

**Special Committee to
Review the Study Commission Process**

Final Report

January 16, 1998

Special Committee Members

**Joseph W. Mayo, Clerk of the House
Joy J. O'Brien, Secretary of the Senate
Peter Chandler, Chief of Staff, Senate President's Office
Peggy Schaffer, Special Assistant, Speaker's Office
David E. Boulter, Director, Office of Policy and Legal Analysis**

Special Committee to Review the Study Commission Process

January 16, 1998

The Honorable Elizabeth H. Mitchell, Speaker
Maine House of Representatives
Office of the Speaker
State House
Augusta, Maine 04333

Dear Speaker Mitchell:

The Special Committee to Review the Study Commission Process is pleased to submit the attached report that discusses the current legislative study process and makes recommendations for improvement. We appreciated the opportunity to study this issue and offer our suggestions for your consideration.

The committee reviewed the current study commission process and identified a number of barriers to establishing legislative study commissions and conducting timely and efficient studies. These barriers decrease the ability of the Legislature to direct the course of its own studies to meet legislative needs. The committee concluded that making relatively few, but important, changes to the current study commission process would significantly improve the effectiveness of study commissions and allow for efficient convening and conduct of the commissions. The areas where a change may improve the process are reflected in the 15 recommendations made by the committee.

We would be pleased to review our findings and recommendations with you in some detail and answer any questions you may have about the process or this report.

Sincerely,

Joy J. O'Brien
Secretary of the Senate

Peggy Schaffer, Special Assistant
Speaker's Office

David E. Boulter, Director
Office of Policy and Legal Analysis

Joseph W. Mayo
Clerk of the House

Peter Chandler, Chief of Staff
Senate President's Office

Table of Contents

Executive Summary

Introduction 1

Special Committee's Charge 2

Special Committee Meetings 2

Background and Historical Perspective 2

Authority for Studies 3

Summary of Findings 4

General Observations and Findings 4

Purposes and Goals of Legislative Studies 4

Major Problems Identified 5

Recommendations for Improvement 12

Appendices 17

Executive Summary

Introduction

Each session the Maine Legislature considers numerous bills that would make new law or amend or repeal existing laws. While the vast majority of legislation is considered and finally acted upon by the legislature in the same session in which it is introduced, some legislation warrants further deliberation or study before a final decision is made. When additional time or information is needed to fully evaluate issues, the Legislature often establishes a special committee or commission to: study the matter during the interim between legislative sessions; evaluate options; and make recommendations to the full legislature for consideration.

Over the last decade, the manner in which study commissions have been established and members appointed has changed dramatically, creating a study commission process that increasingly results in late convening study commissions and a cumbersome appointment process. As a result, study commissions often work under nearly impossible schedules to complete their work and legislators often find that they represent a minority of members on study commissions and have little ability to direct the course of legislative studies.

On November 12, 1997, Speaker of the House Elizabeth H. Mitchell convened a special committee to review the study commission process and develop recommendations by January 1998 for improving the process.

Summary of findings

From 1940 until the 1980's, virtually all legislative studies were authorized through the use of a form of joint order called a study order. Study orders were directed to joint standing or joint select committees. Most of the members of the study committees were legislators. In the 1980's study orders continued to be used although most studies by joint standing committees were authorized by the Legislative Council. On rare occasions, a resolve, private and special law or unallocated public law was enacted to establish a study. From approximately 1987 on, the number of studies established by legislation, rather than by study order or Legislative Council authorization, increased steadily. This year, over 35 studies were authorized and only 2 were pursuant to joint order.

The committee finds that there are significant procedural barriers to conducting effective and timely legislative studies. These barriers have developed over a period of a decade or so and have resulted in a decrease in the ability of the Legislature to direct the course of its own studies, efficiently appoint members and convene study commissions, study and report on matters in a timely fashion, and compensate members equitably. These barriers produce an environment that is not conducive to careful evaluation of important policy issues and options, and ultimately lead to a decline in the

overall quality and relevance of legislative studies.

The committee finds that virtually all of the problems associated with the current study commission process may be grouped into four broad categories: lack of legislative control over legislative studies; cumbersome procedures for establishing study commissions; inconsistencies in funding studies and compensation for members; and inconsistencies among study commissions due to a lack of drafting guidelines for creating study commissions and establishing uniform study procedures.

The committee also finds that making relatively few, but important, changes to the current study commission process will dramatically improve the effectiveness of legislative study commissions, allow for efficient convening and conduct of study commissions and bring the process more in line with the process historically used by the Legislature to conduct studies. Foremost among the changes is the use of study orders as the primary legislative instrument to establish study committees and greater legislative influence in the selection of study commission members.

Recommendations for improvement

1. Reaffirm legislative policy on legislative studies. The committee recommends that the Legislature reaffirm in its joint rules that the primary purpose of legislative studies is to assist legislators in the policy decisions they must make and for that reason the Legislature should establish and fully direct the course and scope of studies in ways that will assure the studies will best meet legislative needs.

2. Return to use of joint standing and joint select committees as principal study committees. The committee recommends that the Legislature return to the use of joint standing and joint select committees as the principal groups to conduct legislative studies. Legislators should constitute the membership of these legislative study commissions. Use of commissions that include broad representation of non-legislators should be reserved for high profile or other special occasions when participation by prestigious outside dignitaries or direct representation of another branch of government or interest groups on a study commission is essential to the success of the study.

3. Use study orders as principal legislative instrument for establishing studies. The committee recommends that study orders be the principal legislative instrument for establishing legislative studies and that joint standing committees consider and report out study orders in the same manner as legislation. Joint standing committees should have authority to report out joint orders requesting that a study be conducted. It is further recommended that if legislation is to be used to establish a legislative study, it first be approved for introduction by the Legislative Council.

4. Presiding officers appoint members. The committee recommends that the members of a legislative study commission be appointed by the presiding officers. Study language should not require that joint appointments be made and should not narrowly prescribe membership slots to be filled for a study.

5. Presiding officers appoint chairs. Except in the case where a study commission is very small (e.g., 3 to 5 members), each study commission should have joint chairs, one appointed by the President and one appointed by the Speaker. The chairs should be appointed at the time of appointment of the other members. In the case of a small study commission, the chair should be appointed by the presiding officer of the body of the originating order or legislation.

6. Keep size of study commissions manageable. The committee recommends that the size of study

commissions be at least 3 but not more than 13 members, a size consistent with that of joint standing committees.

7. Compensate members of study commissions equitably. The committee recommends that as a matter of policy all members of study commissions, including public members unless otherwise compensated by their employers, be entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of a study commission.

8. Conclude studies prior to start of legislative sessions. The committee recommends that all reports of study commissions which are to be submitted to the first regular session of the next or subsequent legislature be submitted not later than the first Wednesday in November preceding the convening of the first regular session of the next legislature, and all reports of study commissions which are to be submitted to the second regular session be submitted not later than the first Wednesday in December preceding the convening of the second regular session.

9. Fund studies through legislative appropriations. The committee recommends that all legislative studies be funded through an appropriation from the General Fund, and the legislative account include a study line to which studies should be budgeted and study expenses charged. If funding from other sources is determined to be necessary, the Legislative Council rather than study commission members should make the requests for funds.

10. Establish formal study table. The committee recommends that the Legislature establish a study table in the Senate on which all legislative study requests, regardless of their funding source, be placed. It further recommends that the Legislative Council review the proposed studies and set priorities for allocation of budgetary and staffing resources. In setting priorities for studies, the Council should consult with the joint standing committees.

11. Staff only legislative studies using Legislative Council staff. The committee recommends that legislative studies be staffed by non-partisan staff assigned by the Legislative Council, and that the Legislature provide staffing only for studies that are either chaired by legislators or in which legislators constitute the majority of members.

12. Place responsibility in offices to coordinate the convening of study commissions. The committee recommends that responsibility for the timely and orderly convening of legislative study commissions be placed in each office that is responsible for staffing the committees. The coordinating office or offices should provide the presiding officers with periodic reports on the progress being made to convene study commissions.

13. Actively manage study expenses. The committee recommends that study commissions and study staff be charged with primary responsibility for managing study budgets and be accountable to the Legislative Council for operating within budgeted resources.

14. Provide formal guidance for drafting study orders and legislation. The committee recommends that proposed drafting guidelines for study orders and legislation be prepared by non-partisan staff and submitted at the beginning of each first regular session for review and approval by the Legislative Council. The guidelines should provide for model orders and legislation that include all necessary elements to properly convene and carry out a study, including language for extensions of reporting dates for studies that whenever possible permit extensions to be granted without having to file legislation for that extension.

15. Specify study commission process in joint rules and Legislative Council policies. The committee recommends the Legislature incorporate appropriate changes to its joint rules so the rules establish the major provisions of the legislative process and policies relating to legislative studies. The committee also recommends that prior to the convening of the first regular session of the 119th Legislature, the Legislative Council adopt administrative policies necessary to implement the changes to the study commission process recommended in this report.

Introduction

Each session the Maine Legislature considers numerous bills that would make new law or amend or repeal existing laws. While the vast majority of legislation is considered and finally acted upon by the legislature in the same session in which it is introduced, some legislation warrants further deliberation or study before a final decision is made. In addition, there are times when the legislature wishes to seek additional information or comment from others on matters of legislative interest before initiating major changes in public policy, law or governmental operations. When additional time or information is needed to fully evaluate issues, the Legislature often establishes a special committee or commission to: study the matter during the interim between legislative sessions; evaluate options; and make recommendations including proposed legislation to the full legislature for consideration. The Legislature has made extensive use of studies over the years and has coordinated the establishment and conduct of study commissions through a legislative research committee or the Legislative Council.

Over the last decade, the manner in which study commissions have been established and members appointed has changed dramatically. This change and other factors have contributed to a study commission process that increasingly results in late convening study commissions and a cumbersome appointment process. As a result, study commissions often work under nearly impossible schedules to complete their work and frequently have to narrow the scope of their study in spite of their legislative charge in order to present their report in time for the Legislature to consider it. Legislators often find that they represent a minority of members on study commissions and have little ability to direct the course of legislative studies. In addition, the current process results in inequities in funding of studies and in compensation of study commission members.

These factors have led to a sense among legislators and others involved with legislative study commissions that the process can be improved significantly: improvements that will result in both an increased satisfaction with the process by study commission members and a greater sense of contribution to the legislative process through more thorough and timely study reports.

On November 12, 1997, Speaker of the House Elizabeth H. Mitchell convened a special committee to review the study commission process and develop recommendations by January 1998 for improving the process.

Special committee's charge

The committee was charged with examining the current legislative process for establishing interim study commissions and recommending ways to improve the process. Specifically, the committee was

to examine:

1. the legislative instrument(s) used to establish study commissions and committees, particularly the use of joint orders and legislation (enactment of a bill);
2. commission membership and appointing authority;
 - joint appointments
 - representation of non-legislative groups and organizations and sources of authority for appointment
3. staffing of study commissions;
4. compensation of members; and
5. funding of study commissions.

Special committee meetings

The committee met on November 24, December 2, December 8, December 18 and December 23, 1997 and January 16, 1998. It reviewed various study commission-related materials, current statutes, joint rules of the Legislature and past study orders and bills. The following represents the findings of the special committee and its recommendations for improvement.

Background and historical perspective

In 1940, the Legislature enacted a bill that established the Legislative Research Committee. The research committee consisted of 10 members: 3 senators and 7 representatives. It was charged with providing the legislature with impartial and accurate information and reports. The committee coordinated all studies internal to the legislature and also required agencies to conduct studies. It is of some interest that the bill became law when the Legislature overwhelmingly overrode the Governor's veto of the bill. The research committee existed until 1973 when the Legislative Council was established.

From 1940-1973, virtually all legislative studies were authorized through the use of a form of joint order called a study order. Study orders directed joint standing committees or the Legislative Research Committee to study and report on certain matters, and established joint select committees. Members of these committees were legislators. Some study orders requested or directed the participation of others, notably executive branch agencies.

From 1973 to approximately 1987, virtually all legislative studies were conducted through joint standing or joint select committees, again the members being legislators. Study orders were the principal means of establishing the studies although in the 1980's, studies by joint standing committees were authorized by the Legislative Council. On rare occasions, a resolve, private and special law or unallocated public law was enacted to establish a study. For example, according to records in the Law and Legislative Reference Library, 52 studies were authorized in 1977: 51 were established by study order and 1 by a P&S law. Studies authorized by legislation were usually associated with some longer term study commission (for example Low Level Radioactive Waste Commission).

From 1987 on, the number of studies established by legislation (rather than by joint order or

Legislative Council authorization) steadily increased. This year, over 35 studies were authorized and only 2 were pursuant to joint order. It is unclear exactly why there has been such a shift from study orders to legislation as the vehicle to establish studies. An increased opportunity for interest groups to have a voting member on a study committee is one explanation that has been offered.

The Legislative Council has served as a priority-setting and coordinating entity for the Legislature with respect to legislative studies since the elimination of the Legislative Research Committee.

General observations:

“ For nearly 50 years until the late 1980’s and the 1990’s, the primary vehicle used by the legislature for establishment of legislative studies appears to have been study orders (and more recently Legislative Council approval for studies by joint standing committees); extensive use of legislation to establish study commissions appears to be a recent development.

“ The Legislature has a long history of authorizing a research committee or the Legislative Council to coordinate and set priorities for legislative studies.

Authority for studies

The general authority to establish legislative study commissions or joint committees rests with the full legislature through enactment of legislation or adoption of an order, except that the presiding officers at their discretion have authority to establish House select and Senate select committees.

Study legislation is binding on all branches of state government to which it is directed. On the other hand, study orders are binding on the legislative branch and can invite, but not compel, participation or action by another branch of state government. Even though study orders are more limited in their application, study orders may still create studies that allow participation of other branches of government or members of the general public. For example, a study order can direct a study committee to invite the participation of certain agencies or groups in a study, including testifying before it or presenting information. Alternatively, it can direct the appointing authorities to invite a representative of an agency or group to be a member of the study committee. As with legislatively authorized studies, most if not all invited persons would likely accept the opportunity to join a study committee.

Pursuant to 3 MRSA '162(3), when the Legislature is not in session the Legislature Council is authorized to assign bills, resolves and studies to existing joint standing committees and joint select committees for consideration, request reports, studies and legislation from joint standing committees and convene meetings of joint standing committees and joint select committees.

Pursuant to 3 MRSA ' 162(8), all appropriations or allocations by the Legislature for specific studies to be carried out by joint standing or joint select committees do not lapse, but are carried forward. Account balances not fully expended are refunded to the Legislature. Certain other budget requirements are specified in 3 MRSA ' 165(7).

Summary of findings

The committee finds that there are significant procedural barriers to conducting effective and timely legislative studies. These barriers have developed over a period of a decade or so and have resulted in

a decrease in the ability of the Legislature to direct the course of its own studies, efficiently appoint members and convene study commissions, provide adequate staff support, study and report on matters in a timely fashion, and compensate members equitably. These barriers produce an environment that is not conducive to careful evaluation of important policy issues and options, and ultimately lead to a decline in the overall quality and relevance of legislative studies.

The committee also finds that making relatively few, but important, changes to the current study commission process will dramatically improve the effectiveness of legislative study commissions, allow for efficient convening and conduct of study commissions and bring the process more in line with the process historically used by the Legislature to conduct studies. Foremost among the changes is the use of study orders as the primary legislative instrument to establish study committees and greater legislative influence in the selection of study commission members.

General observations and findings

1. Purposes and goals of legislative studies

The primary purpose of legislative studies, unlike studies conducted by executive branch agencies or non-governmental organizations, is to assist legislators directly with policy decisions they must make. Legislatively conducted studies:

- “ provide legislators with information to fully understand complex issues and make informed decisions on matters of public policy and operations of state government;
- “ present excellent opportunities to bring outside subject area experts to the legislature to share their knowledge;
- “ provide an important forum to educate the public on legislative issues and other matters of public policy; and
- “ allow the legislature to direct the areas of study to meet its own information needs and appropriately shape policy recommendations from a legislative perspective.

2. Major problems identified

The committee finds that virtually all of the problems associated with the current study commission process may be grouped into four broad categories: lack of legislative control over legislative studies; cumbersome procedures for establishing study commissions; inconsistencies in funding studies and compensation for members; and inconsistencies among study commissions due to a lack of drafting guidelines for creating study commissions and establishing uniform study procedures.

A. Legislators are not in charge of legislative studies

- “ Legislators constitute a minority of membership on most study commissions.
- “ The current study process does not allow legislators to be in charge of legislative studies; it merely provides a legislative seat at the table. Therefore, legislators cannot direct studies to meet legislative needs.

- “ The executive branch and special interests exert a great influence in determining the structure and makeup of study commissions, and the scope and manner of study.
- “ The process for selection of a chair is often undefined or the selection is made after the commission is convened. The presiding officers or other legislators have little direct influence in selection of the study commission chair.
- “ Presiding officers have limited discretion to appoint study commission members due to required joint appointments, including joint appointments with the executive branch, or through selection criteria that allow little legislative discretion.
- “ When legislators do not constitute a majority of membership or chair a study, the role of legislative staff who staff the studies becomes confused.
- “ Fiscal note concerns lead to minimizing legislative membership on studies.
- “ Use of legislation to establish legislative studies requires the Governor’s approval.

Discussion. As was discussed above, the principal legislative instrument for establishing legislative study commissions over the last decade has become legislation. For example, of the 38 legislative studies authorized this session, 30 (79%) were through enactment of legislation, 5 by Legislative Council approval (including 3 staff studies), 1 by authority of the presiding officers and only 2 (5%) by joint order. As with any other law, study legislation is subject to all of the Constitutional requirements for passage, including opportunity for gubernatorial or a people’s veto, and may not become effective (unless passed as emergency legislation) until 90 days after the end of the legislative session. By definition, this means that: 1) the Governor must agree that the Legislature ought to study a particular issue; and 2) studies cannot get underway until well after the end of the legislative session.

Many recent study commissions have had a membership of 15 or more individuals, with legislators comprising a minority of the membership even though they are legislative studies. It is not unusual for legislators to represent 25 % or less of a commission’s membership. In some cases, there have been no legislators. Whereas in the past, departmental officials, special interest groups and members of the general public participated in legislative studies by appearing before and offering information to the study commission, in recent years they have been sitting directly on the commissions as fully participating, voting members. In some cases, they even chair study commissions. In order to minimize the fiscal impact of studies, joint standing committees and legislators sponsoring study legislation often will minimize the number of legislators on study commissions, further exacerbating the minority status of legislators on legislative studies. It is difficult for legislators to exert control over studies or final recommendations when they constitute a minority of the study commission.

Furthermore, legislative committee staff who provide staffing support to the study commissions find themselves taking primary direction from non-legislators, including executive branch officials, when legislators do not chair or constitute a majority of the commission membership. This represents an awkward role for legislative staff and limits the support staff can give to those legislators who do serve on the commissions.

Study legislation typically provides the President and the Speaker with the authority to make the

legislative appointments, though study legislation often limits their appointments to either appointing the members jointly (sometimes jointly with the Governor) or appointing individuals to fill certain narrowly prescribed “slots” representing particular special interest groups. Legislation typically provides that the Governor or interest groups make the other appointments.

Selection of the chair of a study commission often is not specified in the enabling legislation. When chair selection is not specified, it is left to the study commission members to select a chair from among themselves. While other members sometimes will defer to appointed legislators to serve as chairs, not all members will do so. In some cases, departmental officials as well as private sector individuals will chair legislative studies. By not specifying the chair or directing that the presiding officers appoint the chair of the study commission, the Legislature foregoes its opportunity to decide who should head the study to assure that legislative procedures, protocols and purposes are met.

B. Process for establishing study commissions is cumbersome and causes delay

- “ Use of legislation to create study commissions means a significant delay (90 days or more) in the startup of the studies unless the legislation is enacted as an emergency measure. For example, the Legislature adjourned sine die on June 20, 1997, but non-emergency study legislation (enacted much earlier than June 20) could not take effect until September 19, 1997 at the earliest. Delays in the actual convening of study commissions are often significantly longer than 90 days.

- “ Joint appointments slow appointment selection.

- “ The administrative process for appointing and convening study commissions is fragmented among numerous legislative offices. While those legislative offices have some involvement in the study commission process, no individual or office has overall accountability to assure that each aspect is completed in a timely manner.

- “ Without an early selection of a chair to provide direction, commission schedules and background information cannot be prepared to allow for an efficient start of the study process.

- “ The size of most study commissions is unwieldy and often too large to be effective.

- “ There is no formal mechanism such as a study table for setting legislative priorities and allocating resources to studies.

Discussion. In recent years study commissions have been established through enactment of legislation (bills) which, following passage by the Legislature and approval by the Governor, is not effective until 90 days following the close of the session.

The interim period between legislative sessions is a good time to conduct studies since legislators and committee staff can devote more time to studies. The interim between the first and second regular sessions typically is about 6 months. In most cases, however, studies created by legislation will not begin until at least 90 days following the close of the session. Allowing a little time for appointment of members of the study commission once the law is in effect, a study commission often will not be

convened until at least early October, only a couple of months before the Legislature reconvenes.

Study legislation requiring the President and the Speaker to make their appointments to study commissions jointly or jointly with the Governor creates logistical difficulties. It also unduly constrains the authority of the presiding officers to make appointments as they deem appropriate. The sheer logistics of developing multiple lists of names of potential appointees and meeting to negotiate each joint appointment is time consuming and unnecessarily burdensome on the appointment process. Furthermore, requiring the presiding officers to make their appointments jointly with the Governor severely undermines the independence of the legislative branch and allows the executive branch to block appointees to which it does not agree. The Governor's appointments typically are not required to be approved by the presiding officers.

Much study legislation of late has prescribed certain qualifying requirements for study commission appointees, in effect "slots" that also limit the discretion of the presiding officers in making their appointments. Some are less troublesome, such as requiring a particular joint standing committee to be represented on a study commission. Others, however, relate to special interest groups or other non-legislative appointees and the criteria for appointment are so specific as to require the presiding officers to appoint an individual from a specific organization.

In at least one study (P&S 1997, c.51) this session, some of the study commission members were appointed by neither the Governor nor the presiding officers. The law called for the chair of the study commission to appoint 6 of the 14 members, once the chair was appointed from among the initial group of 8 appointees. The manner and quality of appointments determine in large measure the quality of the study and the credibility of the study commission. Legislation such as this affords the Legislature little opportunity to assure quality or credibility.

Because in many cases the selection of chair is not made at the outset of the appointment process, there is no legislator or other individual who is authorized to provide direction to staff in preparing useful background materials in advance of the first meeting, developing agendas or work plans for the study, lining up policy area experts or coordinating the scheduling of initial meetings. Without this advance planning, it is difficult for study commissions to organize themselves quickly and effectively to carry out their charge.

Study commissions that have large memberships can become unwieldy. Some recent study commissions have had in excess of 20 members. Most appointees have work, home or other obligations that create demands for their time. As a result, significant logistical difficulties are often encountered with large study commissions that slow the study process, such as trying to schedule meetings when most members can attend. In addition, very large groups may tend to divide into factions, thus creating less opportunity for full participation by all members and less opportunity to develop a strong sense of working together to find common ground on issues.

The offices of the President and the Speaker assist the presiding officers in contacting and appointing study commission members and in sending initial letters of appointment to appointed members. The Secretary of the Senate and the Clerk of the House are notified of the appointments. The Legislative Information Office then contacts members to arrange the initial meeting of study commissions and prepares a notice of the meeting for mailing to the members. The Executive Director's Office convenes study commissions in the absence of the Chair of the Legislative Council and is responsible for commission budgets. Once the appointments are completed and the initial meeting arranged, staff from the Office of Fiscal and Program Review and Office of Policy and Legal Analysis staff the study

commissions. This process creates numerous opportunities for misstep, delay and lack of awareness of the status of the process by one or more offices. Each step in the process of convening a study commission needs to be coordinated so the process proceeds smoothly and expeditiously.

There is no study table or other formal mechanism by which the Legislature may set legislative priorities for studies and allocate its limited financial and staffing resources. There have been informal approaches by the Legislative Council to review proposed studies, including some this past session. However, there is no formally established, predictable process for reviewing all studies regardless of funding source to decide legislative priorities for studies.

C. Compensation of members & funding of studies are inconsistent & inequitable

- “ Compensation for legislative members has been inconsistent between study commissions, resulting in inequitable treatment of members. Some members receive per diem and expenses, others receive expenses only and some serve without compensation.
- “ Compensation for public members is inconsistent and often lacking.
- “ Study costs are difficult to manage due to the lack of a study line in the legislative budget, and the lack of a clearly defined process for the tracking and timely reporting of costs.
- “ Because study costs are not budgeted in advance, sponsors attempt to avoid or minimize fiscal notes on study bills by minimizing or eliminating compensation for members.
- “ Studies predicated on non-legislative funding create actual funding and public perception problems.

Discussion.

The current study commission process creates noticeable inequities in compensation of study commission members, wide variability in funding of studies based on funding sources, and difficulty in planning for and managing study costs. These problems are due principally to the lack of 3 things:

- “ uniform legislative policy on compensation of members and funding of studies that would assure consistency between studies. Absence a joint rule or other policy guidance, study proposals vary widely in how studies are to be funded and members compensated due to the preferences of particular joint standing committees to which they are referred or individual sponsors;
- “ a formal study table that would allow the Legislature (leadership) to: 1) budget for study costs; and 2) comprehensively review all proposed studies at one time, consult with committees about study needs, and then set priorities for studies based upon availability of budgetary and staffing resources; and
- “ a clearly defined process for tracking and reporting study costs that would make study commissions more accountable for their costs and allow the Legislature to actively manage study costs.

As with studies conducted by executive branch agencies or other entities, legislative studies incur costs. Those costs may include payment of a per diem and reimbursement of expenses to some or all members of a study commission to attend meetings, costs of bringing in policy area experts, costs of holding regional hearings, and printing, distribution and other report publication expenses. While costs vary widely depending on the size of study commissions and their specific needs, most legislative studies costs are relatively modest, averaging under \$4,000 per study. These study costs are either absorbed by existing budgeted resources or more likely paid through a special appropriation associated with each study.

Regardless of the costs of studies, costs should be managed. A study line to which all study expenses are charged would help the legislature plan for study costs and fund studies within available budgeted resources. In addition, regular status reports on study costs as studies are on-going would allow the presiding officers and the Legislative Council to manage study costs, and assist them in understanding the fiscal implications of time extensions or other requests by study commissions. Study commission chairs and commission staff have an obligation to stay within their budgets, but to do that they must have frequent and timely status reports on study budgets and expenses.

In order to avoid a fiscal note on a study bill, sponsors or committees sometimes propose that legislative studies be funded through solicitations from the private sector. This sometimes poses funding problems; private sector funding does not always materialize, resulting in unbudgeted expenses that must then be absorbed by the legislative account. In addition, solicitation of private sector funds (particularly from those interests affected by a study) can undermine the credibility of a legislative study due to public perceptions about study bias.

D. Lack of drafting guidelines leads to inconsistency in how study commissions are established and an inefficient process

- .. Purposes, goals, and scope of studies often are vague in study legislation.
- .. Current study language for study bills and amendments varies considerably depending on the sponsor or committee.
- .. Mechanisms for extension of reporting dates are cumbersome and result in after-the-fact submission of additional bills.

Discussion.

Study commission members and staff benefit from clear statements of purpose for studies and the scope of review expected. Current study language is often vague with respect to purpose and does not clearly state the scope of review expected. When study language is being drafted, greater attention needs to be given to clearly stating the questions to be examined and the specific tasks to be undertaken.

Study commissions should be encouraged to complete their work and file their report by the established deadlines. Currently, if a study commission will not meet its reporting deadline, it files a request for extension. Depending on the language of the study bill, extensions may be granted by the Legislative Council or may require additional legislation. The legislation is almost always after-the-

fact. Ideally, if an extension becomes necessary, the mechanism for extending the reporting date should not be cumbersome or create additional work for the Legislature (such as bills). Careful attention needs to be given to preparing language in study bills to make clear that commissions do not lose their authority to submit a final report or legislation solely due to a missed reporting deadline. Whenever possible, extension language should be drafted to permit extensions to be granted without having to file additional legislation for that purpose.

The lack of drafting guidelines formally authorized for use by staff creates inconsistencies in drafting study language. In addition, without the guidelines, there is no formal procedure to assure that each study proposal will contain the essential administrative provisions. In the past, proposed drafting guidelines were prepared by non-partisan staff and submitted at the beginning of the first regular session for review and approval. Those guidelines included model language for each element of a study proposal including sample language for the range of options available. Numerous potential problem areas could be avoided by re-instituting drafting guidelines for studies.

Recommendations for improvement.

1. Reaffirm legislative policy on legislative studies.

The committee recommends that the Legislature reaffirm in its joint rules that the primary purpose of legislative studies is to assist legislators in the policy decisions they must make and for that reason the Legislature should establish and fully direct the course and scope of studies in ways that will assure the studies will best meet legislative needs.

2. Return to use of joint standing and joint select committees as principal study committees.

The committee recommends that the Legislature return to the use of joint standing and joint select committees as the principal groups to conduct legislative studies. Legislators should constitute the membership of these legislative study commissions. Use of task forces or blue ribbon commissions that include broad representation of non-legislators with full, voting memberships should be reserved for high profile or other special occasions when participation by prestigious outside dignitaries or direct representation of another branch of government or interest groups on a study commission is essential to the success of the study.

3. Use study orders as principal legislative instrument for establishing studies.

The committee recommends that, in keeping with recommendation #2, study orders, approved jointly by the Senate and the House, be the principal legislative instrument for establishing legislative studies involving joint standing committees and joint select committees. Proposed study orders should be referred to joint standing committees for consideration and reported out in the same manner as proposed study legislation. Furthermore, the committee recommends that the joint standing committees have authority to report out joint orders requesting that a study be conducted. Joint orders should be prepared in accordance with procedures specified in the Joint Rules.

Use of legislation as a vehicle for establishing study commissions should be used only when:

- a study is to be conducted by a task force or blue ribbon or other commission involving substantial participation by non-legislators; or

“ a study is proposed to extend beyond the current legislative biennium.

It is further recommended that if legislation is to be used to establish a legislative study, it first be approved for introduction by the Legislative Council.

4. Presiding officers appoint members.

The committee recommends that the members of a legislative study commission be appointed by the presiding officers. Study language should not require that joint appointments be made and should not narrowly prescribe membership slots to be filled for a study.

5. Presiding officers appoint chairs.

Except in the case where the size of a study commission is very small (e.g., 3 to 5 members) each study commission should have joint chairs, one appointed by the President and one appointed by the Speaker. The chairs should be appointed at the time of appointment of the other members. The chair of a study commission having 5 or less members should be appointed by the presiding officer of the body of the originating study order or legislation.

6. Keep size of study commissions manageable.

The committee recommends that the size of study commissions be at least 3 but not more than 13 members, a size consistent with that of joint standing committees.

7. Compensate members of study commissions equitably.

The committee recommends the following with respect to compensation of members.

For legislative members: Legislative members should be entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of a study commission.

For public members (when studies require such members): Public members not otherwise compensated by their employers or other entities whom they represent should be eligible to receive reimbursement of necessary expenses and a per diem equal to that of the legislative per diem for their attendance at authorized meetings of a study commission.

8. Conclude studies prior to start of legislative sessions.

The committee recommends that all reports of study commissions which are to be submitted to the first regular session of the next or subsequent legislature be completed and submitted not later than the first Wednesday in November preceding the convening of the first regular session of the next legislature, and all reports of study commissions which are to be submitted to the second regular session be completed and submitted not later than the first Wednesday in December preceding the convening of the second regular session. Any proposed legislation accompanying such reports should be submitted in final draft form to the Revisor of Statutes by the reporting date. These reporting dates will allow any recommended legislation be drafted and the report distributed in a timely manner. The

dates also will minimize workload conflicts with study committee staff who have bill drafting and joint standing committee staffing responsibilities in addition to study responsibilities.

9. Fund studies through legislative appropriations.

The committee recommends that all legislative studies be funded through an appropriation from the General Fund, and the legislative account include a study line to which studies should be budgeted and study expenses charged.

The committee further recommends that, in the event the Legislature determines that other funds should be sought to support a study, requests to provide funding be made to appropriate entities by the Legislative Council rather than by study commission members. A strict accounting should be kept of the receipt and use of such funds.

10. Establish formal study table.

The committee recommends that the Legislature establish a study table in the Senate on which all legislative study requests, regardless of their funding source, be placed. It further recommends that the Legislative Council review the proposed studies and set priorities for allocation of budgetary and staffing resources. In setting priorities for studies, the Council should consult with the joint standing committees.

11. Staff only legislative studies using Legislative Council staff.

The committee recommends that legislative studies be staffed by non-partisan staff assigned by the Legislative Council, and that the Legislature provide staffing only for studies that are either chaired by legislators or in which legislators constitute the majority of members. If, due to resource limitations or for other reasons, existing legislative staff will not be staffing a study commission, the Legislative Council should approve any non-legislative personnel hired to provide the staffing.

12. Place responsibility in offices to coordinate the convening of study commissions.

The committee recommends that responsibility for the timely and orderly convening of legislative study commissions be placed in each office that is responsible for staffing the committees. The coordinating office or offices should provide the presiding officers with periodic reports on the progress being made to convene study commissions.

13. Actively manage study expenses.

The committee recommends that study commissions and study staff be charged with primary responsibility for managing study budgets and be accountable to the Legislative Council for operating within budgeted resources. In order to achieve that accountability:

- ˆ study committee chairs and staff should be provided with frequent status reports on study budgets, expenditures incurred and available funds;
- ˆ while the studies are on-going, the presiding officers and directors of offices that staff the studies should receive weekly status reports of study commission budgets, expenditures incurred and available funds;

- “ study orders establishing studies should allow the chairs flexibility in determining the number of meetings to be held for each study based upon the individual needs of the study commission so long as the commission does not exceed its authorized budget; and
- “ each study commission should prepare a work plan and proposed budget for the study, consistent with 3 MRSA ' 165(7).

14. Provide formal guidance for drafting study orders and legislation.

The committee recommends that proposed drafting guidelines for study orders and legislation be prepared by non-partisan staff and submitted at the beginning of each first regular session for review and approval by the Legislative Council. The guidelines should provide for model orders and legislation that include all necessary elements to properly convene and carry out a study, including but not limited to:

- “ study purpose statements stating the questions to be examined and the specific tasks to be undertaken;
- “ model language for each element of a study proposal including sample language for the range of options available; and
- “ language for extensions of reporting dates for studies that whenever possible permit extensions to be granted without having to file legislation for an extension and that makes clear that commissions do not lose their authority to submit a final report or legislation solely due to a missed reporting deadline.

15. Specify study commission process in joint rules and Legislative Council policies.

The committee recommends the Legislature incorporate appropriate changes to its joint rules so the rules establish the major provisions of the legislative process and policies relating to legislative studies. Recommended joint rule changes reflecting the committee’s recommendations are attached as Appendix 2 for consideration. The committee also recommends that prior to the convening of the first regular session of the 119th Legislature, the Legislative Council adopt administrative policies necessary to implement the changes to the study commission process recommended in this report.

Appendix 1

Summary of legislative studies authorized during the First Regular and First Special Sessions of the 118th Legislature

Interim Study Commissions Authorized by the 118th Legislature

Name of Legislative Study	Legislative Instrument	Authorizing Legislation	Number of Members	Number/Percent of Legislators	Staffing	Convening Date

Jt. Select Committee on Research and Development	Joint Order	S.P. 669	14	14 (100%)	OPLA	September 24, 1997
Jt. Select Committee to Oversee Maine Yankee Atomic Power Company	Joint Order	H.P. 345	13	13 (100%)	OPLA	August 27, 1997
Blue Ribbon Commission to Study the Effects of Government Regulation and Health Insurance Costs on Small Businesses in Maine	Legislation	Resolves 1997, c. 85 (LD 1905)	12	3 (25%)	OPLA	December 1, 1997
Commission to Determine the Adequacy of Services to Persons with Mental Retardation	Legislation	Resolves 1997, c. 79 (LD 581)	17	3 (18%)	OPLA	September 29, 1997
Commission to Examine the Rate Setting and the Financing of Long-term Care Facilities	Legislation	Resolves 1997, c. 81 (LD 657)	15	4 (27%)	OPLA	November 3, 1997
Commission to Study Certificate of Need Laws	Legislation	Resolves 1997, c. 29 (LD 998)	15	2 (13%)	DHS	October 28, 1997
Commission to Study Insurance Fraud	Legislation	Resolves 1997, c. 77 (LD 933)	12	2 (17%)	Bureau of Insurance, OPLA	October 17, 1997
Commission to Study the Development of Maine's Franco-American Resource	Legislation	Resolves 1997, c. 83 (LD 1603)	27	4 (15%)	University of Maine	October 15, 1997
Commission to Study the Funding and Distribution of Teletypewriters and Other Telecommunications Equipment for	Legislation	Resolves 1997, c. 72 (LD 944)	13	3 (23%)	OPLA	December 5, 1997

People with Disabilities						
Commission to Study the Restructuring of the State's Fiscal Policies to Promote the Development of High-technology Industry in Maine	Legislation	P.L. 1997, c. 557 (LD 1897)	20	4 (20%)	contracted	October 17, 1997
Commission to Study the Unemployment Compensation System	Legislation	Resolves 1997, c. 65 (LD 332)	11	4 (36%)	OPLA	September 24, 1997
Commission to Study the Use of Pharmaceuticals in Long Term Care Settings	Legislation	Resolves 1997, c. 71 (LD 146)	10	3 (30%)	OPLA	January 5, 1998
Committee to Study Tax Relief and Tax Reform	Legislation	P.L. 1997, c. 557 (LD 1897)	13	13 (100%)	OFPR	August 28, 1997
Maine Commission on Children's Health Care	Legislation	P.L. 1997, c. 560 (LD 1904)	16	7 (44%)	SPO, OPLA	October 14, 1997
Maine Commission on Outstanding Citizens	Legislation	Resolves 1997, c. 64 (LD 1610)	8	1 (12%)	Legislative Council	January 5, 1998
State Compensation Commission	Legislation	P.L. 1997, c. 506 (LD 1391)	5	0 (0%)	OFPR	not yet convened
Study Group to Assess the Needs of the State Fire Marshal	Legislation	Resolves 1997, c. 10 (LD 359)	13	1 (8%)	Dept. of Public Safety	August 1997
Subcommittee on Legislative Review of DEP's Motor Vehicle Inspection and Maintenance Program to Meet the Requirements of the Federal Clean Air Act	Legislation	Resolves 1997, c. 57 (LD 1651)	5	5 (100%)	OPLA	September 26, 1997

Subcommittee on Legislative Review of Revisions to the State's Clean Air Strategy	Legislation	P.L. 1997, c. 531 (LD 1058)	5	5 (100%)	OPLA	no meetings
Subcommittee Progress Meetings with DMHMR/SAS and DHS on Design of Comprehensive Mental Health Services Delivery System for Children	Legislation	Resolves 1997, c. 80 (LD 1744)	3	3 (100%)	OPLA	June 23, 1997
Task Force on Improving Access to Prescription Drugs for the Elderly	Legislation	P.L. 1997, c. 560 (LD 1904)	9	4 (44%)	OPLA	December 4, 1997
Task Force on Information Technology in the Public Sector	Legislation	P.L. 1997, c. 554 (LD 1589)	24 minimum	2 (8%)	DAFS, SPO	not convened
Task Force on Production and Issuance of Registration Plates	Legislation	P.L. 1997, c. 311 (LD 260)	11	4 (36%)	Sec. of State	September 12, 1997
Task Force on Regional Service Center Communities	Legislation	Resolves 1997, c. 78	13	3 (23%)	SPO	November 13, 1997
Task Force on State and Federal Tax Filing	Legislation	Resolves 1997, c. 66 (LD 1368)	11	3 (27%)	Maine Revenue Services	November 24, 1997
Task Force to Review the Applied Technology Centers and Applied Technology Regions	Legislation	Resolves 1997, c. 74 (LD 1048)	11	2 (18%)	DOE	November 20, 1997
Task Force to Study Equal Economic Opportunity for All Regions of the State	Legislation	P&S 1997, c. 51 (LD 1452)	14	5 (33%)	OPLA	October 30, 1997
Task Force to Study Strategies to Support Parents as Children's First Teachers	Legislation	Resolves 1997, c. 68 (LD 1832)	16	2 (13%)	DHS	November 3, 1997
	Legislation		16	4 (25%)	OPLA	

Task Force to Study the Cost Effectiveness of the Child Development Services System		P.L. 1997, c. 534 (LD 1581)				November 21, 1997
Task Force to Study the Feasibility of a Single Claims Processing System for 3rd-party Payors of Health Care Benefits	Legislation	Resolves 1997, c. 63 (LD 350)	15	4 (27%)	OPLA	October 28, 1997
Task Force to Study the Feasibility of Creating a Maine Mobility Fund	Legislation	Resolves 1997, c. 73 (LD 1377)	19	4 (21%)	OPLA	December 19, 1997
Work Group to Examine the Legal Rights of Children Who Testify in cases in which they have been alleged Victims of Sexual Abuse	Legislation	P.L. 1997, c. 548 (LD 803)	9	2 (11%)	DHS, AG	not yet convened
Staff Study of Privatization of State Liquor Stores	Legislative Council	n/a	n/a	n/a	OPLA	n/a
Staff Study of the Citizen Initiative Process	Legislative Council	n/a	n/a	n/a	OPLA	n/a
Staff Study on Worker's Compensation and Occupational Disease Law	Legislative Council	n/a	n/a	n/a	OPLA	n/a
Subcommittee on Privacy of Genetic Information	Legislative Council	n/a	5	5 (100%)	OPLA	August 19, 1997
Subcommittee on Scope of Juvenile Justice Problems and Services in Maine	Legislative Council	n/a	5	5 (100%)	OPLA	9/24/1997 (full committee met)

Task Force to Study the Health Effects of Reformulated Gasoline	Presiding Officers	n/a	5	5 (100%)	OPLA	n/a
-----------------------------------------------------------------	--------------------	-----	---	----------	------	-----

¹ 6 of the 14 members were appointed by the chair of the study commission.	
NL indicates a non-legislator was selected as chair of the study commission.	

APPENDIX 2

Appendix 2 Recommended changes to the Joint Rules

Rule 353. Legislative Study Committees

To assist it in the exercise of its duties, the Legislature may establish joint select committees or commissions consisting of legislators and others members to conduct studies. Alternatively it may refer matters to joint standing committees or subcommittees of joint standing committees for study. The procedure for such legislative studies is as follows.

1. Establishing study committees and commissions. Legislative study committees may be established by joint order only unless otherwise authorized by the Legislative Council. Studies that must be established by law or resolve include those that will:

- A. be conducted by a task force, blue ribbon commission or other study group created by the Legislature that includes substantial membership by non-legislators; or
- B. extend beyond the current legislative biennium.

Proposed study orders may be referred to joint standing committees for consideration and reported out in the same manner as proposed study legislation. Joint standing committees may report out study orders requesting that a study be conducted.

2. Appointment of members. Unless otherwise specified in legislation creating a study committee, the members of study committees must be appointed by the presiding officers: Senate members by the President; and House members by the Speaker. Membership may include non-legislators but a majority of the members on study committees must be legislators.

3. Appointment of chairs. Study committees must be chaired jointly except for study committees having 5 or less members. Each presiding officer shall appoint a chair at the time of initial appointment of study committee members except the chair of a study commission having 5 or less members must be appointed by the presiding officer of the body of the originating study order or legislation.

4. Committee size. Study committees may consist of not less than 3 and not more than 13 members, unless legislation creating a study committee specifies a greater number.

5. Compensation. Legislative members are entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of a study committee. Public members not otherwise compensated by their employers or other entities whom they represent are entitled to receive reimbursement of necessary expenses and a per diem equal to the legislative per diem for their attendance at authorized meetings of a study committee.

6. Reporting dates. All reports of study committees which are to be submitted to the first regular session of the next or subsequent legislature must be completed and submitted not later than the first Wednesday in November preceding the convening of the first regular session of the next legislature. All reports of study committees which are to be submitted to the second regular session must be completed and submitted not later than the first Wednesday in December preceding the convening of the second regular session. Any proposed legislation accompanying such reports must be submitted in final draft form to the Revisor of Statutes by the reporting date.

7. Extension of reporting dates. Any study committee that finds it is unable to comply with its reporting date must submit, in writing, a request for extension of reporting date, the reasons an extension is requested and a proposed new reporting date to the Legislative Council prior to the reporting date. The Legislative Council shall review the request and promptly notify the committee of its decision.

8. Study table. All joint orders or legislation proposing legislative studies regardless of funding source must be placed on a special study table. The Legislative Council shall review the proposed studies and establish priorities for allocation of budgetary and staffing resources.

The Legislative Council shall establish a study line in the Legislative Account to which legislative studies are budgeted and study expenses charged. It also shall establish budgets and provide sufficient money from the Legislative Account for studies to be conducted by joint standing committees, joint select committees and other study committees of the Legislature. The Legislative Council shall provide money sufficient to enable the committees to reasonably conduct and complete the requirements of the studies.

The Legislative Council shall adopt guidelines for the drafting of study orders and legislation at the beginning of each legislative biennium. Study orders and legislation must be consistent with the adopted guidelines.

APPENDIX 3

November 12, 1997 letter convening the Special Committee

(Available in printed document only)

[Return to Legislative Studies Page](#)