Final Report
of the

LEGISLATIVE COUNCIL SUBCOMMITTEE TO REVIEW THE STUDY COMMITTEE PROCESS

March 2007

Maine Legislature

STATE OF MAINE
123RD LEGISLATURE
FIRST REGULAR SESSION

Final Report of the LEGISLATIVE COUNCIL SUBCOMMITTEE TO REVIEW THE STUDY COMMITTEE PROCESS

March 2007

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Senator John Martin
Senator Carol Weston
Representative Sean Faircloth
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Executive Summary

The *Subcommittee to Review the Study Committee Process*, hereafter referred to as the "Subcommittee" was established on December 7, 2006 by the Legislative Council of the 123rd Legislature out of a concern that recent trends in the size and composition of legislative studies and in the manner in which such committees were being established were limiting the ability of the Legislature to control the scope and direction of its own studies. The Subcommittee was charged with reviewing the 1998 report of the *Special Committee to Review the Study Commission Process*[1] and examining more recent trends in the legislative study process and identifying existing barriers to conducting effective and timely legislative studies. The Subcommittee was asked to report back to the Legislative Council with recommendations necessary to ensure that the Legislature and the Legislative Council remain in a position to effectively direct the course of legislative studies and the use of study-related legislative resources.

The Subcommittee completed its work in two meetings; the first on Thursday, January 25, 2007 and the second on Wednesday, February 14, 2007. The Subcommittee unanimously makes the following recommendations, which are discussed in more detail in the body of this report:

> ***Recommendation 1.*** *The Subcommittee recommends that Joint Rule 353 be amended to define the term "legislative study" as any group of individuals, except those exempted by Legislative Council policy, whose duties include studying and reporting to the Legislature on any matter or advising the Legislature on any matter and which require the use of Legislative resources.*
>
> ***Recommendation 2.*** *The Subcommittee recommends that the Legislative Council refer interim legislative study proposals to the appropriate joint standing committee of jurisdiction, or to joint select committees in lieu of creating separate study committees, whenever possible. The Subcommittee also recommends that the Legislative Council support the proposal in the Legislative budget to provide funds for up to four interim meetings of the joint standing committees for such purposes.*
>
> ***Recommendation 3.*** *The Subcommittee recommends that Joint Rule 353 be amended to require the use of Joint Study Orders to establish legislative studies in all cases except when a study is directing a person outside the legislature to take some action or when the existence of the study committee extends beyond the Legislature in which it is created.*
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> ***Recommendation 4.*** *The subcommittee recognizes the need for occasional limited extensions of study reporting deadlines, but recommends that Joint Rule 353 be*

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[1] *Final Report of the Special Committee to Review the Study Commission Process*. (January 16, 1998). Committee members included the Clerk of the House, Joe Mayo, the Secretary of the Senate, Joy O'Brien, the Senate President's Chief of Staff, Peter Chandler, the Special Assistant to the Speaker of the House, Peggy Schaffer, and the Director of OPLA, David Boulter.

amended to prohibit extensions of study reporting deadlines beyond December 15th in odd-numbered years or beyond the first Wednesday of December in even numbered years.

Recommendation 5. *The subcommittee recommends amending Joint Rule 353 to require that all legislative study committees be comprised of at least a majority of legislators.*

Recommendation 6. *The subcommittee recommends that Joint Rule 353 be amended to limit legislative study committees to not more than 13 members.*

Recommendation 7. *The Subcommittee recommends greater enforcement of the existing requirement in Joint Rule 353 that legislative study committees be co-chaired by legislators and that the first named Senator be the Senate Chair and that the first named House member be the House Chair.*

Recommendation 8. *The Subcommittee recommends that the use of private financial or in-kind contributions for legislative studies continue to be allowed only with the approval of the Legislative Council and subject to Legislative Council policies ensuring that such contributions are free from influence by pecuniary or vested interests.*

Recommendation 9. *The Subcommittee recommends that Joint Rule 353 be clarified so that, unless the Legislative Council directs otherwise, Legislative Council staff will only be assigned to legislative studies that conform to the requirements of Joint Rule 353.*

Recommendation 10. *The Subcommittee recommends amending Joint Rule 353 to prohibit joint standing committees from reporting out a bill, resolve or Joint Study Order that is inconsistent with Joint Rule 353, except upon the prior approval of the Legislative Council.*

Recommendation 11. *The subcommittee recommends that Joint Rule 353 be amended to prohibit legislative or departmental study committees from being authorized to introduce legislation to implement their recommendations, and to authorize the joint standing committee receiving the report, or the appropriate joint standing committee of jurisdiction in the event the report is submitted to the Legislature, to introduce a bill to implement those recommendation if it so chooses, after having received the report.*

Recommendation 12. *The Subcommittee recommends amending Joint Rule 353 to replace references to study guidelines with language requiring the adoption of binding Legislative Council policies governing the drafting of Joint Study Orders and study legislation.*

Recommendation 13. *The Subcommittee recommends that the Legislative Council adopt a policy requiring the approval of a 2/3rds majority of the Legislative Council to authorize funding for a legislative study that is required to submit a report to a subsequent Legislature.*

Implementing these recommendations will require a number of amendments to Joint Rule 353 and the adoption by the Legislative Council of a number of binding policies governing the drafting of study-related Joint Orders and legislation. A copy of the Subcommittee's recommended revisions to Joint Rule 353 is attached as Appendix A and a proposed Legislative Council policy on studies is attached as Appendix B.

Background

Interim legislative studies have been a tool used by the Legislature for many decades when more time or information is required to resolve difficult policy issues than is available during the regular session. Over the decades, the manner in which such studies were established varied from the almost exclusive use of Joint Study Orders and joint standing or joint select committees from the 1940's through the 1980's, to an increasing reliance during the decade after the late 1980's on using legislation to create study committees.[2]

By 1997, legislative leadership was concerned that those trends were resulting in decreased legislative control over legislative studies, cumbersome procedures for establishing studies and inconsistencies in funding studies, compensating members and in study drafting guidelines. As a result, a special committee was established in late 1997 by then Speaker of the House Elizabeth Mitchell to review the study committee process. In its January 1998 report, that special committee found that those trends had in fact resulted in "significant procedural barriers to conducting effective and timely studies" and "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."[3] The 1998 special committee offered 15 recommendations for improvement, many of which were subsequently adopted and implemented either through changes to the Joint Rules or to the study guidelines adopted by each Council. The recommendations in the 1998 report fell into the following general areas:

- Reaffirm legislative policy that the Legislature should establish and fully direct the course and scope of studies to meet legislative needs;
- Use Joint Study Orders as the preferred instrument in creating studies and joint standing or joint select committees as the principal study committee;
- Study membership should primarily consist of legislators;
- Chairs and study members should be appointed by the Presiding Officers;
- Size of study commissions should be manageable (not more than 13)
- Actively manage study expenses; and
- Use of Legislative Council staff should be reserved for studies with a majority of legislators and the use of legislative staff for studies should not interfere with their committee staffing responsibilities during session.

As discussed in this report, the changes resulting from the 1998 study were initially successful in redirecting the study process back toward greater legislative control of studies through a shift toward greater use of joint study orders, greater legislative representation on study committees and the creation of a special study tables in the House and Senate which allowed the Legislative Council to review all study proposals and prioritize the use of study-related legislative resources. By 2005, however, new concerns

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[2] See the report cited in footnote 1 for a fuller discussion of the history of legislative studies prior to 1998.
[3] *Final Report of the Special Committee to Review the Study Commission Process.* (January 16, 1998).

had arisen that many of the trends of the 1980's and 1990's which led to the 1998 special committee had re-emerged, and that the Legislature was once again losing its ability to effectively direct the course of its own studies and control the use of study-related legislative resources.

That concern was shared by the current Legislative Council. At its first meeting, on December 7, 2006, the 123rd Legislative Council accepted a recommendation from the 122nd Legislative Council and established a five-member "Subcommittee to Review the Study Committee Process" (hereafter referred to as the "Subcommittee") to conduct the first comprehensive review of the legislative study process since 1998. The Subcommittee was charged with reviewing the 1998 report of the *Special Committee to Review the Study Commission Process* and examining more recent trends in the legislative study process and identifying existing barriers to conducting effective and timely legislative studies. The Subcommittee was asked to report back to the Legislative Council with any recommendations necessary to ensure that the Legislature and the Legislative Council remain in a position to effectively direct the course of its legislative studies and the use of study-related legislative resources.

Findings and recommendations

In conducting its review of the legislative study process, the Subcommittee carefully reviewed the 167 studies authorized by Legislative Councils from the 118th to the 122nd Legislatures (1997-2006) and analyzed key trends to determine the effectiveness of the 1998 recommendations and the extent to which issues affecting the legislature's ability to direct the course of its studies had re-emerged in recent years. The review examined trends in the types of legislative instruments used to create studies; the size, composition and legislative representation on studies; the method of appointing chairs; the ability of study committees to complete their work within established reporting deadlines; the number and extent of extensions of reporting dates into subsequent sessions and subsequent legislatures; the funding of studies; and the use of other legislative resources, including the use of Legislative Council staff.[4]

The Subcommittee reaffirms the findings and recommendations in the 1998 report and believes that those recommendations were initially effective in improving legislative control of the legislative study process. Specifically, the Subcommittee determined that in the biennium (or two) following adoption of the 1998 study committee recommendations the following improvement in the legislative study process were observed:

- The use of Joint Orders to create legislative studies increased from 5.1% in the 118th Legislature to 33% in the 119th Legislature;
- The percent of study extensions decreased from 43.6% in the 118th Legislature to 31.3% in the 119th Legislature and further decreased to 14.3% in the 120th Legislature;

[4] A copy of the OPLA analysis of trends in legislative studies is attached as Appendix C.

- Legislative representation on studies increased from 34% in the 118th Legislature to 64% in the 119th Legislature;
- The average size of legislative studies decreased from 11.4 members in the 118th Legislature to 10.5 members in the 119th Legislature; and
- Use of the first named Senate and first named House member as study co-chairs went from 0% in the 118th Legislature to 81.3% of studies in the 119th Legislature. At the same time, methods relying on the selection of chairs by study members decreased from 59% in the 118th Legislature to 0% in the 119th Legislature.

Although the Subcommittee believes that the 1998 report set the right direction for legislative studies, it is also clear that those successes were temporary, in most cases lasting only through the 119th or 120th Legislatures before beginning to trend back towards the situation prior to 1998. The subcommittee found that, beginning with the 120th Legislature, many factors which limit the legislature's ability to direct the course of its studies re-emerged and that some new issues arose in the nine years after that report was issued.

As a result of its review, the Subcommittee makes the following findings and recommendations. A copy of a revised Joint Rule 353 and new Legislative Council policies necessary to implement these recommendations are included in this report as Appendix A and Appendix B.

➢ **Finding #1: A definition of "legislative studies" is needed.** The Subcommittee finds that a clear definition of the term "legislative study" is needed. The absence of such a definition has resulted in confusion about what is a legislative study, whether a study must comply with current standards governing such studies and whether a proposed study should be referred to the Special Study Table for consideration by the Legislative Council.

Discussion. The changes recommended in the 1998 report were intended to establish greater legislative control of legislative studies, but did not clearly define what constitutes a legislative study. This lack of a clear definition has contributed to the large amount of variance in the way studies have been drafted, largely due to misunderstandings about whether a proposed study was, in fact, a legislative study, whether it was subject to some, all or none of the study standards, or whether it should even be placed on the Special Study Table. The Subcommittee believes that these issues can be addressed by including a clear definition of legislative studies in Joint Rule 353 and focusing that definition on studies created by the Legislature which require the use of legislative financial or human resources.

Recommendation 1. *The Subcommittee recommends that Joint Rule 353 be amended to define the term "legislative study" as any group of individuals, except those exempted by Legislative Council policy, whose duties include studying and reporting to the Legislature on any matter or advising the Legislature on any matter and which require the use of Legislative resources.*

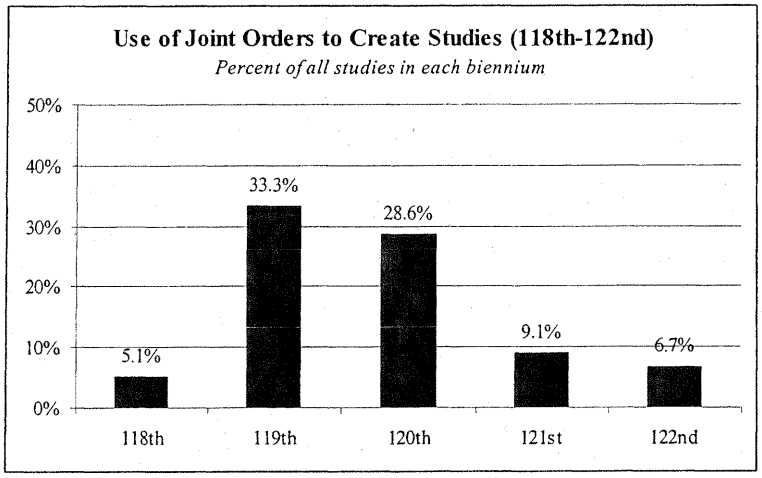
- **Finding #2: Existing joint standing committees are underutilized for studying issues of legislative concern.** The Subcommittee finds that existing joint standing committees have been underutilized as a resource for conducting legislative studies. Greater use of joint standing committees for conducting legislative studies during the interim, or of joint select committees, would make greater use of existing legislative expertise, reduce the number of study committee appointments that would otherwise be required and would increase legislative control of the study process.

  Discussion. The 1998 report recommended that joint standing committees or joint select committees should be used as the principal groups to conduct legislative studies during the interim. Although this option has been occasionally used since 1998, it has been used more infrequently in recent years.

  Recommendation 2. *The Subcommittee recommends that the Legislative Council refer interim legislative study proposals to the appropriate joint standing committee of jurisdiction, or to joint select* committees *in lieu of creating separate study committees, whenever possible. The Subcommittee also recommends that the Legislative Council support the proposal in the Legislative budget to provide funds for up to four interim meetings of the joint standing committees for such purposes.*

- **Finding #3: Require that legislative studies be established by Joint Study Order.** The Subcommittee finds that the use of Joint Study Orders to create legislative studies has decreased significantly since the 119th Legislature, to the point where only two studies were created using this method in the 122nd Legislature. Greater reliance on legislation to create studies has contributed to significant delays in starting the studies and to extensions of reporting deadlines.

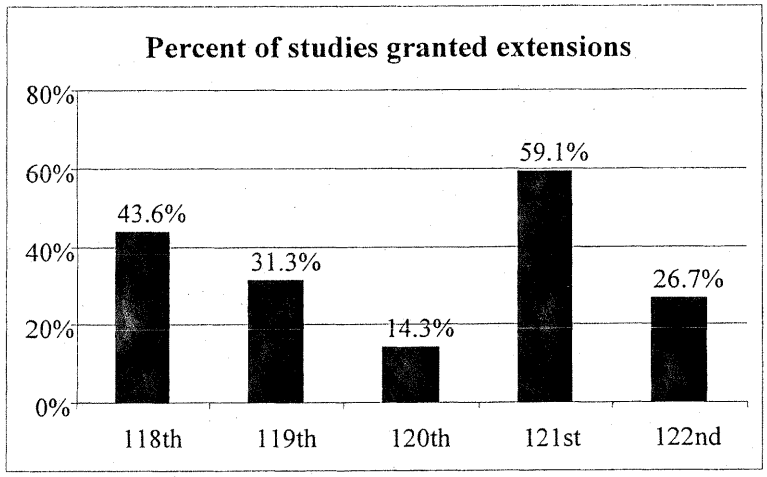
  Discussion. The 1998 report recommended Joint Orders as the preferred method of creating studies in order to allow studies to get underway quickly by not requiring the approval of the Governor and by avoiding the 90-day delayed effective date of non-emergency legislation. As shown below, the use of Joint Orders to create studies increased from 5.1% to 33% following the 1998 report, but has declined steadily since then to 6.7% in the 122nd Legislature. The proportion of studies created by Joint Order and those created by law (Public Law, Resolves or Private and Special Laws) is largely back to where it was in the 118th Legislature, prior to the 1998 working group report.



Recommendation 3. *The Subcommittee recommends that Joint Rule 353 be amended to require the use of Joint Study Orders to establish legislative studies in all cases except when a study is directing a person outside the legislature to take some action or when the existence of the study committee extends beyond the Legislature in which it is created.*

- **Finding #4: Study extensions.** The Subcommittee finds that study extensions have become more common in the past two sessions and that nearly 60% of all extensions granted since the 118th Legislature have extended a study into the next session. This trend in study extensions most likely reflects the movement shown in the previous graph towards using legislation to create studies rather than Joint Orders and has created scheduling and resource conflicts for legislators and Legislative Council staff.

Discussion. The 1998 report recommended that study committees conclude their work and submit their report prior to the start of the next legislative session in order to allow study legislation to be drafted in a timely manner and to minimize workload conflicts for Legislative Council staff who have bill drafting and committee staffing responsibilities during the session. Since the 118th Legislature, the Council has approved 57 study extensions, with 34 (60%) of those resulting in an extension of the study reporting date into the next legislative session. The graph below shows the percent of studies that were granted extensions in each biennium. The trend in granting study extensions was downward from the 118th to the 120th Legislature, but jumped up in the 121st before declining again in the 122nd. The table immediately below the graph presents more detail on the number and percent of extensions, including data on the percent of those extensions that extended studies into the next legislative session.

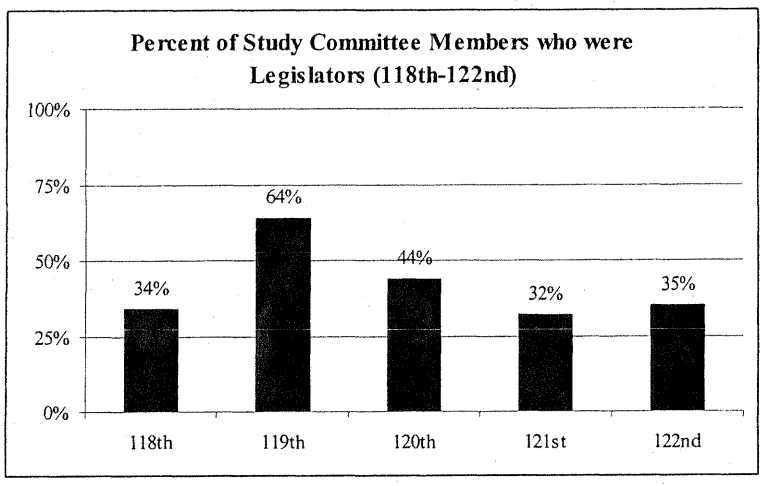


	Total number of studies	Total approved extensions	Percent of Total Studies	Extensions that went into next session	Percent of extensions granted
118th	39	17	43.6%	16	94.1%
119th	48	15	31.3%	6	40.0%
120th	28	4	14.3%	0	0.0%
121st	22	13	59.1%	9	69.2%
122nd	30	8	26.7%	3	37.5%
Total	167	57	34.1%	34	59.6%

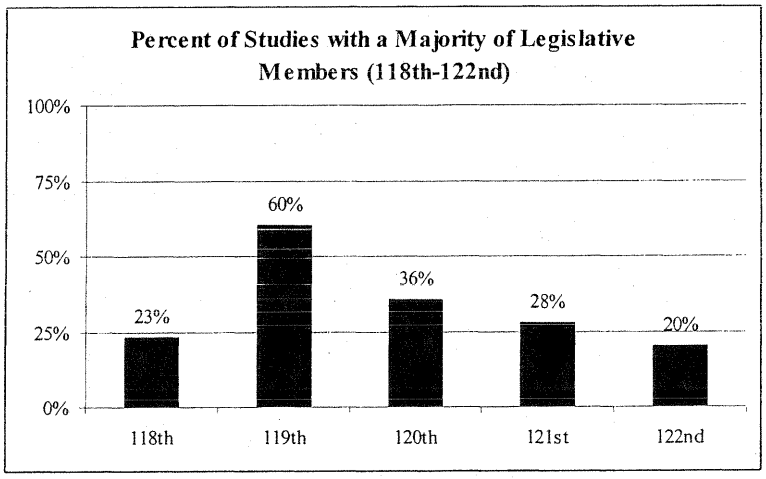
Recommendation 4. *The subcommittee recognizes the need for occasional limited extensions of study reporting deadlines, but recommends that Joint Rule 353 be amended to prohibit extensions of study reporting deadlines beyond December 15th in odd-numbered years or beyond the first Wednesday of December in even numbered years.*

- **Finding #5: Legislative representation on studies.** The Subcommittee finds that legislative representation on legislative studies has declined since the 119th Legislature, and that the number of studies having a majority of legislative members has significantly declined over that period. This trend has seriously eroded the Legislature's ability to direct the course of its studies.

Discussion. The 1998 report recommended that studies be comprised of at least a majority of legislators. The subcommittee endorses that recommendation. However, the percent of study members who are legislators has declined from 64% in the 119th Legislature to 35% in the 122nd Legislature. Legislative representation on studies is largely back to where it was in the 118th Legislature.



Shifts in the trend of legislative representation are shown in more detail in the graph below. This graph shows that the trend is strongly downward for studies having a majority of legislative members. In the 119th Legislature, for example, about 60% of the studies had a majority of legislative members while only about 20% of studies in the 122nd Legislature had a majority of legislative members.

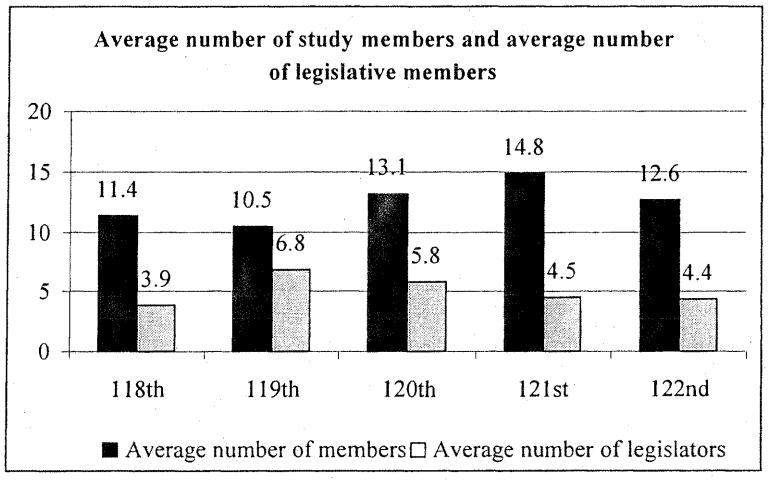


Recommendation 5. *The subcommittee recommends amending Joint Rule 353 to require that all legislative study committees be comprised of at least a majority of legislators.*

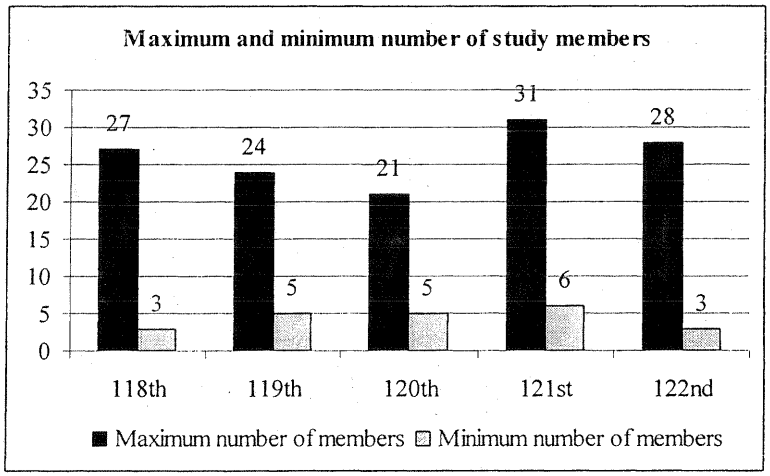
➢ **Finding #6: Size of legislative study committees.** The Subcommittee finds that the average size of study committees has increased since the 119th Legislature, and the largest two studies over the past decade occurred in the most recent two Legislatures.

Discussion. The 1998 special committee report recommended a limit of 13 members, but allowed larger study committees if so specified in the study legislation. That recommendation does appear to have had the effect of initially

reducing the size of study committees and increasing the percentage of legislative members. However, since the 119th Legislature, the average size of study committees is trending generally upwards while the average number of legislative members is trending downwards.



The trend towards larger studies can also be illustrated by looking at the largest and smallest studies in each Legislature. The graph below shows that the size of the largest study decreased in the 119th and 120th Legislatures, relative to the 118th, but was up in the 121st and 122nd Legislatures. The largest studies over the 10 year period occurred in the 121st (31 members) and in the 122nd (28 members).

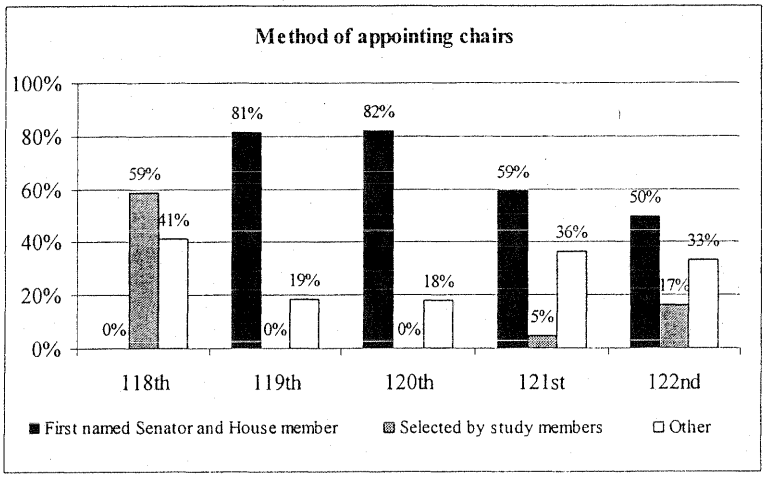


Recommendation 6. *The subcommittee recommends that Joint Rule 353 be amended to limit legislative study committees to not more than 13 members.*

- **Finding #7: Appointment of chairs**. The Subcommittee finds that the use of the first named Senator and the first named House member as legislative co-chairs has declined significantly since the 120th Legislature, and that the use of other

methods of selecting chairs, which the Subcommittee believes reduce the legislative control of those studies, has increased.

Discussion. The 1998 report recommended that studies have two legislative co-chairs; one being the first appointed Senator and the other being the first appointed member of the House. In the 118th Legislature, prior to the 1998 report, the most common method for appointing chairs of study committees was that they were selected by a vote of the members of the study group (59%). That shifted noticeably after the 1998 report to 81% of the studies in the 119th Legislature having the co-chairs specified as the first appointed Senator and the first appointed House member, as the special committee recommended. Since the 120th Legislature, however, the trend in having the first named Senator and House members as co-chairs has declined from 82% to 50%, with corresponding increases in the percentage of studies who either appoint their own chairs or in which chairs are determined by some other means (elected by the members, appointed by the Governor, specified in the study itself, etc).

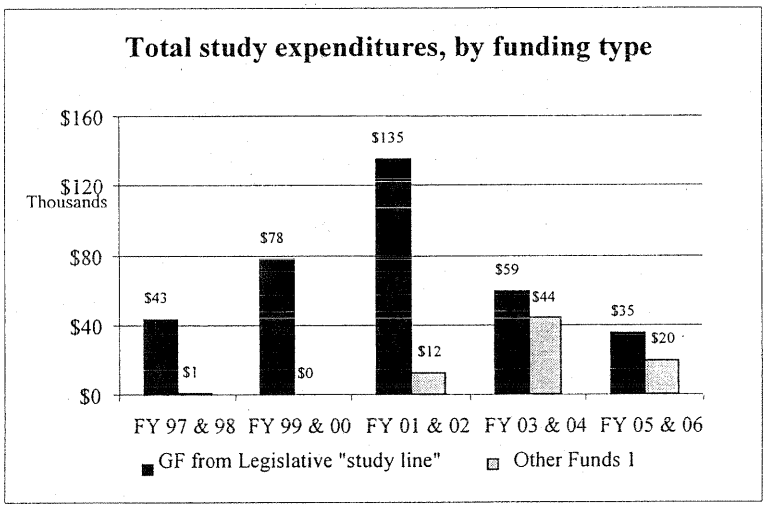


Recommendation 7. *The Subcommittee recommends greater enforcement of the existing requirement in Joint Rule 353 that legislative study committees be co-chaired by legislators and that the first named Senator be the Senate Chair and that the first named House member be the House Chair.*

➢ **Finding #8: Funding of legislative studies.** The Subcommittee finds that legislative studies are being increasingly funded using funds other than General Funds from the "study line" in the Legislative account. Although the use of private financial or in-kind contributions to fund legislative studies is currently allowed, and is appropriate in certain circumstances, trends towards the increased use of outside funds require that current policies ensuring that such contributions are free from any pecuniary or other vested interest are clear and carefully enforced.

Discussion.[5] The 1998 report recommended that legislative studies be funded through an appropriation from the General Fund and that the legislative account include a study line to which studies should be budgeted and study expenses charged. The graphs below show, for each biennium, the total study expenditures by funding type and the percent of study expenditures by funding type. The table below the graphs shows the details of those expenditures.[6]

As these graphs show, total expenditures for studies peaked in FY 01 and FY 02 at $147,677.[7] The graphs also show that the use of "other" funds to pay for studies has increased from 0% in FY 99 and FY 00 (approximating the 119th Legislature) to 36% of study expenditures in the most recent biennium. In these graphs, "other" funds include any funds outside of the Legislature GF "study line" (transfers from department funds, grants, private funding and other forms of special revenue).

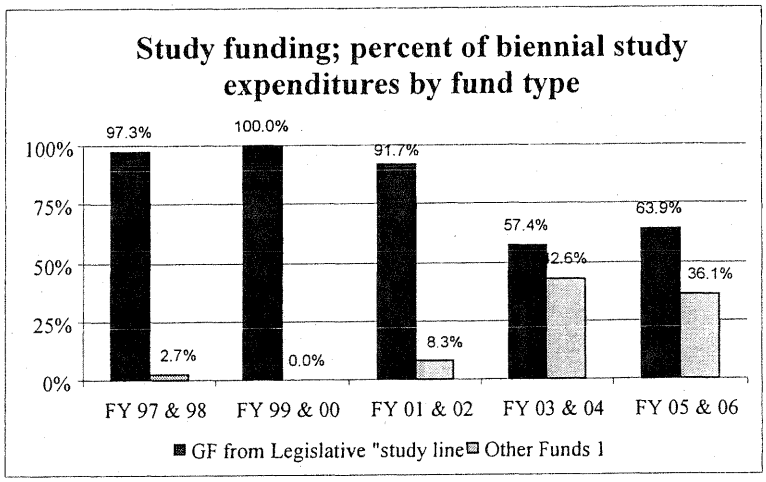


To address concerns about the use of private funds for legislative studies, the Legislative Council for the 121st Legislature adopted policies requiring that such funds be approved and administered by the Legislative Council and certified as being free from influence by pecuniary or vested interests.

[5] Study expenditure data provided by Rose Breton of the Executive Director's Office.

[6] These figures do not include special studies funded from the Legislative account outside of the "study line" in the Legislative budget.

[7] This amount does not include a $200,000 grant received by the Health Security Board study during the 121st Legislature from the Maine Health Access Foundation since those funds passed directly through the study group to fund a feasibility study conducted by Mathematica, Inc. to estimate the cost of switching to a single payer health insurance plan.



STUDY EXPENDITURES

Actual expenditures

Session (approximate)	Fiscal Years	GF from Legislative "study line"	Other Funds [1]	Total
118th	FY 97 & 98	$43,426.75	$1,212.67	$44,639.42
119th	FY 99 & 00	$78,203.45	$0.00	$78,203.45
120th	FY 01 & 02	$135,484.19	$12,193.30	$147,677.49
121st	FY 03 & 04	$59,472.76	$44,068.59	$103,541.35
122nd	FY 05 & 06	$35,145.68	$19,823.84	$54,969.52

Percent of biennial expenditures

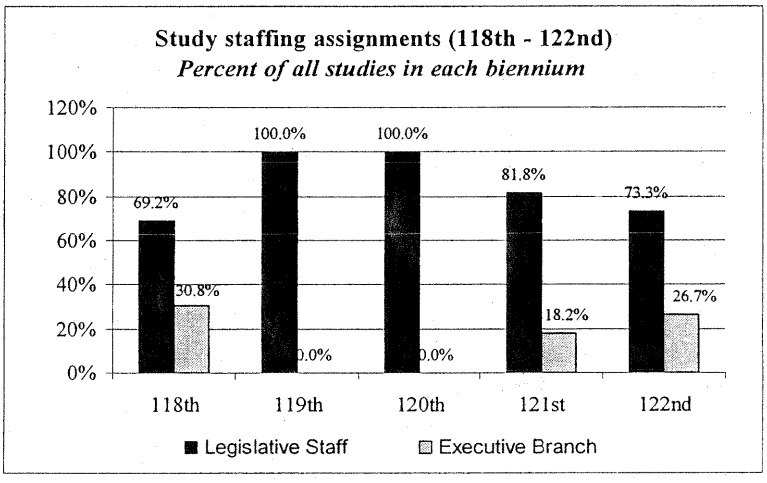
118th	FY 97 & 98	97.3%	2.7%	100.0%
119th	FY 99 & 00	100.0%	0.0%	100.0%
120th	FY 01 & 02	91.7%	8.3%	100.0%
121st	FY 03 & 04	57.4%	42.6%	100.0%
122nd	FY 05 & 06	63.9%	36.1%	100.0%

Recommendation 8. *The Subcommittee recommends that the use of private financial or in-kind contributions for legislative studies continue to be allowed only with the approval of the Legislative Council and subject to Legislative Council policies ensuring that such contributions are free from influence by pecuniary or vested interests.*

➢ **Finding #9: Legislative Council staffing.** The Subcommittee finds that the use of Legislative Council staff to staff studies should be limited to staffing interim legislative studies that are comprised of a majority of legislators and that are chaired by legislators.

Discussion. The 1998 report recommended that legislative studies be staffed by non-partisan staff and that such staffing is provided only for studies that are either chaired by legislators or in which legislators constitute the majority of members. While the 1998 report had the initial effect of directing more legislative staff resources to such studies, the mix of Legislative and Executive Branch staff for

studies is largely back to where it was in the 118th Legislature, prior to the 1998 working group report.



Recommendation 9. *The Subcommittee recommends that Joint Rule 353 be clarified so that, unless the Legislative Council directs otherwise, Legislative Council staff will only be assigned to legislative studies that conform to the requirements of Joint Rule 353.*

- **Finding #10: Assistance in helping committees comply with legislative study rules.** The Subcommittee finds that a mechanism is needed to help assure joint standing committees compliance with rules governing legislative studies prior to those proposed studies being reported out of committee. This is necessary to ensure that studies placed on the study table conform to the study standards. This would also avoid the need to rapidly redraft nonconforming studies at the end of the session immediately prior to adjournment.

Discussion. Since 1998, proposed studies reported out of committee have been referred to Special Study Tables in the Senate and the House and subsequently reviewed by the Legislative Council for conformance with study standards and to determine funding priority. Although committees are informed about study guidelines and standards by legislative staff at the time they are developing the study, committees often vary considerably from those standards and report out orders or legislation containing nonconforming study language. The Legislative Council's review of proposed studies on the "study table" usually takes place within a day or two of sine die adjournment of the Legislature and, as such, there is very little time for the Council to review each proposed study in detail to determine if all elements of the study comply with the study standards or to discuss with the recommending committee how to redraft nonconforming studies. As a result, amendments intended to make studies approved by the Council conform to the study standards must be drafted quickly, usually involve changes not discussed or reviewed by the recommending committee and often can not

fully reconcile the structure of the proposed study with all the study standards without substantively changing the study itself.

Recommendation 10. *The Subcommittee recommends amending Joint Rule 353 to prohibit joint standing committees from reporting out a bill, resolve or Joint Study Order that is inconsistent with Joint Rule 353, except upon the prior approval of the Legislative Council.*

- **Finding #11: Study committees not authorized to introduce legislation.** The Subcommittee finds that legislative control of the study process is increased by placing the decision about whether to introduce legislation to implement study recommendations with the appropriate joint standing committee of jurisdiction rather than with the study committee itself.

Discussion. The large majority of legislative studies over the past decade have been authorized by their enabling legislative instrument to introduce one or more bills directly to the Legislature to implement their recommendations. The Subcommittee believes that the decision about whether or not to introduce legislation to implement the recommendations of a study committee be vested in the appropriate joint standing committee of jurisdiction rather than with the members of the study committee.

Recommendation 11. *The subcommittee recommends that Joint Rule 353 be amended to prohibit legislative or departmental study committees from being authorized to introduce legislation to implement their recommendations, and to authorize the joint standing committee receiving the report, or the appropriate joint standing committee of jurisdiction in the event the report is submitted to the Legislature, to introduce a bill to implement those recommendation if it so chooses, after having received the study report.*

- **Finding #12: Study "guidelines" should be replaced with binding Legislative Council policies.** The Subcommittee finds that the study "guidelines" required by the existing Joint Rule 353 be replaced with binding study policies adopted by the Legislative Council.

Discussion. Joint Rule 353 currently requires the Legislative Council to adopt guidelines for the drafting of study orders and legislation at the beginning of each biennium. Although these have been prepared and adopted by the Council every biennium, the term "guidelines" has led to some confusion about whether they were binding study drafting standards or merely recommended guidelines. The Subcommittee believes, in order to reestablish legislative control of its studies and to ensure consistency in drafting study proposals, that standards for drafting study orders and legislation must be binding and should therefore be adopted as Legislative Council policies rather than as guidelines.

Recommendation. *The Subcommittee recommends amending Joint Rule 353 to replace references to study guidelines with language requiring the adoption of binding Legislative Council policies governing the drafting of Joint Study Orders and study legislation.*

- **Finding #13: A 2/3rds vote of the Council is required to fund studies reporting to a subsequent Legislature.** The Subcommittee finds that legislative studies are most useful in assisting legislators with policy decisions when the study report is submitted to the same Legislature which authorized the study. The Subcommittee also finds that creating legislative studies which submit their report to a subsequent Legislature should therefore be discouraged and used only in extraordinary circumstances.

Recommendation 13. *The Subcommittee recommends that the Legislative Council adopt a policy requiring the approval of a 2/3rds majority of the Legislative Council to authorize funding for a legislative study that is required to submit a report to a subsequent Legislature.*

APPENDIX A

Proposed Revised Joint Rule 353

Amend the Joint Rules by striking all of Joint Rule 353 and inserting in its place the following:

Rule 353. Legislative Studies.

To assist in the exercise of its duties, the Legislature may establish legislative study committees or may alternatively refer matters to joint standing committees or subcommittees of joint standing committees for study. This Joint Rule establishes standards which govern the drafting of legislative study instruments and the authorization of legislative studies. All legislative studies must be consistent with this Joint Rule and with Council policies adopted under this Joint Rule. A joint standing or joint select committee may not, except upon the prior approval of the Legislative Council, report to the Legislature any bill, resolve or Joint Order proposing a legislative study that is inconsistent with this Joint Rule.

1. Definitions. For the purposes of this Joint Rule, the following terms have the following meaning:

A. The term "legislative study" or "legislative study committee" means any group of individuals, except those exempted under policies adopted by the Legislative Council, whose duties include studying and reporting to the Legislature on any matter or advising the Legislature on any matter and which requires the use of legislative resources;

B. The term "legislative resources" means the expenditure of any funds appropriated or allocated to the Legislative Account, the appointment of one or more persons by the Legislature, the inclusion of one or more legislators as a member of the legislative study committee or the use of Legislative Council staff; and

C. The term "non-legislative study" or "non-legislative study group" means any group of individuals directed by legislation to report back to the Legislature on any issue but which is not otherwise a legislative study.

2. Establishing legislative studies. A legislative study may only be created by Joint Study Order, unless the instrument will direct an agency or a person who is not a legislator to take an action or will have an existence that extends beyond the Legislature in which it is introduced.

3. Appointment of members. A majority of legislative study members must be legislators and the legislative study committee must be chaired by legislators appointed in a manner consistent with subsection 4. All members of legislative study committees established by joint study order must be appointed by the presiding officers: Senate members by the President; and House members by the Speaker. Members of a legislative study created by joint study order who are not

legislators must be appointed either by the President or the Speaker. Legislative studies may include a minority of non-legislative members appointed by someone outside the Legislature. Joint appointment of members is not permitted.

4. Appointment of chairs. Legislative studies having more than five members must be co-chaired by legislators. The first appointed Senate member shall be the Senate chair and the first appointed House member shall be the House chair. Legislative studies having five or fewer members must have a single legislative chair appointed by the presiding officer of the body of the originating study order or legislation.

5. Committee size. Legislative study committees may consist of no fewer than 3 and no more than 13 members.

6. Staffing. Unless the Council directs otherwise, Legislative Council staff will only be assigned to legislative studies that conform to this Joint Rule.

7. Reporting dates. All reports of legislative study committees which are to be submitted to a first regular session 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 legislative study committees which are to be submitted to a second regular session must be completed and submitted not later than the first Wednesday in December preceding the convening of the second regular session. Upon request of the study committee, the Council may extend the reporting date, except that the extension may not go beyond December 15th in odd numbered years or beyond the first Wednesday of December in even numbered years.

8. Legislation may not be introduced by legislative studies or non-legislative study groups. Legislative and non-legislative study committees or groups may include proposed legislation in their report to the Legislature, but are not authorized to introduce legislation. Upon receipt of a report submitted by a legislative or non-legislative study committee or group, the joint standing committee to which the report is submitted, or the appropriate joint standing committee of jurisdiction in the event that the report is submitted to the Legislature as a whole, may introduce a bill during the session to which the report is submitted to implement its recommendations on matters relating to the study.

9. 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, upon demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of a study committee.

APPENDIX A

Proposed Revised Joint Rule 353

10. Study table. All joint study orders or legislation proposing legislative studies must be placed on a special study table in the Senate or House. The Legislative Council shall review the proposed studies and authorize the allocation of budgetary and staffing resources for those studies.

11. Council study policies. The Legislative Council shall adopt policies governing legislative studies at the beginning of each legislative biennium. Those policies may include conditions on the funding of legislative studies, exceptions to this Rule, drafting standards or other provisions necessary to satisfy the requirements of this Rule.

APPENDIX A

Proposed Revised Joint Rule 353

APPENDIX B

Proposed Legislative Council Policy on Studies

Council Policy on Studies

The following policies governing legislative studies are adopted by the Legislative Council pursuant to Joint Rule 353.

1. Council authorization of legislative studies. Legislative studies are authorized only upon the approval of a majority of the Legislative Council, except that the approval of a 2/3rds majority of the Legislative Council is required to authorize a legislative study that is required to submit a report to a subsequent Legislature.

2. Funding of legislative studies. The Legislative Council shall establish a study line in the Legislative Account to which legislative studies are budgeted and study expenses charged. That study line shall include funds appropriated by the Legislature for those purposes and funds allocated by the Legislature from other departmental accounts to the Legislative Account for the purposes of funding a legislative study. The use of private funds to fund legislative studies is prohibited unless authorized by the Legislative Council and managed consistent with subsection 3 of these policies. The Legislative Council shall also 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.

3. Acceptance of private contributions to support legislative studies. Private financial or in-kind contributions to support the work of legislative studies may not be accepted from any party having a pecuniary or other vested interest in the outcome of the study. Any person, other than a state agency, authorized and desiring to make a financial or in-kind contribution must certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the study. All such contributions are subject to the approval of the Legislative Council. All accepted contributions must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of contributions, the date the contributions were received, from whom the contributions were received and the purpose of and any limitation on the use of those contributions. The Executive Director of the Legislative Council shall administer the contributions and shall notify the chairs of the legislative study committee when those contributions have been received. If funding for a legislative study is contingent upon receipt of private contributions and sufficient contributions have not been received within 30 days after the effective date of the study instrument, then no meetings of the study are authorized and no study-related expenses of any kind may be incurred or reimbursed.

4. Exceptions to Joint Rule 353. The following limited exemptions to Joint Rule 353 are provided:

APPENDIX B

Proposed Legislative Council Policy on Studies

A. Boards and Commission created in statute and codified in Title 5, chapter 379 are exempt from the provisions of this Joint Rule, except that the use of new legislative financial resources or Legislative Council staffing by a new Board or Commission or as the result of an amendment to an existing Board or Commission shall be referred to a special study table for review and approval by the Legislative Council regarding the use of those resources; and

B. Legislation directing an agency or a group of stakeholders to study and report to the Legislature on any matter may include the appointment of not more than two members of the Legislature, provided that the report of the agency or group is required to be submitted within the biennium in which the legislation is introduced, that there are no other legislative appointments required, that the legislators are appointed consistent with subsection 3 and that no other legislative resources are required. Legislation creating such groups must be referred to a special study table for review and approval by the Legislative Council regarding the use of those resources.

5. Council review of committee requests to vary from Joint Rule 353. Pursuant to Joint Rule 353, joint standing and joint select committees may not, except upon the prior approval of the Legislative Council, report to the Legislature any bill, Resolve or Joint Order proposing a legislative study that is inconsistent with that Joint Rule. Such requests must be made to the Council in writing and must include the committee's recommended draft language for the proposed study along with a list of the ways in which proposed study does not conform to Joint Rule 353 and an explanation of why those nonconforming provisions are needed. Such instruments reported to the Legislature by a committee with the prior approval of the Council remain subject to the provisions of Joint Rule 353 which require that all legislative studies be referred to a special study table for review and funding authorization by the Council.

APPENDIX C

Staff memo summarizing study activities since 1997

MEMORANDUM

Memo to: Members, Legislative Council subcommittee to review the study commission process

From: Patrick Norton, Director, OPLA

Date: January 12, 2006

Re: Summary of studies; 118th to 122nd Legislatures

This memo summarizes trends in the 167 studies authorized by the Legislative Council from the 118th to the 122nd Legislatures (1997-2006) and reviews them in the context of the recommendations made by the 1998 Special Committee on Studies. This analysis was prepared as background material for the subcommittee of the Legislative Council created on December 7th to review the study commission process.

Summary of findings

The chart below summarizes the findings of this analysis.[8] As can be seen, the overall trend for studies since the 119th has been opposite to the direction recommended for studies in the 1998 report of the Special Commission on Studies.

Measure of legislative control	Direction recommended by 1998 Special Committee	Direction in the 119th Legislature	Observed direction since 119th Legislature
Use of Joint Orders	↑	↑	↓
Extensions	↓	↓	↑
Legislative representation on studies	↑	↑	↓
"First named" Senator and Representative as co-chairs	↑	↑	↓
Number of study members	↓	↓	↑
Use Legislative "study line" to fund studies	↑	↑	↓
Nonpartisan staff used for studies with majority legislative membership	↑	↑	↓
Use of nonpartisan staff for permanent year-round advisory bodies	n/a	n/a	↑

The premise underlying the 1998 report was that the Legislature should be in the position of directing the course of its own studies. The concern at the time was that the

[8] An up arrow (↑) indicates support for that recommendation or a trend toward successful implementation of that recommendation. A down arrow (↓) indicates a trend away from that recommendation.

Legislature was losing its ability to influence the direction and extent of its studies, and the recommendations in the 1998 report were intended to reverse that trend by reasserting legislative control over its studies.

The data shown above, and discussed in more detail in the following sections, suggest that those recommendations did initially have the intended effect. However, the data also show that many of the factors the 1998 report identified as limiting the legislature's ability to control its own studies have now resurfaced.

For example, the data show that the size of study committees is increasing while legislative representation is declining; legislation rather than Joint Orders is the primary instrument being used to create studies and, perhaps as a result, study extensions (including extensions into the next legislative session) have been more frequent over the past two sessions; the method for determining who chairs legislative studies is migrating away from the "first named" Senator and Representative towards other methods such as selection by the study group and the use of "outside funding" to fund studies is increasing. The data also show a trend towards using nonpartisan staff to staff permanent year-round advisory commissions rather than short-term and interim studies, as was originally envisioned.

Background

On November 12, 1997, then Speaker of the House Elizabeth H. Mitchell convened a special committee to develop recommendations for improving the legislative study process. The report of that special committee (dated January 16, 1998) made a number of recommendations that addressed "significant procedural barriers to conducting effective and timely studies."[9] According to that report, those barriers were resulting 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."[10] The working group offered 15 recommendations for improvement, all of which were adopted by the Legislative Council in the 118th Legislature. The recommendations fall into the following general areas:

- Reaffirm legislative policy that the Legislature should establish and fully direct the course and scope of studies to meet legislative needs;
- Use Joint Study Orders as the preferred instrument in creating studies and joint standing or joint select committees as the principal study committee;
- Study membership should primarily consist of legislators;
- Chairs and study committee members should be appointed by the Presiding Officers;
- Size of study commissions should be manageable (not more than 13)
- Actively manage study expenses; and

[9] Final Report of the Special Committee to Review the Study Commission Process. (January 16, 1998). Committee members included the Clerk of the House, Joe Mayo, the Secretary of the Senate, Joy O'Brien, the Senate President's Chief of Staff, Peter Chandler, the Special Assistant to the Speaker of the House, Peggy Schaffer, and the Director of OPLA, David Boulter.
[10] ibid

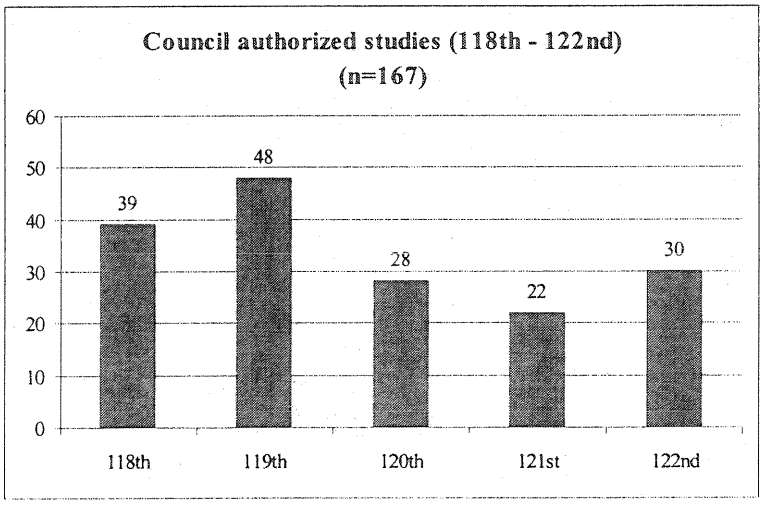
- Use of nonpartisan legislative staff should be reserved for studies with a majority of legislators and the use of legislative staff for studies should not interfere with their committee staffing responsibilities during session.

As a result of a concern that the study process was moving away from the 1998 recommendations in ways that adversely affect the study commission process, the 122nd Legislative Council in November of this year recommended that the 123rd Legislative Council create a subcommittee to review and update the 1998 study and make any recommendations for changes to the study process prior to the adoption of the drafting standards for studies for the 123rd Legislature. The 122nd Council recommended that the subcommittee identify and remove existing barriers to conducting effective and timely legislative studies and to ensure that the Council is in a position to direct the course of interim studies and the use of its committee staff during the legislative session.

To prepare for this review of studies, the Office of Policy and Legal Analysis collected key pieces of information about all studies authorized by the Council from the 118th to the 122nd Legislature (1997-2006) and analyzed that data to determine the extent to which the 1998 study recommendations have been implemented over time. The results of that analysis are summarized below, followed by a more detailed discussion of the key variables analyzed.

Detailed discussion of trends in key variables (118th - 122nd Legislatures)

1. Number of studies. It is useful to start this analysis with a summary of the number of studies authorized by each Council from the 118th to the 122nd Legislatures, as background to the discussions in later sections.[11] As the graph below shows, the number of approved studies over the past 10 years has varied. The number of studies was highest in the 118th and 119th Legislatures (39 and 48 studies respectively) and has ranged between 22 and 30 studies in each subsequent biennium. OPLA was able to identify a total of 167 studies which were authorized by the Council over the 10 year period.

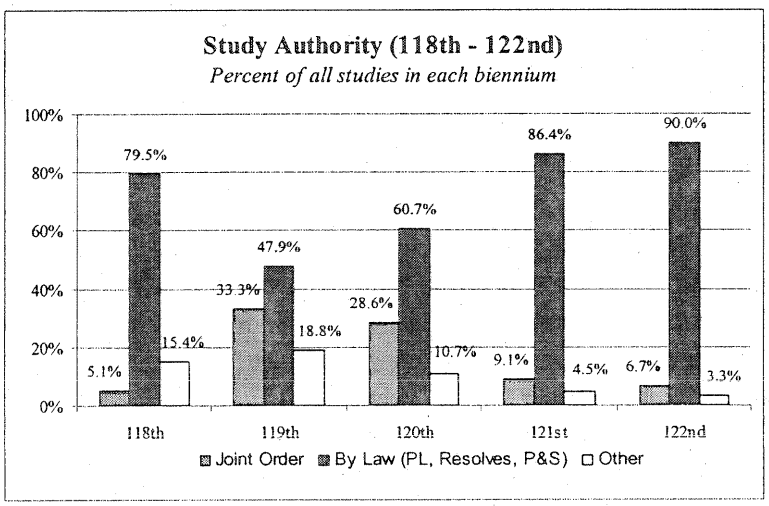


[11] This data was compiled by OPLA. The list of studies used in this analysis is attached.

APPENDIX C

Staff memo summarizing study activities since 1997

2. Use of Joint Orders. The 1998 report recommended Joint Orders as the preferred method of creating studies in order to allow studies to get underway quickly by not requiring the approval of the Governor and by avoiding the 90-day delayed effective date of non-emergency legislation. As shown below, the use of Joint Orders to create studies increased from 5.1% to 33% following the 1998 report, but has declined steadily since then to 6.7% in the 122nd Legislature. The proportion of studies created by JO and those created by law (Public Law, Resolves or Private and Special Laws) is largely back to where it was in the 118th Legislature, prior to the 1998 working group report.

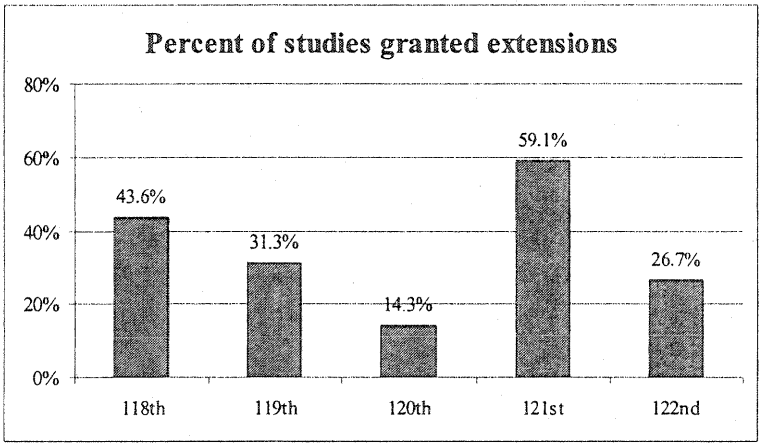


3. Study extensions. The 1998 report recommended that study committees conclude their work and submit their report prior to the start of the next legislative session in order to allow study legislation to be drafted in a timely manner and to minimize workload conflicts for study staff who have bill drafting and committee staffing responsibilities during the session. Since the 118th Legislature, the Council has approved 57 study extensions, with 34 of those resulting in an extension of the study reporting date into the next legislative session.[12] The graph below shows the percent of studies that were granted extensions in each biennium. The trend in granting study extensions was downward from the 118th to the 120th Legislature, but jumped up in the 121st before declining again in the 122nd. These trends in study extensions are somewhat reflective of the trend shown in the previous graph, which shows a movement back towards using legislation to create studies rather than Joint Orders. The table immediately below the graph presents more detail on the number and percent of extensions, including data on the percent of those extensions that were extended into the next session.

[12] This data was collected by reading through minutes of September-March Council meetings from the 118th-122nd and noting whenever the minutes reflected Council approval of a study extension request. It is possible that some extensions, if granted by ballot or extended at meetings that took place during April-October meetings of the Council, may have been overlooked.

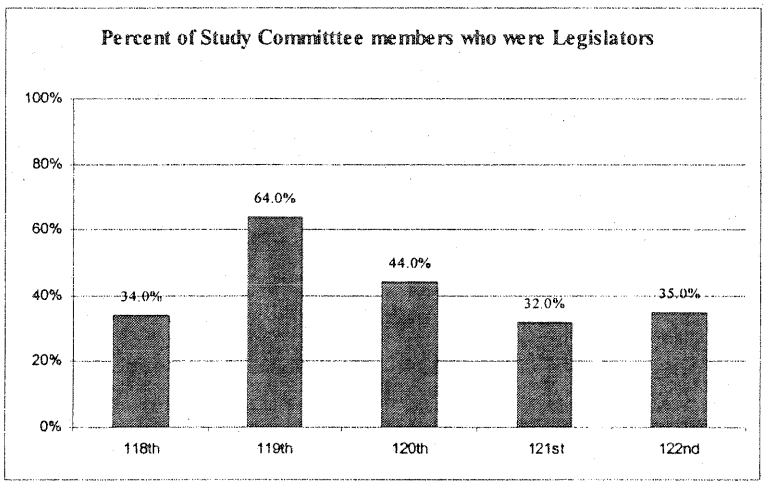
APPENDIX C

Staff memo summarizing study activities since 1997



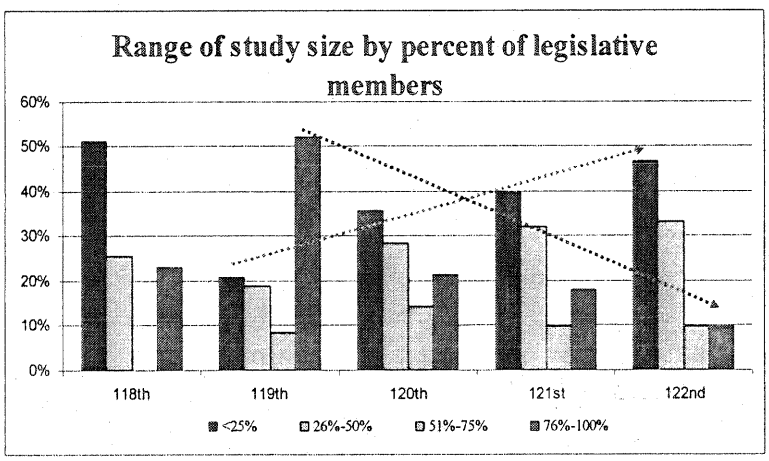
	Total number of studies	Total approved extensions	*Session percent*	Extensions that went into session	*Session percent*
118th	39	17	*43.6%*	16	*41.0%*
119th	48	15	*31.3%*	6	*12.5%*
120th	28	4	*14.3%*	0	*0.0%*
121st	22	13	*59.1%*	9	*40.9%*
122nd	30	8	*26.7%*	3	*10.0%*
Total	167	57	*34.1%*	34	*20.4%*

4. Legislative representation. The 1998 report recommended that studies be comprised of at least a majority of legislators. The percent of study members who are legislators increased from 34% to 64% following issuance of the 1998 report, but generally declined since then to 35% in the 122nd Legislature to the point that the percentage of legislative members in studies authorized by the 122nd Legislature is largely back to where it was in the 118th Legislature.

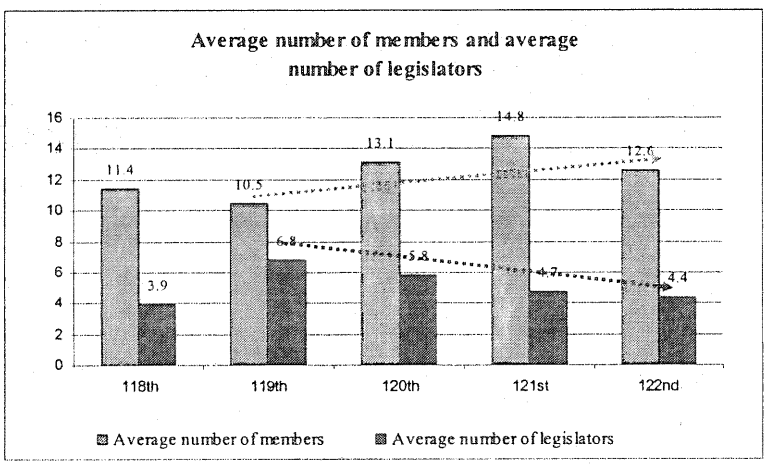


Shifts in the trend of legislative representation are shown in more detail in the graph below. This graph shows that the trend is strongly upwards for studies having fewer than 25% legislative membership (the dotted blue line) and strongly downward for studies

having more than 75% legislative membership (the dotted red line). In the 119th Legislature, for example, about 60% of the studies had a majority of legislative members (the red and yellow bars) while only about 20% of studies in the 122nd Legislature had a majority of legislative members.



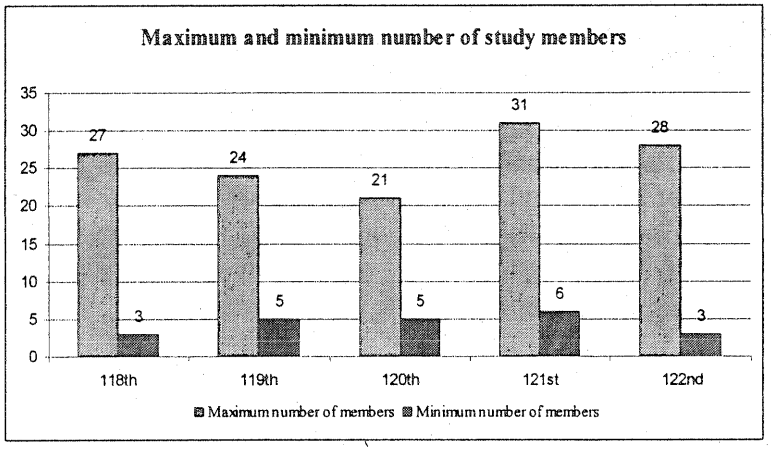
5. Size of studies. The 1998 report recommended that the size of study committees be kept to not more than 13 members. That recommendation does appear to have had the effect of initially reducing the size of study committees and increasing the percentage of legislative members. Since the 119th Legislature, however, the average size of study committees is trending generally (dotted blue line) upwards while, as noted above, the average number of legislative members is trending downwards (dotted red line).



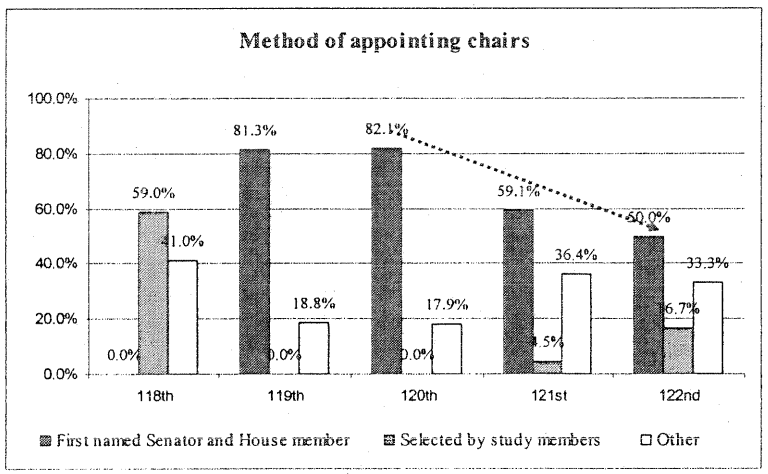
The trend towards larger studies can also be illustrated by looking at the largest and smallest studies in each Legislature. The graph below shows that the size of the largest study decreased in the 119th and 120th Legislatures, relative to the 118th, but was up in the 121st and 122nd Legislatures. The largest studies over the 10 year period occurred in the 121st (31 members) and in the 122nd (28 members).

APPENDIX C

Staff memo summarizing study activities since 1997



6. **Method of appointing chairs.** The 1998 report recommended that studies have two legislative co-chairs; one being the first appointed Senator and the other being the first appointed member of the House. In the 118th Legislature, prior to the 1998 report, the most common method for appointing chairs of study committees was that they were selected by a vote of the members of the study group (59%). That shifted noticeably after the 1998 report to 81.3% of the studies in the 119th Legislature having the co-chairs specified as the first appointed Senator and the first appointed House member, as the special committee recommended. Since the 120th Legislature, however, the trend in having the first named Senator and House members as co-chairs has declined from 82.1% to 50%, (dotted red line) with corresponding increases in the percentage of studies who either appoint their own chairs or in which chairs are determined by some other means (elected by the members, appointed by the Governor, specified in the study itself, etc).

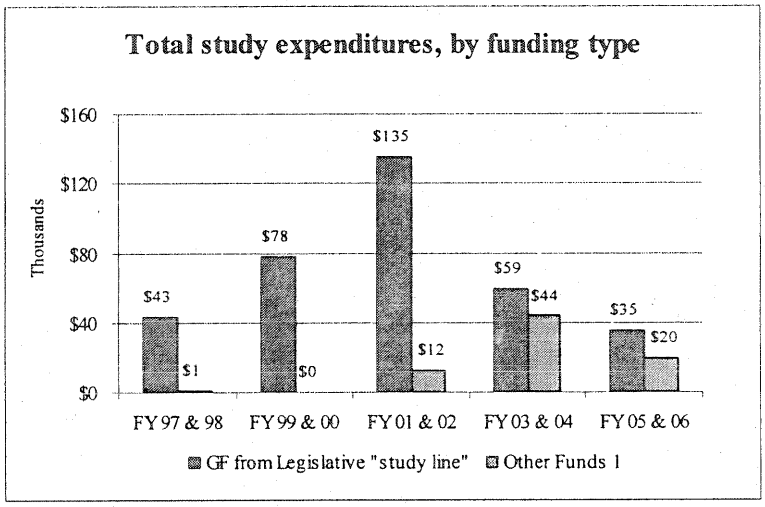


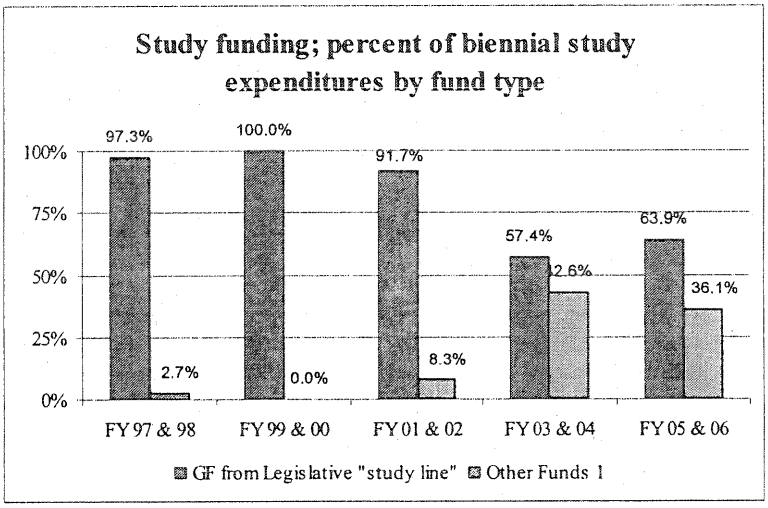
7. **Funding studies.**[13] The 1998 report recommended that legislative studies be funded through an appropriation from the General Fund and that the legislative account include a study line to which studies should be budgeted and study expenses charged. The graphs below show, for each biennium, the total study expenditures by funding type and the

[13] Study expenditure data provided by Rose Breton.

percent of study expenditures by funding type. The table below the graphs shows the details of those expenditures.[14]

As these graphs show, total expenditures for studies peaked in FY 01 and FY 02 at $147,677.[15] The graphs also show that the use of "other" funds to pay for studies has increased from 0% in FY 99 and FY 00 (approximating the 119th Legislature) to 36% of study expenditures in the most recent biennium. In these graphs, "other" funds include any funds outside of the Legislature GF "study line" (transfers from department funds, grants, private funding and other forms of special revenue).





[14] These figures do not include special studies funded from the Legislative account outside of the "study line" in the Legislative budget.

[15] This amount does not include a $200,000 grant received by the Health Security Board study during the 121st Legislature from the Maine Health Access Foundation since those funds passed directly through the study group to fund a feasibility study conducted by Mathematica, Inc. to estimate the cost of switching to a single payer health insurance plan.

APPENDIX C

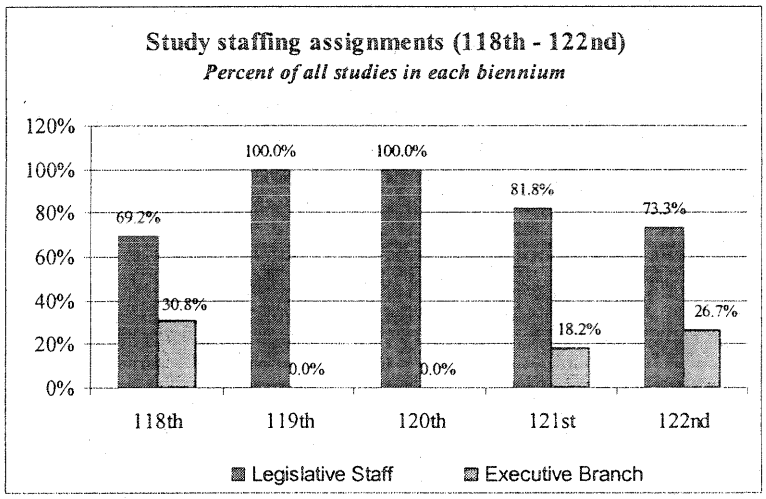
Staff memo summarizing study activities since 1997

STUDY EXPENDITURES

Actual expenditures

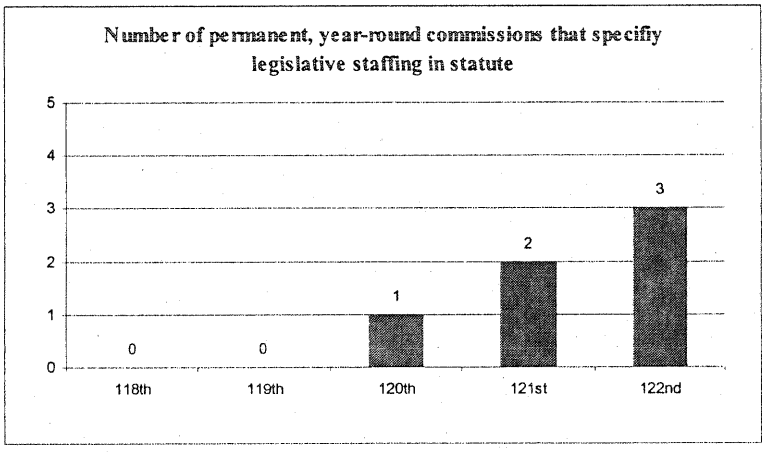
Session (approximate)	Fiscal Years	GF from Legislative "study line"	Other Funds [1]	Total
118th	FY 97 & 98	$43,426.75	$1,212.67	$44,639.42
119th	FY 99 & 00	$78,203.45	$0.00	$78,203.45
120th	FY 01 & 02	$135,484.19	$12,193.30	$147,677.49
121st	FY 03 & 04	$59,472.76	$44,068.59	$103,541.35
122nd	FY 05 & 06	$35,145.68	$19,823.84	$54,969.52
		Percent of biennial expenditures		
118th	FY 97 & 98	97.3%	2.7%	100.0%
119th	FY 99 & 00	100.0%	0.0%	100.0%
120th	FY 01 & 02	91.7%	8.3%	100.0%
121st	FY 03 & 04	57.4%	42.6%	100.0%
122nd	FY 05 & 06	63.9%	36.1%	100.0%

8. Staffing. The 1998 report recommended that legislative studies be staffed by nonpartisan staff and that such staffing be provided only for studies that are either chaired by legislators or in which legislators constitute the majority of members. While the 1998 report had the initial effect of directing more legislative staff resources to such studies, the mix of Legislative and Executive Branch staff for studies is largely back to where it was in the 118th Legislature, prior to the 1998 working group report.



9. New trends. One trend that has developed since the 1998 study is the commitment of nonpartisan legislative committee staff to staffing permanent, year-round advisory commissions. The graph below shows that three such advisory committees have been created since the 120th Legislature; the Legislative Youth Advisory Council (created by the 120th Legislature), the Citizen Trade Policy Commission (created by the 121st Legislature) and the Right to Know Advisory Committee (created by the 122nd Legislature). All these advisory committees have a minority of legislative members, and two of them also either require or allow for non-legislative chairs or have advisory responsibilities that go beyond the Legislature to other agencies or branches of government. It has been noted in the past that the assignment of nonpartisan committee staff to these permanent year-round advisory commissions (which include many

Executive Branch-type functions) creates staffing conflicts during the session which reduce the staffing resources available to the Joint Standing Committees during the session.



	Total members	Legislative members	% Legislative members
LYAC	20	4	20.0%
Citizen Trade	22	6	27.3%
Right-to-Know	14	2	14.3%

I hope this information is useful background as you go forward with your review of studies. I have attached the following items to this memo:

- A spreadsheet that includes the data used in this analysis;
- A copy of the 1998 report on studies; and
- A copy of the provisions of the Joint Rules pertaining to studies.

I look forward to working with you on this review of the study process, and would be happy to answer any questions about this analysis.

C: David Boulter, Executive Director, Legislative Council

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