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OFFICE OF THE
COUNTY COUNCIL

MEMO TO: GREAT-6(1) File

F R O M: Keani N.W. Rawlins-Fernandez, Council Vice-Chair 

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO
AMENDMENTS TO THE RULES OF THE COUNCIL** (GREAT-6(1))

The attached legislative proposal pertains to Item 6(1) on the Committee's agenda.

paf:rem:21-238a

Attachment

Temporary Investigative Group of the Government Relations, Ethics, and Transparency Committee

Purpose of investigation:

To make findings and recommendations on amendments to the Rules of the Council.

Scope of investigation:

The scope of investigation will include the following:

- 1) As its only order of business, the Temporary Investigative Group ("TIG") will review proposed amendments to the Rules of the Council and determine which proposals to recommend to the Committee.
- 2) At the conclusion of its investigation, the TIG will determine which proposals and accompanying amendment summary forms will be transmitted to the Committee.

General rules:

- 1) Discussion of matters relating to the purpose and scope of the investigation is restricted to only those Council members appointed by the Government Relations, Ethics, and Transparency Committee to the TIG.
- 2) The virtual or in-person presence of three TIG members for a meeting called and convened by the TIG Chair constitutes a quorum.
- 3) Discussion of matters relating to the purpose and scope of the investigation is only permitted during a meeting called and convened by the TIG Chair, or in the absence of the TIG Chair, the TIG Vice-Chair.
- 4) Three affirmative votes are required to establish a recommendation of the TIG. Items that do not receive three affirmative votes will be disclosed as findings.
- 5) The TIG Chair will submit a report of the group's findings, recommendations, and legislative proposals, if any, to the Government Relations, Ethics, and Transparency Committee no later than [date], 2021.

- 6) The TIG will be dissolved upon presentation of its findings, recommendations, and legislative proposals to the Government Relations, Ethics, and Transparency Committee.
- 7) At this time, the TIG will be staffed by a Legislative Attorney.
- 8) The TIG is not considered a “board” for Sunshine Law purposes so long as it abides by the requirements of Section 92-2.5(b)(1), Hawaii Revised Statutes, as attached. Sunshine Law requirements including meeting notices, public testimony, open meetings, and meeting minutes do not apply to the TIG.

Membership:	Authority:
_____, TIG Chair	Call, convene, and facilitate TIG discussions; request staff assistance from the Council Chair and Office of Council Services as necessary; report findings and recommendations, if any, to the Government Relations, Ethics, and Transparency Committee; establish and enforce parliamentary procedure.
_____, TIG Vice-Chair	In the absence of the Chair, the Vice-Chair assumes the duties of the Chair.
_____, TIG member	Voting member
_____, TIG member	Voting member

paf:rem:21-238b

Attachment

§92-2.5 Permitted interactions of members. (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.

(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 decisionmaking 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.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.

(d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

(1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;

(2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and

(3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:

- (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and

(B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

(e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

(f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

(g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

(h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1]

Law Journals and Reviews

Hawai'i's Sunshine Law Compliance Criteria. 26 UH L. Rev. 21.

Case Notes

Even assuming that written memoranda circulated by council members, in which the council members presented proposed actions, included justifications for the proposals, and sought "favorable consideration" of the proposals constituted a permitted interaction under subsection (a), the memoranda violated the mandate under subsection (b) that no permitted interaction be used to circumvent the spirit or requirements of the sunshine law to make a decision or to deliberate toward a decision upon board business. The "express premise" of the sunshine law is that opening up the government process to public scrutiny is the only viable and reasonable way to protect the public. 130 H. 228, 307 P.3d 1174 (2013).

Written memoranda circulated by council members, in which the council members presented proposed actions, included justifications for the proposals, and sought "favorable consideration" of the proposals did not fall within the permitted interaction described in subsection (a) because the memoranda: (1) were distributed among all of the members of the Maui county council rather than among only two members of the board; and (2) sought a commitment to vote by asking for "favorable consideration" of the proposals contained within them and thus, violated the sunshine law. 130 H. 228, 307 P.3d 1174 (2013).

Although subsection (a) does not expressly preclude city council members from engaging in serial one-on-one conversations, when council members engaged in a series of one-on-one conversations relating to a particular item of council business, under §92-5(b), the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated. 117 H. 1 (App.), 175 P.3d 111.

[Previous](#)

[Vol02_Ch0046-0115](#)

[Next](#)