgeting

Budgeting is a critical aspect of agency operations. The General Assembly and Governor can hold a board or agency director accountable for the agency's use of resources when responsibility is clearly assigned to one or the other. Current statutory provisions, however, leave authority regarding budget approval and preparation unclear. Statutes for only seven of the 68 boards contain clear and specific references to budget responsibilities. Statutes for the other boards do not mention the board's authority for the agency budget, but may reference a range of other fiscal responsibilities (Table 13).

Nevertheless, despite vague or incomplete statutory language, most supervisory boards approve agency budgets. In addition, some policy and advisory boards participate extensively in the budget process by making their concerns and priorities known to the agency.

Unclear Approval Authority. Thirty-nine boards interpret language in the Code regarding supervision and aspects of fiscal responsibility as the authority to approve the agency budget. The fact that all do not assume this authority illustrates an inconsistent understanding of budget responsibilities among supervisory boards, as illustrated by the following examples:

Although containing no specific mention of the budget, Section 23-218(b) of the Code of Virginia authorizes the Virginia Community College System (VCCS) Board to control and expend funds appropriated by law and to fix tuition and fees. The board interprets this fiscal language as the responsibility for reviewing and approving the budget. The Budget and Finance Committee of the VCCS Board reviews the budget line by line with administrative staff. The committee subsequently submits its recommendations to the full board for final budget approval.

* * *

In contrast, the Commission of Game and Inland Fisheries does not approve the agency budget, and in fact, is not involved to any extent in the development or review of the agency's budget. The Code of Virginia also contains no specific budget

Table 13

STATUTORY LANGUAGE ASSIGNING
BUDGET RESPONSIBILITIES TO BOARDS

ASSIGNED BUDGET RESPONSIBILITY	Number of Boards		
	Supervisory	Policy	Advisory
"... prepare and submit the budget ..."	2	-	-
"... review and comment on the budget ..."	-	3	-
"... direct the preparation of the budget ..."	-	1	-
"... prepare the budget and collect fees ..."	1	-	-
No specific budget responsibilities mentioned	<u>42</u>	<u>9</u>	<u>10</u>
TOTAL	45	13	10

EXAMPLES OF OTHER FISCAL RESPONSIBILITIES
ASSIGNED TO BOARDS

"... receive and expend funds ..."

"... control and expend funds ... "

"... to administer funds available to board ..."

"... supervise expenditures ..."

"... make expenditures as deems necessary ..."

"... approve expenditures ..."

"... allocate funds and oversee expenditures ..."

Source: *Code of Virginia.*

references for this supervisory board, but it does grant the Commission other fiscal-related responsibilities, including: purchasing and leasing land (29-11); receiving and managing donated property and money (29-11.2); making disbursements in the

amount appropriated by the General Assembly from the game protection fund; (29-11) and managing and selling timber on its lands (29-23).

Advisory and policy boards report that they do not approve their respective agencies' budgets. Statutes for advisory boards contain no references to any budget responsibilities, and their advisory level of authority clearly restricts them from an approval role. However, the following examples illustrate that vague statutory language for policy boards can cause confusion over the budget responsibilities of the board and the agency director:

The Board of Conservation and Economic Development is charged in Section 10-12 of the Code of Virginia to "direct the preparation of the budget." In separate interviews, the agency director and board chairman both assumed they had final budget approval authority. Without clear designation of the final source within the agency for budget approval, the potential for conflict exists.

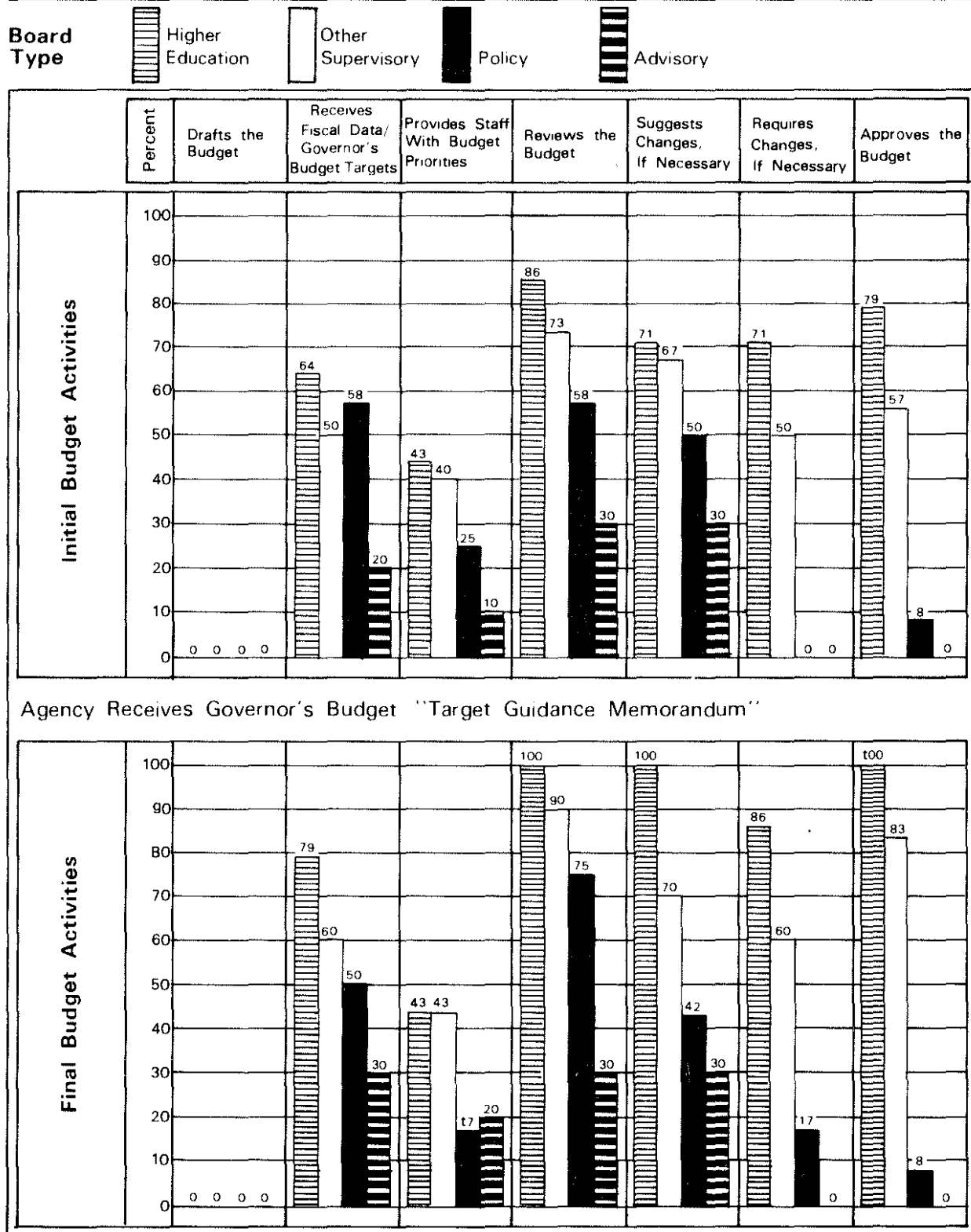
* * *

The Code of Virginia contains no references to the budget responsibilities of the Board for the Visually Handicapped. Prior to 1980, the following fiscal responsibilities were statutorily vested in the board (formerly the Supervisory Commission for the Visually Handicapped): to establish and maintain industrial training schools and workshops for blind persons; to pay employees, provided that expenditures do not exceed appropriations; and to accept gifts and grants which in the board's opinion are suitable for the maintenance, improvement, or expansion of services. These fiscal responsibilities are now vested in the Department for the Visually Handicapped. Nonetheless, the chairman reports that the board continues to approve the final agency budget. This is the only policy board that reports it approves the agency budget.

Uneven Board Participation in Budgeting. Boards may have several points of contact with the initial and final stages of the budget process. The level of a board's budget involvement generally corresponds to its level of operational authority (Figure 2), but there are some exceptions. Simply stated, development of the budget within the agency involves two major steps. The agency prepares an initial draft of its program priorities and anticipated financial needs. This is submitted through the appropriate secretary to the Governor. In turn, the Governor returns a target budget figure to the agency. The agency accordingly revises allocations within the budget to meet the target figure and submits the agency's final budget to the Governor.

Figure 2

Board Participation in Initial and Final Budget Preparation Activities



Source: JLARC Board Survey

As a group, supervisory boards are generally more involved in both initial and final budget activities than either policy or advisory boards. They are particularly more involved in the authoritative control activities such as requiring necessary changes and approving the budget. The higher education boards of visitors with their budget committees are among the most active supervisory boards in budgeting. Two supervisory boards, the Commission of Game and Inland Fisheries, and the Marine Resources Commission, report they are not involved in their agencies' budget processes and do not approve the budgets. Three boards report that they approve their agencies' final budgets, but spend little time in budgeting activities.

Fifty-eight percent of the policy boards report that they spend little or no time in budgeting activities. Some policy boards, however, are extensively involved in receiving budget drafts, receiving program and financial information and suggesting budget changes. In these instances, a board may view its participation in the budget process as a way to ensure that the agency incorporates the board's concerns and priorities. The contrast is illustrated by the following example:

The Board of Mental Health and Mental Retardation (MHMR) and the Commission of Health Regulatory Boards (CHRB) both have authority to "review and comment" on their agency budgets. The Board of MHMR and its Planning and Budget Committee receive program and financial trend information from the agency, provide the staff with budget priorities, and review and suggest changes in the budget drafts before and after receiving the Governor's target figure. The final agency budget is a negotiated agreement between the board and the commissioner, although the board recognizes the commissioner's final authority if differences are unreconcilable. The board reports that it spends much of its time in budgeting activities.

* * *

The Commission on Health Regulatory Boards spends very little time in budgeting activities and reviews budget drafts for general information purposes only. The chairperson indicated that the board may be more active in the agency's budget process in the future, but it has previously played a very passive role in this area.

Although advisory boards have no specific budget authority or general fiscal responsibilities, some of these boards also assert themselves in the budget process. The following example illustrates that agencies include the advice and concerns of advisory boards when developing the agency budget:

When preparing the agency budget, staff of the Department on Aging originally proposed budget cuts in two meal support programs: "meals on wheels" and "congregate" meals. Advisory board members who reside in rural areas, however, explained the transportation problems of elderly in these rural areas and the need of the disabled for home delivery of meals or transportation assistance to a site where meals are served to groups. After receiving this feedback from the board, the Department modified the extent of the proposed cuts.

The Advisory Board on Aging is one of four advisory boards which take part in their agencies' budget processes. The other six do not.

Although boards of all types may have extensive input into the development of their agencies' budgets, none of the 68 boards reported that they actually prepare the budget drafts. This complex and time-consuming task is left to the administrative and fiscal staff of the agencies. The extent of board involvement in the development of agency budgets apparently depends on their desire to affect priorities.

To ensure accountability, budget approval authority should be clearly specified for either the board or the agency director. If the General Assembly decides that boards with supervisory levels of authority should also control the agency budget, then it may wish to specifically charge those boards with budget approval authority. If these boards are to serve as more than a "rubber stamp", however, the boards should also be directed to periodically review the agency budget. This will require the boards to devote sufficient time to budget review activities. In all other instances, the General Assembly may wish to assign budget approval authority to the agency director.

Unless the General Assembly desires to totally exclude certain boards from the budgeting process, it may wish to charge all other boards with the authority to review the agencies' budgets. By exercising this responsibility, boards could better understand potential fiscal constraints on their decisions. This authority would also allow them to comment on the funding of policy priorities. Budget "review" authority would signal the desire for board input, yet allow boards to determine the extent of their involvement in the budget process, short of final approval.

POLICY, REGULATION, AND MONITORING

Boards may substantially influence agencies by establishing or advising on policies or regulations and monitoring agency performance in selected or general areas. These responsibilities need not involve boards directly in agency operations. Board involvement in these areas does, however, provide citizens with the opportunity to

participate in agency decision-making, promulgate regulations, and oversee achievement of results. Nevertheless, some boards become overly involved in administrative detail to the detriment of broad policy development. Monitoring, in contrast, appears to be most beneficial when specific areas of responsibility are prescribed.

Policy

Most boards are involved in some level of policy-making for agencies. Unlike discrete personnel and budget activities, policy making is a somewhat ambiguous, multi-level responsibility. It may be broadly interpreted as setting general goals and plans for agencies or, in some cases, narrowly interpreted as the authority to establish administrative procedures. Some ambiguity in the roles of boards and agency heads may be constructive. Both agency and public concerns should be taken into account when determining the parameters for action by agencies. Nevertheless, the General Assembly has been concerned that boards should be directing most of their limited time to consideration of major policies and the public interest in governmental services. These considerations, rather than administrative detail, are the unique contributions of citizen boards.

Level of Involvement. For analytic purposes, four levels of board involvement in policy making were identified: (1) broad policy decisions such as identifying public or client needs for action by the agency, (2) developing goals and plans for action, (3) determining how to allocate resources, and (4) narrow policy decisions such as establishing administrative procedures for implementing policies.

Generally, boards were found to be most involved in developing broad policy guidance for agencies. Even many supervisory boards, however, defer to agency staff when final policy direction is established. Board involvement in such broad policy areas as service need identification, goal-setting, and planning for agency actions is illustrated by the following examples:

At the request of the Commission of Game and Inland Fisheries (CGIF), the National Wildlife Federation studied the programs of the agency. The study recommended several goals and objectives for the Commission based on its findings in Virginia and nationwide. The CGIF screened the recommendations and adopted those that were most applicable to Virginia. These objectives and goals now serve as guidelines for agency staff in the administration of CGIF programs.

* * *

Higher education boards of visitors commonly develop multiyear plans. These plans contain such

items as projected funding, space and equipment needs, targeted faculty-student ratios and student capacity, and curricula expansions or deletions.

* * *

The Board of Commissioners for the Virginia Port Authority continually sets short-term objectives. In its efforts to compete with other eastern ports, the Board sets monthly tonnage goals for the volume of shipping conducted through its ports.

* * *

The Mental Health and Mental Retardation Board and the Board of Social Services are two examples of policy boards that hold an annual work session and policy planning meetings. The boards identify major issues that they expect to deal with during the next and following years, and they identify strategies to achieve their major policy objectives.

* * *

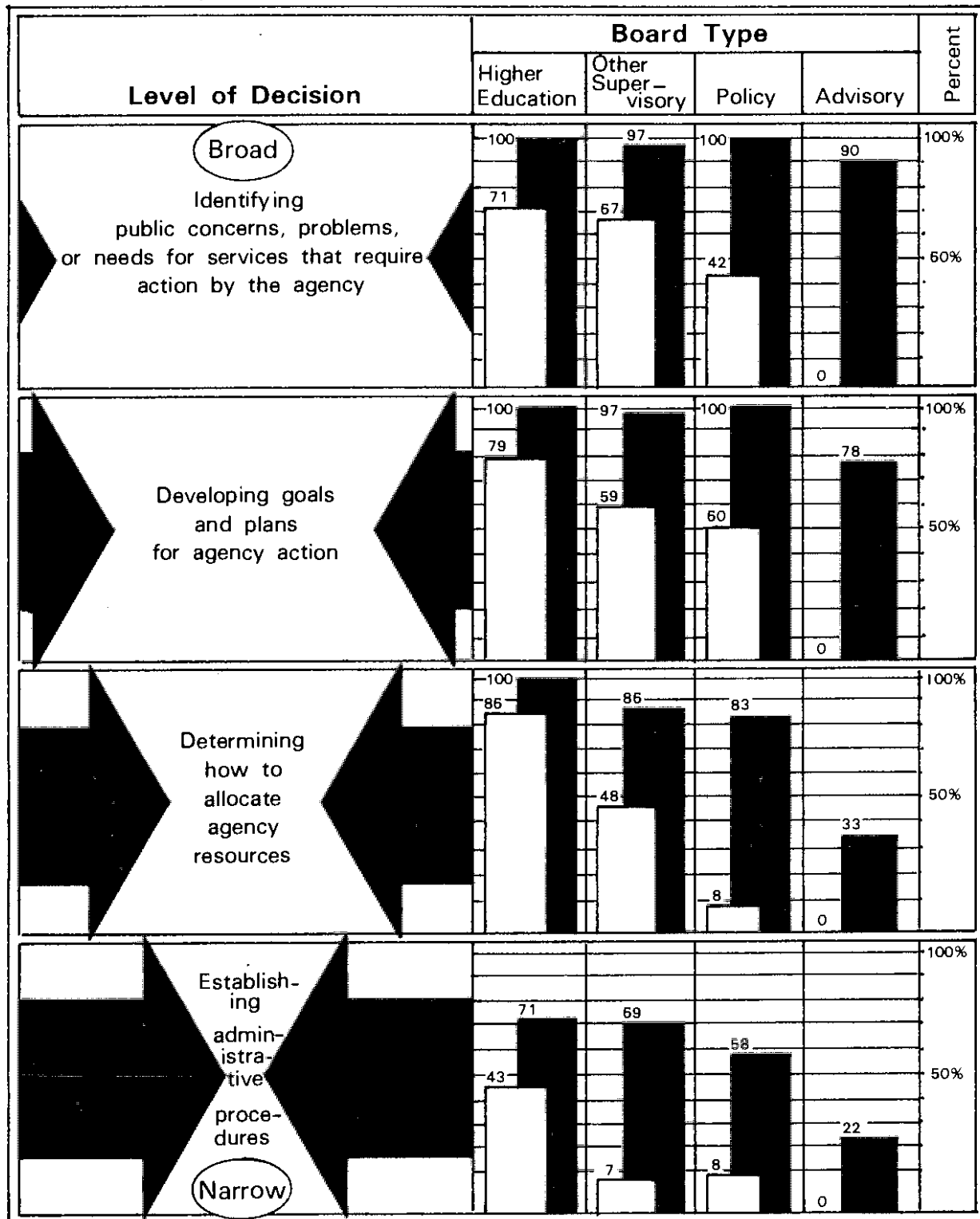
The Advisory Board on Aging recently sponsored a model legislative session to provide additional visibility for its advisory role in broad policy decisions. The "Silver-Haired Legislature" was used as a forum to discuss and focus legislative, executive, and public attention on the concerns of the elderly.

The extent of board involvement in each level of policy making is shown in Figure 3. When boards serve in an advisory capacity, their expected level of involvement in policy decisions is clear: advisory boards restrict themselves to providing only advice. Supervisory and policy boards, however, do not consistently interpret their authority for determining needs, goals, and plans for agency services. Two thirds of the supervisory boards and 42 percent of the policy boards take authoritative action: the others provide advice. Follow-up interviews with survey respondents suggest that boards refrain from making the final decisions in their areas because they perceive policymaking as a joint effort by boards and agencies. A compromise process ensures that agency plans and goals are responsive to the needs of the public within fiscal and administrative constraints.

The level of board involvement generally decreases as policy decisions become more narrowly focused on budgetary and administrative detail. While most supervisory and policy boards provide at least advice on allocating agency resources, it is primarily the supervisory

Figure 3

Board Policy Decisions



Provide at least advice

Make final decision

Source: JLARC Board Survey

boards that make final decisions in this area, which often translates into budget approval. Only three of 10 advisory boards provide advice at this policy level.

Many boards consider the administrative procedures of agencies. Nine boards report that at times they make administrative decisions:

- The policy Board of Conservation and Economic Development promulgates mined land reclamation regulations that contain specific administrative steps for obtaining permits and the items to be contained on applications.
- The supervisory Commonwealth Attorney's Services' and Training Council is actually a collegial body supported by a two-person staff, and as such, prescribes activities it expects the staff to perform for the board.
- The supervisory Board of Trustees of the Virginia Supplementary Retirement System (VSRS) issues investment directives to the small investment arm of the VSRS but does not set administrative procedures for the administrative side of the agency.
- The remaining six boards, higher education boards of visitors, cite examples that range from approving administrative procedures to be followed by the president when fraud or theft is suspected, to specifying the approach that should be taken on fund drives.

Emphasis on Major Policy Areas. Some boards interpret their supervisory authority as including administrative details. However, as illustrated below, the General Assembly has become concerned when board concentration on administrative matters has caused underemphasis on their public policy role.

Prior to 1980, the Board of Mental Health and Mental Retardation was responsible for the "supervision, management and control of the system of (MHMR) facilities." Finding that board members were focusing an inordinate amount of attention on the day-to-day administration of the hospitals to the detriment of other board responsibilities, a legislative study commission recommended that board members be freed from administrative duties. This would allow the board to focus its efforts on developing overall policies governing the system, particularly on services offered in the community and their link to the State hospitals. Supervisory language was deleted from the board's statutes in

1980, and the board was specifically charged to develop policies for a continuum of care for the State's mentally ill and retarded.

* * *

The supervisory State Water Control Board concentrates much of its efforts on a range of administrative responsibilities. In 1976, JLARC found that the board did not meet Virginia's need for comprehensive planning and policy making in the area of water resource quality and quantity. A 1983 Management Analysis and Systems Development report found that the board is involved in specific administrative activities "at the general expense of broader policy decisions." JLARC's review of board meeting minutes and interviews confirmed that the board spends most of its time awarding construction contracts and adjudicating law and regulation violations with minor emphasis on its broad policy responsibilities.

A board with supervisory authority and broad legislative mandates may have difficulty in determining whether its supervisory or policy making responsibilities should receive priority attention. A supervisory board may choose to deal with the more immediate administrative concerns. It appears, however, that in most cases a part-time board could have greater impact by concentrating on important issues relative to an agency's overall performance of its mission.

Regulation

In contrast to generally defined policy responsibilities, some boards have specific and exclusive responsibility for promulgating rules and regulations that have the force of law. Regulations specify procedures, standards, or criteria for implementing policies or programs. Board rulemaking is therefore related to agency administration and policy implementation.

Regulatory authority has traditionally been assigned to boards to ensure that quasi-legislative decisions are not made by a single individual, but by a collegial body in an open public forum. While boards continue to be viewed as appropriate rule-making bodies, concerns have focused on the need to identify impacts of rules, balance public and organizational concerns, and carry out legislative intent.

Administrative Relationships. Rulemaking authority is generally clearly assigned to a board rather than an agency head, although there are some exceptions. A close relationship between boards and agencies exists for development of rules, however, because boards must be aware of the administrative impacts of proposed rules.

The Administrative Process Act, which specifies rulemaking procedures, requires preparation of statements that assess the public interest and administrative impacts of proposed rules. Departments often provide the staff work for rule and statement development and keep boards advised of potential fiscal or administrative constraints. Balancing of public and agency concerns is evident in the following example:

In its efforts to meet the needs of disadvantaged mothers, the Board of Social Services was considering a change in the eligibility limits for the Aid for Dependent Children (ADC) program to compensate for the detrimental effects of inflation. Although the proposed change would allow more individuals in need of ADC benefits to participate in the program, the department estimated this regulation modification would require an additional \$1.3 million general fund appropriation and constrain other agency programs. Deliberations on this matter are still continuing. The additional cost was not included in the Department's regular budget request, but it has been added as part of the agency's 1984-86 budget addendum.

Supervisory and policy boards' responses to the JLARC survey indicated that they receive adequate information from agencies during the rulemaking process and that agency concerns are taken into account. Boards should be certain, however, that public interest is not outweighed by administrative concerns. It is for this reason that regulatory authority is generally vested in collegial bodies.

Policy Relationship. Since boards' regulatory authority is generally more specific than policy authority, boards can more readily be held accountable for regulatory actions. In fact, as illustrated by the following examples, policy can be further defined or implemented through regulations.

Section 37.1-10 of the Code of Virginia authorizes the Mental Health and Mental Retardation Board to develop and establish programmatic and fiscal policies and ensure the development of long-range programs and plans for mental health, mental retardation, and substance abuse services provided by the State and by community service boards. Translating these subject area policy directives into specific regulatory responsibilities, the General Assembly authorizes the Board to establish mental health clinics for counseling and treating patients and charges the Board to promulgate regulations governing those clinics (§37.1-23, Code of Virginia).

* * *

The State Water Control Board (SWCB) is authorized in Section 62.1-44.15 of the Code of Virginia to establish water quality standards and policies and to adopt specific regulations to enforce the general water quality management program of the Board. Section 62.1-44.36 directs the SWCB to formulate coordinated plans and policies for the development, conservation, and use of Virginia's water resources. Adding specificity, this statute also enumerates seven principles that the board should consider in developing water resources policies. For example, adequate watershed policies should preserve and balance multiple uses, and safe water supplies should be protected for human consumption while conserving maximum supplies for other beneficial uses. Section 62.1-44.38 authorizes the SWCB by regulation to require water users to register withdrawals of large quantities of surface and subsurface water.

Several processes are currently in place or under consideration to ensure that boards are accountable for protecting the public interest and carrying out legislative intent. The Administrative Process Act requires boards to subject proposed rules to public scrutiny by holding public hearings, identifying potential economic impacts, and citing the authorizing sections of the Code of Virginia. Authority to review rules has been retained by the General Assembly, and executive oversight of existing rules is currently exercised by the Governor's Regulatory Reform Advisory Board. The Advisory Board has several proposals under consideration to increase public participation in rulemaking and to strengthen executive and legislative oversight of rulemaking.

The value of assigning rulemaking to collegial bodies has been confirmed by recent studies of executive organization. This value is still apparent today, and boards make an important contribution to State government in carrying out this function. Therefore, the quasi-legislative and quasi-judicial functions of these boards should be continued, with reasonable oversight to ensure that rules with the force of law accurately implement legislative intent.

Monitoring

Most boards are involved to some extent in agency monitoring, although not all boards have a similar statutory charge. The limited information received by about one-third of the supervisory boards, however, indicates that some boards may not be adequately exercising their oversight role or using information for authoritative purposes.

It appears that the General Assembly could signal legislative expectations and support for board monitoring of agency performance through specific definitions of monitoring responsibilities.

Statutory Monitoring Provisions. The General Assembly adopted monitoring language originally proposed by the 1973-78 Commission on State Governmental Management. One advisory and six policy boards are required to "monitor the department and its effectiveness" and to carry out a public-agency liaison role. Each board is to provide a means of citizen access, have the right to access department information, and publicize and elicit support for the activities of the department. In addition to these seven boards, 19 other boards of all three types have a range of other evaluative responsibilities that may be interpreted as granting them a monitoring role (Table 14).

Specific monitoring provisions serve as statutory benchmarks for assessing board performance, as illustrated by the following examples:

Section 33.1-12 (9) of the Code of Virginia charges the Highway and Transportation Commission to monitor and, where necessary, approve actions taken by the Department of Highways and Transportation in order to ensure the efficient and economical development of public transportation and the coordination of plans with other highway programs. In the 1981 final report on the Organization and Administration of DHT, JLARC found that that the board did not adequately monitor the Department to ensure that public transportation needs were met. The senior member of the board and the commissioner report that a board subcommittee on public transportation is now working closely with staff to oversee the function.

* * *

The Mental Health and Mental Retardation Board is generally responsible for "monitoring the activities of the department" under section 37.1-10(4) of the Code of Virginia. In 1980, an internal evaluation committee of the board was also mandated by statute to review and evaluate the effects of board policies and the performance of the Department of MHMR and community service boards in carrying out board policies. Of particular concern to the General Assembly was the need to develop a continuum of institutional-to-community care for the mentally ill and retarded. As a first step to implement the charge, the committee is compiling an inventory of board policies to determine what should be revised or eliminated. The board chair-

Table 14

SPECIFIC MONITORING AND OTHER EVALUATIVE RESPONSIBILITIES

<u>Charge</u>	<u>Board</u>	<u>Reference Code</u>
(SPECIFIC MONITORING PROVISIONS)		
Monitor the effectiveness of the department; have the right of access to department information; and ensure the development of programs to educate citizens and elicit public support for the activities of the department.	Aviation Commission	\$5.1-2.2
	Board of Commerce	\$54-1.25
	Board of Corrections	\$53.1-5
	Commission on Health Regulatory Boards	\$54-955.1
	Board of Housing and Community Development	\$36-137
	Mental Health and Mental Retardation Board	\$37.1-10
	Board of Rehabilitative Services	\$2.1-576

(OTHER EVALUATIVE RESPONSIBILITIES)		
Review the department's program of employee relations and make recommendations to improve communications between employees and agencies of the Commonwealth.	Personnel Advisory Committee	\$2.1-113.3

(OTHER EVALUATIVE RESPONSIBILITIES)		
Ensure that annual audits are conducted of a representative sample of State and local criminal justice agencies to ensure compliance with this article of the <i>Code of Virginia</i> and the regulations of the Board.	Board of Criminal Justice Services	\$9-186

Source: *Code of Virginia*.

man reported to JLARC that after completing this first step, the board will attempt to assess department and community service board compliance.

* * *

The Commission of Health Regulatory Boards is generally responsible for ensuring coordination among the various regulatory boards that receive administrative support from the Department of Health Regulatory Boards. A part of the Commission's specific responsibilities, it is charged by Section 54-955.1 of the Code of Virginia to monitor the activities of the department. In the recent December 1982 report on The Occupational and Professional Regulatory System in Virginia, JLARC found that the Commission needs to take a more active approach to its monitoring responsibility. JLARC recommended that the board should require the department to report on its plan for correcting management difficulties and monitor the department's progress through regular activity reports.

By supplementing general monitoring provisions with other specific charges, the General Assembly can promote a consistent understanding between the board and agency concerning the focus of the board's monitoring responsibilities and the expected cooperation from the agency. The General Assembly may wish to amend existing statutes to specify areas of board monitoring.

Receipt and Use of Monitoring Information. Although less than half of the 68 boards have been assigned a specific monitoring or evaluative responsibility, 89 percent of the supervisory boards, 92 percent of the policy boards and 70 percent of the advisory boards report that they spend at least some of their time monitoring the agency and its programs. However, the type of information received and the time devoted to monitoring varies considerably among boards.

Common sources of information for boards include regular agency activity reports, annual financial statements, audit reports, external evaluation reports, and special evaluations requested by the boards themselves. Other monitoring techniques reported by the boards include, for example, tracing the progress of construction projects and proposals through capital outlay reports and following the status of investigations and disciplinary proceedings against violators of board regulations.

Advisory boards obtain the most limited information and cannot require corrective actions. Nonetheless, advisory boards can suggest agency changes, as illustrated by the following example:

Feeling that the activities of the Department of Rehabilitative Services should be more visible to the public, the advisory board suggested that the department review the activities of its public relations office. With the concurrence of the agency director, the review was conducted, and subsequently public education programs were introduced in medical and high schools. A series of public hearings were also conducted across the State to get feedback on the success of counselors in finding jobs for the disabled and to generally promote the activities of the department and hear any public concerns with its programs.

As a group, supervisory and higher education boards generally receive the most varied information. They can also take more authoritative action to redirect agency activities when necessary, as illustrated by the following example:

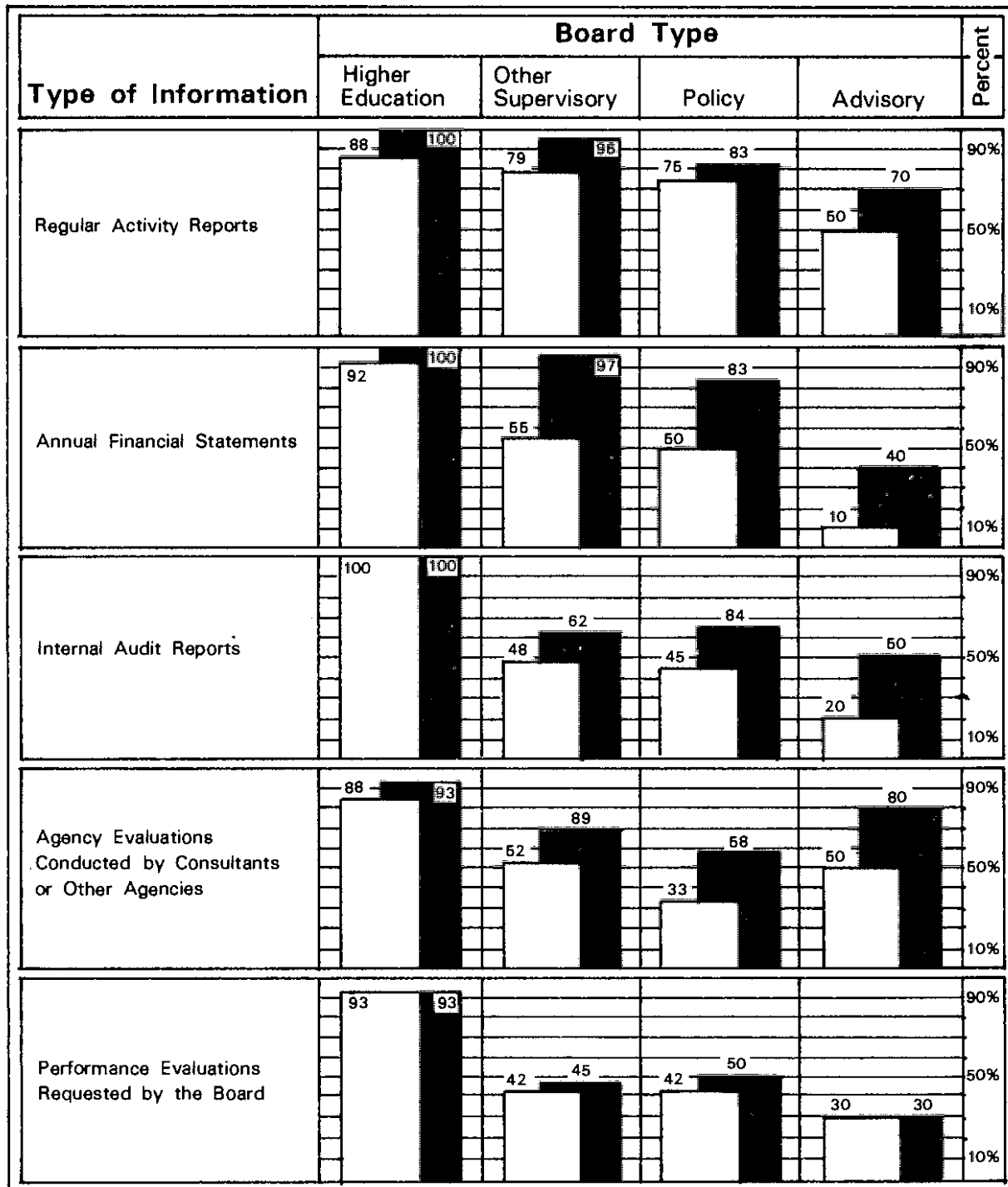
A few years ago, the Board of Visitors of Virginia Polytechnic Institute and State University requested a study of the university's internal audit function. Finding that stronger fiscal controls were needed, the Board authorized the creation and staffing of an internal audit unit. The unit was established and reports to the Finance and Internal Audit Committee of the Board of Visitors.

About one-third of the supervisory boards receive or request limited information from their agencies. These boards primarily use the information for informative purposes, not for authoritative action (Figure 4). Eleven percent of the supervisory boards indicated that they spend very little or no time in monitoring the activities of their respective agencies. Some adjustment in the supervisory responsibilities of these boards may be necessary, or the boards should establish monitoring priorities.

With respect to annual financial statements, all agencies are charged by Comptroller Directive 4-82 to provide their respective boards with financial information to ensure "that the senior management, commissions and boards of the Commonwealth's agencies and institutions are supported by sound financial management practices." Nine of the 68 boards, however, report that they do not receive annual financial statements from their agencies. All agencies should comply with the Comptroller Directive 4-82, which requires agencies to share annual financial statements with their boards. In addition, boards should make certain that they also receive other forms of information necessary to monitor the overall performance of agencies.

Figure 4

Receipt and Use of Monitoring Information



Percent that receive information

Percent that at least suggest corrective action, if necessary

Source: JLARC Board Survey

BOARDS WITH POTENTIAL TO CHANGE

Differences in activities among the three types of boards reaffirm that the General Assembly has established general but meaningful distinctions in board authority. Some individual boards within each general category are substantially more involved or less involved in specific activities than the remaining boards with a similar level of operational authority. In these instances, the General Assembly may wish to reassess assigned levels of board authority. Some supervisory boards already resemble policy boards in terms of their level of activity, and other boards might serve a useful and appropriate purpose in an advisory capacity.

Redefining Supervisory Boards

Particular attention should be devoted to redefining supervisory boards in order to maximize the effectiveness of boards and provide for efficient administration of agencies. Two-thirds of the Commonwealth's major boards are required to supervise their respective agencies. Assigning boards the highest level of operational authority -- agency supervision -- places a tremendous responsibility on the shoulders of a part-time lay board. This level of authority implies that the board is ultimately responsible for all aspects of agency performance. Staff serve in a support capacity to the board, which is responsible for ensuring that statutes and board directives are fully implemented.

Criteria for determining the continuation and definition of supervisory authority should be based on (1) the concerns expressed in previous studies regarding the adequacy of supervision by a part-time board, (2) the need identified in this study to clarify accountability for key operating functions and to ensure adequate implementation of policy and monitoring responsibilities, and (3) the current differences among supervisory boards.

Supervisory boards currently fall into several distinct categories, as shown in Table 15. Some have responsibilities similar to those of policy boards, others appoint the agency director, and still others carry out special functions or have unique structural arrangements.

Concerns. Several performance factors and continuing concerns have been associated with assigning a supervisory level of authority to boards:

- A lay board that meets periodically throughout the year cannot "supervise" an agency as effectively as a full-time administrator. Nevertheless, vaguely worded statutes and their inconsistent interpretation and implementation blurs the limits of boards' supervisory authority in personnel functions, budgeting, policy-making, and monitoring.

Table 15

SUBCATEGORIES OF SUPERVISORY BOARDS

Board Appoints Agency Director

Fifteen Higher Education
Boards of Visitors
Commission of Game and
Inland Fisheries
Board of Trustees, Virginia
Supplementary Retirement
System
Board of Commissioners
Virginia Port Authority
State Council for Higher
Education in Virginia
Board of Trustees, Jamestown-
Yorktown Foundation
Board of Visitors, Virginia
Schools for the Deaf and
Blind
Board of Trustees, Virginia
Museum of Fine Arts
Board of Trustees, Science
Museum of Virginia
*Marine Products Commission
*Compensation Board
*Commonwealth Attorney's Services'
and Training Council

Board Chairman also
Serves as Agency Head

Highway and Transportation
Commission
Marine Resources Commission

Other Special Functions

State Board of Elections
Commission for Local Government
State Milk Commission
Board of Education
Board of Directors, Virginia
Truck and Ornamentals
Research Station
State Library Board

Boards with Responsibilities Similar to Those of Policy Boards

Virginia Public Telecommunica-
tions Board
Board of Agriculture and
Consumer Services
State Air Pollution Control
Board
State Water Control Board

Virginia Historic Landmarks
Commission
Virginia Commission for the Arts
Virginia Council for the Deaf
Board of Rehabilitative School
Authority
Virginia Fire Commission

*Not listed as exclusions to 2.1-41.2 of the *Code of Virginia*, but in
practice appoint the full-time agency administrator.

Source: JLARC categorization based on statutory responsibilities.

- The management hierarchy and reporting within agencies could be seriously disrupted in instances where the Governor appoints the agency director but the board is authorized to employ personnel.

- The potential arises for both overemphasizing and underemphasizing a board's role in agency budgeting when the board interprets its supervisory authority as the authority to approve the agency budget.
- Policy-making responsibilities may be interpreted by supervisory boards as the authority to determine administrative procedures instead of developing broad policies in areas assigned by the General Assembly.
- When a board is expected to serve as the collective supervisory head of an agency, it cannot also be expected to serve as an independent citizen check to monitor the agency.

Boards That Resemble Policy Boards. Nine supervisory boards have a range of responsibilities that resemble those of the State's policy boards, including rule making and adjudication. Moreover, the boards do not appear to have unique circumstances that would necessitate continuing a supervisory level of authority. In some cases, such as the State Water Control Board, the Air Pollution Control Board, the Soil and Water Conservation Commission, and the Historic Landmarks Commission, the General Assembly has reduced the supervisory control of the board by removing its previous authority to appoint the agency director.

Amending statutes to delete statutory supervisory references for these boards would not strip them of their importance. Rather, it would clearly signal the need for the agency directors to manage the agency and allow the boards to concentrate on all their other major responsibilities. The State Water Control Board, for example, is responsible for developing water resource plans and setting water quality standards. These boards could be granted an intermediate (policy) level of authority.

Boards That Appoint Directors. Although the General Assembly currently directs 45 boards to supervise their respective agencies, the rationale for a board to supervise an agency is most clear for the boards that appoint the agency's director. In these instances, the General Assembly more clearly signals its intention for the board to serve as the head of the agency or institution. Section 2.1-41.2 of the *Code of Virginia* authorizes the Governor to appoint all agency heads except for the following agencies:

- Fifteen institutions of higher education
- State Council of Higher Education in Virginia
- Commission on Game and Inland Fisheries
- Virginia Supplemental Retirement System
- Virginia Port Authority
- Jamestown-Yorktown Foundation
- Schools for the Deaf and Blind
- Virginia Museum of Fine Arts
- Science Museum of Virginia

"Supervision" for the higher education boards of visitors and other boards that appoint the director resembles a corporate model in which a collective board is ultimately responsible for the corporation, but the board selects a chief operating officer to run the organization. There is a major distinction between corporate boards and these State boards, however: board members are appointed by the Governor, confirmed by the General Assembly, and are accountable to these elected officials.

Agency directors under these boards are more clearly in a subordinate position to the board than in those instances where the Governor appoints the director and the board serves in an adjunct capacity to the agency. Although many of the previously mentioned considerations associated with a supervisory level of authority still apply, accountability for agency performance is more clearly centered in the board, which is responsible for the selection of its "chief administrative officer" to carry out board and General Assembly directives.

In practice, three additional boards also appoint the full-time administrators of their small agencies, although section 2.1-41.2 of the *Code of Virginia* could be interpreted as authorizing the Governor to appoint these agency administrators. The Marine Products Commission and the Commonwealths Attorneys' Services and Training Council (CASTC) appoint the heads of their two-person staffs. As required by an apparently unsuperceded statute, the appointment of the CASTC administrative coordinator requires the concurrence of the Secretary of Public Safety. Statutes for a third board, the Compensation Board, contain no references to the board's authority for employing personnel, but in practice the board appoints the full-time executive secretary of the nine-person staff. The chairperson of this board, however, is a part-time salaried employee who is responsible for "supervising the administrative work of the board." In contrast, the Governor appoints the administrative head of the small three-person staff under the Commission of Local Government.

If the General Assembly intends for the Marine Products Commission, Commonwealths Attorneys' Services and Training Council, and the Compensation Board to appoint their respective full-time administrators, then these boards should be listed with the other exclusions to Section 2.1-41.2 of the *Code of Virginia*. It is particularly important to clarify the full scope of § 2.1-41.2 if this section is to be used as a criterion for determining which boards should be vested with a supervisory level of authority.

Boards with Unique Attributes. Some boards have special functions. In these cases their implementation of supervisory authority does not raise major concerns. Boards in this category include, for example, the Commission on Local Government and its three-person staff, who serve as an arm of the court in a fact-finding capacity and as a mediator between local governments. The Board of Education would

also be included in this category by virtue of its constitutionally assigned supervisory authority.

Two additional boards, the Highway and Transportation Commission and the Marine Resources Commission, serve in unique supervisory capacities: the chairman of the board also serves as the director of the agency. The collegial bodies in these instances are responsible for developing major public policy in their respective areas, but operating authority is primarily vested in the chairman/agency director.

A precise definition of supervisory boards could lead to more consistent application of boards' authority. If the supervisory category were defined to include only the constitutionally established Board of Education, the higher education boards of visitors, and other boards that appoint the director, the following 16 supervisory boards would be reduced to a policy level of authority:

- | | |
|---|--|
| • State Board of Elections | • Highway and Transportation Commission |
| • Commission on Local Government | • Marine Resources Commission |
| • State Milk Commission | • Virginia Historic Landmarks Commission |
| • Board of Directors, Virginia Truck and Ornamentals Research Station | • Virginia Commission for the Arts |
| • State Library Board | • Board of the Rehabilitative School Authority |
| • Virginia Public Telecommunications Board | • Virginia Fire Commission |
| • Board of Agriculture and Consumer Services | • Virginia Council for the Deaf |
| • State Air Pollution Control Board | |
| • State Water Control Board | |

Policy Boards

Most boards exercising an intermediate level of operational authority appear appropriately placed in the policy category. However, based on actual responsibilities, the following boards might be placed in an advisory category.

Although the scope of their responsibilities exceeds those of other advisory boards, the Board of Commerce and Commission of Health Regulatory Boards are primarily limited to making recommendations in their area of professional regulatory policy, based on their findings on the need for regulating various professional groups. These two boards do not have final authority for developing regulations. They only propose regulation and regulation schemes to the General Assembly.

Clearly designating these boards as advisory would not substantially alter their current authority but would clearly establish limits.

A third policy board actually falls into a quasi-policy category:

Unlike other boards with a policy level of authority, all regulatory responsibilities are not assigned to the Board of Housing and Community Development. Although the Board is responsible for building, safety, and fire codes, section 15.1-11.4C of the Code of Virginia assigns to the agency director responsibility for establishing standards for the certification of certain plumbers, mechanical workers and electricians.

In this case, all regulatory responsibilities should be consolidated in the director or the board, and then the board should be categorized accordingly. As with other policy boards, all regulatory responsibilities should probably be consolidated in the board. If all regulatory responsibilities were assigned to the agency director, however, the board would serve primarily in an advisory capacity.

A fourth board, the Job Training Coordination Council, also appears to fall within a quasi-policy level of authority. This board, however, is unique among the other 68 boards: it was created by executive order.

Advisory Boards

Many advisory boards actively pursue their responsibilities within the limits of their advisory level of authority. The following two advisory boards, however, have been inactive in the past and might be considered for elimination:

The Board of Military Affairs has been inactive during FY 83, and appointments to the board were never completed. The "board" currently consists of a single board member who serves in a consultant-like capacity to the Department of Military Affairs.

* * *

The three-member Board of Visitors of Gunston Hall is responsible for advising the Governor on the management of Gunston Hall by the supervisory board of regents. The Board of Regents is not comprised of gubernatorial appointees, and therefore the advisory board was established to enable the Governor to monitor the management of this

historic attraction. Nonetheless, Gunston Hall is subject to other State fiscal controls. Previous Boards of Visitors have been inactive in their oversight of this attraction.

If the Board of Military Affairs is perceived as serving a useful role, then all appointments should be made to the board and it should be activated. If it continues to be inactive as it has in the past, there is no compelling reason to continue its existence. If deed restrictions bind the State to retain the Board of Visitors of Gunston Hall, then the Board should actively fulfill the conditions of the deed that require it to advise the Governor on the management of Gunston Hall. The Director and the supervisory Board of Regents should cooperate with the current board to enable it to overcome the inactivity of previous boards.

Two boards among the 68 have already been eliminated from the role of overseeing a State agency. Since the consolidation of the Department of Transportation Safety and the Commission of Outdoor Recreation with other agencies on July 1, 1983, the respective advisory and supervisory boards of those two agencies no longer have purviews that encompass the mission of an entire agency.

OPTIONS FOR ESTABLISHING CRITERIA

Although some diversity may be necessary to enable boards to achieve the unique purposes for which they were created, piecemeal assignment of responsibilities to boards results in the current variation in statutory language, and the potential for conflict with the agency director over control of agency operations. The purpose a board is expected to serve should be clearly articulated and the limits on its authority should be precisely defined. Formal criteria established in statute could be used to identify under what circumstances a board is needed:

1. with an agency-wide purview.
2. for more than a formal source of citizen advice.
3. as the supervisory body of the agency.

Guiding principles would outline the purposes to be served by boards and specify under what circumstances a board should supervise an agency, provide only advice, or carry out intermediate levels of responsibility. Furthermore, to ensure more consistent assignment, understanding, and implementation of supervisory, policy, or advisory authority, criteria could also specify certain uniform responsibilities for each level of authority. Relevant criteria might include but not be limited to the following:

- Supervisory authority could be reserved for boards that appoint the agency's director and for boards of higher

education. In these instances, the agency director is most clearly subordinate to the board which holds him or her accountable for performance of the agency's mission. The board, therefore, would be considered the operating entity or agency head. Supervisory authority could be assigned to others with special functions, or restricted to higher education boards of visitors.

- A board could be assigned an intermediate level of policy authority if it were determined that a board were needed to develop specific public policies and regulations within legislative parameters and to adjudicate violations of those policies and regulations.
- A board could be assigned an advisory level of authority if policies were closely circumscribed by State and Federal laws or regulations, or if the board were not needed to serve a regulatory purpose. Limiting a board to an advisory level of authority, however, would not be intended to restrict the board from participating in the development of public policy. Such a board could still serve as a formal liaison between the agency and the clients it served to ensure that the agency understood the public concerns and that the activities of the agency were scrutinized and communicated to the public.
- Regardless of the level of authority assigned to a board, final authority for personnel and budgeting activities should be assigned to the agency director or the board. If a board were expected to supervise the agency, then budget and personnel control would be complementary responsibilities. In all other instances, control for these functions would reside with the agency director. Boards with all levels of authority could be assigned budget review responsibilities.
- A board's attention should be limited or directed to particular aspects of an agency's responsibility. For example, requiring monitoring of specific policies could assure the General Assembly of accountability on the part of the agency and the board. If a board were not expected to provide supervisory oversight, then it could be specifically restricted from monitoring administrative procedures. To ensure that progress or concerns were communicated to other State decision-makers, boards could be directed to periodically report to the General Assembly and/or Governor through the secretary.

After the development and adoption of standard criteria for more precisely defining boards' levels of operational authority, the criteria could be systematically applied to boards in one of two ways:

1. *A board's level of authority and commensurate responsibilities could be reviewed on a case-by-case basis when concerns with its performance were raised. The above criteria would serve as a consistent guide for determining if concerns stemmed from a change in the need for the board's purpose and warranted revision of the board's level of authority. Conversely, if the purpose for which the board was created still existed, then the board would be expected to comply with legislative directives, although vague and misunderstood statutes might need to be clarified. Criteria would assist in the systematic and consistent revision of a board's level of authority and responsibilities and alleviate the need for ad hoc decisions. The criteria would also serve as a guide for assigning a level of authority and commensurate responsibilities to any new board that might be created.*
2. *All boards could be assigned to one or more distinct levels of authority, precisely defining the personnel, budget, and other general responsibilities associated with each level, and periodically reassessing board performance. This option is designed to prevent misinterpretation of board roles and avoid possible conflicts with agency directors concerning operational control of agencies. This option could also achieve greater consistency among the activities of boards with a similar level of authority. Furthermore, board activities should be periodically reviewed. The criteria would provide uniform benchmarks for determining if boards complied with legislative directives and if the need for the originally assigned level of authority still existed. New and existing boards could be aligned or realigned according to the operational role they were expected to serve.*

III. ROLE OF BOARDS IN EXECUTIVE DIRECTION

Within the structure of State government, boards are placed between their respective agencies and the Governor's secretaries. Most boards predate the secretarial system, which was established in 1972. At that time, agencies with similar missions were grouped into seven functional areas, each overseen by a Secretary. Statutes do not address the role of boards in this hierarchy, but Governors have by executive order brought boards under the jurisdiction of the Secretaries. This circumstance, coupled with strong emphasis on professional management for agencies, has at times made unclear the role of boards in agency operations and executive direction.

Both secretaries and boards, for example, have responsibility for setting policy and for overseeing the performance of agencies. There is strong potential for conflict as agency heads, boards, and secretaries seek to exercise their respective responsibilities without clearly defined parameters. The continued expectations for citizen participation in State government also require assessment.

ROLE IN THE CHAIN OF COMMAND

The position of boards in the management hierarchy of State government is unclear. This in part reflects ambiguity of the status of boards as operating heads of agencies, as discussed in the previous chapter. It also reflects differences in statutes and executive orders relating to boards and secretaries, particularly in the education area of government. Boards are uncertain about their reporting relationships within the chain of command and the appropriate boundaries for agency, board, and secretarial action.

Unclear Reporting Relationships

Currently, statutes do not address the authority of the Governor's secretaries with respect to boards. Using the latitude granted to them by the statutes, the current and former Governor brought boards directly under the control of the secretaries. Through executive order, Governor Dalton and Governor Robb have authorized secretaries to exercise their executive powers and duties over agency heads "and their respective collegial bodies".

Responses to the JLARC survey of board chairpersons indicate, however, that boards are uncertain about their reporting relationship to the Secretaries. Apparently unaware of the executive orders, only

12 of the 68 boards (20 percent) indicated they report directly to the Secretary. Twenty-nine percent of the boards indicated that they report to the Governor and the Secretary, or were not clear to whom they reported. Forty-six percent of the boards indicated they reported directly to the Governor. Three of the nine advisory boards noted that they reported to the director of the agency (Table 16).

Table 16

BOARD ASSESSMENTS OF POSITION IN THE CHAIN-OF-COMMAND

Board Type	Boards Report to the...				Total*
	Governor	Secretary	Director	Not Clear or Multiple	
Higher Education	8	0	0	5	13
Other Supervisory	11	9	0	8	28
Policy	5	2	0	4	11
Advisory	4	1	3	1	9
Totals*	28 (46%)	12 (20%)	3 (5%)	18 (29%)	61 (100%)

Board Type	Agency Directors Report to the...				Total*
	Governor	Secretary	Board	Not Clear or Multiple	
Higher Education	1	0	10	2	13
Other Supervisory	1	12	10	6	29
Policy	0	9	0	3	12
Advisory	0	9	0	1	10
Totals*	2 (3%)	30 (47%)	20 (31%)	12 (19%)	64 (100%)

*All boards did not respond to each question.

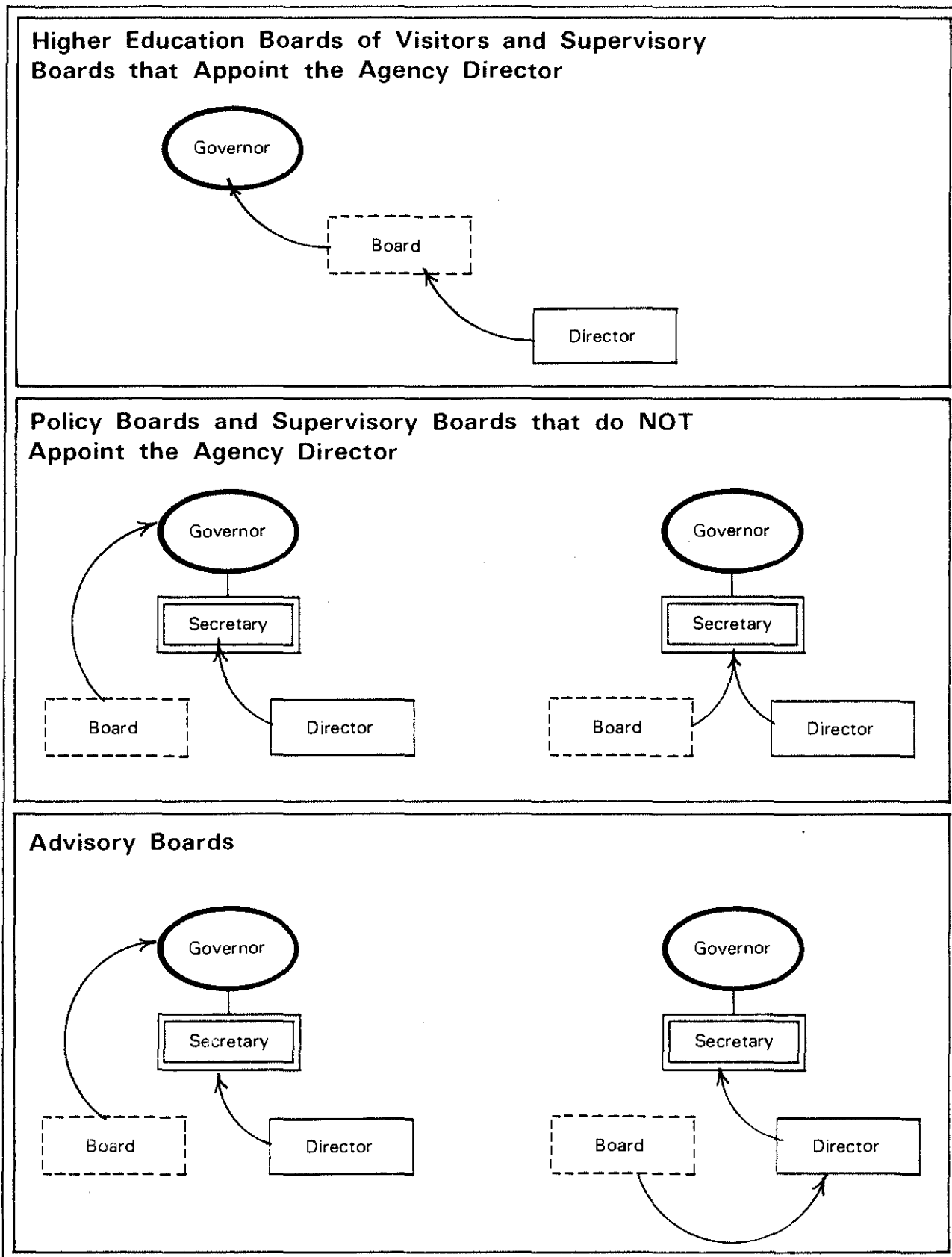
Source: JLARC Board Survey.

Although responses within categories of supervisory, policy, and advisory boards were not uniform, there were discernable patterns. Policy and advisory boards indicated that the agency director reports directly to the secretary. Supervisory boards generally perceived that the director reports to the board. This was particularly true of boards that appoint the agency director (Figure 5).

The General Assembly could greatly clarify reporting relationships by adopting the definition of supervisory boards recommended in the previous chapter. A supervisory board that appoints the agency director would be classified as the operating head of the agency. The board, rather than the agency director, would report to the Secretary.

Figure 5

Hierarchy As Expressed By Board Chairpersons*



*Models based on the most frequently cited reporting relationships

Source: JLARC Board Survey

In all other instances: (1) boards would be accountable to the secretaries only for responsibilities specified for them in statute or executive order; and (2) the agency director, appointed by the Governor, would report to the secretary on matters related to the overall performance of the agency.

Bounds of Authority

It is not unusual for several levels of government to have responsibility for key management processes such as policy making, budgeting, and monitoring. For example, agencies allocate resources and implement programs within guidelines and appropriation levels established by the General Assembly. The Governor and the General Assembly serve as a constitutional "check and balance" on each other. However, the potential for problems arises when the distinction between two governmental entities is not clearly delineated or generally understood. The functioning of the executive agreement process, initiated in the fall of 1982, illustrates such problems between the Governor's secretaries and some boards.

In the executive agreements, each agency and institution of higher education developed and specified agency goals and implementation plans. Each agreement was developed and signed by the Governor, the respective secretary, and the agency director. The Governor used the agreements as a management tool for communicating broad policy concerns to the agency. The agency responded with plans for achieving these goals as well as agency-specific goals. Agencies' performance will be assessed by their success in achieving the goals.

Boards, to a large extent, were not involved in this process. Almost half of the 68 boards reported that they either did not know of the agreement or did not participate in its development (Table 17). Eleven boards did not review the agreement after it was completed. In interviews with JLARC, some chairpersons of supervisory and policy boards indicated that they should have been involved in such a critical policy and planning process since their level of authority implies responsibilities in these areas.

Boards have a legitimate interest in the development of a management process with broad implications for direction of executive agencies. Supervisory boards and boards of higher education have broad authority that warrants direct involvement. Other boards may provide advice as in other areas.

The current problem with executive agreements, however, is symptomatic of the need for statutory definition of the reporting relationships and roles of Secretaries and boards with regard to agencies. A companion volume to this report, An Assessment of the Secretarial System in the Commonwealth of Virginia, addresses the role of secretaries. That report recommends that secretaries be recognized as

Table 17

BOARD PARTICIPATION IN THE EXECUTIVE AGREEMENTS

<u>Level of Participation During Development</u>	<u>Board Type</u>				<u>Total</u>
	<u>Higher Education</u>	<u>Other Supervisory</u>	<u>Policy</u>	<u>Advisory</u>	
Had no knowledge of agreement during its development	0	2	5	2	9 (14%)
Knew of the agreement but did not participate in its development	3	12	4	5	24 (38%)
Reviewed the agreement and suggested changes	3	9	2	3	17 (27%)
Reviewed, required changes where necessary, and approved the agreement	8	5	0	0	13 (21%)
TOTAL*	14	28	11	10	63 (100%)
<u>Participation After Completion</u>					
Boards that did not review agreement after it was completed	1	3	4	3	11 (17%)

*All boards did not respond to the question.

Source: JLARC Board Survey.

the manager-coordinators of each functional area of government, except education. In that capacity, secretaries would provide overall policy direction for their functional areas and hold each agency head accountable for its program, fiscal, and administrative performance. However, agency heads, be they directors or supervisory boards, would be responsible for agency operations and program implementation.

Boards in the Education Secretariat

Because of the unique status of boards in the education area of government, the managerial role of the Secretary of Education appears to be more limited than that of other secretaries. Nevertheless,

the only distinction made in executive orders is in the budget authority of the Secretary of Education. This limitation mirrors specific statutory language which permits the secretary to develop "alternative" budgets, policies, and plans, rather than a comprehensive program budget for education.

Unlike any other secretarial area, all 23 boards in the education secretariat appoint their respective directors and presidents (Table 18). These boards may be viewed, therefore, as the operating heads of these agencies. Moreover, boards of higher education are designated in statute as "subject at all times to the control of the General Assembly". The Board of Education is uniquely established in the Constitution with specified authority for elementary and secondary education.

Table 18

DISTRIBUTION OF BOARD TYPES WITHIN SECRETARIAL AREAS*

<u>Secretarial Area</u>	<u>Agencies with no Boards</u>	<u>Board Type</u>			<u>Total</u>
		<u>Advisory</u>	<u>Policy</u>	<u>Supervisory</u>	
Administration & Finance	10	1	0	5	6
Commerce & Resources	2	3	4	11	18
Education	0	0	0	23	23
Human Resources	0	4	6	1	11
Public Safety	2	0	2	3	5
Transportation	<u>2</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>5</u>
Total	16	10	13	45	68

*Includes only those boards which are concerned with the operations of the entire agency. Narrow focus boards are not included.

Source: JLARC *Code of Virginia* Inventory.

Although Executive Order 23 (82) places the institutions and boards of education under the jurisdiction of the Secretary, no such assignment is made in statute. Section 2.1-51.21 of the *Code of Virginia* does state that the Governor may, by executive order, assign any "other State executive agency" to the Secretary of Education or reassign any of the listed agencies to another secretary. It is doubtful, however, whether Virginia's institutions of higher education should be considered "other State executive agencies".

The relationships and responsibilities for budget development are also unique for the Secretary of Education and the boards. All other Secretaries are authorized to develop comprehensive program

budgets for their areas. In contrast, the State Council of Higher Education in Virginia (SCHEV) has a strong budget role for higher education. SCHEV develops policies, formulas, and guidelines for equitable distribution and use of public funds among public institutions of higher education. Individual institutions submit their budgets to SCHEV for analysis in relation to its policies and guidelines. In turn, SCHEV sends its recommendations for approval or modification to the Governor.

In practice, the Secretary of Education reports that he relies on the staff work of SCHEV. He has authority, however, to propose different "alternatives." Responses to the JLARC board surveys confirm that some rectors of the boards of visitors are confused regarding the reporting relationships between the board, the president of the university, SCHEV, and the Secretary of Education.

The responsibilities of the Secretary of Education require clarification, particularly with regard to the State Council of Higher Education, the institutions of higher education, and the supervisory boards of visitors. In statute it appears the Secretary's role more clearly approximates that of a policy advisor than a functional area manager-coordinator. Regardless, the Governor's executive orders should reflect statutory provisions.

CITIZEN ROLE

Boards are traditionally viewed as providing a citizen liaison with the bureaucracy. Board members primarily fulfill this role by attending board meetings. Few board members engage in other public-agency liaison activities such as meeting with or discussing concerns with individuals, local officials, or community groups. Therefore, the affiliations that members bring to the board are particularly important. The composition of boards reflects statutory requirements and individual board-member affiliations such as professional or advocacy groups. The General Assembly and the Governor can significantly impact a board's outlook by defining its composition and the appointment process.

Representation on Boards

Membership requirements are established in statute for approximately two-thirds of the positions on boards. Slots are designated, for example, for a State agency official, individuals with a specific professional background, a member of a specified association, or a representative of a service region or voting district. Additional slots on some boards are reserved for an undefined category of citizen members, which appears to indicate members without direct affiliations with the purposes of the boards.

Current Affiliations. JLARC surveyed a representative sample of board members to determine their affiliations and how important they considered each affiliation to be in their participation on the board. Almost 98 percent of board members have some affiliation. Sixty percent are in a related business or profession, and about one-third are members of a related trade or professional association, or are volunteers in related areas. Most members with these affiliations believed them to be important. Other affiliations were considered to be less important. These included affiliation with a political or civic organization, agency service region, or a range of local activities (Figure 6).

Desirable Qualifications. Board members were also asked to identify qualifications important to board membership. They frequently cited willingness to devote the necessary time, and knowledge and interest in the subject area, agency, relevant issues, and Virginia State government. A number of personality traits were also mentioned, including objectivity, good judgement, cooperativeness, independence, and willingness to take a stand on issues. Members of Human Resources boards frequently cited compassion and sensitivity to the needs of clients. About 15 percent of the respondents felt that political awareness and contacts were important qualifications.

Definition of Citizen Members. A unique category of citizen member has been established for about 200 positions on boards. This designation appears to reflect a growing interest nationwide in balancing professional and interest group perspectives with those of unaffiliated citizens. However, citizen members are not sufficiently defined in statute to accomplish this result. The JLARC survey shows that, at least on the 68 boards, board members currently filling citizen member slots are likely to have affiliations related to the purpose of the board.

About 80 percent of citizen members are employed in related fields, and 21 percent belong to trade or professional organizations. Citizen members are also more frequently affiliated with volunteer efforts, community boards, and advisory groups than other members.

As might be expected, individuals that fill "citizen member" slots apparently come to the attention of those who select candidates not because they are void of related commitments, but because those commitments and affiliations signal an interest in the board and the agency's mission. If the General Assembly desires to restrict or encourage certain criteria for citizen membership, a specific definition could be adopted in statute. Individuals with related professional affiliations, for example, could be excepted from serving in this capacity.

ERRATA

The following should substitute for the third, fourth, and fifth paragraphs on page 64.

Definition of Citizen Members. Unique designations of "citizen member", "consumer", or "representative of the public" have been established for about 100 positions on boards. These designations appear to reflect a growing interest nationwide in balancing professional and interest group perspectives with those of unaffiliated citizens. However, these designations are not sufficiently defined in statute to accomplish this result.

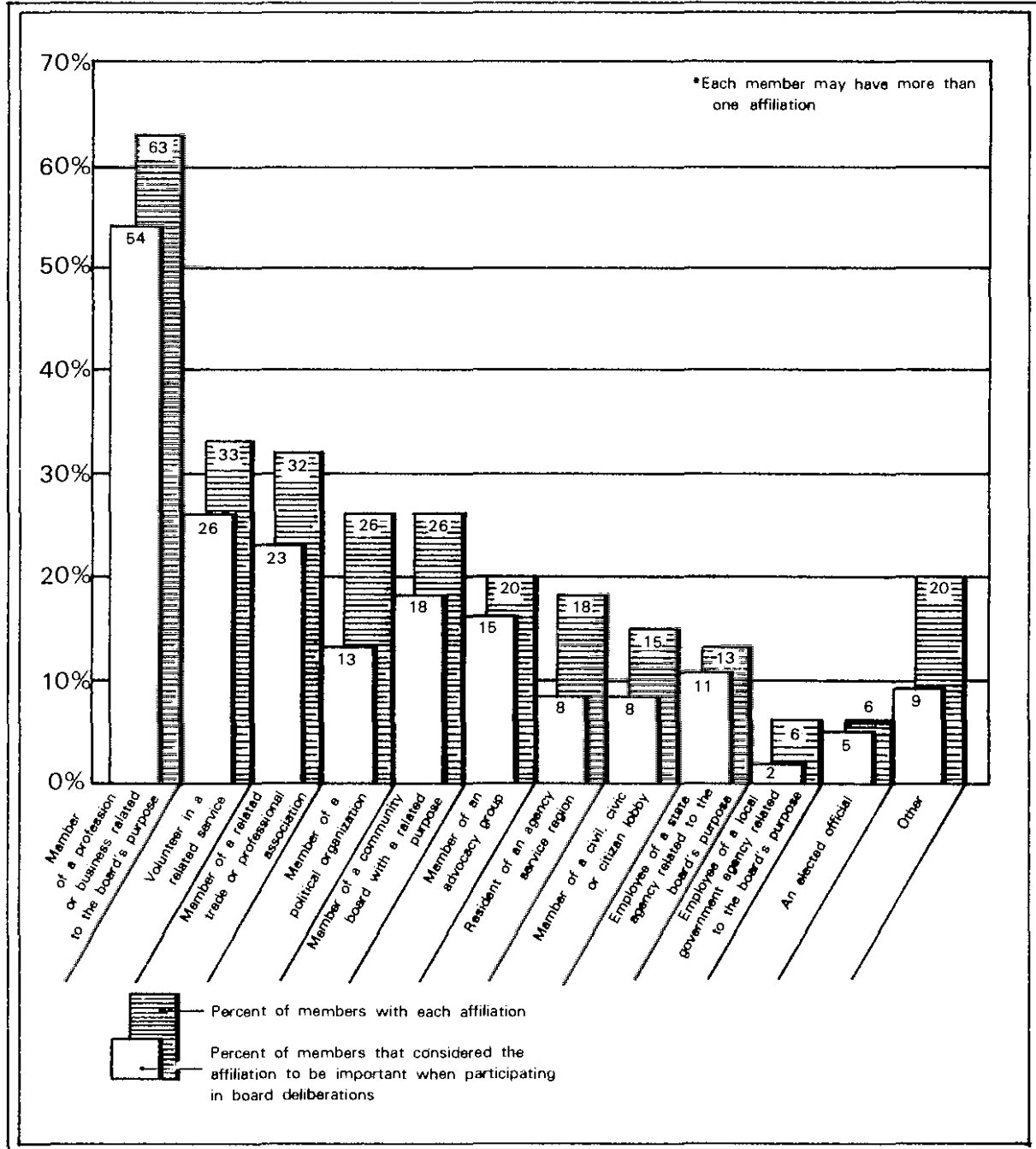
The JLARC survey showed that, at least on the 68 boards, members who thought they filled a citizen member requirement were likely to also have affiliations that were directly related to the purpose of the board. In addition, there appeared to be a considerable amount of confusion about whether a member was appointed to represent a particular interest or to represent an unaffiliated citizen's perspective. About 80 percent of the individuals who reported they filled citizen member requirements were employed in related fields, and 21 percent belonged to trade or professional organizations. These individuals were also more frequently affiliated with volunteer efforts, community boards, and advisory groups than other members.

The General Assembly may wish to clarify the definitions of "citizen member", "consumer", and "representative of the public" positions on boards. If the General Assembly desires to restrict or encourage certain criteria for citizen membership, a specific definition could be adopted in statute. Individuals with related professional affiliations, for example, could be excepted from serving in this capacity.

Joint Legislative Audit and Review Commission, An Assessment of the Role of Boards and Commissions in the Executive Branch of Virginia, House Document No. 22, The Virginia General Assembly, 1984.

Figure 6

Board Member Affiliations and Their Perceived Importance



Source: JLARC Board Member Survey

The following definition of "citizen member," which is contained in 54-1.18:1 but currently applies only to members on professional regulatory boards, might be adapted for broader application to all boards:

A citizen member of a regulatory board shall be a person who (i) is not by training or experience a practitioner of the profession or occupation regulated by the board (ii) is not the spouse, parent, child, or sibling of such a practitioner and (iii) has no direct or indirect financial interest, except as a consumer, in the practice of the profession or occupation regulated by the board.

Level of Participation

Overall there appear to be two distinct groups of board members: those that are very active and those that are minimally involved. As a rule, board members are more active in preparing for and attending meetings than they are in other board-related activities. Such activities include receiving complaints or answering questions from the public, representing the board at civic group meetings, or contacting local or elected officials to discuss board, agency, or local concerns. Fifty percent of the board members engage in these other activities no more than once or twice a year. A few individual members, however, are very active in these areas.

Public Activities. As public representatives, board members are involved in a number of activities in which full-time agency managers would not usually be involved. Board members frequently mention their agency-public liaison role as one such activity. The following examples from survey responses illustrate this role:

"The agency is more accountable to the public because regulatory and policy decisions are made in public meetings that are often attended by the press. Agency staff must propose and argue for a course of action in these matters, rather than making decisions without public input."

* * *

"Board members provide a point of contact for the public. In turn, public concerns can be relayed to the agency."

* * *

"The board serves as a forum for various State and local interests to voice their concerns. As

such a forum, the board is in a position to complement the work of the Governor and Secretary, who by necessity may be oriented toward other, higher-priority concerns."

Other significant contributions mentioned by board members include the following: attracting development or operational funds for agencies and universities, introducing proposals or helping to plan and develop programs and legislation, advocating for agency client groups, and removing regulatory and disciplinary decisions from the control of a single administrator. Representing their board to outside groups, agencies, and elected officials was a significant contribution noted by 24 percent of the 98 board members who responded to this question.

Meeting Activities. Boards of visitors' members prepare and review meeting materials and attend subcommittee meetings more frequently than members on most other boards (Figure 7). Policy board members also actively prepare for meetings. Fifty percent of the policy board members attended regular board meetings at least 6 times a year, and 50 percent of the members on higher education, other supervisory, and advisory boards attended regular board meetings four times a year.

Although most board members are relatively inactive in board-related activities outside of meeting preparation and attendance, members of higher education boards of visitors and policy board members are more active than others in receiving complaints or answering questions from the public. When compared with members of all other boards, policy board members more frequently contact local officials to discuss agency or local concerns.

Cost of Citizen Input on Boards.

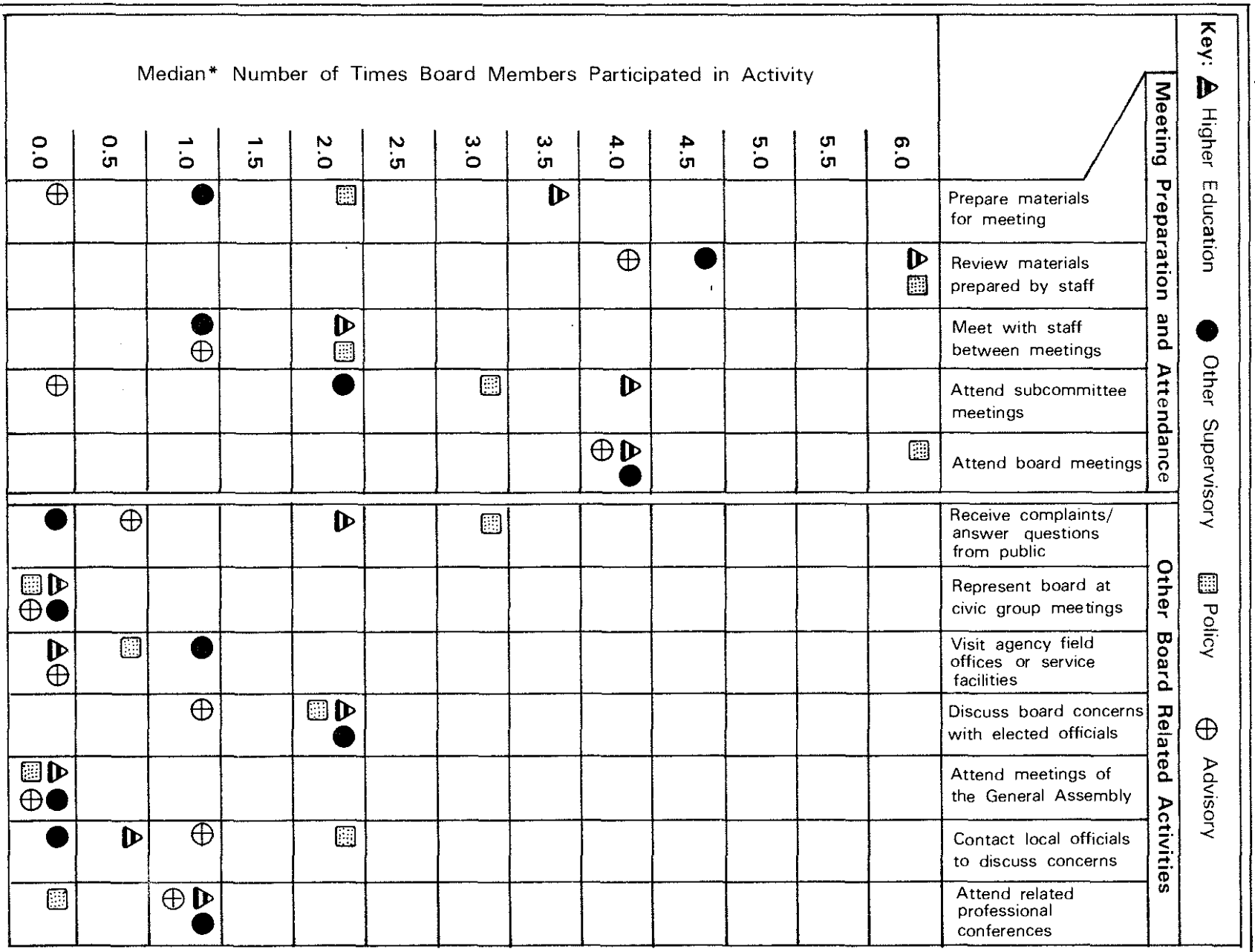
Agency costs of more than \$800,000 during calendar year 1982 can be directly attributed to the support of the 68 major boards for items such as per diem reimbursements; meal, lodging, travel and other member expense reimbursements; rental of meeting facilities; and postage and supplies. Rental costs are usually minimal or nonexistent since agencies are able to use their own facilities or other locations willing to host board meetings at no cost to the agency. And, as specified by Section 2.1-20.3 of the *Code of Virginia*, boards with advisory, advocacy, or education-related functions do not receive the \$50 per diem reimbursement.

In a few instances, such as the Board of Corrections, the Mental Health and Mental Retardation Board, and the Board of Visitors of the University of Virginia, the costs include the salary and benefits of a full-time secretary assigned to the board. Other boards also receive part-time secretarial assistance from the agencies; but the extent and cost of this support is not charged directly to the board,

Figure 7

Frequency of Board Member Activities During FY 1982

January 1, 1982 to December 31, 1982



*Median = 50% of the respondents participated in the activity less than or equal to this number of times during the year.

Source: JLARC Board Member Survey

and therefore these costs, for the most part, are not included. One agency estimated that board support costs would be doubled if the time and expenses for staff attendance at board meetings were included in the calculations. Therefore, \$800,000 is a conservative estimate of the total cost to support board activities.

In general, the average cost to support policy and higher education boards is greater than the cost to support supervisory or advisory boards. Those boards with the highest costs, however, are usually those with major policy or supervisory authority over the largest State agencies. The Boards of Corrections, Education, Mental Health and Mental Retardation (MHMR), and Game and Inland Fisheries, for example, are among those boards in the higher end of the cost range. Higher education boards of visitors are also among those boards that incur the highest State costs, although their costs range from \$39,000 to \$4,000 (Table 19).

Table 19

DIRECT STATE COSTS TO SUPPORT BOARD ACTIVITIES
(January 1, 1982 to December 31, 1982)

Board Type	Number of Boards	Total Cost	Range		Average
			Low	High	
Higher Education	15	\$253,479	\$3,416	\$39,571	\$16,899
Other Supervisory	30	\$319,794	0	\$53,803	\$10,660
Policy	13	\$212,796	\$ 446	\$55,165	\$16,369
Advisory	10	\$ 28,850	0	\$ 7,897	\$ 2,885
TOTAL	68	\$814,919			

Source: JLARC Survey of Board Costs.

Compared with the \$6 billion cost to operate Virginia State government during a year, \$800,000 may be a relatively small price to pay to ensure public participation on the 68 major boards in State government. Although the total cost to support board activities might be considerably greater if indirect staff support costs were included, agencies report that some members do not seek reimbursements or per diem compensation to which they are entitled under State law.

Some efficiencies in the operation of boards could be achieved, however. Agency directors and board chairpersons report that in some cases, changes in the frequency, duration, and location of meetings might result in cost savings. In one instance, the director indicated that the minimum number of six meetings per year required by

statute may be more than necessary. Agencies and boards should jointly seek to identify areas where board-related expenses might be reduced without diminishing the effectiveness of the board or creating an unmanageable workload. When a board and agency concur that the minimum number of meetings required by statute is more frequent than necessary, they should seek amendments in statute from the General Assembly.

ALTERNATIVES FOR CLARIFYING AND MODIFYING BOARD ROLES

Several options could be considered for clarifying or modifying board roles and responsibilities. Any of the following options would help to clarify the reporting relationships and authority of boards vis-a-vis agency directors and the Governor's secretaries. All options would also retain the citizen-government liaison role that board members serve. The options differ, however, in their degree of authority restriction and structure reconfiguration.

1. *Specify to whom all boards (or categories of boards) are accountable.* This option would clearly establish the position of boards in the chain of command, designate the limits of board authority, and help to eliminate confusion in areas where boards and secretaries appear to share some level of responsibility.
2. *Restrict boards from agency supervisory responsibilities.* This option could clarify the role of boards with respect to the director in the management of the agency, and direct boards' attention to such areas as policy-making, monitoring, and the unique contributions of their citizen role. Moreover, board authority would not overlap the managerial oversight responsibilities of the Governor's secretaries. Agency directors would clearly serve as agency heads and be accountable to the Governor through the secretaries for the performance of their agencies.
3. *Grant boards only advisory or advocacy responsibilities.* This option would further ensure that boards do not become involved in agency operations, and would avoid overlapping responsibilities and confused authority with respect to the Governor's secretaries and agency heads. Board members would still serve a vital liaison role by communicating citizen concerns to agency directors, secretaries, and other State officials and by assisting in the development of policy proposals and recommendations. Final authority for policy and administrative decisions would clearly reside elsewhere in the management hierarchy, however.

4. *Create umbrella boards that oversee similar programs or agencies.* This option could achieve greater coordination in service delivery and foster cooperative efforts to address common concerns. The number of boards aligned with agencies on a one-to-one basis would also be reduced. As a result, boards' involvement in individual agencies' operations would be minimized, but the level of authority would need to be limited to prevent an overlapping coordinative role with the secretaries.
5. *Create limited-duration task forces to focus on specific issues.* Agencies and secretaries could benefit from the expertise of knowledgeable individuals on the issue under study. Expertise could be pooled for problem-solving purposes, and disbanded when the task was accomplished. Proliferation of boards would be limited, and involvement in agency operations would be avoided. To prevent duplicated efforts, the charge to the task force should be distinct from the responsibilities of existing government entities.

IV. CONCLUSION AND RECOMMENDATIONS

Under the broad mandate to determine the most efficient and effective structure of the executive branch, JLARC has assessed the role of citizen boards within the structure. Renewed interest in assessing the role of citizen boards has been fueled by the evolution of a professional management orientation in Virginia. This orientation is exemplified by recruitment of professional managers to run State agencies; centralization of major administrative support functions such as budgeting and accounting; and alignment of agencies with similar missions within broad functional areas. Perhaps the most dramatic change has been the creation and evolution of the Governors' secretaries as policy coordinators and functional area managers.

Virginia, however, retains its strong traditional commitment to citizen participation on boards to ensure that State government remains responsive to the public it serves. How to retain and maximize citizen participation without impeding the development of a professionally managed, and efficiently and effectively structured executive branch is a continuing concern. This concern is particularly relevant now that the secretaries have been assigned stronger organizational, program policy, and oversight responsibilities that parallel those of many boards.

After examining the characteristics of all boards, JLARC focused on the 68 "major" boards with purviews that encompass the entire missions of their associated State agencies. These boards were selected because their breadth of authority places them in positions to substantially influence the operation of State agencies. They also have policy and oversight roles that are shared by the Governor's secretaries. Furthermore, the level of authority granted to these boards has been debated in previous reorganization studies. This concern can be expressed in the form of a question: should boards have final authority for developing policies and supervising their implementation by agencies, or should boards serve only as policy advisors in an adjunct capacity to agencies?

Previous studies generally recommended a more limited operational role for boards. The General Assembly has acted on a case-by-case basis to reduce the operational authority of individual boards. Statutes currently establish three general types of major State boards:

- 45 boards are responsible for supervising their respective agencies
- 10 boards are clearly limited to an advisory capacity

- 13 boards are directed to exercise an intermediate level of authority (by serving quasi-legislative, quasi-judicial, and other functions but not providing agency supervision).

JLARC assessed the roles of these three different types of boards using the principles applied in previous studies. Methods included mailed questionnaires to board chairpersons and board members, personal and telephone interviews with chairpersons and agency directors, attendance at board meetings, and review of minutes, and other meeting materials. Generally, the research tested the assumptions that (1) board responsibilities and levels of authority would differ but be consistent among categories of boards; (2) board involvement in activities would be commensurate with assigned levels of authority; and (3) accountability and reporting relationships would be clearly defined, understood, and implemented.

Conclusions tended to confirm the concerns of previous studies, particularly regarding the inconsistent exercise of supervisory authority by boards. However, for the most part, JLARC found that boards do fit within broadly defined categories of supervisory, policy, and advisory authority. Nevertheless, statutes are not sufficiently specific in some cases to differentiate clearly among board and agency director responsibilities for budgetary and personnel functions or for establishing day-to-day operational policies. Additionally, boards often exceed or fall short of expected levels of activity. The relationship of boards and agencies to the management structure provided by the secretaries is particularly unclear.

A number of ways to clarify or modify board roles and responsibilities are presented throughout this report. After assessing the overall implications of these as a group, JLARC staff developed the following recommendations as a proposal for legislative and executive consideration. Central to this proposal is the principle that boards should be authorized to exercise only the level and type of authority necessary to fulfill their statutory responsibilities. Supervisory authority, in particular, should be assigned only where clearly warranted. The following proposal attempts to preserve meaningful citizen participation on State boards, yet permit an effective and efficient structuring of the management responsibilities within the executive branch.

Staff Recommendation 1: The General Assembly should adopt statutory language to clearly establish criteria for determining the need for a board, its level of authority, and complementary responsibilities consistent with the level of authority. Specific categories of boards should be created and each board should be assigned to one of the categories.

To clearly establish the responsibilities of boards and the limits of their authority, criteria should be specified in statute to identify whether a board should:

1. have an agency-wide purview
2. function as more than a formal source of citizen advice
3. function as the supervisory body of the agency

The following types of definitions should be incorporated within statutes and should be used when assigning a new board's level of authority or reassessing the authority of an existing board:

- *Supervisory boards* are the entities responsible for agency operations including the employment and supervision of personnel and approval of the budget. These boards appoint the agency head and ensure that the agency head complies with all board and statutory directives.
- *Policy boards* may be specifically charged by statute to develop policies and regulations. Specific functions of the board may include rate setting, distributing federal funds, and adjudicating regulatory or statutory violations, but each power is to be enumerated by law.
- *Advisory boards* provide advice and comment from knowledgeable citizens when agencies develop public policies. They also articulate the concerns of particular populations. This type of board should be created if policies are closely circumscribed by State and federal laws and regulations, or if the board is not intended to serve a rule-making purpose.

The guiding principle for assigning a level of authority should be that a board will be granted only the level and type of authority that is necessary to carry out its responsibilities. Moreover, the continuing need for an assigned level of responsibility should be periodically reassessed.

Staff Recommendation 2: The General Assembly should repeal supervisory authority for 16 boards and continue such authority only for the higher education boards of visitors, boards that by law appoint the administrative head of their agencies, and the Board of Education.

These boards are:

- | | |
|---|--|
| • State Board of Elections | • Highway and Transportation Commission |
| • Commission on Local Government | • Marine Resources Commission |
| • State Milk Commission | • Virginia Historic Landmarks Commission |
| • Board of Directors, Virginia Truck and Ornamentals Research Station | • Virginia Commission for the Arts |
| • State Library Board | • Board of the Rehabilitative School Authority |
| • Virginia Public Telecommunications Board | • Virginia Fire Commission |

- Board of Agriculture and Consumer Services
- State Air Pollution Control Board
- State Water Control Board
- Virginia Council for the Deaf

Important board contributions do not reside in the day-to-day administration of State agencies but rather in their exercise of a range of quasi-legislative, quasi-judicial, advisory, advocacy and other responsibilities. Part-time lay boards cannot supervise agencies as effectively as full-time professional administrators. In the past, the General Assembly deleted supervisory responsibilities of boards when they became involved in the daily administration at the expense of their other statutory responsibilities.

Boards that appoint agency directors or college presidents are the only boards ultimately accountable for the performance of these individuals. In these instances, the board serves as the governing body and is clearly expected to serve in a corporate supervisory capacity to ensure that the director and staff fully implement board and statutory directives. To adequately exercise their supervisory level of authority, these boards must have control of two key operating functions: personnel and budget.

Boards whose *Code* provisions include "supervisory" language, but which serve adjacent to a director appointed by the Governor, have no direct control over the director. The limits on the supervisory authority of the 16 boards in this category are vague, and therefore they are not clearly the governing bodies of their agencies. Boards that do not appoint agency directors should neither be authorized to employ personnel nor approve agency budget requests. Without supervisory authority, these boards should not interpret policy-making responsibilities as the authority to establish administrative procedures. It is important to note that no other specific or general responsibilities of these boards would be affected by this recommendation other than to vest supervisory, personnel, and budget authority in the agency directors.

The following amendments to the general responsibilities of boards, commissions, and institutions in Title 9 of the *Code of Virginia* would accomplish this recommendation:

General Authority of Boards and Agency Directors.

- A. Notwithstanding any provision of law to the contrary, the agency administrator of each executive branch agency shall have the following general powers and duties except those directors in 2.1-41.2 that are appointed by their respective boards and the Board of Education:

1. To supervise and manage the department or agency;
 2. To employ such personnel as may be necessary subject to Chapter 10 of Title 2.1 and within the limits of appropriations made therefore by the General Assembly;
 3. To prepare, approve, and submit all budget requests for appropriations and be responsible for all expenditures pursuant to appropriations.
- B. No provision in section A shall restrict any other specific or general powers and duties of executive branch boards granted by law.

The only boards that appoint their agency heads and, consequently, would be authorized to supervise their respective agencies are:

- The 15 higher education boards of visitors (including the Virginia Community College System Board)
- Commission of Game and Inland Fisheries
- Virginia Supplementary Retirement System
- Virginia Port Authority
- State Council of Higher Education in Virginia
- Jamestown-Yorktown Foundation
- Schools for the Deaf and Blind
- Virginia Museum of Fine Arts
- Science Museum of Virginia

Although not listed as exclusions to §2.1-41.2 of the *Code of Virginia*, three boards, the Marine Products Commission, Commonwealth's Attorneys Services and Training Council, and the Compensation Board, appoint the full-time administrators of their small agencies. These three boards, along with the constitutionally established Board of Education, should therefore also be classified as supervisory boards.

Staff Recommendation 3: The General Assembly should clarify or modify the level of authority for five additional boards.

These boards are:

- Board of Commerce
- Commission of Health Regulatory Boards
- Board of Housing and Community Development
- Board of Military Affairs
- Board of Visitors of Gunston Hall

Two policy boards, the Board of Commerce and the Commission of Health Regulatory Boards, do not meet the criteria for assigning a policy level of authority. Although the scope of their responsibilities is somewhat more broad than other advisory boards, current statutes primarily give them the authority only to make recommendations to the agency, Governor, or General Assembly in their respective areas of responsibility. Consequently, these two boards should be assigned an advisory level of authority to clearly establish limits on the exercise of their responsibilities.

A third policy board, the Board of Housing and Community Development, has more limited powers than other policy boards but more authority than advisory boards. Regulatory responsibilities currently split between the agency director and the board should be consolidated in one or the other, and the board should be categorized accordingly.

Two advisory boards, the Board of Military Affairs and the Board of Visitors of Gunston Hall, have been previously inactive. If the Board of Military Affairs is perceived as serving a useful role, then it should be activated. If it continues to be inactive as it has in the past, there is no compelling reason to continue its existence.

If deed restrictions bind the State to retain the advisory Board of Visitors of Gunston Hall, then the board should actively fulfill the conditions of the deed that require it to advise the Governor on the management of Gunston Hall. The Director and the supervisory Board of Regents should cooperate with the current advisory board to enable it to overcome the inactivity of previous boards.

Staff Recommendation 4: The General Assembly should ensure that the Governor (or by delegation, the respective Secretary) is clearly responsible for holding agency heads or, under certain circumstances, supervisory boards accountable for the discharge of their powers and duties, except the institutions and agencies responsible for primary, secondary, and higher education.

To clarify lines of authority within the management hierarchy and to ensure accountability at the agency level, the "agency head" must be identified as either the board or agency director. When boards are responsible for appointing their agency directors, the General Assembly has established these boards in a meaningful supervisory capacity. In these instances, the boards are ultimately accountable for the performance of their agencies and of the directors selected to administer agency programs. The agency administrators, therefore, are directly accountable to these boards. The boards, in turn, are accountable to the Governor through the appropriate Secretary for all (administrative, fiscal, and program) aspects of agency operations.

The higher education boards of visitors, the Board of Education, and the State Council of Higher Education in Virginia (SCHEV) are clearly the supervisory heads of their respective institutions and

agencies. Ultimate accountability for primary, secondary, and higher education in Virginia is defined by law. Virginia tradition preserves the relatively autonomous status of education from executive branch control, although the education institutions are ultimately accountable to the General Assembly. The configuration for coordinating education in the executive branch will depend upon General Assembly actions to clarify the role of the Secretary of Education. Regardless of changes of this kind, the boards of visitors, Board of Education, and SCHEV should be recognized as the supervisory heads of their institutions, through whom the presidents, superintendent, and director must report.

All other agency directors appointed by the Governor should be directly accountable to the Governor, through the respective secretary, for the administrative, fiscal, and program performance of their agencies. Regardless of their current level of authority, boards that do not appoint their agency directors should be responsible to the Governor, through the secretary, for their specifically assigned statutory responsibilities, but not for the administration of their agencies. Supervisory language for the 16 boards that serve adjacent to an agency director appointed by the Governor should therefore be deleted to avoid confusion as to who serves as the administrative head of the agency.

Staff Recommendation 5: The General Assembly should delete the personnel employment authority of the boards listed below that do not appoint their respective agency directors.

These boards are:

- State Air Pollution Control Board
- Virginia Commission for the Arts
- State Board of Elections
- Virginia Historic Landmarks Commission
- State Library Board
- Commission on Local Government
- State Milk Commission
- Board of the Rehabilitative School Authority
- Virginia Soil and Water Conservation Commission
- State Water Control Board

These 10 boards are currently authorized to employ necessary personnel for their agencies, even though they do not appoint their agency directors. Line accountability for staff performance is confused when the director is appointed by the Governor, but agency staff are appointed by the board. Conflict between agency directors and boards may occur over the selection of personnel and staffing of agency activities if boards choose to exercise this prerogative.

In practice, few supervisory boards (other than higher education boards of visitors) exercise their authority to employ personnel. Restricting boards that do not appoint their agency directors from

hiring personnel would not alter current practice. Such action, however, would prevent boards from participating in an administrative decision that should reside with the agency director, and would recognize that the agency head is responsible for the performance of agency staff.

Staff Recommendation 6: The General Assembly should specifically charge supervisory boards that have authority to appoint their agency heads with the authority to approve agency budget requests. All other boards should be authorized only to review agencies' budgets.

Vague or absent statutory budget language confuses board authority to participate in the review and approval of the agency budget. All higher education boards of visitors approve the institutions' final budget requests. Of the remaining supervisory boards, some interpret their supervisory or fiscal responsibilities as the authority to approve their agency budgets; others do not. In some cases, supervisory boards do not participate at all in agency budget processes.

Other than in instances where the board exercises supervisory control through the appointment of the agency director, all agency directors should be responsible for the technical tasks of drafting and submitting their agency budgets, as well as approving their agencies' final budget requests consistent with the Governor and secretaries' directives. No change in board practice would occur in their technical participation, since none report they draft the budget. Although some boards would no longer approve agency budgets, their participation in this process could still be substantial if they chose to use budget development discussions as a means to communicate their policy concerns and priorities.

These boards, in fact, would be more likely to provide early input and substantive review if they did not have budget approval authority. Currently, some policy and advisory boards actively review and participate in budget development although they do not approve the budget. By authorizing boards to review agency budgets, boards could become involved to the extent they deem necessary, short of budget approval.

Staff Recommendation 7: The General Assembly should specifically define the areas of policy or agency operations that should be monitored by a board in those instances where a board is expected to serve in an oversight capacity.

Although general statutory monitoring provisions signal intent for a board to serve in a citizen oversight capacity, these general references are insufficient to identify which areas the board

should monitor. When a charge contains specific policy areas or activities to be monitored, board performance can be periodically assessed to determine compliance. The intent for agencies to cooperate with board efforts is also clarified. Furthermore, since Governor's secretaries have moved toward an oversight role, it has become even more important to specify the areas of agency activities that boards are expected to monitor.

Specific monitoring responsibility is also assigned to boards administratively. Comptroller Directive 4-82 requires all agencies to provide their respective boards with financial information to ensure "that the senior management, commissions and boards of the Commonwealth's agencies and institutions are supported by sound financial management practices."

Staff Recommendation 8: The General Assembly should define the unique category of "citizen" board member in statute to exclude individuals with affiliations related to the purpose of a board.

Nationwide, there is growing interest in balancing professional and interest group perspectives on boards with those of unaffiliated citizens. In Virginia, ten percent of the 1,990 executive branch board positions identified in this study are required to be filled by the unique category of citizen member.

With the exception of §54-1.18:1 of the *Code of Virginia* that applies only to members on professional regulatory boards, no statutory provision establishes a definition of citizen member. JLARC survey results illustrate that at least on the 68 major boards, "citizen member" composition requirements insufficiently distinguish between members that meet this requirement, a professional affiliation requirement, or a position with no attached requirements. Eighty percent of the members who reported they filled a citizen member requirement were also affiliated with a profession directly related to the board's purpose. Twenty percent of these individuals were formally affiliated with a related professional or trade association.

If the General Assembly desires to restrict or encourage certain criteria for citizen membership, a specific definition should be adopted in statute. Individuals with related professional affiliations, for example, could be excepted from serving in this category of board membership. By adopting language similar to the following provisions in §54-1.18:1, the qualifications of citizen board members on all boards would be more precisely defined:

A citizen member of a board shall be a person who
(i) is not by training or experience a practitioner of the profession or occupation regulated by the board (ii) is not the spouse, parent, child, or

sibling of such a practitioner, and (iii) has no direct or indirect financial interest, except as a consumer, in the practice of the profession or occupation regulated by the board.

Staff Recommendation 9: Whenever applicable, the General Assembly, Governor, and agencies should consolidate or eliminate boards to reduce the overall size, complexity and cost of State government.

As agencies are consolidated during executive agency reorganizations, the collegial bodies associated with the merged agencies should also be consolidated. Boards with similar orientations should also be independently considered for consolidation, regardless of agency reorganizations.

When boards are not needed to supervise, develop regulations, or adjudicate cases for a particular agency, consolidation of any of the 222 boards would serve several purposes. The span of control for the Governor and secretaries would begin to take on more manageable proportions. Board consolidations could foster cooperative problem-solving and policy-development efforts that transcend individual agency orientations. Consequently, boards would be less likely to involve themselves in the daily administration of agencies. An ancillary benefit of fewer boards is some savings in direct reimbursement of board members and indirect staff support costs.

Staff Recommendation 10: To the extent possible, agencies and their boards should take steps to contain the direct and indirect costs of board meetings.

According to some board chairpersons and agency directors, the frequency, direction, or location of board meetings might be altered to more efficiently conduct the business of the board and reduce board-related expenses. The director of one agency suggested that the statutory minimum of six meetings per year may be more frequent than necessary. Other individuals reported that the board might make better use of its time by holding fewer but longer meetings. Although most boards do not pay to rent meeting facilities, agencies reimburse travel and lodging expenses for board members that must travel to distant meeting locations.

Boards and agencies should consider agency preparation and meeting support costs, and board site visit needs and workload demands when determining and implementing the most productive and efficient meeting schedules. When a board and agency concur that it is appropriate to hold less than the minimum number of meetings required by statute, they should seek amendments in statute from the General Assembly.

Staff Recommendation 11: The General Assembly may wish to explore and possibly specify in statute the extent to which task forces may be created, their duration, and the appropriate use of staff support from State agencies.

Most State boards and their responsibilities are created in statute by the General Assembly. During the last two years, however, 14 collegial bodies, primarily task forces, have been created by executive order to advise the Governor in such areas as the economic outlook in Virginia, federal block grants, and physical fitness. During the previous eight years, a total of six executive order bodies were established by the former two Governors.

In many instances, the responsibilities of the task forces overlap the statutory responsibilities of other State entities. Moreover, to fulfill their charge, the task forces often draw upon staff assistance from State agencies. Although the creation of such collegial bodies does not appear outside the Governor's authority, the General Assembly may wish to review responsibilities, duration, and staff support of task forces. Statutory parameters may be necessary to avoid duplicated efforts and explicitly define permissible uses of staff support.

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Appendix B: Board Level of Operational Authority

Appendix C: Agency Responses

APPENDIX A TECHNICAL APPENDIX SUMMARY

JLARC policy and sound research practice require a technical explanation of research methodology. The full technical appendix for this report is available upon request from JLARC, Suite 1100, 910 Capitol Street, Richmond, Virginia 23219.

The technical appendix includes a detailed explanation of special methods and research employed in conducting the study. The following areas are covered:

1. Board Classification. The JLARC board and commission review focused on boards with a purview that encompasses the entire mission of their affiliated State agency or institution of higher education. A systematic review of statutory responsibilities assigned to boards identified 68 executive boards with this purview. A classification based on the level of operational authority was then assigned to each board on the basis of its statutory responsibilities. This classification scheme guided subsequent comparisons of the statutory responsibilities and the reported activities of three different types of boards - supervisory, policy and advisory.

2. Board Chairperson Survey. JLARC mailed a written questionnaire to each chairperson of the 68 boards to: (1) identify boards' level of participation in personnel, budget, policy, monitoring, and executive agreement decisions, (2) identify where executive branch reporting relationships are not clear, and (3) identify where board responsibilities are perceived to overlap with others. Sixty-six completed questionnaires were returned. Questionnaire administration conformed to accepted methodological standards for survey research: the questionnaire was pretested with 10 chairpersons; the accuracy of 20 percent of the questionnaires were verified by telephone interviews; and 12 additional respondents were called to clarify responses to on individual items.

3. Board Member Survey. A second questionnaire was mailed to a representative sample of 141 board members on the 68 boards. One hundred twenty-six responses were received. Board members were asked to report on their affiliations, participation in board-related activities, significant or unique contributions, and qualifications judged to be necessary for their respective boards. The written questionnaire was pretested and verified by telephone interviews. Survey results were checked for consistency with other survey responses and statutory provisions. Ninety-five out of 100 times, the percentage of all board members with each affiliation will be within a maximum error of plus or minus 8 percent of the affiliation percentages for sampled board members.

4. Case Study Review. To gather additional information on board activities, seven of the 68 boards were selected for case study review. Three supervisory boards, three policy boards, and one advisory board were selected. For these boards, JLARC conducted personal interviews with the board chairperson and agency director. Board meeting agenda, minutes, and other board related materials were also reviewed.

5. Survey of Board Costs. JLARC requested each agency director of the 68 agencies to compile board-related expenditure data for calendar year 1982. Expenditure figures were provided for direct costs for board member per diem and expense reimbursements, meals, lodging, travel, meeting facility rental, and supplies. Indirect salary costs for the time staff spent attending and preparing for board meetings could not be uniformly calculated and therefore were not requested.

APPENDIX B
BOARD LEVEL OF OPERATIONAL AUTHORITY

<u>Board</u>	<u>Level of Authority</u>		
	<u>Supervisory</u>	<u>Policy</u>	<u>Advisory</u>
<i>Administration and Finance</i>			
Board of Trustees, Virginia Supplementary Retirement System	X		
Compensation Board	X		
State Board of Elections	X		
Virginia Public Telecommunications Board	X		
Commission of Local Government	X		
Personnel Advisory Committee			X
<i>Commerce and Resources</i>			
Advisory Board on Industrial Development			X
Board of Agriculture and Consumer Services	X		
Board of Commerce		X	
Board of Conservation and Economic Development		X	
Board of Visitors, Gunston Hall			X
Board of Housing and Community Development		X	
Board of Trustees, Jamestown-Yorktown Foundation	X		
State Air Pollution Control Board	X		
State Water Control Board	X		
Advisory Council to the Virginia Employment Commission			X
Commission of Game and Inland Fisheries	X		
Commission of Outdoor Recreation**	X		
State Milk Commission	X		
Virginia Historic Landmarks Commission	X		
Virginia Marine Products Commission	X		
Virginia Marine Resources Commission	X*		
Virginia Soil and Water Conservation Commission	X		
Council on the Environment		X	
<i>Education</i>			
Board of Directors, Science Museum of Virginia	X		
Board of Directors, Virginia Truck and Ornamentals Research Station	X		
Board of Education	X		
Board of Trustees, Virginia Museum of Fine Arts	X		
Board of Visitors, Virginia Schools for the Deaf and Blind	X		
State Board of Community Colleges	X		
State Library Board	X		
Virginia Commission for the Arts	X		
State Council for Higher Education in Virginia	X		
Board of Visitors, Christopher Newport College	X		

<u>Board</u>	<u>Level of Authority</u>		
	<u>Supervisory</u>	<u>Policy</u>	<u>Advisory</u>
Board of Visitors, College of William and Mary	X		
Board of Visitors, George Mason University	X		
Board of Visitors, James Madison University	X		
Board of Visitors, Longwood College	X		
Board of Visitors, Mary Washington College	X		
Board of Visitors, Norfolk State University	X		
Board of Visitors, Old Dominion University	X		
Board of Visitors, Radford University	X		
Board of Visitors, University of Virginia	X		
Board of Visitors, Virginia Commonwealth University	X		
Board of Visitors, Virginia Military Institute	X		
Board of Visitors, Virginia Polytechnic Institute and State University	X		
Board of Visitors, Virginia State University	X		

Human Resources

Advisory Board, Division for Children			X
Advisory Board on the Aging			X
Board of Rehabilitative Services			X
State Board of Health		X	
State Board of Social Services		X	
State Board of Mental Health and Mental Retardation		X	
Virginia Board for the Visually Handicapped		X	
Commission of Health Regulatory Boards		X	
Advisory Committee to the Division of Volunteerism			X
Virginia Council for the Deaf	X		
Governor's Job Training Coordinating Council		X	

Public Safety

Board of the Rehabilitative School Authority	X		
Board of Criminal Justice Services		X	
State Board of Corrections		X	
Virginia Fire Commission	X		
Commonwealths Attorneys' Services and Training Council	X		

Transportation

Board of Commissioners, Virginia Port Authority	X		
Board of Military Affairs			X
Board of Transportation Safety**			X
State Highway and Transportation Commission	X*		
Virginia Aviation Commission		X	

*Agency Director is also the Chairman of the Board.

**The agencies under these boards were consolidated with larger agencies on July 1, 1983. These boards would no longer meet the selection criteria for this review.

APPENDIX C

AGENCY RESPONSES

As part of an extensive data validation process, the Governor, the Governor's secretaries, executive agencies and other individuals with an interest in JLARC's review and evaluation effort were given an opportunity to comment on an exposure draft of this report.

Comments were solicited two ways. First, findings and recommendations from the exposure draft were presented to agency heads, board members, and other individuals attending the Governor's Critical Reevaluation Conference in September 1983. Second, copies of the exposure draft were distributed to the Governor, the Governor's secretaries, and the chairman of rectors of the boards and commissions. In each case written comments were requested.

Written responses were received from the Governor's secretaries, 66 agencies and institutions of higher education, and 58 other individuals. The responses from the Governor's secretaries are included in the appendixes of a companion volume to this report, entitled Organization of the Executive Branch in Virginia: A Summary Report. The written responses of agencies, institutions, and others are on file in the JLARC staff offices and may be inspected on request.

Appropriate technical corrections resulting from the responses have been made in this final report.

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