

The Consultative/Consensus Model

Using Consensus in a Legislative
Process

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Models of Decisionmaking

- Majority
- Consensus
- Mediation/Facilitation
- Arbitration
- EDR (Expedited Dispute Resolution)

Consultation Process

- A/k/a “stakeholder” or “public involvement” process
- legislative process that assists public policy decision makers through outreach to those affected by the subject of the inquiry
- convening, outreach, seek advice/info, refer to it, take into account

Collaboration Process

- Legislative process where stakeholders, public involvement sought to advise on public policy matters/issues
- stakeholders and agency work together in a designed process to achieve a common goal (eg., develop recommendations)
- methods include consensus

Consensus

- What is it?
 - Decisionmaking process whereby stakeholders work together to reach an agreement acceptable to all.
 - More or less unanimity(consultative model v. negotiated rulemaking).
 - Premise: respect for diversity and open sharing of information.

Consensus

- How does it work?
 - Steps in the process:
 - Present
 - Clarify
 - Discuss
 - Take a pulse
 - Adopt (perhaps with dissents)
 - Implement
 - Evaluate

Consensus

- How does it work?
 - Whole or partial use (Consultative model)
 - Milestones v. total product/document
 - Outline v. granularity
 - Process aspects - bringing the product to Commission (combinations of milestones, dissents, recommendations)

Things to Keep in Mind

- “What gets us into trouble is not what we don’t know. It’s what we know for sure that just ain’t so.”
- “When you come to a fork in the road, take it.”
- “You can see a lot just by looking.”
-Yogi Berra

Consensus

- When should you use it?
 - High level agreement
 - Begin this way, then convert process
 - Where issues are ripe/mature
 - When person of authority is at table
 - Where there are power balances
 - Parties have an interest in negotiating
 - Limited number of issues

Consensus

- When NOT to use it?
 - Where judicial precedent needed
 - Outcome will affect a party not participating
 - More costly
 - Emergency/deadline
 - Where bad faith evident
 - Minor process issues
 - Where a party must compromise values
 - number of participants is very large

Consensus

- Structure of process:
 - Roles - participants, note takers, facilitator
 - Structure - small, issue oriented groups that produce drafts for consideration by all
 - Guidelines - refer to definition of consensus
 - groundrules
 - level playing field
 - no attribution
 - avoid posturing

Tools for Reaching Consensus

- Identify root cause of obstacles
- Use milestones
- Use caucus, workgroups effectively
- Table where more information is needed
- Break down issues into components
- Prioritize
- Take a break

More tools.....

- Assign disagreeing parties to jointly draft proposals
- Seek clarification whenever necessary
- Engage in “reality testing”
- Retain your sense of humor

Final Tips....

- “People will accept your ideas much more readily if you tell them Benjamin Franklin said it first.” - David Comins
- “It’s better to ask some of the questions than know all the answers.” - James Thurber