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# J E F F E R S O N C E N T E R

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CITIZEN INPUT. REAL RESULTS.

## **SUBJECT: Concept Paper -- Proposal to Expand Citizen Participation Opportunities in the State of Minnesota's Administrative Rule Making Process**

### **ISSUE**

The public's perception is that the administrative rule making process happens like this:

Agency staff develops an administrative rule to address a management or implementation issue that impacts a state program. Impetus for the proposed rule comes from state legislators, lobbyists, or state employees responsible for administering the program. Citizens are involved only indirectly, if at all, through these three sources. **An ordinary citizen's one and only opportunity to directly participate in the rule making process comes at the very end of it, at a public hearing or in response to a generic invitation to submit written comments about the proposed regulation. It's too late to affect anything significant at that point. The rule's already been written.**

When a rule or regulation potentially impacts a citizen's quality of life, affected citizens want a chance for their perspectives to be considered at the beginning of the rulemaking process. Lack of such opportunity is a frustration frequently voiced at those last-stage public hearings. Anyone who's attended them has heard it. **Governor Ventura's Big Plan acknowledges this circumstance, citing an intention "to involve stakeholders and citizens at the beginning of rulemaking to gain the broadest perspective on need, reasonableness, clarity and enforceability."** The currently used, business-as-usual public notice and public hearing procedure doesn't do that.

### **PROPOSED ACTION**

Working closely with either the Governor's office and key department staff, the Jefferson Center can convene and facilitate Feedback Panels at the front end of the rule making process. **A Feedback Panel is a small group (usually 8 to 12 people), carefully chosen to demographically represent the population likely to be impacted by the regulation.** More than a focus group, the Feedback Panel meets for a day or two, hears presentations about all aspects of the issue, and has ample opportunity to question presenters. With the help of the Jefferson Center's facilitators, panel members articulate their concerns and perspectives, which can be woven into the content and texture of the proposed regulation – because the Panel's work occurs as the rule is being drafted.

Issues that staff think might merit drafting a new rule or revising an existing regulation can be packaged and presented to Feedback Panels that convene like grand juries, perhaps on a quarterly basis. A panel's term might be 6 months or a year.

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Feedback Panels can also be organized on an as-needed basis (no fixed term) for agencies not so actively engaged in regulation writing.

**The citizens' perspective afforded by a Feedback Panel will produce practically oriented, common sense considerations often not currently raised until after a rule has been promulgated.** Inserting Feedback Panels into the rulemaking process directly addresses a Big Plan goal and a need and intention often voiced by legislators. It will surely be perceived as a popular initiative by rank-and-file citizens.

The procedure is innovative and addresses a problem faced by all state governments. An initiative like this one might be a good candidate for a high profile good government award next year (like the Ford Foundation's competition).

## **SUBJECT: "Negotiated Rulemaking"**

### **What is it?**

- An alternative procedure for drafting proposed regulations. Premise: in some situations it is useful to bring together agency representatives and stakeholders to jointly **prepare the text** of a proposed rule **before** the agency submits the rule to the formal rulemaking process.

Traditional approach: draft-notice-comment. Agency may or may not consult the people whose activities the rule regulates, or who might otherwise be interested in the issue -- to gather information that might be helpful in drafting the proposed rule. When the agency does seek input and advice from stakeholders, it typically consults one stakeholder at a time. Contacts are usually informal and unstructured.

### **Some apparent benefits of negotiated rulemaking:**

- Allows the agency and all affected interests to jointly frame the issue and develop mutually agreed solutions.
- Increases citizen participation in public decision making
- Improves the substance of a proposed rule
- Shortens the time necessary to implement a final rule.
- Increases the level of compliance
- Reduces litigation.

**NOTE:** This process is resource intensive in the short-term for everybody involved.

- The agency should probably retain an outside facilitator to manage it.
- Stakeholders have to spend more time and resources with the agency before, during and after the public comment period.

### **Places where variations of the process have been used:**

- U.S. Department of Transportation (FAA) – 35 rules. U.S. Government overall -- 67 negotiations. Enabling legislation: Negotiated Rulemaking Act of 1990 (re-authorized and amended in 1996).
- States (6) where similar statutes have been passed: Idaho, Florida, Montana, Nebraska, Texas and Washington. New York has a procedure in place that is mandated by a governor's executive order (1992).

No evidence so far of any systematic documentation or analysis of how the process has worked at the state level.