Joint Rules Committee

Legislative Guidelines Applicable to Studies, Legislative Commissions, Nonlegislative Collegial Bodies, and Resolutions

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Studies and Legislative Commissions

I. Two-Year Studies

The recent practice has been for the House and Senate Rules Committees to limit the number of studies that they each report. However, this is not a reflection of the actual number of studies agreed to or passed each year. Studies may be created in legislation considered or amended by other standing committees. In addition, studies may be created when standing committees refer bills to other entities for further examination. These studies are never considered or counted towards the agreed upon limit by the House and Senate Rules Committees. Studies embedded in Section 1 bills, enactment clauses, and the budget bill are very difficult to track.

- 1. Beginning in 2004, new studies should be created for two years to coincide with the biennial budget cycle and to facilitate legislative continuity. One-year studies are permissible only if the study can be completed within one year of the date of creation.
- 2. Studies requesting continuation in odd-numbered year sessions should be continued for one year only.
- 3. Creating, adding, or continuing studies in Section 1 bills, enactment clauses, the budget bill, and the referral of legislation by standing committees to other entities for study should be discouraged.

II. What Constitutes a Nonstudy

Criteria are needed to determine what constitutes a "nonstudy." Several study resolutions were amended during the 2002 Session to request the compilation and/or dissemination of information. These resolutions were referred to as "nonstudies." However, confusion resulted in counting the number of studies approved by each chamber because the features of resolutions that authorize studies and data retrieval and dissemination overlap.

- 1. Resolutions that request or direct the following actions should be considered nonstudies:
 - Requests or directs the collection and dissemination of existing data or information.
 - Increases or decreases the membership of an existing joint subcommittee or legislative commission.
 - Creates or continues a legislative commission or collegial body whose mission is not the examination of legal or policy issues, research, review and analysis of information, evaluation of alternatives for resolving problems, decision-making, reporting of findings, or the issuance of recommendations.
 - Draws attention to a problem or issue and then directs the Clerk to forward a copy of the resolution to an entity in order that it may be apprised of the sense of the General Assembly in this matter during the entity's deliberations.
- Legislation that request or direct the collection and dissemination of existing data or information should include language that requires the publication of such data or information in accordance with the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports to facilitate legislative history tracking and accountability.
- 3. Nonstudies should be included in the total number of studies counted by the House and Senate Rules Committees, respectively.

III. What Constitutes a Study

Criteria are needed to determine what constitutes a "study." The Procedural Resolution requires an introductory deadline for studies; it is necessary to determine what constitutes a study to assist members in complying with the deadline.

Recommendations

- 1. Creates or continues a committee study, joint committee, joint subcommittee, legislative commission, agency study, or collegial body, whose mission includes the examination of legal or policy issues, research, review and analysis of information, evaluation of alternatives for resolving problems, decision-making, reporting of findings, or the issuance of recommendations.
- 2. Requests, directs, or encourages a committee study, joint committee, joint subcommittee, legislative commission, an agency, collegial body, or nongovernmental entity to take specific action. Such legislation should include language that requires the entity to submit an executive summary describing the action taken or its progress towards meeting the objectives of the enabling resolution to the Division of Legislative Automated Systems, to be posted on the General Assembly's web site. Legislation requesting, directing, or encouraging a specific action to be taken should include the term, "; report" at the end of the title.
- 3. Requests or directs an existing committee study, joint committee, joint subcommittee, legislative commission, an agency, collegial body, or nongovernmental entity to include other related objectives in its ongoing study and deliberations.

Consolidation of Studies

- 1. Consolidation of multiple joint resolutions establishing similar or different studies requested of or directed to the same entity may be counted as multiple studies.
- Consolidation of multiple joint resolutions that request or direct multiple entities to conduct individual studies on inter-related issue(s) may be counted as one study.

IV. Nomenclature and Terminology for Studies

The nomenclature of studies varies and includes committee studies, joint subcommittees, commissions, task forces, select committees, and other configurations in an attempt to convey a special distinction. However, such distinction is a misrepresentation because the basic functions and duties are the same for all such entities.

- 1. The nomenclature for legislative studies should be "committee, joint committee, joint subcommittee, and commission" only. For the purposes herein, the term "commission" means a statutory study group created in the legislative branch of government and composed of members of both chambers of the General Assembly or under the purview of a single chamber.
- Single House and Senate resolutions should not create joint subcommittees, agency studies, commissions, and nonstudies. Such resolutions should create standing committee studies of the respective chamber only and should be referred to as "committee studies."
- Joint resolutions should create or continue legislative studies, agency studies, and nonstudies. Legislative studies created or continued by a joint resolution should be referred to as joint subcommittees and should be created or continued for no longer than two years by any resolution. After three years of continued existence, the joint subcommittee should be codified or discontinued.
- 4. Bills should create legislative commissions that are permanent or that will exist for more than three years and should be codified in Title 30.
- 5. Bills that create legislative commissions should specify that the commission is established in the legislative branch of government.
- 6. Joint resolutions that reference legislative agencies, joint subcommittees, and legislative commissions should always use directive language. For all other entities, requesting language should always be used.

V. Titles of Studies

The titles of studies are often long and nonspecific. Frequently, the purpose of the study is obscured when multiple entities to conduct or participate in the study, (e.g., more than four, and information actually pertaining to the objectives) are included in the title. It is also confusing when the title of the resolution is inconsistent with the purpose stated in the resolved clause. Moreover, tracking resolutions that are in actuality studies is difficult when the title is imprecise.

Recommendations

- 1. The title of studies must be concise and specific.
- 2. The title and resolved clause in resolutions should match.
- 3. All legislation creating, adding, or continuing a study should include the term "study" in the title of the resolution or bill and in the summary catchline, and the term "report" at the end of the title.

Examples

- For bills: A Bill to amend § 20-49.10 of the Code of Virginia, relating to relief from legal determination of paternity; study; report.
- For resolutions: Establishing a joint subcommittee to study the Commonwealth's state personnel needs. Report.
- 4. Precise language should be substituted for the phrase "expressing the sense of the General Assembly."

Example

- Prohibiting low-speed vehicles from traveling in the passing lane on interstate highways in the Commonwealth.
- Ensuring that all students in the public schools become proficient readers by the third grade.

Supporting the need to strengthen U.S. border checkpoints.

VI. Appointments, Size, Composition, and Subgroups

Legislative study resolutions frequently establish very large memberships, e.g., 15 or more members, and increasingly provide for appointments by entities other than the Speaker and the Senate Committee on Rules and the appointment of several nonlegislative citizen members, resulting in studies in which legislators are in the minority. Often, the qualifications of nonlegislative citizen members to be appointed are not provided, for example, a representative of the Virginia Dog Breeders Association, or the president of Cat Lovers of Virginia, or a nonlegislative citizen at-large. Allowing members and others to serve on a legislative study at their discretion makes it difficult to determine the total membership, estimate the direct costs of the study, conduct business, and formulate recommendations. Legislative records also indicate a proliferation of advisory task forces and subgroups that are authorized and/or are established by committees, joint subcommittees, and legislative commissions. An extensive number of nonlegislative citizen members serve on these subgroups and many may receive compensation and reimbursement of expenses.

- 1. The total membership of committee studies, joint committees, joint subcommittees, and legislative commissions should consist of the requisite number of members needed to accomplish the study.
- 2. The only appointing authorities for legislative studies are the Speaker of the House and the Senate Committee on Rules.
- 3. The qualifications of nonlegislative citizen members should be specified in the legislation.
- 4. Legislation that continues a study should include language stating that Senate appointees shall continue to serve.
- 5. Legislation that continues a study should include language that reconstitutes the appointment of members of the House of Delegates by the Speaker of the House.
- 6. Legislation that continues a study should include language that provides that appointments of members of the House of Delegates shall be "in accordance with the principles of proportional representation contained in the Rules of the House of Delegates."
- 7. Nonlegislative citizen members appointed to serve on studies should be citizens of the Commonwealth of Virginia.

VI. Appointments, Size, and Composition (Continued)

- 8. Legislation that creates committee studies, joint committees, joint subcommittees, and legislative commissions should not be drafted to permit members to serve at their discretion.
- 9. The number of legislative members appointed to committee studies, joint committees, joint subcommittees, and legislative commissions should exceed the number of nonlegislative citizen members and voting ex officio members.
- 10.Legislation that creates committee studies, joint committees, joint subcommittees, and legislative commissions should specify that nonlegislative citizen members who are appointed by their title or position should serve ex officio. The legislation should specify whether nonlegislative citizen members serve with or without voting privileges.
- 11. The creation and composition of subgroups of committee studies, joint committees, joint subcommittees, and legislative commissions should be authorized and specified in the enabling legislation.
- 12. The following language should be included in study resolutions to address the travel of nonlegislative citizens outside of the Commonwealth to attend legislative meetings:

"Nonlegislative citizen members shall be citizens of the Commonwealth of Virginia. Unless otherwise approved in writing by the chairman of the (Name of Entity) and the respective Clerk, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings." If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required.

13. Legislative representation of a particular area, e.g. Roanoke River Basin, should be specified by district.

VII. Joint Subcommittee and Commission Differential

During the past few years, the House Committee on Rules has required that all legislation containing appointments of legislative members provide for a two-member differential in favor of the House of Delegates. The Senate Committee on Rules does not share this view. This issue has not been resolved; therefore, legislation has to be amended multiple times prior to agreement by both chambers each year.

Recommendations

1. The two-member differential in favor of the House of Delegates (i.e., the number of House members exceeds the number of Senate members by two) for all studies should be retained. However, to equalize the voting strength, the following provision should be included in legislative studies:

"No recommendation of the (Name of Entity) shall be adopted if a majority of the House members or a majority of the Senate members appointed to the (Name of Entity) (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the (Name of Entity)."

VIII. Terms

The terms of appointments to legislative commissions vary from one to 10 years. Legislative members are appointed to legislative commissions to represent the General Assembly. However, when the terms of such members exceed their terms of office, confusion may exist as to whether former members of the General Assembly continue to serve their terms on the commissions. Members of the Virginia House of Delegates are elected for two-year terms and members of the Senate of Virginia are elected for four-year terms. When members are appointed according to the same number of terms, Senate members serve twice as long as House members. The appointment of House members to more terms equalizes the number of years that House and Senate members may serve on legislative commissions. Study resolutions that create two-year studies often do not indicate whether nonlegislative citizen members who are appointed due to their title or position should serve only for as long as they occupy the title or position, e.g., small businessman of the year.

- 1. Members of the General Assembly appointed to legislative commissions should be appointed to terms coincident with their terms of office. Legislative members should retain their eligibility to serve and not be subject to term limits.
- 2. Nonlegislative citizen members should be appointed by the Senate Committee on Rules and the Speaker of the House initially to two-year terms.
- 3. Nonlegislative citizen members appointed due to their titles or positions should serve ex officio only for the period in which the title or position is conferred.
- Nonlegislative citizen members appointed to legislative commissions should have term limits established by the number of years that they are eligible to serve.

IX. Designation of Chairman and Vice Chairman

Legislation creating legislative studies increasingly specifies the chairman of the committee study, joint committee, joint subcommittee, or legislative commission, and provides that the study shall be chaired by a member of the executive or judicial branch of government or by a nonlegislator.

Recommendations

1. The chairman and vice chairman of legislative studies should always be a member of the General Assembly and this requirement should be specified in the legislation

X. Study Objectives

Legislation increasingly does not include objectives for studies. The inclusion of specific objectives provides direction, focus, and parameters for the study.

Recommendations

1. Legislation establishing or continuing studies should always include specific and concise study objectives.

XI. Number of Meetings, Compensation, and Funding

Resolutions establishing legislative studies often do not include the number of meetings authorized, upon which the direct costs, in part, are based. Typically, the variable costs for experts, speakers, materials, and resources needed by the study and the source of funding are not included in the estimation. The inclusion of this information would facilitate better projections of the costs associated with studies. The fiscal records indicate that the majority of meetings occur during the third and fourth quarter of the year. Scheduling meetings throughout the year will increase the time that legislative studies will have to deliberate on the issues before it and develop appropriate recommendations.

- 1. The direct known costs of joint subcommittees, committee studies, and joint committees include member-related expenses (i.e., members' per diem and expenses) and should be specified in the resolution.
- 2. Nonmember-related expenses include the known estimated costs of materials, resources, speakers, consulting services, etc. that are necessary for the conduct of the study. Authorization for consulting services should adhere to the requirements for consulting services as provided in the appropriations act. The costs associated with consulting services should be funded separately in the appropriations act. All known costs of nonmember related expenses should be specified in the legislation.
- 3. Approval for unbudgeted nonmember-related expenses should require the written authorization of the respective Clerk and the chair of the joint subcommittee. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks and the chair should be required.
- 4. Legislative commissions should be funded by a separate appropriate in the Appropriation Act. However, during its first year of existence, a legislative commission may be funded from the Clerks' operating budgets with the approval of the Joint Rules Committee. If the legislative commission is not funded for any year thereafter, it shall expire and this condition should be included in an enactment clause of the enabling legislation.
- 5. With the exception of legislative commissions, whose budgets are reviewed by the Budget Oversight Subcommittee of the Joint Rules Committee, committee studies, joint committees, joint subcommittees, and legislative commissions created by resolution and by statute should be reimbursed for no more than four meetings per year. Meetings include public hearings and any meeting of a subgroup composed of less than the full membership of the body. Multiple meetings held on the same day shall be deemed to constitute one meeting.

XI. Number of Meetings, Compensation, and Funding (continued)

6. Committee studies, joint committees, joint subcommittees, and legislative commissions should schedule their meetings for Monday, Tuesday, or Wednesday during the first and third full weeks of the month.

XII. Staffing

Legislation creating legislative studies sometimes provide for staffing by executive branch agencies and nonlegislative entities.

- 1. Staff support for committee studies, joint committees, joint subcommittees, and legislative commissions should always be provided by legislative agencies or staff and should be stated in the legislation.
- 2. Administrative staff support for committee studies, joint committees, joint subcommittees, and legislative commissions, unless the enabling legislation for legislative commissions provide for the hiring of staff, should always be provided by the Office of the Clerk of the Senate or the Office of the Clerk of the House, as appropriate, and should be stated in the legislation. Examples of legislative commissions whose legislation authorize the hiring of staff include, but are not limited to, the Joint Legislative Audit and Review Commission, Virginia State Crime Commission, Joint Commission on Health Care, Virginia Housing Commission, and the Virginia Commission on Youth.
- 3. The Division of Legislative Services should provide legal, research, policy analysis, and other staff support services to committee studies, joint committees, joint subcommittees, and legislative commissions, unless the enabling legislation for legislative commissions provide for the hiring of staff. These responsibilities should be stated in the legislation.
- 4. Nonlegislative agencies and nongovernmental entities should provide assistance or other services as requested by the committee study, joint committee, joint subcommittee, or legislative commission. These responsibilities should be stated in the legislation, if appropriate.

XIII. Reporting Clause

The deadline by which a committee study, joint subcommittee, agency, or nongovernmental entity must complete its work and submit its report is not clearly stated in study resolutions. Further, the regular reporting clause is removed from nonstudy resolutions. Therefore, no report is published as a state document. The lack of a published report can limit public access to work completed upon the request of the General Assembly and legislative tracking of issues that have been addressed.

- 1. The reporting date for studies conducted by standing committees, joint committees, joint subcommittees, agencies, and nongovernmental entities should not exceed two years from the year in which the study was created.
- 2. The date for completing committee meetings for studies created by a resolution should be stated explicitly and separated from the date by which the chairman's executive summary and the report must be submitted.
- 3. Committee studies, joint committees, and joint subcommittees should file a chairman's executive summary of the findings and recommendations of the study with the Division of Legislative Automated Systems by the first day of the Regular Session. The chairman's executive summary should state whether a final report will be submitted to the Governor and the General Assembly. In the case of two-year studies, a chairman's executive summary should be submitted for each year and should state whether a report will be submitted for that year to the Governor and the General Assembly. The chairman's executive summary and any report should be posted on the website of the General Assembly by the Division of Legislative Automated Systems.
- 4. Legislative commissions should file a chairman's executive summary describing the commission's work and activity for the preceding year with the Division of Legislative Automated Systems by the first day of the Regular Session each year. The chairman's executive summary should state whether a report will be submitted to the Governor and the General Assembly. The chairman's executive summary and any report should be posted on the website of the General Assembly by the Division of Legislative Automated Systems.

XIII. Reporting Clause (continued)

- 5. Committee studies, joint committees, joint subcommittees, legislative commissions, agencies, or nongovernmental entities that are requested, directed, or encouraged to take specific action should submit an executive summary and a report describing the action taken or its progress towards meeting the requests of the enabling resolution to the Division of Legislative Automated Systems by the first day of the Regular Session, to be posted on the General Assembly's website.
- 6. Entities requested or directed to collect and disseminate data or information pursuant to nonstudy resolutions should submit an executive summary and a report of the data and/or information that meets the request of the legislation to the Division of Legislative Automated Systems by the first day of the Regular Session, to be posted on the website of the General Assembly.

XIV. Expiration and Review of Existing Legislative Commissions and Nonlegislative Collegial Bodies

The Joint Rules Committee has adopted guidelines that require legislative commissions and nonlegislative collegial bodies to be created by statute. These entities may be established as temporary or permanent bodies. Currently, the sunset provision for new legislative commissions and nonlegislative collegial bodies is an optional provision in the canned language.

Recommendations

1. New legislative commissions, nonlegislative advisory collegial bodies, and nonlegislative collegial bodies whose primary mission is the conduct of studies should expire (sunset) after three years from the date of creation.

XV. Implementation Clause

"Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study," Joint Rules Committee Resolution #4 (1990). In the past, the implementation clause has not been placed on resolutions creating committee studies or legislative commissions because, generally, they have the authority to conduct studies or are funded by a separate appropriation.

Recommendations

- 1. The implementation clause should be used only in resolutions creating or continuing committee studies, joint committees, and joint subcommittees.
- 2. The implementation clause should read as follows:

"Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or delay the period for the conduct of the study, or authorize additional meetings during the ______ interim."

NONLEGISLATIVE COLLEGIAL BODIES

Executive, Judicial, and Independent Councils and Commissions

XVI. Designation of Branch of Government

Legislation creating boards, councils, and commissions does not note the branch of government in which they are being established. The lack of such detail causes confusion in determining the branch of government to which the entity is accountable, the appointment process, and the designation of staff.

Recommendation

1. Bills that create boards, councils, and commissions should specify the branch of government in which the entity is being established or should state that the board, council, or commission is an independent entity.

XVII. Appointments

Legislation establishing collegial bodies increasingly provides for appointments of legislative members by entities other than the Speaker and the Senate Committee on Rules.

- Members of the House of Delegates and of the Senate of Virginia serving on collegial bodies of the executive or judicial branch or independent agencies created pursuant to legislation initiated by the General Assembly should be appointed by the Speaker of the House and the Senate Committee on Rules, respectively.
- Nonlegislative citizen members appointed to collegial bodies created pursuant to legislation initiated by the General Assembly should be citizens of the Commonwealth of Virginia.
- 3. Members of the General Assembly serving on collegial bodies and entities created pursuant to an Executive Order should be appointed by the Governor.

XVIII. Terms

The terms of appointments to collegial bodies vary from one to five years. Terms less than four years impose additional burdens on the Secretary of the Commonwealth in completing required forms and documents for such appointments. Terms of more than four years may prevent a Governor from exercising his appointing authority for a particular body. The Governor's appointing authority is maximized when members are appointed to serve at his pleasure. Staggered terms promote continuity and consistency in the work of the body and preserve institutional knowledge.

Some members of collegial bodies are appointed because they hold a particular office. However, when a member is appointed for a term and then relinquishes the position that entitled him to the appointment, there may be confusion as to whether he continues to serve out his term on the collegial body.

- 1. Members of the General Assembly should be appointed to terms coincident with their terms of office.
- 2. Members of the General Assembly appointed to collegial bodies should have term limits.
- 3. Nonlegislative citizen members should be appointed initially to staggered terms and thereafter to four-year terms.
- 4. Nonlegislative citizen members appointed to collegial bodies should have term limits.

XIX. Discretionary Membership

Allowing members and others to serve on a legislative study committee or commission at their discretion makes it difficult to determine the total membership, estimate the direct costs of the study, conduct business, and formulate recommendations.

Recommendations

1. Boards, councils, and commissions should not be created with provisions that permit members to serve at their discretion.

XX. Number of Meetings

The statutes for collegial bodies are not consistent in requiring a minimum number of meetings. Meetings that are left to the discretion of the body provide greater flexibility to enable it to perform its duties. However, requiring collegial bodies to hold a minimum number of meetings each year promotes accountability and provides a public forum for the body's work.

Recommendations

1. The general practice of specifying the number of meetings that a collegial body must hold annually, with provisions to permit the chairman or a quorum of the body to call meetings, should be retained and stated in the statute.

XXI. Compensation of Legislative and Nonlegislative Citizen Members

Source of Funding

Legislation establishing boards, councils, and commissions often does not provide for the compensation of legislative and nonlegislative citizen members or specify the source of funding, particularly in the case of legislative members who serve on executive branch boards, councils, and commissions. Providing this information will facilitate planning and budgeting by the House and Senate Clerks Offices and eliminate confusion regarding the source of funding and which entities are responsible for the compensation of legislative members who serve on executive branch councils, boards, and commissions as permissible under law.

- 1. Funding for the costs of compensation (per diem) and expenses of legislative members appointed to collegial bodies should be provided by the collegial body or the relevant state agency to which it is affiliated. The relevant state agency should be named in the statute.
- 2. Collegial bodies that anticipate using private funds to cover the costs of compensation and expenses of its members should be authorized to receive and expend such funds as specified in the statute.

XXII. Staff Support for Collegial Bodies

Legislation that creates boards, councils, and commissions frequently do not provide for staff support.

- 1. The source of staff support for the collegial body should always be specified in the statute.
- 2. An appropriate agency or entity within the branch of government in which the collegial body has been established should provide staff support for the collegial body.

Resolutions

XXIII. Resolutions Designating Days

Resolutions that designate days often do not provide a person or organization to receive it. As a rule, these resolutions have been generated by an advocacy or other interest group. However, when the resolutions are agreed to, there is no central record of all the designated days and no mechanism for notifying the public, advocates, and other interest groups of the General Assembly's action.

- 1. Resolutions that designate days, weeks, or months should include the recipient(s) to receive a copy of the resolution.
- 2. Resolutions passed to designate days, weeks, or months should be posted by the respective Clerk on the website of the General Assembly. The resolution should state that upon passage the resolution would be posted on the website for the General Assembly.

XXIV. Celebration of Life/On the Death of Legislative Members Commending Resolutions

Resolutions that commend or pertain to the death of legislative members are introduced in both chambers without regard to the house in which the member last served.

Recommendations

1. Resolutions that commend or celebrate the life of a member of the General Assembly should be introduced by a member of the last house in which the member last served.

XXV. Proper Names

Resolutions frequently refer to elected officials and other persons by their proper name rather than by their title. Proper names are appropriate when used in commending, memorial or celebrating the life, designating a day/week/month, and encouraging/recognizing/memorializing and other resolutions, (i.e., resolutions that formerly used "expressing the sense of the General Assembly").

- The title and/or position of elected officials and other dignitaries noted in study resolutions should be used to identify them, e.g., the President of the United States, the Secretary General of the United Nations, the Chairman of the World Bank.
- 2. The proper name of members of the General Assembly, elected officials, dignitaries, and other persons should be used in the title and resolved clause of all resolutions.

XXVI. Implementation of the Guidelines

- 1. The Division of Legislative Services should include templates that incorporate the legislative guidelines adopted by the Joint Rules Committee in the bill drafting system.
- 2. The legislative guidelines adopted by the Joint Rules Committee should be distributed to all members of the General Assembly and other authorized requesters of legislation, (e.g., cabinet secretaries, independent agencies, the Governor, Lieutenant Governor, Attorney General), and legislative staff involved in the bill drafting and preparation process as soon as practicable.