

# MAINE STATE LEGISLATURE

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STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
SENATE
119TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A " to S.P. 755, L.D. 2131, Bill, "An Act to Ensure that Agency Use of Collaborative Decision-making and Stakeholder Processes is Fair and Consistent with the Goals of the Maine Administrative Procedure Act"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 5 MRSA §8002, sub-§3-C is enacted to read:

3-C. Consensus-based rule development process. "Consensus-based rule development process" means a collaborative process when a draft rule is developed by an agency and a representative group of participants with an interest in the subject of the rulemaking.

Sec. 2. 5 MRSA §8051-B is enacted to read:

§8051-B. Consensus-based rule development process

1. Agency authority. An agency may voluntarily engage in a consensus-based rule development process. An agency that develops a draft rule through a consensus-based rule development process retains the sole discretion over whether to submit the rule as a proposed rule and as to the final language of the proposed rule.

2. Initial considerations. As part of a consensus-based rule development process, an agency shall:

A. Establish a representative group of participants with an interest in the subject of the rulemaking;

2 B. Develop ground rules for the operation of the  
3 consensus-based rule development process that are mutually  
4 acceptable to the agency and the participants;

6 C. Disclose the funding and time constraints on the agency;

8 D. Give prior notice of all meetings to the representative  
9 group of participants and establish a mechanism for other  
10 interested parties to receive notice and information  
11 regarding all meetings;

12 E. Select an agency employee or another individual  
13 contracted by the agency to chair or facilitate the  
14 meetings; and

16 F. Distribute a summary and submitted materials from all  
17 meetings to the representative group of participants and  
18 other interested parties.

20 3. Record. An agency that engages in a consensus-based  
21 rule development process that results in a proposed rule shall  
22 maintain:

24 A. A list of all meetings held, the participants at each  
25 meeting and the interests or organizations they represented;

26 B. A summary of each of the meetings; and

28 C. A description by the agency of the consensus-based rule  
29 development process and an analysis of the decisions that  
30 came out of that process, including the extent to which  
31 consensus was reached on the decisions.

34 4. Judicial review. An agency action to engage in or  
35 terminate a consensus-based rule development process is not  
36 subject to judicial review. This section does not bar judicial  
37 review of a rule finally adopted by an agency following a  
38 consensus-based rule development process if such a review is  
39 otherwise available by law as long as the basis for review is  
40 other than procedural error in the consensus-based rule  
41 development process.

42 Sec. 3. 5 MRSA §8060, sub-§1, ¶A, as enacted by PL 1989, c.  
43 547, §8, is amended to read:

46 A. A list of rules that the agency expects to propose prior  
47 to the next regulatory agenda due date and whether the  
48 agency anticipates engaging in any consensus-based rule  
49 development process;

**Sec. 4. Department of Labor to develop best practices guidelines.**

2 By April 15, 2000, the Department of Labor shall convene a  
4 working group consisting of representatives of state agencies  
6 and a representative of an organization representing dispute  
8 resolution professionals. The working group shall develop best  
practices guidelines to assist agencies in the creation and  
utilization of consensus-based rule development processes.'

10 Further amend the bill by inserting at the end before the  
12 summary the following:

**FISCAL NOTE**

16 The additional costs associated with developing a best  
18 practices guideline related to consensus-based rule development  
20 processes can be absorbed by the Department of Labor and the  
state agencies comprising the working group charged to develop  
these guidelines utilizing existing budgeted resources.

22 The additional requirements imposed on state agencies that  
24 choose to utilize a consensus-based rule development process can  
be absorbed by the affected agencies within existing resources.'

**SUMMARY**

28 The amendment is the majority report. This amendment  
30 replaces the bill. The amendment defines "consensus-based rule  
32 development process" and sets forth a basic structure for agency  
34 use of the process. The amendment gives agencies the authority  
36 to voluntarily engage in consensus-based rule development  
38 processes and sets forth specific items that must be addressed by  
40 the agency, including establishing a representative group of  
42 participants, developing ground rules, disclosing funding and  
44 time constraints, giving notice of meetings, selecting a chair or  
46 facilitator and distributing summaries and materials. If a draft  
rule developed through a consensus-based process becomes a  
48 proposed rule, the agency must maintain a record regarding the  
consensus-based rule development process, including the extent to  
which consensus was reached. The amendment requires an agency to  
include anticipated consensus-based rule development process in  
its regulatory agenda. The amendment requires the Department of  
Labor to convene a working group to develop best practices  
guidelines to assist agencies in the use of consensus-based rule  
development processes. The amendment also adds a fiscal note to  
the bill.