

HOUSE BILL NO. 317

INTRODUCED BY GILBERT, REAM, HALLIGAN

JANUARY 22, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
FEBRUARY 4, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 5, 1993	PRINTING REPORT.
FEBRUARY 6, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 8, 1993	SECOND READING, DO PASS.
FEBRUARY 9, 1993	ENGROSSING REPORT.
FEBRUARY 10, 1993	THIRD READING, PASSED. AYES, 95; NOES, 2.
FEBRUARY 11, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION. FIRST READING.
MARCH 24, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 29, 1993	THIRD READING, CONCURRED IN. AYES, 42; NOES, 5. RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 317
2 INTRODUCED BY Gilbert Ream Holman
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A
5 FRAMEWORK FOR THE CONDUCT OF NEGOTIATED RULEMAKING;
6 PROVIDING A PROCESS FOR ESTABLISHING A NEGOTIATED RULEMAKING
7 COMMITTEE; PROVIDING DUTIES FOR A NEGOTIATED RULEMAKING
8 COMMITTEE; AUTHORIZING AN AGENCY TO USE THE SERVICES OF A
9 CONVENER AND A FACILITATOR; AND AUTHORIZING AN AGENCY TO
10 ACCEPT GRANTS OR GIFTS TO FUND A NEGOTIATED RULEMAKING
11 PROCESS."

12
13 WHEREAS, negotiated rulemaking is a process that
14 reflects an agency's recognition that regulatory objectives,
15 consistent with legislative directives, can be accomplished
16 in more than one way; and

17 WHEREAS, negotiated rulemaking brings together the
18 regulating agency and regulated and other interested parties
19 during the development of a rule to negotiate and resolve
20 potential problems with the rulemaking in order to develop a
21 rule acceptable to all parties; and

22 WHEREAS, negotiated rulemaking may improve the substance
23 of a proposed rule, shorten the length of time necessary to
24 implement a final rule, and reduce litigation, thereby
25 effectuating legislative purposes and aiding in the prompt

1 delivery of governmental services; and

2 WHEREAS, federal agencies and other states have
3 extensive experience with and success at negotiating
4 rulemaking.

5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 NEW SECTION. **Section 1. Short title.** [Sections 1
8 through 10] of this bill may be cited as the "Montana
9 Negotiated Rulemaking Act".

10 NEW SECTION. **Section 2. Purpose.** The purpose of
11 [sections 1 through 10] is to establish a framework for the
12 conduct of negotiated rulemaking consistent with the Montana
13 Administrative Procedure Act and the constitutional right of
14 Montanans to participate in the operation of governmental
15 agencies and to encourage agencies to use negotiated
16 rulemaking when it enhances the rulemaking process. As
17 authorized by 2-4-304, it is the intent of the legislature
18 that state agencies, whenever appropriate, use the
19 negotiated rulemaking process to resolve controversial
20 issues prior to the commencement of the formal rulemaking
21 process. However, negotiated rulemaking is not a substitute
22 for the public notification and participation requirements
23 of the Montana Administrative Procedure Act, and a consensus
24 agreement by a negotiated rulemaking committee may be
25 modified by an agency as a result of the subsequent

1 rulemaking process. [Sections 1 through 10] may not be
2 construed as an attempt to limit innovation and
3 experimentation with the negotiated rulemaking process.

4 NEW SECTION. Section 3. Definitions. As used in
5 [sections 1 through 10], the following definitions apply:

6 (1) "Agency" means any board, bureau, commission,
7 department, authority, or officer of the executive branch of
8 state government authorized by law to make rules.

9 (2) "Consensus" means unanimous concurrence among the
10 interests represented on a negotiated rulemaking committee
11 established under [section 6], unless the committee agrees
12 upon another specified definition.

13 (3) "Convener" means a person who impartially assists
14 an agency in determining whether establishment of a
15 negotiated rulemaking committee is feasible and appropriate
16 for a particular rulemaking procedure.

17 (4) "Facilitator" means a person who impartially aids
18 in the discussions and negotiations among the members of a
19 negotiated rulemaking committee to develop a proposed rule.
20 A facilitator does not have decisionmaking authority.

21 (5) "Interest" means, with respect to an issue or
22 matter, multiple parties that have a similar point of view
23 or that are likely to be affected in a similar manner.

24 (6) "Negotiated rulemaking" means rulemaking through
25 the use of a negotiated rulemaking committee.

1 (7) "Negotiated rulemaking committee" or "committee"
2 means an advisory committee established under [section 6]
3 and authorized under 2-4-304 to consider and discuss issues
4 for the purpose of reaching a consensus in the development
5 of a proposed rule.

6 (8) "Person" means an individual, partnership,
7 corporation, association, governmental subdivision, agency,
8 or public or private organization of any character.

9 (9) "Rule" means an agency regulation, standard, or
10 statement of general applicability that implements,
11 interprets, or prescribes law or policy or describes the
12 organization, procedures, or practice requirements of an
13 agency. The term includes the amendment or repeal of a prior
14 rule but does not include:

15 (a) statements concerning only the internal management
16 of an agency and not affecting private rights or procedures
17 available to the public;

18 (b) formal opinions of the attorney general and
19 declaratory rulings issued pursuant to 2-4-501;

20 (c) rules relating to the use of public works,
21 facilities, streets, and highways when the substance of the
22 rules is indicated to the public by means of signs or
23 signals;

24 (d) rules implementing the state personnel
25 classification plan, the state wage and salary plan, or the

1 statewide budgeting and accounting system;

2 (e) uniform rules adopted pursuant to interstate
3 compact, except that the rules must be filed in accordance
4 with 2-4-306 and must be published in the Administrative
5 Rules of Montana.

6 NEW SECTION. Section 4. Determination of need for
7 negotiated rulemaking committee. (1) An agency may establish
8 a negotiated rulemaking committee to negotiate and develop a
9 proposed rule if the agency director determines that the use
10 of the negotiated rulemaking procedure is in the public
11 interest. In making that determination, the agency director
12 shall consider whether:

13 (a) there is a need for a rule;

14 (b) there are a limited number of identifiable
15 interests that will be significantly affected by the rule;

16 (c) there is a reasonable likelihood that a committee
17 can be convened with a balanced representation of persons
18 who:

19 (i) can adequately represent the interests identified
20 under subsection (1)(b); and

21 (ii) are willing to negotiate in good faith to reach a
22 consensus on the proposed rule;

23 (d) there is a reasonable likelihood that a committee
24 will reach a consensus on the proposed rule within a fixed
25 period of time;

1 (e) the negotiated rulemaking procedure will not
2 unreasonably delay the notice of proposed rulemaking and the
3 issuance of the final rule;

4 (f) the agency has adequate resources and is willing to
5 commit those resources, including technical assistance, to
6 the committee; and

7 (g) the agency, to the maximum extent possible
8 consistent with the legal obligations of the agency, will
9 use the consensus of the committee as the basis for the rule
10 proposed by the agency.

11 (2) An agency may use the services of a convener to
12 assist in making the determination of need pursuant to
13 subsection (1) and to assist the agency in:

14 (a) identifying persons who will be significantly
15 affected by a proposed rule; and

16 (b) conducting discussions with affected persons on the
17 issues of concern and ascertaining whether the establishment
18 of a negotiated rulemaking committee is feasible and
19 appropriate for the particular rulemaking procedure.

20 (3) The convener shall report findings and make
21 recommendations to the agency. Upon request of the agency,
22 the convener shall ascertain the names of persons who are
23 willing and qualified to represent the interests that will
24 be significantly affected by the proposed rule. The report
25 and any recommendations of the convener must be made

1 available to the public upon request.

2 NEW SECTION. Section 5. Application for membership on
3 committees -- publication of notice. (1) If an agency
4 decides to establish a negotiated rulemaking committee, the
5 agency shall publish in the Montana Administrative Register
6 and, as appropriate, in newspapers and other publications, a
7 notice that includes:

8 (a) an announcement that the agency intends to
9 establish a negotiated rulemaking committee to negotiate and
10 develop a proposed rule;

11 (b) a description of the subject and scope of the rule
12 to be developed and the issues to be considered;

13 (c) a list of interests likely to be significantly
14 affected by the proposed rule;

15 (d) a list of the persons proposed to represent the
16 affected interests and the agency;

17 (e) a proposed schedule for completing the work of the
18 committee; and

19 (f) an explanation of how a person may apply for or
20 nominate another person for membership on the committee.

21 (2) An agency may include the notice required in
22 subsection (1) in the notice of intent to promulgate rules
23 made pursuant to 2-4-302.

24 (3) The agency shall provide a period of at least 30
25 days for the submission of comments and applications for

1 membership on a negotiated rulemaking committee.

2 NEW SECTION. Section 6. Establishment of committee --
3 determination. (1) If, after considering comments and
4 applications submitted under [section 5], the agency
5 determines that a negotiated rulemaking committee can
6 adequately represent the interests of the persons that will
7 be significantly affected by a proposed rule and that it is
8 feasible and appropriate in the particular rulemaking, the
9 agency may establish a negotiated rulemaking committee.

10 (2) If, after considering comments and applications
11 submitted under [section 5], the agency decides not to
12 establish a negotiated rulemaking committee, the agency
13 shall notify the persons who commented on or applied for
14 membership on the negotiated rulemaking committee of the
15 reasons for the decision. The agency shall also publish a
16 notice in the Montana Administrative Register and, as
17 appropriate, in newspapers and other publications.

18 (3) The agency shall provide appropriate administrative
19 support to the negotiated rulemaking committee, including
20 technical support.

21 (4) A negotiated rulemaking committee terminates upon
22 promulgation of the final rule under consideration, unless
23 the agency, after consulting the committee, or the committee
24 itself specifies an earlier termination date.

25 NEW SECTION. Section 7. Expansion of committee

1 membership. (1) A negotiated rulemaking committee may by
2 consensus expand its membership, either by contacting and
3 recruiting persons whose participation the committee
4 believes is essential to the success of the negotiated
5 rulemaking process or upon reviewing a petition submitted
6 pursuant to subsection (2).

7 (2) Persons who will be significantly affected by a
8 proposed rule and who believe that their interests will not
9 be adequately represented by any person on a negotiated
10 rulemaking committee may petition for or nominate another
11 person for membership on the negotiated rulemaking
12 committee. Each petition or nomination must be submitted to
13 the negotiated rulemaking committee and must include:

14 (a) the name of the petitioner or nominee and a
15 description of the interests the person represents;

16 (b) evidence that the petitioner or nominee is
17 authorized to represent parties related to the interests the
18 person proposes to represent;

19 (c) a written commitment that the petitioner or nominee
20 will actively participate in good faith in the development
21 of the rule under consideration; and

22 (d) an explanation of reasons that the persons already
23 on the negotiated rulemaking committee do not adequately
24 represent the interests of the person submitting the
25 petition or nomination.

1 (3) Upon receiving a petition pursuant to subsection
2 (2), a negotiated rulemaking committee shall decide by
3 consensus at its next meeting whether or not to expand its
4 membership.

5 NEW SECTION. **Section 8. Committee -- duties --**
6 **procedures -- report.** (1) A negotiated rulemaking committee
7 shall consider the matter proposed by the agency for
8 consideration and shall attempt to reach consensus
9 concerning a proposed rule and any other matter the
10 committee determines is relevant to the proposed rule.

11 (2) The person representing the agency on a negotiated
12 rulemaking committee shall participate in the deliberations
13 of the committee with the same rights and responsibilities
14 of other members of the committee and is authorized to fully
15 represent the agency in the discussions and negotiations of
16 the committee.

17 (3) A negotiated rulemaking committee may adopt
18 procedures or ground rules for the operation of the
19 committee.

20 (4) If a negotiated rulemaking committee achieves
21 consensus on a proposed rule, at the conclusion of the
22 negotiations, the committee shall transmit to the agency
23 that established the committee a report containing the
24 proposed rule.

25 (5) If a negotiated rulemaking committee does not reach

1 a consensus on the proposed rule, the committee shall
 2 transmit to the agency a report specifying areas in which
 3 the committee reached consensus and the issues that remain
 4 unresolved. The committee may include in the report any
 5 other information, recommendations, or materials that the
 6 committee considers appropriate. Any member of the committee
 7 may include as an addendum to the report additional
 8 information, recommendations, or materials.

9 (6) Pursuant to Title 2, chapter 3, part 2:

10 (a) the meetings of a negotiated rulemaking committee
 11 must be open to the public; and

12 (b) meeting minutes, records, and reports must be kept
 13 and must be made available for inspection by the public.

14 NEW SECTION. Section 9. Facilitator -- selection and
 15 duties. (1) An agency may nominate a person to serve as a
 16 facilitator for the negotiations of the committee, subject
 17 to the approval of the committee by consensus. If the
 18 committee does not approve the agency's nomination for
 19 facilitator, the agency shall submit a substitute
 20 nomination. If a committee does not approve the substitute
 21 nomination of the agency for facilitator, the committee
 22 shall select by consensus a person to serve as facilitator.
 23 A person designated to represent the agency in substantive
 24 issues may not serve as facilitator or presiding officer for
 25 the committee.

1 (2) A facilitator approved or selected by a committee
 2 shall:

3 (a) preside at the meetings of the committee in an
 4 impartial manner;

5 (b) impartially assist the members of the committee in
 6 conducting discussions and negotiations and achieving
 7 consensus; and

8 (c) manage the keeping of minutes and records.

9 NEW SECTION. Section 10. Expenses -- convener --
 10 facilitator -- committee members. (1) An agency may employ
 11 or enter into a contract for the services of an organization
 12 or individual to serve as a convener or facilitator for a
 13 negotiated rulemaking committee or may use the services of a
 14 government employee to act as a convener or facilitator for
 15 a committee.

16 (2) An agency shall determine whether a person under
 17 consideration as a convener or facilitator of a negotiated
 18 rulemaking committee has any financial or other interest
 19 that would preclude the person from serving in an impartial
 20 and independent manner. A person disqualified under this
 21 criterion must be dropped from further consideration.

22 (3) Members of a negotiated rulemaking committee are
 23 responsible for their own expenses of participation.
 24 However, an agency may pay for a committee member's
 25 reasonable travel and per diem expenses, expenses to obtain

1 technical assistance, and a reasonable rate of compensation
2 if:

3 (a) the committee member certifies a lack of adequate
4 financial resources to participate in the committee; and

5 (b) the agency determines that the committee member's
6 participation in the committee is necessary to ensure an
7 adequate representation of the interests of the members.

8 (4) An agency may accept grants or gifts from any
9 source to fund the negotiated rulemaking process, provided
10 that:

11 (a) information on the name of the person giving the
12 grant or gift and the amount of the grant or gift is
13 available to the public;

14 (b) the grant or gift is given to and accepted by the
15 agency without placing any condition on the membership of a
16 negotiated rulemaking committee or the outcome of the
17 negotiated rulemaking process; and

18 (c) there is consensus among the members of the
19 negotiated rulemaking committee established pursuant to
20 [section 6] that the acceptance of the grant or gift will
21 not diminish the integrity of the negotiated rulemaking
22 process.

23 NEW SECTION. **Section 11.** Codification instruction.
24 [Sections 1 through 10] are intended to be codified as an
25 integral part of Title 2, and the provisions of Title 2

1 apply to [sections 1 through 10].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0317, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act establishing a framework for the conduct of negotiated rulemaking; providing a process for establishing a negotiated rulemaking committee; providing duties for a negotiated rulemaking committee; authorizing an agency to use the services of a convener and a facilitator; and authorizing an agency to accept grants or gifts to fund a negotiated rulemaking process.

ASSUMPTIONS:

1. The determination to use a negotiated rulemaking committee would be at the discretion of the agency director, based on the criteria outlined in the bill, including whether the agency has adequate resources and is willing to commit those resources.
2. The decision to use a convener would be at the discretion of the agency. Agencies which use a convener under contract may pay approximately \$35/hour for a one day meeting.
3. Agencies which use the negotiated rulemaking committee would incur costs for additional Montana Administrative Rules notices @ \$35/page.

FISCAL IMPACT:

Agencies using the negotiated rulemaking process would incur relatively minor costs. Given agency discretion and the criterion concerning the availability of adequate resources, such costs would be generally absorbed within current level budgets.

 1-27-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-29-93
BOB GILBERT, PRIMARY SPONSOR DATE

Fiscal Note for HB0317, as introduced

HB 317

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

1 House BILL NO. 317
2 INTRODUCED BY Gilbert Pearson Holman
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A
5 FRAMEWORK FOR THE CONDUCT OF NEGOTIATED RULEMAKING;
6 PROVIDING A PROCESS FOR ESTABLISHING A NEGOTIATED RULEMAKING
7 COMMITTEE; PROVIDING DUTIES FOR A NEGOTIATED RULEMAKING
8 COMMITTEE; AUTHORIZING AN AGENCY TO USE THE SERVICES OF A
9 CONVENER AND A FACILITATOR; AND AUTHORIZING AN AGENCY TO
10 ACCEPT GRANTS OR GIFTS TO FUND A NEGOTIATED RULEMAKING
11 PROCESS."

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13 WHEREAS, negotiated rulemaking is a process that
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20 potential problems with the rulemaking in order to develop a
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14 Montanans to participate in the operation of governmental
15 agencies and to encourage agencies to use negotiated
16 rulemaking when it enhances the rulemaking process. As
17 authorized by 2-4-304, it is the intent of the legislature
18 that state agencies, whenever appropriate, use the
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20 issues prior to the commencement of the formal rulemaking
21 process. However, negotiated rulemaking is not a substitute
22 for the public notification and participation requirements
23 of the Montana Administrative Procedure Act, and a consensus
24 agreement by a negotiated rulemaking committee may be
25 modified by an agency as a result of the subsequent

1 rulemaking process. [Sections 1 through 10] may not be
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4 NEW SECTION. Section 3. Definitions. As used in
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9 (2) "Consensus" means unanimous concurrence among the
10 interests represented on a negotiated rulemaking committee
11 established under [section 6], unless the committee agrees
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13 (3) "Convener" means a person who impartially assists
14 an agency in determining whether establishment of a
15 negotiated rulemaking committee is feasible and appropriate
16 for a particular rulemaking procedure.

17 (4) "Facilitator" means a person who impartially aids
18 in the discussions and negotiations among the members of a
19 negotiated rulemaking committee to develop a proposed rule.
20 A facilitator does not have decisionmaking authority.

21 (5) "Interest" means, with respect to an issue or
22 matter, multiple parties that have a similar point of view
23 or that are likely to be affected in a similar manner.

24 (6) "Negotiated rulemaking" means rulemaking through
25 the use of a negotiated rulemaking committee.

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2 means an advisory committee established under [section 6]
3 and authorized under 2-4-304 to consider and discuss issues
4 for the purpose of reaching a consensus in the development
5 of a proposed rule.

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7 corporation, association, governmental subdivision, agency,
8 or public or private organization of any character.

9 (9) "Rule" means an agency regulation, standard, or
10 statement of general applicability that implements,
11 interprets, or prescribes law or policy or describes the
12 organization, procedures, or practice requirements of an
13 agency. The term includes the amendment or repeal of a prior
14 rule but does not include:

15 (a) statements concerning only the internal management
16 of an agency and not affecting private rights or procedures
17 available to the public;

18 (b) formal opinions of the attorney general and
19 declaratory rulings issued pursuant to 2-4-501;

20 (c) rules relating to the use of public works,
21 facilities, streets, and highways when the substance of the
22 rules is indicated to the public by means of signs or
23 signals;

24 (d) rules implementing the state personnel
25 classification plan, the state wage and salary plan, or the

1 statewide budgeting and accounting system;

2 (e) uniform rules adopted pursuant to interstate
3 compact, except that the rules must be filed in accordance
4 with 2-4-306 and must be published in the Administrative
5 Rules of Montana.

6 NEW SECTION. **Section 4.** Determination of need for
7 negotiated rulemaking committee. (1) An agency may establish
8 a negotiated rulemaking committee to negotiate and develop a
9 proposed rule if the agency director determines that the use
10 of the negotiated rulemaking procedure is in the public
11 interest. In making that determination, the agency director
12 shall consider whether:

13 (a) there is a need for a rule;

14 (b) there are a limited number of identifiable
15 interests that will be significantly affected by the rule;

16 (c) there is a reasonable likelihood that a committee
17 can be convened with a balanced representation of persons
18 who:

19 (i) can adequately represent the interests identified
20 under subsection (1)(b); and

21 (ii) are willing to negotiate in good faith to reach a
22 consensus on the proposed rule;

23 (d) there is a reasonable likelihood that a committee
24 will reach a consensus on the proposed rule within a fixed
25 period of time;

1 (e) the negotiated rulemaking procedure will not
2 unreasonably delay the notice of proposed rulemaking and the
3 issuance of the final rule;

4 (f) the agency has adequate resources and is willing to
5 commit those resources, including technical assistance, to
6 the committee; and

7 (g) the agency, to the maximum extent possible
8 consistent with the legal obligations of the agency, will
9 use the consensus of the committee as the basis for the rule
10 proposed by the agency.

11 (2) An agency may use the services of a convener to
12 assist in making the determination of need pursuant to
13 subsection (1) and to assist the agency in:

14 (a) identifying persons who will be significantly
15 affected by a proposed rule; and

16 (b) conducting discussions with affected persons on the
17 issues of concern and ascertaining whether the establishment
18 of a negotiated rulemaking committee is feasible and
19 appropriate for the particular rulemaking procedure.

20 (3) The convener shall report findings and make
21 recommendations to the agency. Upon request of the agency,
22 the convener shall ascertain the names of persons who are
23 willing and qualified to represent the interests that will
24 be significantly affected by the proposed rule. The report
25 and any recommendations of the convener must be made

1 available to the public upon request.

2 NEW SECTION. Section 5. Application for membership on
3 committees -- publication of notice. (1) If an agency
4 decides to establish a negotiated rulemaking committee, the
5 agency shall publish in the Montana Administrative Register
6 and, as appropriate, in newspapers and other publications, a
7 notice that includes:

8 (a) an announcement that the agency intends to
9 establish a negotiated rulemaking committee to negotiate and
10 develop a proposed rule;

11 (b) a description of the subject and scope of the rule
12 to be developed and the issues to be considered;

13 (c) a list of interests likely to be significantly
14 affected by the proposed rule;

15 (d) a list of the persons proposed to represent the
16 affected interests and the agency;

17 (e) a proposed schedule for completing the work of the
18 committee; and

19 (f) an explanation of how a person may apply for or
20 nominate another person for membership on the committee.

21 (2) An agency may include the notice required in
22 subsection (1) in the notice of intent to promulgate rules
23 made pursuant to 2-4-302.

24 (3) The agency shall provide a period of at least 30
25 days for the submission of comments and applications for

1 membership on a negotiated rulemaking committee.

2 NEW SECTION. Section 6. Establishment of committee --
3 determination. (1) If, after considering comments and
4 applications submitted under [section 5], the agency
5 determines that a negotiated rulemaking committee can
6 adequately represent the interests of the persons that will
7 be significantly affected by a proposed rule and that it is
8 feasible and appropriate in the particular rulemaking, the
9 agency may establish a negotiated rulemaking committee.

10 (2) If, after considering comments and applications
11 submitted under [section 5], the agency decides not to
12 establish a negotiated rulemaking committee, the agency
13 shall notify the persons who commented on or applied for
14 membership on the negotiated rulemaking committee of the
15 reasons for the decision. The agency shall also publish a
16 notice in the Montana Administrative Register and, as
17 appropriate, in newspapers and other publications.

18 (3) The agency shall provide appropriate administrative
19 support to the negotiated rulemaking committee, including
20 technical support.

21 (4) A negotiated rulemaking committee terminates upon
22 promulgation of the final rule under consideration, unless
23 the agency, after consulting the committee, or the committee
24 itself specifies an earlier termination date.

25 NEW SECTION. Section 7. Expansion of committee

1 membership. (1) A negotiated rulemaking committee may by
 2 consensus expand its membership, either by contacting and
 3 recruiting persons whose participation the committee
 4 believes is essential to the success of the negotiated
 5 rulemaking process or upon reviewing a petition submitted
 6 pursuant to subsection (2).

7 (2) Persons who will be significantly affected by a
 8 proposed rule and who believe that their interests will not
 9 be adequately represented by any person on a negotiated
 10 rulemaking committee may petition for or nominate another
 11 person for membership on the negotiated rulemaking
 12 committee. Each petition or nomination must be submitted to
 13 the negotiated rulemaking committee and must include:

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 15 description of the interests the person represents;

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 17 authorized to represent parties related to the interests the
 18 person proposes to represent;

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 20 will actively participate in good faith in the development
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22 (d) an explanation of reasons that the persons already
 23 on the negotiated rulemaking committee do not adequately
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 25 petition or nomination.

1 (3) Upon receiving a petition pursuant to subsection
 2 (2), a negotiated rulemaking committee shall decide by
 3 consensus at its next meeting whether or not to expand its
 4 membership.

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 6 procedures -- report. (1) A negotiated rulemaking committee
 7 shall consider the matter proposed by the agency for
 8 consideration and shall attempt to reach consensus
 9 concerning a proposed rule and any other matter the
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 12 rulemaking committee shall participate in the deliberations
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 18 procedures or ground rules for the operation of the
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a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations, or materials.

(6) Pursuant to Title 2, chapter 3, part 2:

(a) the meetings of a negotiated rulemaking committee must be open to the public; and

(b) meeting minutes, records, and reports must be kept and must be made available for inspection by the public.

NEW SECTION. Section 9. Facilitator -- selection and duties. (1) An agency may nominate a person to serve as a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. If the committee does not approve the agency's nomination for facilitator, the agency shall submit a substitute nomination. If a committee does not approve the substitute nomination of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or presiding officer for the committee.

(2) A facilitator approved or selected by a committee shall:

(a) preside at the meetings of the committee in an impartial manner;

(b) impartially assist the members of the committee in conducting discussions and negotiations and achieving consensus; and

(c) manage the keeping of minutes and records.

NEW SECTION. Section 10. Expenses -- convener -- facilitator -- committee members. (1) An agency may employ or enter into a contract for the services of an organization or individual to serve as a convener or facilitator for a negotiated rulemaking committee or may use the services of a government employee to act as a convener or facilitator for a committee.

(2) An agency shall determine whether a person under consideration as a convener or facilitator of a negotiated rulemaking committee has any financial or other interest that would preclude the person from serving in an impartial and independent manner. A person disqualified under this criterion must be dropped from further consideration.

(3) Members of a negotiated rulemaking committee are responsible for their own expenses of participation. However, an agency may pay for a committee member's reasonable travel and per diem expenses, expenses to obtain

1 technical assistance, and a reasonable rate of compensation
2 if:

3 (a) the committee member certifies a lack of adequate
4 financial resources to participate in the committee; and

5 (b) the agency determines that the committee member's
6 participation in the committee is necessary to ensure an
7 adequate representation of the interests of the members.

8 (4) An agency may accept grants or gifts from any
9 source to fund the negotiated rulemaking process, provided
10 that:

11 (a) information on the name of the person giving the
12 grant or gift and the amount of the grant or gift is
13 available to the public;

14 (b) the grant or gift is given to and accepted by the
15 agency without placing any condition on the membership of a
16 negotiated rulemaking committee or the outcome of the
17 negotiated rulemaking process; and

18 (c) there is consensus among the members of the
19 negotiated rulemaking committee established pursuant to
20 [section 6] that the acceptance of the grant or gift will
21 not diminish the integrity of the negotiated rulemaking
22 process.

23 NEW SECTION. **Section 11.** Codification instruction.
24 [Sections 1 through 10] are intended to be codified as an
25 integral part of Title 2, and the provisions of Title 2

1 apply to [sections 1 through 10].

-End-

1 House BILL NO. 317
 2 INTRODUCED BY Gilbert Pearson Holman
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A
 5 FRAMEWORK FOR THE CONDUCT OF NEGOTIATED RULEMAKING;
 6 PROVIDING A PROCESS FOR ESTABLISHING A NEGOTIATED RULEMAKING
 7 COMMITTEE; PROVIDING DUTIES FOR A NEGOTIATED RULEMAKING
 8 COMMITTEE; AUTHORIZING AN AGENCY TO USE THE SERVICES OF A
 9 CONVENER AND A FACILITATOR; AND AUTHORIZING AN AGENCY TO
 10 ACCEPT GRANTS OR GIFTS TO FUND A NEGOTIATED RULEMAKING
 11 PROCESS."

12
 13 WHEREAS, negotiated rulemaking is a process that
 14 reflects an agency's recognition that regulatory objectives,
 15 consistent with legislative directives, can be accomplished
 16 in more than one way; and

17 WHEREAS, negotiated rulemaking brings together the
 18 regulating agency and regulated and other interested parties
 19 during the development of a rule to negotiate and resolve
 20 potential problems with the rulemaking in order to develop a
 21 rule acceptable to all parties; and

22 WHEREAS, negotiated rulemaking may improve the substance
 23 of a proposed rule, shorten the length of time necessary to
 24 implement a final rule, and reduce litigation, thereby
 25 effectuating legislative purposes and aiding in the prompt

1 delivery of governmental services; and

2 WHEREAS, federal agencies and other states have
 3 extensive experience with and success at negotiating
 4 rulemaking.
 5

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 NEW SECTION. Section 1. Short title. [Sections 1
 8 through 10] of this bill may be cited as the "Montana
 9 Negotiated Rulemaking Act".

10 NEW SECTION. Section 2. Purpose. The purpose of
 11 [sections 1 through 10] is to establish a framework for the
 12 conduct of negotiated rulemaking consistent with the Montana
 13 Administrative Procedure Act and the constitutional right of
 14 Montanans to participate in the operation of governmental
 15 agencies and to encourage agencies to use negotiated
 16 rulemaking when it enhances the rulemaking process. As
 17 authorized by 2-4-304, it is the intent of the legislature
 18 that state agencies, whenever appropriate, use the
 19 negotiated rulemaking process to resolve controversial
 20 issues prior to the commencement of the formal rulemaking
 21 process. However, negotiated rulemaking is not a substitute
 22 for the public notification and participation requirements
 23 of the Montana Administrative Procedure Act, and a consensus
 24 agreement by a negotiated rulemaking committee may be
 25 modified by an agency as a result of the subsequent

rulemaking process. [Sections 1 through 10] may not be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the executive branch of state government authorized by law to make rules.

(2) "Consensus" means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under [section 6], unless the committee agrees upon another specified definition.

(3) "Convener" means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.

(4) "Facilitator" means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator does not have decisionmaking authority.

(5) "Interest" means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

(6) "Negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee.

(7) "Negotiated rulemaking committee" or "committee" means an advisory committee established under [section 6] and authorized under 2-4-304 to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public or private organization of any character.

(9) "Rule" means an agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) rules implementing the state personnel classification plan, the state wage and salary plan, or the

1 statewide budgeting and accounting system;

2 (e) uniform rules adopted pursuant to interstate
3 compact, except that the rules must be filed in accordance
4 with 2-4-306 and must be published in the Administrative
5 Rules of Montana.

6 NEW SECTION. Section 4. Determination of need for
7 negotiated rulemaking committee. (1) An agency may establish
8 a negotiated rulemaking committee to negotiate and develop a
9 proposed rule if the agency director determines that the use
10 of the negotiated rulemaking procedure is in the public
11 interest. In making that determination, the agency director
12 shall consider whether:

13 (a) there is a need for a rule;

14 (b) there are a limited number of identifiable
15 interests that will be significantly affected by the rule;

16 (c) there is a reasonable likelihood that a committee
17 can be convened with a balanced representation of persons
18 who:

19 (i) can adequately represent the interests identified
20 under subsection (1)(b); and

21 (ii) are willing to negotiate in good faith to reach a
22 consensus on the proposed rule;

23 (d) there is a reasonable likelihood that a committee
24 will reach a consensus on the proposed rule within a fixed
25 period of time;

1 (e) the negotiated rulemaking procedure will not
2 unreasonably delay the notice of proposed rulemaking and the
3 issuance of the final rule;

4 (f) the agency has adequate resources and is willing to
5 commit those resources, including technical assistance, to
6 the committee; and

7 (g) the agency, to the maximum extent possible
8 consistent with the legal obligations of the agency, will
9 use the consensus of the committee as the basis for the rule
10 proposed by the agency.

11 (2) An agency may use the services of a convener to
12 assist in making the determination of need pursuant to
13 subsection (1) and to assist the agency in:

14 (a) identifying persons who will be significantly
15 affected by a proposed rule; and

16 (b) conducting discussions with affected persons on the
17 issues of concern and ascertaining whether the establishment
18 of a negotiated rulemaking committee is feasible and
19 appropriate for the particular rulemaking procedure.

20 (3) The convener shall report findings and make
21 recommendations to the agency. Upon request of the agency,
22 the convener shall ascertain the names of persons who are
23 willing and qualified to represent the interests that will
24 be significantly affected by the proposed rule. The report
25 and any recommendations of the convener must be made

available to the public upon request.

NEW SECTION. Section 5. Application for membership on committees -- publication of notice. (1) If an agency decides to establish a negotiated rulemaking committee, the agency shall publish in the Montana Administrative Register and, as appropriate, in newspapers and other publications, a notice that includes:

(a) an announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(b) a description of the subject and scope of the rule to be developed and the issues to be considered;

(c) a list of interests likely to be significantly affected by the proposed rule;

(d) a list of the persons proposed to represent the affected interests and the agency;

(e) a proposed schedule for completing the work of the committee; and

(f) an explanation of how a person may apply for or nominate another person for membership on the committee.

(2) An agency may include the notice required in subsection (1) in the notice of intent to promulgate rules made pursuant to 2-4-302.

(3) The agency shall provide a period of at least 30 days for the submission of comments and applications for

membership on a negotiated rulemaking committee.

NEW SECTION. Section 6. Establishment of committee -- determination. (1) If, after considering comments and applications submitted under [section 5], the agency determines that a negotiated rulemaking committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee.

(2) If, after considering comments and applications submitted under [section 5], the agency decides not to establish a negotiated rulemaking committee, the agency shall notify the persons who commented on or applied for membership on the negotiated rulemaking committee of the reasons for the decision. The agency shall also publish a notice in the Montana Administrative Register and, as appropriate, in newspapers and other publications.

(3) The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical support.

(4) A negotiated rulemaking committee terminates upon promulgation of the final rule under consideration, unless the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

NEW SECTION. Section 7. Expansion of committee

1 membership. (1) A negotiated rulemaking committee may by
2 consensus expand its membership, either by contacting and
3 recruiting persons whose participation the committee
4 believes is essential to the success of the negotiated
5 rulemaking process or upon reviewing a petition submitted
6 pursuant to subsection (2).

7 (2) Persons who will be significantly affected by a
8 proposed rule and who believe that their interests will not
9 be adequately represented by any person on a negotiated
10 rulemaking committee may petition for or nominate another
11 person for membership on the negotiated rulemaking
12 committee. Each petition or nomination must be submitted to
13 the negotiated rulemaking committee and must include:

14 (a) the name of the petitioner or nominee and a
15 description of the interests the person represents;

16 (b) evidence that the petitioner or nominee is
17 authorized to represent parties related to the interests the
18 person proposes to represent;

19 (c) a written commitment that the petitioner or nominee
20 will actively participate in good faith in the development
21 of the rule under consideration; and

22 (d) an explanation of reasons that the persons already
23 on the negotiated rulemaking committee do not adequately
24 represent the interests of the person submitting the
25 petition or nomination.

1 (3) Upon receiving a petition pursuant to subsection
2 (2), a negotiated rulemaking committee shall decide by
3 consensus at its next meeting whether or not to expand its
4 membership.

5 NEW SECTION. Section 8. Committee -- duties --
6 procedures -- report. (1) A negotiated rulemaking committee
7 shall consider the matter proposed by the agency for
8 consideration and shall attempt to reach consensus
9 concerning a proposed rule and any other matter the
10 committee determines is relevant to the proposed rule.

11 (2) The person representing the agency on a negotiated
12 rulemaking committee shall participate in the deliberations
13 of the committee with the same rights and responsibilities
14 of other members of the committee and is authorized to fully
15 represent the agency in the discussions and negotiations of
16 the committee.

17 (3) A negotiated rulemaking committee may adopt
18 procedures or ground rules for the operation of the
19 committee.

20 (4) If a negotiated rulemaking committee achieves
21 consensus on a proposed rule, at the conclusion of the
22 negotiations, the committee shall transmit to the agency
23 that established the committee a report containing the
24 proposed rule.

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a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations, or materials.

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24 [Sections 1 through 10] are intended to be codified as an
25 integral part of Title 2, and the provisions of Title 2

1 apply to [sections 1 through 10].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 23, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration House Bill No. 317 (first reading copy -- white), respectfully report that House Bill No. 317 be amended as follows and as so amended be concurred in.

Signed: Senator Eleanor Vaughn
Senator Eleanor Vaughn, Chair

That such amendments read:

1. Page 3, line 8.

Following: "authorized"

Insert: "or required"

2. Page 8, line 22.

Strike: "promulgation"

Insert: "adoption"

3. Page 11, lines 9 through 13.


Following: "(6)" on page 11, line 9

Strike: the remainder of subsection (6) in its entirety

Insert: "Title 2, chapter 3, part 2, applies to meetings of a negotiated rulemaking committee."

-END-

HB 317

 Amd. Coord.
Sec. of Senate

 Senator Carrying Bill

SENATE

1 HOUSE BILL NO. 317

2 INTRODUCED BY GILBERT, REAM, HALLIGAN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A
5 FRAMEWORK FOR THE CONDUCT OF NEGOTIATED RULEMAKING;
6 PROVIDING A PROCESS FOR ESTABLISHING A NEGOTIATED RULEMAKING
7 COMMITTEE; PROVIDING DUTIES FOR A NEGOTIATED RULEMAKING
8 COMMITTEE; AUTHORIZING AN AGENCY TO USE THE SERVICES OF A
9 CONVENER AND A FACILITATOR; AND AUTHORIZING AN AGENCY TO
10 ACCEPT GRANTS OR GIFTS TO FUND A NEGOTIATED RULEMAKING
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13 WHEREAS, negotiated rulemaking is a process that
14 reflects an agency's recognition that regulatory objectives,
15 consistent with legislative directives, can be accomplished
16 in more than one way; and

17 WHEREAS, negotiated rulemaking brings together the
18 regulating agency and regulated and other interested parties
19 during the development of a rule to negotiate and resolve
20 potential problems with the rulemaking in order to develop a
21 rule acceptable to all parties; and

22 WHEREAS, negotiated rulemaking may improve the substance
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25 effectuating legislative purposes and aiding in the prompt

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2 WHEREAS, federal agencies and other states have
3 extensive experience with and success at negotiating
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12 conduct of negotiated rulemaking consistent with the Montana
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14 Montanans to participate in the operation of governmental
15 agencies and to encourage agencies to use negotiated
16 rulemaking when it enhances the rulemaking process. As
17 authorized by 2-4-304, it is the intent of the legislature
18 that state agencies, whenever appropriate, use the
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20 issues prior to the commencement of the formal rulemaking
21 process. However, negotiated rulemaking is not a substitute
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23 of the Montana Administrative Procedure Act, and a consensus
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1 rulemaking process. [Sections 1 through 10] may not be
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13 upon another specified definition.

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15 an agency in determining whether establishment of a
16 negotiated rulemaking committee is feasible and appropriate
17 for a particular rulemaking procedure.

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19 in the discussions and negotiations among the members of a
20 negotiated rulemaking committee to develop a proposed rule.
21 A facilitator does not have decisionmaking authority.

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1 the use of a negotiated rulemaking committee.

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13 shall consider whether:

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15 (b) there are a limited number of identifiable
16 interests that will be significantly affected by the rule;

17 (c) there is a reasonable likelihood that a committee
18 can be convened with a balanced representation of persons
19 who:

20 (i) can adequately represent the interests identified
21 under subsection (1)(b); and

22 (ii) are willing to negotiate in good faith to reach a
23 consensus on the proposed rule;

24 (d) there is a reasonable likelihood that a committee
25 will reach a consensus on the proposed rule within a fixed

1 period of time;

2 (e) the negotiated rulemaking procedure will not
3 unreasonably delay the notice of proposed rulemaking and the
4 issuance of the final rule;

5 (f) the agency has adequate resources and is willing to
6 commit those resources, including technical assistance, to
7 the committee; and

8 (g) the agency, to the maximum extent possible
9 consistent with the legal obligations of the agency, will
10 use the consensus of the committee as the basis for the rule
11 proposed by the agency.

12 (2) An agency may use the services of a convener to
13 assist in making the determination of need pursuant to
14 subsection (1) and to assist the agency in:

15 (a) identifying persons who will be significantly
16 affected by a proposed rule; and

17 (b) conducting discussions with affected persons on the
18 issues of concern and ascertaining whether the establishment
19 of a negotiated rulemaking committee is feasible and
20 appropriate for the particular rulemaking procedure.

21 (3) The convener shall report findings and make
22 recommendations to the agency. Upon request of the agency,
23 the convener shall ascertain the names of persons who are
24 willing and qualified to represent the interests that will
25 be significantly affected by the proposed rule. The report

1 and any recommendations of the convener must be made
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13 to be developed and the issues to be considered;

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17 affected interests and the agency;

18 (e) a proposed schedule for completing the work of the
19 committee; and

20 (f) an explanation of how a person may apply for or
21 nominate another person for membership on the committee.

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23 subsection (1) in the notice of intent to promulgate rules
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2 membership on a negotiated rulemaking committee.

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7 adequately represent the interests of the persons that will
8 be significantly affected by a proposed rule and that it is
9 feasible and appropriate in the particular rulemaking, the
10 agency may establish a negotiated rulemaking committee.

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12 submitted under [section 5], the agency decides not to
13 establish a negotiated rulemaking committee, the agency
14 shall notify the persons who commented on or applied for
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18 appropriate, in newspapers and other publications.

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20 support to the negotiated rulemaking committee, including
21 technical support.

22 (4) A negotiated rulemaking committee terminates upon
23 promulgation ADOPTION of the final rule under consideration,
24 unless the agency, after consulting the committee, or the
25 committee itself specifies an earlier termination date.

1 NEW SECTION. Section 7. Expansion of committee
 2 membership. (1) A negotiated rulemaking committee may by
 3 consensus expand its membership, either by contacting and
 4 recruiting persons whose participation the committee
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 6 rulemaking process or upon reviewing a petition submitted
 7 pursuant to subsection (2).

8 (2) Persons who will be significantly affected by a
 9 proposed rule and who believe that their interests will not
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 19 person proposes to represent;

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 24 on the negotiated rulemaking committee do not adequately
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1 petition or nomination.

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 8 shall consider the matter proposed by the agency for
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 11 committee determines is relevant to the proposed rule.

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 14 of the committee with the same rights and responsibilities
 15 of other members of the committee and is authorized to fully
 16 represent the agency in the discussions and negotiations of
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18 (3) A negotiated rulemaking committee may adopt
 19 procedures or ground rules for the operation of the
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21 (4) If a negotiated rulemaking committee achieves
 22 consensus on a proposed rule, at the conclusion of the
 23 negotiations, the committee shall transmit to the agency
 24 that established the committee a report containing the
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(5) If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations, or materials.

(6) Pursuant to Title 2, chapter 3, part 2:

~~(a) the meetings of a negotiated rulemaking committee must be open to the public; and~~

~~(b) meeting minutes, records, and reports must be kept and must be made available for inspection by the public.~~

TITLE 2, CHAPTER 3, PART 2, APPLIES TO MEETINGS OF A NEGOTIATED RULEMAKING COMMITTEE.

NEW SECTION. Section 9. Facilitator -- selection and duties. (1) An agency may nominate a person to serve as a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. If the committee does not approve the agency's nomination for facilitator, the agency shall submit a substitute nomination. If a committee does not approve the substitute nomination of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator.

A person designated to represent the agency in substantive issues may not serve as facilitator or presiding officer for the committee.

(2) A facilitator approved or selected by a committee shall:

(a) preside at the meetings of the committee in an impartial manner;

(b) impartially assist the members of the committee in conducting discussions and negotiations and achieving consensus; and

(c) manage the keeping of minutes and records.

NEW SECTION. Section 10. Expenses -- convener -- facilitator -- committee members. (1) An agency may employ or enter into a contract for the services of an organization or individual to serve as a convener or facilitator for a negotiated rulemaking committee or may use the services of a government employee to act as a convener or facilitator for a committee.

(2) An agency shall determine whether a person under consideration as a convener or facilitator of a negotiated rulemaking committee has any financial or other interest that would preclude the person from serving in an impartial and independent manner. A person disqualified under this criterion must be dropped from further consideration.

(3) Members of a negotiated rulemaking committee are

1 responsible for their own expenses of participation.
 2 However, an agency may pay for a committee member's
 3 reasonable travel and per diem expenses, expenses to obtain
 4 technical assistance, and a reasonable rate of compensation
 5 if:

6 (a) the committee member certifies a lack of adequate
 7 financial resources to participate in the committee; and

8 (b) the agency determines that the committee member's
 9 participation in the committee is necessary to ensure an
 10 adequate representation of the interests of the members.

11 (4) An agency may accept grants or gifts from any
 12 source to fund the negotiated rulemaking process, provided
 13 that:

14 (a) information on the name of the person giving the
 15 grant or gift and the amount of the grant or gift is
 16 available to the public;

17 (b) the grant or gift is given to and accepted by the
 18 agency without placing any condition on the membership of a
 19 negotiated rulemaking committee or the outcome of the
 20 negotiated rulemaking process; and

21 (c) there is consensus among the members of the
 22 negotiated rulemaking committee established pursuant to
 23 [section 6] that the acceptance of the grant or gift will
 24 not diminish the integrity of the negotiated rulemaking
 25 process.

1 NEW SECTION. Section 11. Codification instruction.
 2 [Sections 1 through 10] are intended to be codified as an
 3 integral part of Title 2, and the provisions of Title 2
 4 apply to [sections 1 through 10].

-End-