

June 30, 2014

MEMO TO: Don S. Guzman, Councilmember

F R O M: Sharon Brooks, Legislative Attorney ^{SB}
Scott Jensen, Legislative Analyst ST
Pauline Martins, Committee Secretary ^{PM}

SUBJECT: **WORKING GROUP COMPARISON** (PAF 14-164)

You have asked us for an overview of various forms of entities – which we can cumulatively refer to as “working groups” – that have been historically employed by Council members to gather information and consensus on matters of public concern. Temporary investigative groups (“TIGs”), also known as permitted interaction groups; subcommittees; special committees; independent working groups; and boards, commissions, and advisory committees are among the distinct group forms that we review below in narrative form and in the attached chart. As you will see, the working groups have differing legal requirements, membership, and capabilities.

Temporary investigative groups

A TIG may be created by a standing committee pursuant to the permitted interactions section of the State Sunshine Law (Section 92-2.5(b), Hawaii Revised Statutes (“HRS”)). Typically, this group is tasked with studying a defined issue and making recommendations to the standing committee. More rarely, a TIG may be created to present, discuss, or negotiate a position of the standing committee at a meeting.

The TIG membership may consist of two or more members of a standing committee, but less than a quorum. Members of the public may also work with the TIG. Should a vacancy occur on a TIG, no replacement member can be chosen as the TIG’s membership is set at creation. If the standing committee wants to change the TIG’s membership, it must dissolve the TIG and create a new one.

TIGs are not *required* to hold meetings, be open to the public, take testimony, transcribe minutes, or post agendas. This exemption from the Sunshine Law expedites the TIG’s work and promotes a more efficient process. Nonetheless, TIGs may take any of those actions, if they wish. TIGs may solicit input from the public as part of an investigation without needing to post a meeting agenda. TIG members may operate by email or phone and, as an exception to Sunshine Law requirements for other boards, may discuss Council business outside of a meeting. Members of the committee who are not part of the TIG may not attend TIG meetings. Before the TIG reports to the committee, TIG members should not discuss the status of their investigation with committee members who are not part of the TIG.

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A TIG has limited duration and is usually dissolved following its report to the standing committee. The primary benefit of a TIG is that it is more flexible than a standing committee or subcommittee because it need not adhere to Sunshine Law requirements. A disadvantage of a TIG is that the group's report must be given on a separate date that is prior to the date of any consideration or action by the standing committee. Additionally, TIGs can be labor intensive and demanding on Council resources.

We found two examples of TIGs formed by Council standing committees: the 2011 TIG of the Budget and Finance Committee to make findings and recommendations on policies relating to the apparent disparity of real property assessments for agricultural use versus non-agricultural use, and the 2013 TIG of the Budget and Finance Committee to recruit, evaluate, and recommend a County Auditor. At your direction, we can research the Council's experience with those TIGs, including interviewing Council members and staff who participated.

Executive-branch deliberative bodies, including the Maui General Plan Advisory Committee, appear to have made more frequent use of TIGs.

Subcommittees

Subcommittees may be created within any standing committee pursuant to Rule 7(D), Rules of the Council. Subcommittees are created to provide recommendations to the standing committees, particularly on matters that require in-depth research or technical expertise. The standing committee appoints the chair, vice-chair, and members of the subcommittee; specifies the objectives of the subcommittee; and sets a date on which the subcommittee is to be dissolved. Subcommittees must comply with all Sunshine Law requirements for a standing committee. That is, they must hold noticed, public meetings; post agendas; produce minutes; and take testimony (see Part I, Chapter 92, HRS).

An advantage of a subcommittee is that the standing committee to which it reports may take action on the subcommittee's recommendations at the same meeting at which the report is presented. However, a disadvantage of a subcommittee is the standing committee will typically have numerous meetings of its own to consider the subcommittee's findings and recommendations before taking action on the subcommittee's report. The standing committee's review and deliberations on a subcommittee's report adds another layer to the Council's review process, placing additional burdens on budget, staff, and other resources.

While the use of subcommittees reached its peak in the 1990s (six established in the 1993-94 term, six in the 1995-96 term, and eight in the 1997-98 term), their numbers tapered off in the ensuing decades. The final two subcommittees were established in 2002, including the Subcommittee on Outdoor Lighting Standards, which was formed to assist the Public Works and Transportation Committee with an item regarding amendments to an outdoor lighting bill. While the group met a number of times, no legislation resulted from the subcommittee's efforts. Ultimately, a private group took over the task of trying to provide well-considered recommendations to the appropriate Council committee on the legislation.

Special committees

Special committees can be regarded as obsolete because the applicable authorizing law, former Rule 6, Rules of the Council, was removed in 2011. In the preceding decade, special committees had been rarely, if ever, used. Under the prior rule, a special committee was established by the full Council, which specified its purposes and operating period, and approved the chair, vice-chair and membership.

Independent working groups

Council members are free to establish, or join, an independent working group (i.e., a body not formed by the Council or a Council committee), provided they remain cognizant of Sunshine Law constraints relating to communication among Council members. Typically, these groups are formed by, or with, community interest groups to focus on specific issues. They can be useful in determining policy goals because they can cover a broad range of issues, incorporate a diverse membership, and change their goals over time. Historically, however, bill drafting by independent groups has been problematic, as the task has not been performed by those with professional training and experience. In addition, some public members have appeared to be committed to specific language of a draft bill because they worked on it, whether or not the language meets legal requirements.

OCS resources are rarely provided to an independent working group because of budgetary constraints and the possible perception of preferential treatment. Therefore, from time to time, Council members have chosen to provide staff and other resources from their individual offices to assist various independent working groups. Provided there is a public purpose for the allocation of resources, this appears appropriate.

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Boards, commissions, and advisory committees

Boards, commissions, and advisory committees, established by Charter or ordinance, are often available to respond to Council members' inquiries. For example, the Commission on Children and Youth is tasked with making recommendations to the Council on all matters relating to children, youth, and youth programs proposed for adoption by the Council (Chapter 2.39, Maui County Code). While a Council member with a question or a proposal in those areas is free to obtain the group's assistance with minimal impact on Council resources, the option of seeking guidance from this commission and other County entities appears underutilized. OCS encourages a greater use of this resource.

We hope this is helpful. Please let us know if you have any questions or require further assistance.

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Attachment

COMPARISON OF WORKING GROUPS FOR COUNTY ISSUES

	Temporary Investigative Group	Legislative Subcommittee	Special Committee	Public	Executive Board/Commission/Advisory Committee
Definition	A small group composed of committee members to investigate a specific issue and report findings within a defined time period.	Created by a standing committee to focus on specified subject matter and report findings to the standing committee.	A group created by the Council for specified purposes operating within a defined period of time.	A group formed by members of the public, focused on issues of concern, without specific rules or requirements of law.	A group formed pursuant to Charter or ordinance, typically appointed by the Mayor with Council approval.
Authority	HRS § 92-2.5(b)(1)	Rule 7(D), Rules of the Council	There is no current authority for a special committee. Prior to 2011, authority to create a special committee was in Rule 6, Rules of the Council.	No authority needed. Not defined under law.	Specific Maui County Code or Charter provision.
Creation	A temporary investigative group ("TIG"), also known as a permitted investigative group, may be created by a standing committee.	A subcommittee may be created within any standing committee by motion and vote.	Rule 6, as it existed prior to 2011, provided that the Council may create any special committee as deemed appropriate. There is no legal support for creating a special committee at this time.	An independent working group is typically formed by individual members of the public.	Created by Charter or ordinance.
Purpose	To investigate a matter relating to the official business of a standing committee.	To provide well-considered recommendations to the standing committee, particularly on matters that require in-depth research or technical expertise.	Rule 6, as it existed prior to 2011, provided that the objectives of a special committee were specified by the the Council at the time of establishment.	The group defines its own purpose, which often evolves over time.	Defined by Charter or ordinance.
Scope	The scope of the investigation and each member's authority are defined by the standing committee.	The standing committee shall specify the objectives of the subcommittee and set a date on which the subcommittee shall be deemed dissolved.	Rule 6, as it existed prior to 2011, provided that the Council shall specify the objectives of the special committee, and shall set a date on which the special committee shall be deemed dissolved.	Defined by the group.	Defined by Charter or ordinance.
Membership	Two or more Council members, but less than a quorum of the standing committee, as specified at creation.	The standing committee shall appoint the chair, vice-chair, and members of the subcommittee. Council members who are not voting members of a subcommittee serve as non-voting members of the subcommittee and may participate in the proceedings.	Prior rule provided that the Council shall appoint the chair, vice-chair, and members of the special committee. Council members who are not voting members of a special committee serve as non-voting members and may participate in the proceedings.	Council members, as restricted by the Sunshine Law, and members of the public, without limitation.	As defined at creation.

Resources; staffing	TIGs are entitled to the same resources as a standing committee.	A subcommittee is analogous to a new standing committee, requiring full OCS support.	When formed in the past, a special committee was analogous to a subcommittee, having full OCS support.	Typically, little or no OCS staffing is provided. Council members may assign their Executive Assistants.	Minimal OCS resources; staffed by Administration.
Legal requirements	TIGs are provided for by the Sunshine Law under HRS § 92-2.5. While they are not required to transcribe minutes or post agendas, they must present findings and recommendations to the standing committee, whereafter all deliberation on the investigated matter must occur only at a duly noticed meeting of the standing committee subsequent to the date of the meeting where the TIG report was made.	Subcommittees shall comply with the procedural requirements applicable to standing committees, to the extent practicable.	When formed in the past, special committees had to comply with the procedural requirements applicable to standing committees, to the extent D16 practicable.	No specific requirements under law.	None.
Sunshine Law requirements (Part I Chapter 92, HRS)	TIGs must comply with special provisions under HRS § 92-2.5.	Must comply with Sunshine Law.	Must comply with Sunshine Law.	Council members must be cognizant of Sunshine Law restrictions on communication amongst themselves outside of duly noticed public meetings.	Must comply with Sunshine Law.
History	Example: In 2013, the Budget and Finance Committee voted to establish a TIG for recruiting and evaluating applicants for the position of County Auditor. The TIG was composed of three Council members, whose respective authorities were set forth when the TIG was created.	No subcommittees have been created since 2002. The Subcommittee on Outdoor Lighting Standards was created in that year, but no legislation resulted.	Special committees were rarely utilized by the Council to investigate specific issues prior to 2011, when the rule providing for them was deleted. Example: Special Committee on Land Acquisition formed in 1998 to concentrate on long-term financing and criteria for land acquisition, as recommended by the Budget and Finance Committee.	The group defines its own purpose, which often evolves over time.	
Comments	In the past, TIGs have involved intense work, heavily using OCS staff, often after hours.	While a subcommittee may be created under current rule, this group form is disfavored because it imposes heavy burdens on OCS resources, which may not have been anticipated in the budget, and it requires additional availability of Council members, who must comply with Sunshine Law requirements.		Because members of independent working groups are rarely trained in legislative drafting, they are best used to formulate broad policy agendas and create consensus. When OCS has been involved, questions have arisen concerning the extent to which staff can advise the group, draft legislation, or be present at meetings.	Boards, commissions, and advisory committees were designed to be used by the Council but have been underutilized (e.g., the Commission on Children and Youth, established by Chapter 2.39, Maui County Code, which makes recommendations to the Council on all matters relating to children, youth, and youth programs). Assistance may be initiated by correspondence from a Council member.

References:

HRS § 92-2.5(b)

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decision-making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

Rules of the Council, Rule 7(D)

Subcommittees. A subcommittee within any standing committee may be created for the purpose of providing well-considered recommendations to the standing committee particularly on matters that require in-depth research or technical expertise. The standing committee shall appoint the chair, vice-chair, and members of the subcommittee shall specify the objectives of the subcommittee and shall set a date on which the subcommittee shall be deemed dissolved. Subcommittee members shall comply with the procedural requirements applicable to standing committees to the extent practicable. All Council members who are not voting members of a subcommittee shall serve as non-voting members of the subcommittee and may participate in the proceedings but shall not be counted toward quorum for the subcommittee.