

New Proposals For 1971

ACIR
STATE LEGISLATIVE
PROGRAM



ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, D. C. 20575
NOVEMBER 1970
M-53

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

October 1970

Private Citizens:

Robert E. Merriam, Chicago, Illinois, Chairman
Howard H. Callaway, Pine Mountain, Georgia
Vacancy

Members of the United States Senate:

Sam J. Ervin, Jr., North Carolina
Karl E. Mundt, South Dakota
Edmund S. Muskie, Maine

Members of the United States House of Representatives:

Florence P. Dwyer, Mrs., New Jersey
L. H. Fountain, North Carolina
Al Ullman, Oregon

Officers of the Executive Branch, Federal Government:

Robert H. Finch, Counsellor to the President
George Romney, Secretary, Housing and Urban Development
George P. Shultz, Director, Office of Management and Budget

Governors:

Buford Ellington, Tennessee
Warren E. Hearnes, Missouri
Ronald Reagan, California
Raymond P. Shafer, Pennsylvania

Mayors:

C. Beverly Briley, Nashville, Tennessee
Lawrence F. Kramer, Jr., Paterson, New Jersey
Richard G. Lugar, Indianapolis, Indiana, Vice Chairman
Jack Maltester, San Leandro, California

Members of State Legislative Bodies:

W. Russell Arrington, Senator, Illinois
B. Mahlon Brown, Senator, Nevada
Robert P. Knowles, Senator, Wisconsin

Elected County Officials:

Conrad M. Fowler, Shelby County, Alabama
Edwin G. Michaelian, Westchester County, New York
Lawrence K. Roos, St. Louis County, Missouri

New Proposals For 1971

ACIR STATE LEGISLATIVE PROGRAM

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, D. C. 20575
NOVEMBER 1970
M-53

FOREWORD

The Advisory Commission on Intergovernmental Relations – ACIR or INTERGOV – is a 26 member, bipartisan body established by Act of Congress in 1959 to give continuing study to the relationships among local, State and national levels of government and to recommend improvements. The Commission's membership, listed on the inside of the front cover, represents the legislative and executive branches of the three levels of government and the public at large.

Although created by Congress, the Commission does not speak for the Federal Government. Therefore, it should not be inferred that the Federal Government necessarily concurs in all recommendations of the Commission or in suggested legislation to implement them.

In its unique role as the official monitor of the American federal system, the Commission offers an extensive action agenda for improving Government at all levels. Strengthening State and local government, the weaker partners of the federal system, is a central theme of the Commission's recommendations.

The Commission recognizes that its contribution to strengthening of the federal system will be measured, in part, in terms of its role in fostering significant improvements in the relationships between and among Federal, State and local governments. It therefore devotes a considerable share of its resources to encouraging the consideration of its recommendations for legislative and administrative action by government at all levels.

INTERGOV recommendations for State action are translated into legislative language for consideration by the State legislatures. Two proposed bills in this volume – “State Public Labor-Management Act” and “Internal Conduct of Employee Organizations” – were drafted to implement recommendations in the Commission's report, *Labor Management Policies for State and Local Government*. Also included is a policy statement on “State Mandating of Local Employment Conditions” which incorporates a recommendation in the same report. The other draft bills are revisions of proposed legislation contained in earlier editions of the ACIR State Legislative Program. These are: “Taxation of Interstate Firms Physical Presence Rules,” “Property Tax Organization and Administration,” and “Assessment Notification, Review and Appeal Procedure.”

Some of the proposals in this volume are based on existing State statutes. Initial drafts were prepared by the INTERGOV staff. Individual proposals were reviewed by State officials and others with special knowledge in the subject matter fields involved.

All the proposals have been reviewed by an Advisory Board on State Legislation and the drafts further revised where appropriate to incorporate suggestions for improvement. Responsibility for the content of the proposals, however, rests solely with ACIR.

Members of the Advisory Board, whose valuable contributions are gratefully acknowledged, are:

Carl M. Frasure
Professor of Political Science
West Virginia University
and Chairman, Council of State Governments
Committee on Suggested State Legislation

Charles Wheeler
Director, North Carolina Commission on
Higher Education Facilities and
Vice Chairman, Council of State Governments
Committee on Suggested State Legislation

Albert J. Abrams
Secretary, New York State Senate

Carl N. Everstine
Director
Maryland Department of Legislative
Reference

Donald L. Jones
Executive Director
League of Oregon Cities

Ralph T. Keyes
Executive Secretary
Association of Minnesota Counties

Alastair McArthur
Deputy Executive Director
National Association of Counties

C. Emerson Murry
Research Director
North Dakota Legislative Research
Committee

Allen E. Pritchard, Jr.
Deputy Executive Vice President
National League of Cities

Robert M. Rhodes
Deputy Director, Washington Office
Council of State Governments

These proposals for State legislation are offered in the hope that they will serve as a useful reference aid for State legislators, State legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Reprints of individual proposals are available in "slip bill" form upon request.

A complete list of current INTERGOV publications will be found at the end of this volume. Previous State legislative proposals to implement recommendations contained in Commission reports are available in the *1970 Cumulative ACIR State Legislative Program*. Copies of the 1970 Cumulative Program as well as additional copies of this volume, or reprints of the individual proposals they contain, are available upon request.

The draft proposals in this volume are identified by code numbers which conform to *A Functional Analytical Index to Suggested State Legislation (1941-1971)* prepared by the Council of State Governments.

Wm. R. MacDougall
Executive Director

CONTENTS

Taxation of Interstate Firms Physical Presence Rules	15-13-00	
Property Tax Organization and Administration	15-41-20	✓
Assessment Notification, Review and Appeal Procedure	15-41-40	✓
State Public Labor-Management Relations Act	71-80-10	
Internal Conduct of Public Employee Organizations	71-80-20	
State Mandating of Local Employment Conditions (A Policy Statement)	71-80-30	

TAXATION OF INTERSTATE FIRMS PHYSICAL PRESENCE RULES

The quality of tax administration is becoming a more important tax climate variable as the proportion of business activity conducted by multistate firms grows and as the demand for greater tax certainty and uniform treatment increases.

In meeting the need of multistate firms for clear-cut and enforceable physical presence rules to govern the determination of their liability for sales and income tax payments, states have exhibited some general reluctance, in part perhaps, in the belief that definitive jurisdictional rules might result in loss of revenue and limit their scope for negotiation.

The growing demand for tax certainty and uniform treatment on the part of multistate firms suggests that most jurisdictions would have much to gain by pursuing a policy designed to maximize convenience, certainty, and evenhanded treatment. State action on the jurisdictional front would go a long way toward removing the threat of a Congressionally mandated rule that ignores the necessity of distinguishing between jurisdiction for income tax purposes where business pays taxes directly and jurisdiction for sales tax purposes where business acts as the collection agent for the State.

These considerations, moreover, underscore the Commission's earlier recommendations calling for State rehabilitation of local property tax administration, State collection of local sales and income taxes, and State conformity with key Federal income tax definitions.

The paragraphs below provide the set of criteria the State tax administrator can use as his guide to assert his State's jurisdiction to tax a person or firm under its business income or sales tax statutes. States may establish these physical presence rules either by administrative regulation or by incorporating them into the appropriate taxing statute.

Corporate Income Tax

1 *General rule.* A corporation shall be considered to have income from sources within this State
 2 for corporate income tax purposes if the corporation:
 3 (a) owns or leases real property within this state,
 4 (b) owns or leases personal property within this state which contributes directly (but not inciden-
 5 tally) to the production of income,
 6 (c) has one or more employees located in this state, or
 7 (d) regularly maintains a stock of tangible personal property in this state for sale in the ordinary
 8 course of its business, but property which is on consignment in the hands of a consignee and which is
 9 offered for sale by the consignee on his own account, shall not be considered as stock maintained by
 10 the consignor, nor shall property which is in the hands of a purchaser under a sale or return arrangement
 11 be considered as stock maintained by the seller.

12 *Location of Tangible Personal Property.* Personal property shall be considered located in this
 13 state if it is physically present in the state.

15-13-00

1 Personal property which is rented out by a corporation to another person and which is charac-
2 teristically mobile property, shall be considered to be located in this state if the location at or from
3 which the property is regularly delivered to a lessee is in this state.

4 *Location of employee.* An employee shall be considered to be located in this state if the em-
5 ployee's service is either localized in this state, or not localized in any state but some of the service is
6 performed in this state and the employee's base of operation is in this state.

7 Service of any employee shall be considered to be localized in this state if the service is per-
8 formed either entirely within this state, or both within and without this state, but the service performed
9 without the state is incidental to service performed within the state.

10 The term "base of operations," with respect to employee, means a single place of business with
11 a permanent location which is maintained by the employer and from which the employee regularly
12 commences his activities and to which he regularly returns in order to perform the functions necessary
13 to the exercise of his trade or profession.

14 An employee shall not be considered to be located in this state if his only business activities
15 within the state on behalf of his employer are either or both of the following:

16 (1) The solicitation of orders, for sales of tangible personal property, which are sent outside
17 this state for approval or rejection and (if approved) are filled by shipment or delivery from a point
18 outside the state.

19 (2) The solicitation of orders in the name of or for the benefit of a prospective customer of
20 his employer, if orders by the customer to the employee to enable the customer to fill orders resulting
21 from the solicitation are orders described in paragraph (1).

22 The term "employee" shall have the same meaning it has for purposes of Federal income tax
23 withholding under chapter 24 of the Internal Revenue Code of 1954, as amended.

24 *Rules Relate to Physical Presence Only.* Nothing in the foregoing paragraphs shall be construed
25 to affect the powers of this state to require the combining or consolidation of the income of two or
26 more corporations where that action is necessary to determine accurately the income of a corporation
27 considered to have income from sources within this state.

Sales and Use Tax

1 *General rule.* A person shall be required to pay a sales tax or to collect a sales and use tax
2 imposed with respect to taxable sales of tangible personal property and services to persons within this

15-13-00

- 1 state if he:
- 2 (1) owns or leases real property within the state,
- 3 (2) has one or more employees located in the state,
- 4 (3) regularly maintains a stock of tangible personal property in the state for sale in the ordinary
- 5 course of business,
- 6 (4) regularly leases out tangible personal property for use in the state,
- 7 (5) regularly solicits orders for the sale of tangible personal property by salesmen, solicitors, or
- 8 representatives in the State, or
- 9 (6) regularly engages in the delivery of property in the State other than by common carrier or
- 10 United States mail.

PROPERTY TAX ORGANIZATION AND ADMINISTRATION

State and local governments share responsibility for property assessment administration in all States but Hawaii. Efforts at improving the quality of property assessment therefore must concentrate on knitting this two level system into a well-coordinated, smoothly functioning operation. The draft proposal seeks to achieve this difficult, but by no means impossible, goal by clearly spelling out the responsibilities of each level and by providing effective machinery for the coordination of assessment standards and procedures.

The prevailing pattern for State-local property tax administration — subject to innumerable variations — provides a four-step process:

- local assessment districts, which are responsible for the bulk of primary assessing;
- local or county boards of review;
- county boards of equalization; and
- one or more State agencies which are responsible for functions such as supervision of local assessing, technical aid to local assessors, taxpayer appeals hearings, interarea equalization of assessment, central assessment of some classes of property, and valuation research.

The suggested legislation coordinates State-local administrative organization under a central directing authority.

It provides for a single State agency which is professionally organized and equipped for the job. Adequate powers of supervision and regulation are clearly defined by law. The State agency has responsibility for assessment supervision and equalization, assessment of all State-assessed property, and valuation research.

At the local level, the suggested legislation provides that no assessment districts be less than countywide. If counties are too small to be efficient assessment districts — as often is the case — the bill authorizes the creation of multicounty assessment districts. To avoid wasteful duplication of assessment effort, it eliminates all overlapping assessment districts (township and municipal). It also provides for county assessors to be appointed on the basis of demonstrated merit and be subject to removal for good cause by the appointing official.

The suggested act seeks to encourage the employment of assessors and appraisers on a professional basis. Therefore, no residence requirement is included. To omit a residence requirement, some States may find it necessary to amend the relevant general personnel statutes or write an affirmative exemption into this statute.

This draft legislation draws on Oregon, Maryland and Kentucky experience, particularly as it relates to the provision of State technical assistance to local assessment jurisdictions. In 1969, Nebraska enacted property tax organization and administration statutes closely parallel to this draft bill.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act establishing a division of property taxation within the [state tax agency]; providing for the qualifications, duties, and responsibilities of county assessors and related personnel; providing for state-county relations in respect of assessment and appraisal of property, and for related purposes."]

(Be it enacted, etc.)

1 *Section 1. Division of Property Taxation.*¹ (a) There shall be in the [state tax agency] a divi-
2 sion of property taxation, hereinafter called the "division." The head of the division shall be the
3 director, appointed by the [head of the state tax agency] in accordance with the provisions of the
4 [state merit system law]. The director shall serve in accordance with provisions of the law. He shall
5 have experience and training in the fields of taxation and property appraisal.

6 (b) The employees of the division shall be in the [state merit service]. The director may con-
7 tract for the services of expert consultants to the division.

8 (c) In addition to any duties, powers, or responsibilities otherwise conferred upon the division,
9 it shall administer and enforce all laws related to the state supervision of local property tax administra-
10 tion and the central assessment of property subject to ad valorem taxation. The director shall have
11 rulemaking authority [in accordance with the state administrative procedures act]. Whenever the
12 division assesses or appraises property, or provides services therefor, it shall prescribe the methods and
13 specifications for such assessment or appraisal.

14 *Section 2. Assessors and Appraisers, Qualifications and Certification.* (a) Except as expressly
15 permitted by statute, no person shall perform the duties or exercise the authority of an assessor or
16 appraiser of property in or on behalf of any county unless he is the holder of an assessor's or appraiser's
17 certificate, as the case may be, issued by the division.

18 (b) The division shall provide for the examination of applicants for such certificates. No certifi-
19 cate shall be issued to any person who has not demonstrated to the satisfaction of the division that he
20 is competent to perform the work of an assessor or appraiser, as the case may be; but any applicant for
21 a certificate who is denied the same shall have a right to a review of the denial [in accordance with the
22 state administrative procedure act] [by a court of appropriate jurisdiction].

¹As an alternative for states in which organization for tax administration is diffused, the agency should be given prominence as a separate department or bureau. It may be desirable to have the career administrator serve under a multi-member commission appointed for overlapping terms.

1 *Section 3. Collection and Publication of Property Tax Data.*² (a) The division annually shall
 2 make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of
 3 assessment uniformity, and overall compliance with assessment requirements for each major class of
 4 property in each county in the state. In order to determine the degree of assessment uniformity and
 5 compliance in the assessment of major classes of property within each county, the division shall com-
 6 pute measures of central tendency and dispersion in accordance with appropriate standard statistical
 7 analysis techniques. [As used in this section, “average dispersion” means the percentage which the
 8 average of the deviations of the assessment ratio of individual sold [or appraised] properties bears to
 9 their median ratio.]

10 (b) The division may require assessors and other local officers to report to it data on assessed
 11 valuations and other features of the property tax as the division shall require. The division shall con-
 12 struct and maintain its system for the collection and analysis of property tax facts so as to enable it to
 13 make intra-jurisdictional comparisons as well as intercounty comparisons based on property tax and
 14 assessment ratio data [compiled for other states by the United States Bureau of the Census, or any
 15 agency successor thereto].

16 (c) The [state tax agency] shall publish annually the findings of the division’s assessment ratio
 17 studies together with digests of property tax data.

18 (d) The county assessor shall post annually in his office the assessment ratio as found in his
 19 county as determined by the division.

20 *Section 4. Tax Exemption Information.* The county assessor regularly shall assess all tax exempt
 21 property within the county, calculate the total assessed valuation for each type of exemption, and com-
 22 pute the percentages of total assessed valuations exempted. The totals and computations made and
 23 obtained, together with summary information on the function, scope and nature of exempted activities,
 24 shall be published annually by the county.

25 *Section 5. Forms.* The division shall devise, prescribe, [supply,] and require the use of all forms
 26 deemed necessary for effective administration of the property tax laws. The division may provide forms
 27 on a reimbursable basis. So far as practicable the forms shall be uniform, but nothing herein shall be
 28 deemed to prevent the prescribing of substitute or additional forms where special circumstances require.

²Subsection (a) of this section is similar to section 3, and subsection (c) of this section is similar to section 5 of the act entitled “An act establishing assessment standards and performance measurements; establishing interdistrict and intra-district tax equalization procedures, and for related purposes,” which appears below. This duplication is necessary because the provisions are desirable in each act standing alone.

1 *Section 6. Tax Maps.* The division shall require each county assessor to maintain tax maps in
 2 accordance with standards specified by the division. Whenever necessary to correct mapping deficien-
 3 cies, the division shall install standard maps or approve mapping plans and supervise map production.
 4 The [state tax agency] [shall] [may] require the county to reimburse the state for tax maps installed
 5 by the division. The amount or amounts of such reimbursement shall be deposited in the [state treas-
 6 ury] to the account of the [state tax agency].³

7 *Section 7. Provision of Tax Manuals and Guides.* The division shall prepare, issue, and periodi-
 8 cally revise guides for local assessors in the form of handbooks of rules and regulations, appraisal man-
 9 uals, special manuals and studies, cost and price schedules, news and reference bulletins and digests of
 10 property tax laws suitably annotated.

11 *Section 8. Uniform system of preparation of assessment rolls, tax bills, etc. for statewide use.*
 12 The division shall develop, maintain, and enforce a uniform system of statewide applicability for the
 13 preparation of assessment rolls, tax rolls, tax bills and all other county revenue functions through data
 14 processing facilities as required by the county or multicounty assessment district pursuant to rules and
 15 regulations. To insure system compatibility and uniformity while a uniform system of statewide appli-
 16 cability is developed, any utilization of data processing facilities by counties or multicounty assessment
 17 districts shall receive approval from the division.

18 *Section 9. Provision of Engineering, Professional and Technical Services.* Whenever a county by
 19 or pursuant to action of its [governing board] requests the [state tax agency] to provide engineering,
 20 professional or technical services for the appraisal or reappraisal of properties, the [state tax agency]
 21 may, within its available resources, and in accord with its determination of the need therefor, provide
 22 these services. The county shall pay to the [state tax agency] the actual cost of the services in accord-
 23 ance with a schedule of standard fees and charges furnished and, from time to time, revised by the
 24 [state tax agency]. All payments received by the [state tax agency] pursuant to this section shall be
 25 deposited in the [state treasury] to the account of the [state tax agency].

26 *Section 10. Appraisal of Industrial and Commercial Properties.* The division shall provide to
 27 each county or multicounty assessment district the services of certified appraisers for the appraisal of
 28 major industrial and commercial properties. The properties to be appraised shall be determined by the
 29 division after consultation with the county assessor. In making these determinations, the division shall
 30 take into account the ability of the county assessor to perform appraisals with the resources at his dis-
 31 posal. [Provide for reimbursement or county charge as may be appropriate.]

³In place of the last two sentences of section 6, a state may prefer the following: Costs of map production and instal-
 lation incurred pursuant to this section shall be county charges.

1 *[Alternative Section 10. Appraisal of Industrial Property.* (a) Notwithstanding other provisions
2 of the law, industrial property in this state whether real estate or personal property shall be valued and
3 assessed by the [state tax agency].

4 (b) Industrial property as used herein means a combination of land, improvements, and machinery
5 functioning as a unit: in the assembly, fabrication, processing, manufacture, and distribution of finished
6 or partly finished products from raw materials (including agricultural products) or fabricated parts; in
7 the processing of natural resources, including minerals and gravel.

8 (c) The [state tax agency] shall assess industrial property as provided by law, and on or before
9 [insert date] shall certify to the [insert appropriate official] of each county in which the property is
10 located the amount of the assessment made against each description.

11 (d) The [state tax agency] may request the assistance of county assessing officers and local
12 assessors in valuing any industrial property.]⁴

13 *Section 11. Inspections, Investigations and Studies.* The division may make the necessary
14 inspections, investigations and studies for the adequate administration of its responsibilities pursuant
15 to this act. These may be made in cooperation with other state agencies, and, in connection therewith,
16 the division may utilize reports and data of other state agencies.

17 *Section 12. Training Programs.* The division shall conduct or sponsor in-service, pre-entry, and
18 intern training programs on the technical, legal, and administrative aspects of the assessment process.
19 For this purpose it may cooperate with educational institutions, local, regional, state, or national asses-
20 sors' organizations, and with other organizations interested in improving assessment practices. The
21 division may reimburse the participation expenses incurred by assessors and other employees of the
22 state and its subdivisions whose attendance at in-service training programs is approved by the division.
23 The counties, from the county general fund, shall reimburse the expenses incurred by the county asses-
24 sor when the division does not reimburse him for attending the programs contemplated in this section.

25 *Section 13. Enforcement of Assessment and Appraisal Standards.* (a) In order to promote com-
26 pliance with the requirements of law, the division shall issue and, from time to time, may amend or
27 revise rules and regulations containing minimum standards of assessment and appraisal performance.
28 Such standards shall relate to: (1) adequacy of tax maps and records; (2) types and qualifications of
29 personnel; (3) methods and specifications for the appraisal or reappraisal of property; and (4) adminis-
30 tration. For failure to meet the standards contained in the rules and regulations the division may sus-
31 pend, in whole or in part, performance of the assessment or appraisal function by a county.

⁴States that consider direct state assessment of industrial property desirable (rather than strong state supervision over local administration of the tax on such property) may wish to consider alternative section 10.

1 (b) If the division finds that a county has failed or is failing to meet the standards contained in
2 the rules or regulations in force pursuant to subsection (a) of this section, it shall notify the county
3 assessor of the fact and nature of the failure. The notice shall be in writing and shall be served upon
4 the county assessor and the [county governing board].

5 (c) If within one year from the service of the notice the failure has not been remedied, the
6 division may, at any time during the continuance of the failure, issue an order requiring the county
7 assessor and [county governing board] to show cause why the authority of the county with respect to
8 assessments or any matter related thereto should not be suspended, shall set a time and place at which
9 the director of the division shall hear the county assessor and [county governing board] on the order,
10 and after the hearing shall determine whether and to what extent the assessment function of the county
11 shall be so suspended.

12 (d) During the continuance of a suspension pursuant to subsection (c) of this section, the divi-
13 sion shall succeed to the authority and duties from which the county has been suspended and shall
14 exercise and perform them. The exercise and performance shall be a charge on the suspended county.
15 The suspension shall continue until the division finds that the conditions responsible for the failure to
16 meet the minimum standards contained in the rules and regulations of the division have been corrected.

17 (e) Any county aggrieved by a determination of the division made pursuant to this section or
18 alleging that its suspension is no longer justified may have a review of the determination or continued
19 suspension [as provided in the state administrative procedure act] [by a court of appropriate jurisdic-
20 tion].

21 *Section 14. County Assessor.* (a) On and after [January 1, 19[]] the county assessor shall
22 be appointed by the [county executive or governing board] and shall hold office [for an indefinite
23 term] [for a term of five years]. No person shall be eligible for appointment as county assessor who
24 does not hold an assessor's certificate issued by the division pursuant to section 2 of this act.

25 (b) A county assessor may be removed from office by the [county executive or governing board]
26 or by the commissioner of the [state tax agency]. The [county executive or governing board] may
27 not remove the assessor, except for cause. Upon specification in writing to the assessor and the [county
28 governing board], the commissioner may remove the assessor for failure to comply with the orders of
29 the division. [Add provision making appropriate statute relating to hearings and appeals applicable, or
30 supply procedural detail.]

31 (c) Notwithstanding any provision of this section, any county assessor holding office on the
32 effective date of this act by virtue of election by the people shall be entitled to complete the term for
33 which he was elected.

1 [(d) If other statutes or provisions of local law do not affirmatively empower county assessors
2 to assess, appraise and classify property, use this subsection to confer such power.]

3 *Section 15. Governing Valuations.* [Each local taxing unit] shall be bound by the assessed
4 valuations established by the county assessor for all property subject to its taxing power.

5 *Section 16. Multi-County Assessment Districts.*⁵ (a) Any two or more contiguous counties may
6 enter into an agreement for joint or cooperative performance of the assessment function.

7 (b) The agreement shall provide for:

8 (1) the division, merger, or consolidation of administrative functions between or among
9 the parties, or the performance thereof by one county on behalf of all the parties;

10 (2) the financing of the joint or cooperative undertaking;

11 (3) the rights and responsibilities of the parties with respect to the direction and super-
12 vision of work to be performed under the agreement;

13 (4) the duration of the agreement and procedures for amendment or termination thereof;
14 and

15 (5) any other necessary or appropriate matters.

16 (c) The agreement may provide for the suspension of the powers and duties of the office of
17 county assessor in any one or more of the parties.

18 (d) Unless the agreement provides for the performance of the assessment function by the asses-
19 sor of one county for and on behalf of all other counties party thereto, the agreement shall prescribe
20 the manner of appointing the assessor, and the employees of his office, who shall serve pursuant to
21 the agreement. Each county party to the agreement shall be represented in the procedure for choosing
22 the assessor. Except to the extent made necessary by the multi-county character of the assessment
23 agency, qualifications for employment as assessor or in the assessment agency, and terms and condi-
24 tions of work shall be similar to those for the personnel of a single county assessment agency. Any
25 county may include in any one or more of its employee benefit programs an assessor serving pursuant
26 to an agreement made under this section and the employees of his assessment agency. As nearly as
27 practicable, the inclusion shall be on the same basis as for similar employees of a single county only.
28 An agreement providing for the joint or cooperative performance of the assessment function may pro-
29 vide for the assessor and employee coverage in county employee benefit programs.

30 (e) No agreement made pursuant to this section shall take effect until it has been approved in
31 writing by the head of the [state tax agency] and the [attorney general].

⁵The possibility of including this paragraph may depend in a particular state on constitutional or statutory consider-
ations. Furthermore, references to counties in this paragraph should be changed in states where other units of local govern-
ment are the basic assessing jurisdictions.

1 (f) Copies of any agreement made pursuant to this section, and of any amendment thereto, shall
2 be filed in the office of the [secretary of state] and the [state office of local government] .

3 *Section 17. State Performance of County Assessment Function.* The [governing board] of a
4 county may, [by resolution] , request the [state tax agency] to assume the county assessment function
5 and to perform the same in and for the county. If the commissioner of the [state tax agency] finds
6 that direct state performance of the function is necessary or desirable to the economic and efficient
7 performance thereof, he may direct the division to undertake its performance pursuant to the request.
8 Unless otherwise authorized by law, the division shall undertake and perform the function only after
9 the execution of a suitable agreement between the county and the [state tax agency] providing for
10 responsibility for costs. During the continuance of performance of the county assessment function by
11 the division, the office and functions of the county assessor shall be suspended, and the performance
12 thereof by the division shall be deemed performance by the county assessor.

13 *Section 18. Discontinuance of Certain Assessors' Office.* On and after [date] assessment of
14 property for purposes of taxation, unless pursuant to agreement as authorized in section 16 of this
15 act, shall be only by the county and state in accordance with law. However, any assessor in office on
16 [date] who is serving a fixed term as provided by statute or local law may continue in office until the
17 expiration of the term, and the jurisdiction of which he is the assessor shall continue to have the assess-
18 ment function previously conferred upon it until the office is vacated or the assessor's term expires.

19 *Section 19. Tax Commissioner Revolving Fund created.* There is hereby created a fund to be
20 known as the Property Tax Revolving Fund to which shall be credited all money received by the divi-
21 sion for services performed to county and multicounty assessment districts as provided for in this act.
22 The county or multicounty assessment district shall be billed by the division for services rendered as
23 provided for in this act. Reimbursements to the division shall be credited to the fund and expenditures
24 shall be made, subject to legislative appropriation, only when such funds are available. The division
25 shall only bill for the actual amount expended in performing the service.

26 *Section 20. Separability.* [Insert separability clause.]

27 *Section 21. Effective Date.* [Insert effective date.]

ASSESSMENT NOTIFICATION, REVIEW AND APPEAL PROCEDURE

Many States provide an elaborate hierarchy of administrative and judicial review and appeal agencies for the protection of property taxpayers. But actual protection frequently is illusory, because:

- the property owner has no standard by which to compare his assessment with those on other properties;
- the tribunals to which the taxpayer must appeal frequently are ill constituted or staffed for the purpose; and
- the burden of providing his case is too onerous and costly.

The small taxpayer, in particular, is helpless if he has no simple inexpensive, and dependable recourse. Numerous States have undertaken a variety of steps to improve assessment administration, but most have tended to ignore the need to inform property owners of assessment standards and the procedure for assessment review and appeal. This suggested legislation would provide such procedures.

Under this bill, assessors would be required to inform property owners of the assessed value of their property as it appears on the roll and the latest assessment ratio findings of the State tax department. Protests would be heard by county assessors or local boards of property tax review. In the case of State assessed property, the commissioner of the State tax agency would hear the protest. Appeal could be taken from these initial review agencies to the State tax court, established by the suggested act.

Emphasis is placed on informality of procedure at each level of review. At the State tax court level a small claims procedure is established.

The legislation specifically provides that the parties to an assessment protest proceeding may make use of data contained in assessment ratio studies. In any proceeding relating to a protested assessment the court or other review agency is directed to accept as conclusive evidence of inequitable assessment a proven deviation of 10 percent or more from the relevant county assessment ratio and grant appropriate relief.

Since other provisions of the suggested legislation make assessment ratio studies freely available, the result should be a simplification of evidence gathering and presentation in litigation relating to assessments. The appeals procedure is patterned along the general lines of the Maryland and Massachusetts review system. The notification procedure is patterned along the general lines of the California requirement.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An act providing for protests of assessments, establishing a state tax court, and for related purposes."]

(Be it enacted, etc.)

1 *Section 1. Information by Assessors.* (a) The assessor shall, upon or prior to completion of the
 2 local roll, inform each property owner of real property on the roll of the assessed value of his real
 3 property as it shall appear on the completed local roll. The information given by the assessor shall also
 4 include the most recent assessment ratio for the county as determined by the division of property
 5 taxation [of the state tax agency]. The information shall be in a form substantially as follows:

6 “The assessed value of your property is \$. In its latest assessment ratio
 7 study the [state tax agency] found that property in this county is being assessed
 8 generally at % of its current market value.” [In states where the law specifies
 9 an assessment level other than current market value the notice should also specify
 10 what this level is, e.g., “State law requires that property be assessed at % of its
 11 current market value.”]

12 (b) The assessor shall include a notification of the period during which assessment protests will be
 13 accepted and the place where they may be filed.

14 (c) This information shall be furnished by the assessor to the property owner or his designee by
 15 regular United States mail directed to him at his latest address known to the assessor. Neither the
 16 failure of the property owner to receive this information nor the failure of the assessor to inform the
 17 property owner shall in any way affect the validity of any assessment or the validity of any taxes
 18 levied.

19 *Section 2. Jurisdiction to Hear Protest.* A taxpayer who desires to protest an assessment of his
 20 property may protest in the manner provided by this act. Jurisdiction to hear and determine protest of
 21 assessments shall be only in the courts and agencies upon whom jurisdiction is conferred by this act.

22 *Section 3. Assessors and Boards of Review.* (a) In all counties of less than [] population
 23 according to the last decennial census there shall be a [local board of property tax review] to consist
 24 of [specify membership, method of appointment, and term]. The board shall hear and determine
 25 assessment protests, and shall have power to alter or modify any protested assessment in order that it
 26 conform to law. The board may review assessments and order equalization thereof as may be neces-
 27 sary. Whenever the county assessor has in his regular employ [three] or more appraisers holding
 28 appraiser’s certificates issued by the division of property taxation [of the state tax agency], herein-
 29 after called “division,” one of the appraisers shall sit with and advise the board, but no appraiser shall
 30 sit with the board on its hearing of, or advise the board concerning any protest of, an assessment of
 31 property previously appraised by him.

15-41-40

1 (b) In counties of [] or more population according to the last decennial census,
2 the county assessor shall have in his regular employ at least [three] appraisers holding appraiser's
3 certificates issued by the division and the county assessor shall have the functions and jurisdic-
4 tions of a [local board of property tax review] and there shall be no board. In hearing
5 and determining a protest of an assessment the assessor shall be assisted by an appraiser regu-
6 larly employed in his office who has not previously appraised the property in question.

7 (c) In a county in which the assessment function is performed by an assessor acting for
8 and on behalf of more than one county as provided in an agreement made pursuant to [cite
9 appropriate section of state statute authorizing multi-county assessment districts], a protest of
10 assessment shall be heard and determined by either the assessor's office functioning under
11 the agreement if the office has in its regular employ at least [three] appraisers holding apprais-
12 er's certificates from the division or a [local board of property tax review] established by the
13 agreement.

14 (d) In the case of property assessed by the state, the protest shall be heard and deter-
15 mined solely by the [head of the state tax agency].

16 (e) Review of determinations of a [local board of property tax review], a county
17 assessor when acting on a protest of assessment, and of determinations of the [head of the
18 state tax agency] when acting on a protest of assessment, may be had only in the state [tax
19 court or court of appropriate jurisdiction] as established in section 5 of this act.

20 *Section 4. Initiation of Protests.* (a) Within [thirty] days of his receipt of a notice of
21 assessment or reassessment of property, the owner thereof may protest his assessment or re-
22 assessment. The protest shall be in writing on a form provided by the [county assessor]
23 [division]. The protest may include or be accompanied by a written statement of the
24 grounds for the protest, and may include a request for a hearing. The protest, together with
25 the accompanying statement, if any, shall be filed with the county assessor having jurisdiction
26 to hear the protest or the [local board of property tax review], as the case may be. There-
27 upon, the county assessor or [local board of property tax review], if a hearing has been re-
28 quested, shall fix the time and place where the protest shall be heard and shall serve a notice
29 thereof on the protesting taxpayer.

30 (b), At, or in connection with any hearing held pursuant to this section, the protesting
31 taxpayer shall be entitled to the assistance of an agent and other persons as he may wish.

32 (c) Any agent who appears for or with a taxpayer at a hearing held pursuant to this section
33 shall not be deemed to be engaged in the practice of any licensed trade or profession by reason of his
34 appearance.

1 (d) If the taxpayer has requested a hearing, he may appear in person or by an agent. An agent
 2 shall have power to appear for and act on behalf of the protesting taxpayer only if the protest clearly
 3 identifies the taxpayer's agent.

4 *Section 5. Tax Court.** (a) There is hereby established the state tax court which, for adminis-
 5 trative purposes only, shall be in the [state tax agency], but which shall be an independent administra-
 6 tive tribunal. The court shall consist of a chief judge and [four] associate judges, appointed from
 7 members of the bar by the governor [with the consent of the state senate] [with the consent of the
 8 state legislature]. The term of each judge of the court shall be [six] years. The initial appointments
 9 shall be as follows: the chief judge for a term of [six] years; one associate judge for a term of [two]
 10 years; one associate judge for a term of [three] years; one associate judge for a term of [four] years;
 11 and one associate judge for a term of [five] years. Vacancies on the court shall be filled for the un-
 12 expired term in the same manner as appointments to full terms. During his continuance in office
 13 neither the chief judge nor an associate judge shall have any other employment, but shall devote full
 14 time to his duties as judge.

15 (b) Subject only to review by the [state supreme court], the state tax court shall have juris-
 16 diction to determine all appeals from determinations of the [local board of property tax review], the
 17 county assessor, and the [head of the state tax agency] relative to protested assessments. The state tax
 18 court may affirm, reverse, or modify any determination of the [local board of property tax review],
 19 county assessor when acting on a protested assessment, or the [head of the state tax agency] when
 20 acting on a protested assessment.

21 (c) Any taxpayer dissatisfied with the disposition of his protested assessment by the [local
 22 board of property tax review], county assessor, or [head of the state tax agency] may appeal it to the
 23 state tax court by filing with the court a written notice of appeal and serving on the appropriate
 24 county assessor or the [head of the state tax agency], as the case may be, a certified copy of the notice.
 25 In order to be valid and effective, the notice shall be filed and served within [thirty] days of the dis-
 26 position from which the appeal is to be taken.

27 (d) Consistent with this act and [cite statutes applicable to proceedings of administrative tri-
 28 bunals], the state tax court shall provide by rule for practice before it and the conduct of its proceed-
 29 ings.

30 (e) The state tax court may hear and determine all issues of fact and of law, but a determination
 31 of a [local board of property tax review], county assessor, or the [head of the state tax agency] shall
 32 be affirmed unless contrary to substantial evidence.

* States may wish to extend the jurisdiction of the tax court to all matters involving the administration of state taxes.
 Alternatively States may wish to create a simple, efficient tax appeal process in an existing state judicial system.

1 (f) If a protested assessment cannot otherwise be brought into conformity with law, the state
 2 tax court may order such adjustments with respect to other assessments of property as are necessary
 3 to produce full conformity with law.

4 (g) The state tax court may allow a rehearing on the facts of its determinations.

5 (h) Appeals from determinations of the state tax court may be taken to the [state supreme
 6 court] only on questions of law. [Provide procedures for appeals to the state supreme court.]

7 *Section 6. Taking of Testimony.* (a) Any judge of the state tax court, or any employee of the
 8 court, designated in writing for the purpose by the chief judge, may administer oaths, and the court
 9 may summon and examine witnesses and require by subpoena the production of any returns, books,
 10 papers, documents, correspondence, and other evidence pertinent to the matter under inquiry, at any
 11 designated place of hearing, and may authorize the taking of a deposition before any person competent
 12 to administer oaths. In the case of a deposition, the testimony shall be reduced to writing by the per-
 13 son taking the deposition or under his direction and the deposition shall then be subscribed by the
 14 deponent.

15 (b) The protesting taxpayer whose assessment is in question and the county assessor or [head of
 16 the state tax agency] may obtain an order of the state tax court summoning witnesses or requiring the
 17 production of any returns, books, papers, documents, correspondence and other evidence pertinent
 18 to the matter under inquiry in the same manner in which witnesses may be summoned and evidence may
 19 be required to be produced for the purpose of trials in the [court of appropriate jurisdiction]. Any
 20 witness summoned or whose deposition is taken shall receive the same fees and mileage as witnesses in
 21 the [court of appropriate jurisdiction].

22 *Section 7. Small Claims.* (a) The state tax court shall establish by rule a small claims procedure
 23 which, to the greatest extent practicable, shall be informal. The court shall take special care to provide
 24 all protesting taxpayers, wherever located within the state, reasonable and convenient access to the
 25 court, and shall sit at the time and place as may be appropriate to promote accessibility.

26 (b) Any protesting taxpayer who, pursuant to the action on his protest by the county assessor,
 27 [local board of property tax review], or [head of the state tax agency], would incur a tax liability of
 28 less than \$[1,000.00] by reason of the protested assessment in the first year to which the assessment
 29 applies may elect to employ such procedure to appeal from the action on his protest upon payment of
 30 a \$[2.00] filing fee.

31 (c) The appellant shall file with the state tax court a written statement of the facts in the case,
 32 together with a waiver of the right to appeal to the [state supreme court]. The state tax court shall
 33 cause a notice of the appeal and a copy of the statement to be served on the county assessor or [head

15-41-40

1 of the state tax agency] whose assessment is in question. If the sole defense offered is that the prop-
2 erty was not over-assessed, no further pleadings shall be required.

3 *Section 8. Appeal to [State Supreme Court].* [Use this section to provide procedure for appeal
4 of tax court determinations to state supreme court.]

5 *Section 9. Effect of Assessment Ratio Evidence.* (a) Unless a party to the proceedings estab-
6 lishes that the assessment ratio for a county contained in reports of assessment ratio studies of the
7 division is not supported by facts or was derived or established in a manner contrary to law, the
8 division's ratio shall be conclusive evidence of what the reported ratio is in fact.

9 (b) In any proceeding relating to a protested assessment, a proven deviation of ten percent or
10 more from the relevant county assessment ratio shall be substantial evidence that the protested assess-
11 ment is incorrect.

12 *Section 10. Separability.* [Insert separability clause.]

13 *Section 11. Effective Date.* [Insert effective date.]

STATE PUBLIC LABOR–MANAGEMENT RELATIONS ACT

No State permits public employees to strike, but work stoppages of government personnel at all levels have been skyrocketing. The right of government workers to organize is recognized in more than two-thirds of the States and more and more States are adopting public employer-employee relations acts.

In *Labor-Management Policies for State and Local Government*, the Advisory Commission on Intergovernmental Relations asserted that State efforts “will have little significance unless there is appropriate machinery to resolve recognition and representation disputes, ensure adherence by all parties to the law, and provide the means of facilitating the resolution of controversies arising out of employer-employee impasses.”

The Commission adopted 16 recommendations addressed to the problem, not all of them unanimously. The following suggested laws were drafted to implement the recommendations. The majority of the Commission viewed the “meet and confer in good faith” approach as most appropriate in a majority of situations under present and evolving conditions. Therefore, the first draft takes this approach. However, a substantial minority of the Commission called for “collective negotiations”. The second draft embodies that viewpoint.

The first substantive title of the meet and confer draft establishes a Public Employee Relations Agency (PERA) with significant administrative and dispute settlement responsibilities.

To safeguard public employee rights, the draft includes a section authorizing public employees to form, join, participate in or refrain from joining or participating in the activities of employee organizations of their own choice. The bill recognizes the right of supervisory personnel to form their own associations, but bars them from rank and file unions and from formal recognition privileges to strengthen the management orientation of supervisors and to stabilize the basic administrative discretion of public employers. The bill also includes a management rights section.

The suggested legislation establishes procedures for formal recognition of an employee organization, for determination by PERA of the appropriate unit, and for agency certification of the majority employee representative when inter-union disputes arise. Certain privileges are accorded recognized employee organizations, including dues checkoff.

The bill seeks to balance the need for a large measure of flexibility but preserve the essential integrity of the act and the functions of merit systems. Therefore it permits the memoranda of agreement to cover all issues relating to employment including wages, hours and other terms and conditions, but exempts certain critical items including issues preempted by law and the authority of civil service commissions and boards to conduct and grade merit examinations and to rate candidates.

It bans strikes, but mandates a range of formal devices to resolve disagreements. The bill also provides localities the option of substituting their own provisions and procedures as long as they do not derogate rights granted under the act.

The “collective negotiations” draft is similar in many respects. The focus, however, is somewhat different; bilateral negotiations is the prime purpose of this draft.

Section-by-Section Analysis

(Meet and Confer in Good Faith)

Section 1 states the legislature's findings and purpose, and declares among other findings that recognition of employees' right to organize can alleviate unrest, but inherent differences exist between public and private employment which preclude employer-employee relationships in the public service from being completely comparable to those in the private sector.

Section 2 provides definitions of 15 terms used in the act.

Section 3 creates a Public Employee Relations Agency (PERA) and specifies the Agency's powers, responsibilities, and membership. All members of the Agency are appointed by the Governor and significant administrative and dispute settlement functions are assigned to it.

Section 4 authorizes public employees to form, join, and participate in, or to refrain from joining or participating in, employee organizations for the purpose of meeting and conferring with public employers.

Section 5 permits supervisory employees to join and participate in employee organizations, provided that such organizations do not include non-supervisory employees. It prohibits the public employer from extending formal recognition to supervisor organizations, but permits informal consultation at the discretion of the employer.

Section 6 specifies certain traditional public employer rights under the act.

Section 7 provides procedures for formal recognition of an employee organization, for PERA's determination of the appropriate unit, and for certification by the PERA of the designated representative of such unit when inter-union disputes arise.

Section 8 specifies the rights accompanying formal recognition of an employee organization, including authorization for the public employer to make dues checkoffs and to give employee representatives reasonable time off during normal working hours without loss of compensation to meet and confer.

Section 9 contains alternative procedures for determining the recognition status of local employee organizations whereby local public employees may establish their own process for such determination. These procedures, however, must not be inconsistent with those stipulated for the State under the previous two sections.

Section 10 extends the scope of a memorandum of agreement to cover wages, hours, and other conditions of employment; but it excludes proposals relating to any subjects pre-empted by Federal or State law or municipal charter, to public employee and public employer rights defined under the act, and to the authority of civil service commissions and personnel boards to examine and rate candidates. The parties are authorized to include in a memorandum of agreement procedures for advisory arbitration of unresolved grievances and disputed interpretations of the memorandum of agreement.

71-80-10

Section 11 specifies procedures for implementing a memorandum of agreement.

Section 12 provides machinery for resolving disputes arising in the course of discussions, including mediation, fact-finding, and “show-cause” hearings; it also specifies cost-sharing arrangements for mediation and fact-finding services.

Section 13 lists prohibited practices for public employers and employees, and states that in applying this section fundamental distinctions between public and private employment shall be recognized and that no Federal or State law applicable to private employment shall be regarded as a binding or controlling precedent; strikes are banned.

Section 14 provides for the handling of violations of prohibited practices.

Section 15 contains a local public agency option, wherein localities are permitted to substitute their own provisions and procedures for those established for the State, provided the rights granted under the act are not abrogated.

Section-by-Section Analysis

(Collective Negotiations)

Section 1 states the legislature’s findings and purpose, and asserts that experience in both the public and private sectors has demonstrated that collective negotiations, because it establishes greater equality of bargaining power between public employees and their employers and encourages these parties to resolve their differences by mutual agreement, can remove certain sources of strife and unrest.

Section 2 provides definitions of 15 terms used in the act.

Section 3 creates a Public Employee Relations Agency (PERA) and specifies the Agency’s powers, responsibilities, and membership. Two alternative approaches to appointing members are provided: all of the Agency’s members may be appointed by the Governor; or two members may be appointed by the Governor, two by a State Labor Committee established pursuant to the act, and the fifth—the chairman—by the other four members. Significant administrative and dispute settlement functions are assigned to the Agency.

Section 4 authorized public employees to form, join, and participate in employee organizations for the purpose of negotiating collectively with public employers. Employees also may refrain from joining such organizations.

Section 5 permits supervisory employees to join and participate in employee organizations, provided that such organizations do not include non-supervisory employees. It prohibits the public employer from extending exclusive recognition to supervisor organizations, but permits informal consultation at the discretion of the employer.

71-80-10

Section 6 specifies certain traditional public employer rights under the act, but makes this section optional.

Section 7 provides procedures for exclusive recognition of an employee organization, for PERA's determination of the appropriate unit, and for certification (by the PERA) of the designated representative of such unit when inter-union conflicts arise.

Section 8 specifies the rights accompanying exclusive recognition of an employee organization, including requirements for the public employer to make dues checkoffs and to give employee representatives time off during normal working hours without loss of compensation to negotiate.

Section 9 contains alternative procedures for determining the recognition status of local employee organizations, whereby local public employers may establish their own process for such determination. Its procedures, however, must not be inconsistent with those stipulated for the State under the previous two sections.

Section 10 gives broad scope to an agreement but it excludes proposals relating to the authority of duly constituted civil service commissions and personnel boards to examine and rate candidates. In any conflict between the terms of an agreement and matters covered by any charter, special act, ordinance, civil service commission or personnel board rule or regulation, or general statutes pertaining to working hours for policemen and firemen or to coverage of employees under a retirement system, the agreement shall prevail. The parties are authorized to include in an agreement procedures for final and binding arbitration of unresolved grievances and disputed interpretations of the agreement.

Section 11 specifies procedures for implementing a written agreement, and provides that an employer's failure to submit to the legislature a request for funds necessary to implement such agreement within an appropriate time period shall constitute bad faith.

Section 12 provides machinery for resolving disputes arising in the course of negotiations, including mediation, fact-finding, voluntary arbitration, and "show-cause" hearings; cost-sharing arrangements for mediation, fact-finding, and arbitration services are specified.

Section 13 lists prohibited practices for public employers, including dealing directly with employees on matters falling within the scope of negotiations thus circumventing the exclusive representative; prohibited practices for public employees are also cited, including engaging in strikes.

Section 14 provides for the handling of violations of prohibited practices.

Section 15 contains a local public agency option, wherein localities are permitted to substitute their own provisions for those established for the State, provided the rights granted under the act are not abrogated.

STATE PUBLIC LABOR—MANAGEMENT RELATIONS ACT

SUGGESTED LEGISLATION¹

[Title should conform to State requirements. The following is a suggestion: “An Act to Establish a Framework of Employer-Employee Relations by Providing Uniform and Orderly Methods for Dealings Between Employees and Organizations Thereof and Employing Public Agencies and for Related Purposes.”]

(Be it enacted, etc.)

1 *Section 1. Findings and Purpose.* The legislature hereby finds and declares that:

2 (1) the people of this State have a fundamental interest in the development of harmonious
3 and cooperative relationships between government and its employees;

4 (2) recognition by public employers of the right of public employees to organize and full
5 acceptance of the principle and procedure of full communication between public employers and
6 public employee organizations can alleviate various forms of strife and unrest;

7 (3) the State has a basic obligation to protect the public by attempting to assure the orderly
8 and uninterrupted operations and functions of government;

9 (4) the status of public employees neither is, nor can be, completely comparable to that of
10 private employees, in fact or law, because of inherent differences in the employment relationship
11 arising out of the unique fact that the public employer was established by and run for the benefit
12 of all the people and its authority derives not from contract nor the profit motive inherent in the
13 principle of free private enterprise, but from the constitution, statutes, and municipal charters; and

14 (5) this difference between public and private employment is further reflected in the constraints
15 that bar any abdication or bargaining away by public employers of their continuing legislative discretion
16 and in the fact that constitutional provisions as to contract, property, and due process do not have the
17 same force with respect to the public employer-employee relationship.

¹The following statute incorporates a “meet and confer in good faith” approach to labor-management relations in the State and local public service. A draft embodying a “collective negotiations” approach appears on page 15. On balance, the Advisory Commission on Intergovernmental Relations tends to favor the meet and confer in good faith approach but recognizes that different States will take varying positions regarding sections of this draft legislation; hence, the inclusion of alternate language.

1 It is the purpose of this act to obligate public agencies, public employees, and their representatives
2 to enter into discussions with affirmative willingness to resolve grievances and disputes relating to wages,
3 hours, and other terms and conditions of employment, acting within the framework of laws and charter
4 provisions. It is also the purpose of this act to promote the improvement of employer-employee relations
5 within the various public agencies of the State and its political subdivisions by providing a uniform basis
6 for recognizing the right of public employees to join organizations of their own choice, or to refrain from
7 joining, and be represented by such organizations in their employment relations and dealings with public
8 agencies.

9 *Section 2. Definitions.* As used in this act:

10 (1) "Public employee" means any person employed by any public agency excepting those persons
11 classed as legislative, judicial, or supervisory public employees; elected and top management appointive
12 officials; and certain categories of confidential employees including those who have responsibility for
13 administering the public labor-management relations law as a part of their official duties.

14 (2) "Supervisory employee" means any individual having authority, in the interest of the employer,
15 (i) to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees,
16 or (ii) responsibly to direct them, or (iii) to adjust their grievances, or (iv) effectively to recommend such
17 action, if in connection with the foregoing the exercise of such authority is not of a merely routine or
18 clerical nature, but requires the use of independent judgment.

19 (3) "Confidential employee" means one whose functional responsibilities or knowledge in connection
20 with the issues involved in the meet and confer in good faith process would make his membership in the
21 same organization as rank-and-file employees incompatible with his official duties.

22 (4) "Public agency" or "public employer" means the State of [] and every
23 governmental subdivision, district, public and quasi-public corporation, public agency and town, city,
24 county, city and county, and municipal corporation, whether incorporated or not and whether chartered
25 or not.

26 (5) "Governing body" means the legislative body of the public employer or the body possessing
27 legislative powers. In the case of [independent] school districts, it means the board of education, board
28 of trustees or sole trustee, as the case may be.

29 (6) "Representative of the public employer" and "designated representative" means the chief
30 executive officer of the public employer or his designee, except where the governing body provides
31 otherwise.

32 (7) "Employee organization" means any organization which includes employees of a public agency and
33 which has as one of its primary purposes representing such employees in discussions with that public agency
34 over wages, hours, and other terms and conditions of employment.

71-80-10

1 (8) "Recognized employee organization" means an employee organization which has been formally
2 acknowledged by the public agency or certified as representing a majority of the nonsupervisory employees
3 of an appropriate unit.

4 (9) "Agency" means the Public Employee Relations Agency established pursuant to this act.

5 (10) "Meet and confer in good faith" means the process whereby the chief executive of a public
6 agency, or such representatives as it may designate, and representatives of recognized employee
7 organizations have the mutual obligation personally to meet and confer in order to exchange freely
8 information, opinions, and proposals, to endeavor to reach agreement on matters within the scope of
9 discussions, and to seek by every possible means to implement agreements reached.

10 (11) "Memorandum of agreement" means a written memorandum of understanding arrived
11 at by the representatives of the public agency and a recognized employee organization(s), which may
12 be presented to the governing body or its statutory representative and to the membership of such
13 organization(s) for appropriate action.

14 (12) "Mediation" means effort by an impartial third party to assist in reconciling a dispute
15 regarding wages, hours, and other terms and conditions of employment between representatives
16 of the public agency and the recognized employee organizations through interpretation, suggestion,
17 and advice.

18 (13) "Fact-finding" means investigation of such a dispute by an individual, panel, or board with
19 the fact-finder submitting a report to the parties describing the issues involved. The report may contain
20 recommendations for settlement and may be made public.

21 (14) "Advisory arbitration" means interpretation of the terms of an existing or a new memorandum
22 of agreement or investigation of disputes by an impartial third party whose decision is not binding upon
23 the parties.

24 (15) "Voluntary arbitration" means a procedure wherein both parties jointly agree to submit their
25 dispute to an impartial third party whose decision may be final and binding or advisory and non-binding,
26 depending on the nature of the initial agreement.

27 (16) "Strike" means the failure by concerted action with others to report for duty, the wilful
28 absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full,
29 faithful, and proper performance of the duties of employment, and without the lawful approval of one's
30 superior, or in any manner interfering with the operation of government of the State, the government of
31 any of the political subdivisions thereof, the public schools or any authority, commission, board or
32 branch thereof, for the purpose of inducing, influencing, or coercing a change in the conditions or
33 compensation or the rights, privileges, or obligations of employment.

34 *Section 3. Public Employee Relations Agency.*

35 (a) There is hereby created [in the State department of] a board, to be known as the [Public

1 Employee Relations Agency], which shall consist of [5] members appointed by the Governor, by and
2 with the advice and consent of the Senate from persons representative of the public. Not more than [3]
3 members of the Agency shall be members of the same political party. Each member shall be appointed
4 for a term of [6] years, except that [2] shall be appointed for a term to expire [2] years following the
5 effective date of this act, [2] for a term that shall expire [4] years following the effective date of this
6 act, and [1] for a term that shall expire [6] years following the effective date of this act. A member
7 appointed to fill a vacancy shall be appointed for the unexpired term of the member whom he is to
8 succeed.

9 (b) Members shall hold no other public office or public employment in the State or its political
10 subdivisions. [The chairman shall give his full time to his duties.]

11 (c) Members of the Agency other than the chairman, when performing the duties of the Agency,
12 shall be compensated at the rate of [one hundred dollars a day], together with an allowance of actual
13 and necessary expenses incurred in the discharge of their responsibilities hereunder. The chairman shall
14 receive an annual salary to be fixed within the amount available therefor by appropriation, in addition to
15 an allowance for expenses actually and necessarily incurred by him in the performance of his duties.

16 (d) The Agency may appoint an executive director and such other persons, including but not
17 limited to mediators, members of fact-finding boards, and representatives of employee organizations
18 and public employers to serve as technical advisers to such fact-finding boards, as it may from time to
19 time deem necessary for the performance of its functions. The agency shall prescribe their duties, fix
20 their compensation, and provide for reimbursement of their expenses within the amounts made available
21 therefor by appropriation.

22 (e) In addition to the authority provided in other sections, the Agency may:

23 (1) Make studies and analyses of, and act as a clearing-house of information relating to,
24 conditions of employment of public employees throughout the State.

25 (2) Provide technical assistance and training programs to assist public employees in their
26 dealings with employee organizations.

27 (3) Request from any public agency such assistance, services, and data as will enable the
28 Agency properly to carry out its functions and powers.

29 (4) Establish procedures for the prevention of improper public employer and employee
30 organization practices as provided in Section 13 of this act, provided that in the case of a claimed
31 violation of paragraph (5) of subdivision (b) or paragraph (4) of subdivision (c) of such section,
32 procedures shall provide only for an entering of an order directing the public agency or employee
33 organization to meet and confer in good faith. The pendency of proceedings under this paragraph
34 shall not be used as the basis to delay or interfere with determination of representation status
35 pursuant to Section 7 of this act or with meeting and conferring. The Agency shall exercise exclusive

1 nondelegable jurisdiction of the power granted to it by this paragraph.

2 (5) Establish, after consulting with representatives of employee organizations and of public
3 agencies, panels of qualified persons broadly representative of the public, to be available to serve as
4 mediators, members of fact-finding boards, or arbitrators.

5 (6) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly
6 its functions and powers.

7 (7) For the purpose of such hearings and inquiries, administer oaths and affirmations, examine
8 witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the
9 production of documents by the issuance of subpoenas, and delegate such powers to any member of the
10 Agency or any person appointed by the Agency for the performance of its functions. Such subpoenas
11 shall be regulated and enforced [under the civil practice law and rules].

12 (8) Make, amend, and rescind, from time to time, such rules and regulations, including but
13 not limited to those governing its internal organization and conduct of its affairs, and exercise such other
14 powers, as may be appropriate to effectuate the purposes and provisions of this act.

15 *Section 4. Public Employee Rights.* Public employees shall have the right to form, join, and
16 participate in the activities of employee organizations of their own choosing for the purpose of meeting
17 and conferring with public employers or their designated representatives with respect to grievances and
18 wages, hours, and other terms and conditions of employment. Public employees also shall have the
19 right to refuse or fail to join or participate in the activities of employee organizations.

20 *Section 5. The Special Case of Supervisory Employees.* Supervisory employees may form, join,
21 and participate in the activities of employee organizations, provided such organizations do not include
22 non-supervisory employees. A public agency shall not extend formal recognition to a supervisory organization
23 for the purpose of meeting and conferring with respect to grievances and conditions of employment, but
24 may consult or otherwise communicate with such an organization on appropriate matters.

25 *Section 6. Public Employer Rights.* Nothing in this act is intended to circumscribe or modify the
26 existing right of a public agency to:

27 (1) direct the work of its employees;

28 (2) hire, promote, demote, transfer, assign, and retain employees in positions within the public
29 agency;

30 (3) suspend or discharge employees for proper cause;

31 (4) maintain the efficiency of governmental operations;

32 (5) relieve employees from duties because of lack of work or for other legitimate reasons;

33 (6) take actions as may be necessary to carry out the mission of the agency in emergencies; and

34 (7) determine the methods, means, and personnel by which operations are to be carried on.

1 *Section 7. Recognition of Employee Organizations.*

2 (a) Public employers shall recognize employee organizations for the purpose of representing their
3 members in dealings with such employees. Employee organizations may establish reasonable provisions
4 for an individual's admission to or dismissal from membership.

5 (b) Where an employee organization has been certified by the Agency as representing a majority
6 of the employees in an appropriate unit, or recognized formally, pursuant to the provisions of this act,
7 the public employer shall meet and confer in good faith with such employee organization in the determination
8 of, and the administration of grievances arising under the terms and conditions of employment of their
9 public employees as provided in this act, and may enter into a memorandum of agreement with such employee
10 organization.

11 (c) When a question concerning the designation of an appropriate unit is raised by a public agency,
12 employee organization, or employees, the Public Employee Relations Agency, established pursuant to this
13 act, shall, at the request of any of the parties, investigate such question and, after a hearing, rule on the
14 definition of the appropriate unit. In defining the unit, the Agency shall take into consideration, along
15 with other relevant factors, the principles of efficient administration of government, the existence of a
16 community of interest among employees, the history and extent of employee organization, geographical
17 location, the provisions of Section 5 of this act, and the recommendations of the parties involved.

18 (d) Following investigation of a question concerning the representation of employees, the Public
19 Employee Relations Agency at the request of any of the parties, shall examine such questions and certify
20 to the parties in writing the name(s) of the representative(s) that has been designated. The filing of a
21 petition for the investigation or certification of a representative of employees by any of the parties shall
22 constitute a question within the meaning of this section. In any such investigation, the Agency may provide
23 for an appropriate hearing, shall determine voting eligibility, and shall take a secret ballot of employees in
24 the appropriate unit involved to ascertain such representatives for the purpose of formal recognition. If the
25 Agency has certified a formally recognized representative in an appropriate unit, as provided in this section,
26 it shall not be required to consider the matter again for a period of one year, unless it appears that sufficient
27 reason exists. The Agency may promulgate such rules and regulations as may be appropriate to carry out
28 the provisions of subsections (c) and (d) of this section.

29 *Section 8. Rights Accompanying Formal Recognition.*

30 (a) A public employer shall extend to an employee organization certified or recognized formally,
31 pursuant to this act, the right to represent the employees of the appropriate unit involved in meet and
32 confer proceedings and in the settlement of grievances and the right to unchallenged representation
33 status, consistent with Section 7(d), during the 12 months following the date of certification or formal
34 recognition.

1 (b) A public employer may extend to such an organization the right to membership dues deduction,
2 upon presentation of dues deduction authorization cards signed by individual employees, provided that all
3 employee organizations may have the right to membership dues deductions until the formally recognized
4 representative has been determined.

5 (c) Representatives of formally recognized employee organizations may be given reasonable time off
6 without loss of compensation during normal working hours to meet and confer with public employers on
7 matters falling within the scope of discussions.

8 *Section 9. Procedures for Determining the Recognition Status of Local Employee Organizations.*

9 (a) Every public agency, other than the State and its authorities acting through its governing body,
10 may establish procedures, not inconsistent with the provisions of Sections 7 and 8 of this act and after
11 consultation with interested employee organizations and employer representatives, to resolve disputes
12 concerning the recognition status of employee organizations composed of employees of such agency.

13 (b) In the absence of such procedures, these disputes shall be submitted to the Public Employee
14 Relations Agency in accordance with Section 7 of this act.

15 *Section 10. Scope of Memorandum of Agreement.* The scope of a memorandum of agreement may
16 extend to all matters relating to employment conditions and employer-employee relations, including, but
17 not limited to, wages, hours, and other terms and conditions of employment except, however, that the
18 scope of a memorandum of agreement shall not include proposals relating to (i) any subject preempted by
19 Federal or State law or by municipal charter, (ii) public employee rights defined in Section 4 of this act,
20 (iii) public employer rights defined in Section 6 of this act, or (iv) the authority and power of any civil
21 service commission, personnel board, personnel agency or its agents established by constitutional provision,
22 statute, charter or special act to conduct and grade merit examinations, and to rate candidates in the order
23 of their relative excellence from which appointments or promotions may be made to positions in the
24 competitive division of the classified service of the public employer served by such civil service commission
25 or personnel board. A memorandum of agreement may contain a grievance procedure culminating in
26 advisory arbitration of unresolved grievances and disputed interpretations of such agreement.

27 *Section 11. Implementation of Memoranda of Agreement.* If agreement is reached by the representative
28 of the public employer and the recognized employee organization, they shall jointly prepare a memorandum
29 of understanding and, within [14] days, present it to the governing body for determination. The body, as
30 soon as practicable, shall consider the memorandum and take appropriate action. If a settlement is reached
31 with an employee organization, the governing body or the representative of the public employer shall
32 implement the settlement in the form of a law, ordinance, resolution, executive order, rule, or regulation,
33 as the case may be. If the governing body or the designated representative rejects a proposed memorandum,
34 the matter shall be returned to the parties for further deliberation.

71-80-10

1 *Section 12. Resolution of Disputes Arising in the Course of Discussions.*

2 (a) Public employers may include in memoranda of agreement concluded with formally recognized or
3 certified employee organizations a provision setting forth the procedures to be invoked in the event of disputes
4 which reach an impasse in the course of meet and confer proceedings. For purposes of this section, an impasse
5 shall be deemed to exist if the parties fail to achieve agreement at least [60] days prior to the budget
6 submission date of the public employer. In the absence or upon the failure of dispute resolution procedures
7 contained in agreements resulting in an impasse, either party may request the assistance of the Public Employee
8 Relations Agency or the Agency may render such assistance on its own motion, as provided in subdivision (b)
9 of this section.

10 (b) On the request of either party, or upon the Agency's own motion, if it determines an impasse
11 exists in meet and confer proceedings between a public employer and formally recognized or certified employee
12 organizations, the Agency shall aid the parties in effecting a voluntary resolution of the dispute, and appoint
13 a mediator or mediators, representative of the public, from a list of qualified persons maintained by the Agency.

14 (c) If the impasse persists [10] days after the mediator(s) has been appointed, the Agency shall appoint
15 a fact-finding board of not more than [3] members, each representative of the public, from a list of qualified
16 persons maintained by the Agency. The fact-finding board shall conduct a hearing, may administer oaths,
17 and may request the Agency to issue subpoenas.

18 It shall make written findings of facts and recommendations for resolution of the dispute and, not later
19 than [20] days from the day of appointment, shall serve such findings on the public employer and the recognized
20 employee organization. If the dispute continues [10] days after the report is submitted to the parties, the report
21 shall be made public.

22 (d) If the parties have not resolved the impasse by the end of a [40] day period commencing with the
23 date of appointment of the fact-finding board, (i) the representative of the public employer involved shall
24 submit to the governing body or its duly authorized committee(s) a copy of the findings of fact and
25 recommendations of the fact-finding board, together with his recommendations for settling the dispute;
26 (ii) the employee organization may submit to the governing body or its duly authorized committee(s) its
27 recommendations for settling the dispute; (iii) the governing body or such committee(s) shall forthwith
28 conduct a hearing at which the parties shall be required to explain their positions with respect to the board;
29 and (iv) thereafter, the governing body shall take such action as it deems to be in the public interest, including
30 the interest of the public employees involved.

31 (e) The costs for mediation services provided by the Agency shall be borne by the Agency. All
32 other costs, including that of fact-finding services, shall be borne equally by the parties to a dispute.

33 *Section 13. Prohibited Practices; Evidence of Bad Faith.*

34 (a) Commission of a prohibited practice, as defined in this section, among other actions, shall
35 constitute evidence of bad faith in meet and confer proceedings.

1 (b) It shall be a prohibited practice for a public employer or its designated representative wilfully
2 to:

3 (1) interfere, restrain, or coerce public employees in the exercise of rights granted in
4 Section 4 of this act;

5 (2) dominate, interfere, or assist in the formation, existence, or administration of any
6 employee organization;

7 (3) Encourage or discourage membership in any labor organization; employee agency,
8 committee, association, or representation plan by discrimination in hiring, tenure, or other terms or
9 conditions of employment;

10 (4) Discharge or discriminate against an employee because he has filed any affidavit, petition,
11 or complaint or given any information or testimony under this act, or because he has formed, joined, or
12 chosen to be represented by any labor organization or employee organization;

13 (5) Refuse to meet and confer with representatives of recognized employee organizations
14 as required in Section 7 of this act;

15 (6) Deny the rights accompanying certification or formal recognition granted in Section 8
16 of this act;

17 (7) Blacklist any employee organization or its members for the purpose of denying them
18 employment;

19 (8) Avoid mediation and fact-finding endeavors as provided in Section 12 of this act; or

20 (9) To institute or attempt to institute a lockout.

21 (c) It shall be a prohibited practice for public employees or employee organizations wilfully to:

22 (1) Interfere with, restrain, or coerce public employees in the exercise of rights granted in
23 Section 4 of this act;

24 (2) Interfere with, restrain, or coerce a public employer with respect to rights protected in
25 Section 6 of this act or with respect to selecting a representative for the purposes of meeting and conferring
26 on the adjustment of grievances;

27 (3) Refuse to meet and confer with a public employer as required in Section 7 of this act;

28 (4) Avoid mediation and fact-finding efforts as provided in Section 12 of this act; or

29 (5) Engage in a strike.

30 (d) In applying this section, fundamental distinctions between private and public employment
31 shall be recognized, and no body of Federal or State law applicable, wholly or in part to the private
32 employment, shall be regarded as binding or controlling precedent.

33 *Section 14. Violations of Prohibited Practices.*

34 (a) Any controversy concerning prohibited practices may be submitted to the Agency: Proceedings
35 against the party alleged to have committed a prohibited practice shall be commenced by service upon it by

1 the Agency of a written notice, together with a copy of the charges. The accused party shall have [7] days
 2 within which to serve a written answer to such charges. The Agency's hearing shall be held promptly thereafter
 3 and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses in
 4 their behalf. Compliance with the technical rules of evidence shall not be required. The Agency may use its
 5 rule-making power, as provided in Section 3, to make any other procedural rules it deems necessary to carry
 6 on this function.¹

7 (b) The Agency shall state its findings of facts upon all the testimony and shall either dismiss the complaint
 8 or determine that a prohibited practice has been or is being committed. If the Agency finds that the party accused
 9 has committed or is committing a prohibited practice, the Agency shall petition the [court of appropriate
 10 jurisdiction] to punish such violation, and shall file in the [court] the record in the proceedings. Any person
 11 aggrieved by a final order of the Agency granting or denying in whole or in part the relief sought may obtain
 12 a review of such order in the [court of appropriate jurisdiction] by filing a complaint praying that the order
 13 of the Agency be modified or set aside, with copy of the complaint filed on the Agency, and thereupon the
 14 aggrieved party shall file in the [court] the record in the proceedings, certified by the Agency. Findings of the
 15 Agency as to the facts shall be conclusive unless it is made to appear to the satisfaction of the [court of
 16 appropriate jurisdiction] that the findings of fact were not supported by substantial evidence.

17 *Section 15. Local Public Agency Options.* This act, except for Sections 2, 3(e) (3), 4, 5, 6, 7, 8, 13
 18 and 14, shall be inapplicable to any public employer, other than the State and its authorities, which, acting
 19 through its legislative body, has adopted by local law, ordinance, or resolution its own provisions and procedures
 20 which have been submitted to the Agency by such public employer and as to which there is in effect a determination
 21 by the Agency that such provisions and procedures and the continuing implementation thereof do not derogate
 22 the rights granted under this act.

23 *Section 16. Separability.* [Insert separability clause.]

24 *Section 17. Effective Date.* [Insert effective date.]

NOTE: Following is a draft embodying a "collective negotiations" approach. The Advisory Commission favors the meet and confer in good faith approach but recognizes that some States may well wish to consider other language with respect to the topics covered in the sections of this draft legislation; hence, the inclusion of this alternate.

¹ Where a State has adopted an administrative procedures act, this section should be made to conform to it.

STATE PUBLIC LABOR—MANAGEMENT RELATIONS ACT
(Collective Negotiations)

[Title should conform to State requirements. The following is a suggestion: "An Act to Establish a Framework of Employer-Employee Relations by Providing Uniform and Orderly Methods for Collective Negotiations Between Employees and Organizations Thereof and Employing Public Agencies and for Related Purposes."]

(Be it enacted, etc.)

1 *Section 1. Findings and Purpose.* The legislature hereby finds and declares that:

2 (1) the people of this State have a fundamental interest in the development of harmonious and cooperative
3 relationships between government and its employees;

4 (2) recognition by public employers of the right of public employees to organize and full acceptance of the
5 principle and procedure of collective negotiations between public employers and public employee organizations can
6 alleviate various forms of strife and unrest. Experience in the private and public sectors of our economy has proved
7 that unresolved disputes in the public service are injurious to the public, the governmental agencies, and public
8 employees;

9 (3) experience in private and public employment has also proved that protection by law of the right of
10 employees to organize and negotiate collectively safeguards employees and the public from injury, impairment and
11 interruptions of necessary services, and removes certain recognized sources of strife and unrest, by encouraging practices
12 fundamental to the friendly adjustment of disputes arising out of differences as to wages, hours, and other working conditions,
13 and by establishing greater equality of bargaining power between public employers and public employees; and

14 (4) the State has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted
15 operations and functions of government.

16 It is the purpose of this act to obligate public agencies, public employees, and their representatives to enter into
17 collective negotiations with affirmative willingness to resolve grievances and disputes relating to wages, hours, and other
18 terms and conditions of employment. It is also the purpose of this act to promote the improvement of employer-employee
19 relations within the various public agencies of the State and its political subdivisions by providing a uniform basis for
20 recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be
21 represented by such organizations in their employment relations and dealings with public agencies.

22 *Section 2. Definitions.* As used in this act:

23 (1) "Public employee" means any person employed by any public agency excepting those persons classed as
24 legislative, judicial, or supervisory public employees; elected and top management appointive officials; and certain
25 categories of confidential employees including those who have responsibility for administering the public labor-management
26 relations law as a part of their official duties.

71-80-10

1 (2) "Supervisory employee" means any individual having authority, in the interest of the employer, (i) to hire,
2 transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or (ii) responsibly to
3 direct them, or (iii) to adjust their grievances, or (iv) effectively to recommend such action, if in connection with the
4 foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent
5 judgment.

6 (3) "Confidential employee" means one whose functional responsibilities or knowledge in connection with the
7 issues involved in the collective negotiations process would make his membership in the same organization as rank-and-
8 file employees incompatible with his official duties.

9 (4) "Public agency" or "public employer" means the State of [] and every governmental
10 subdivision, district, public and quasi-public corporation, public agency and town, city, county, city and county, and municipal
11 corporation, whether incorporated or not and whether chartered or not.

12 (5) "Governing body" means the legislative body of the public employer or the body possessing legislative powers.
13 In the case of [independent] school districts, it means the board of education, board of trustees or sole trustee, as the
14 case may be.

15 (6) "Representative of the public employer" and "designated representative" means the chief executive officer of
16 the public employer or, his designee, except where the governing body provides otherwise.

17 (7) "Employee organization" means any organization which includes employees of a public agency and which has as
18 one of its primary purposes representing such employees in collective negotiations with that public agency over wages, hours,
19 and other terms and conditions of employment.

20 (8) "Recognized employee organization" or "exclusive representative" means an employee organization which has been
21 formally acknowledged by the public agency or certified as representing a majority of the nonsupervisory employees of an
22 appropriate unit.

23 (9) "Agency" means the Public Employee Relations Agency established pursuant to this act.

24 (10) "Collective negotiations" means performance of the mutual obligation of the employer through its chief
25 executive officer or designated representative and the recognized employee organization to meet at reasonable times and
26 negotiate in good faith with respect to wages, hours, and other conditions of employment, or the negotiation of an agreement,
27 or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by
28 either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

29 (11) "Agreement" means a written contract between an employer and an employee organization, usually for a
30 definite term, defining the conditions of employment, including wages, hours, vacations, holidays, and overtime payments,
31 and the procedures to be followed in settling disputes or handling issues that arise during the term of the contract.

32 (12) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and
33 other terms and conditions of employment between representatives of the public agency and the recognized employee
34 organizations through interpretation, suggestion, and advice.

1 (13) "Fact-finding" means investigation of such a dispute by an individual, panel, or board with the fact-finder
 2 submitting a report to the parties describing the issues involved. The report may contain recommendations for settlement
 3 and may be made public.

4 (14) "Binding arbitration" means interpretation of the terms of an existing agreement by an impartial third party
 5 whose decision may be final and binding.

6 (15) "Voluntary arbitration" means a procedure wherein both parties jointly agree to submit their dispute to an
 7 impartial third party whose decision may be final and binding or advisory and non-binding, depending on the nature of the
 8 initial agreement.

9 (16) "Strike" means the failure by concerted action with others to report for duty, the wilful absence from one's
 10 position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the
 11 duties of employment, and without the lawful approval of one's superior, or in any manner interfering with the operation of
 12 government of the State, the government of any of the political subdivisions thereof, the public schools or any authority,
 13 commission, board or branch thereof, for the purpose of inducing, influencing, or coercing a change in the conditions or
 14 compensation or the rights, privileges, or obligations of employment.

15 *Section 3. Public Employee Relations Agency.* [(a) There is hereby created [in the State department of]
 16 a board, to be known as the [Public Employee Relations Agency] , which shall consist of [5] members appointed by the
 17 Governor, by and with the advice and consent of the Senate from persons representative of the public. Not more than [3]
 18 members of the Agency shall be members of the same political party. Each member shall be appointed for a term of [6] years,
 19 except that [2] shall be appointed for a term to expire [two] years following the effective date of this act, [2] for a term that
 20 shall expire [4] years following the effective date of this act, and [1] for a term that shall expire [6] years following the
 21 effective date of this act. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member
 22 whom he is to succeed.]

23 [(a) There is hereby created the Public Employee Relations Agency, which shall be composed of [5] members.
 24 The Governor shall appoint two members who shall serve at his pleasure.

25 A State Labor Committee also may be created and its membership shall be open to any labor organization which
 26 represents employees as defined in the act. The Committee shall adopt reasonable rules for the purpose of designating and
 27 removing labor members of the Agency. The first meeting of the Committee shall be convened by a representative of the labor
 28 organization having the largest number of members who are employees as defined in the act. This representative shall serve
 29 as acting chairman of the State Labor Committee until a permanent chairman is selected in accordance with the rules adopted
 30 by the Committee.

31 The State Labor Committee, in accordance with its rules, shall appoint [2] members of the Public Employee Relations
 32 Agency, who shall serve at the pleasure of the Committee. If the Committee fails to appoint such members within [28] days
 33 following the naming of the Governor's appointees, the Governor shall appoint [2] additional members representative of
 34 employee organizations who shall serve at his pleasure. The fifth member of the Agency shall be elected and designated chairman
 35 by the unanimous vote of the other [4] members, after which he shall be appointed by the Governor. The chairman shall serve

1 for [3] years, commencing from the date of his appointment. Vacancies in the office of any member shall be filled in the
2 same manner as herein provided for appointment. [3] members, consisting of the chairman, at least one member appointed
3 by the Governor and at least one member appointed by the Committee shall at all times constitute a quorum of the Agency.]

4 (b) Members shall hold no other public office or public employment in the State or its political subdivisions.
5 [The chairman shall give his full time to his duties.]

6 (c) Members of the Agency other than the chairman shall, when performing the duties of the Agency, shall be
7 compensated at the rate of [one hundred dollars a day], together with an allowance of actual and necessary expenses incurred
8 in the discharge of their responsibilities hereunder. The chairman shall receive an annual salary to be fixed within the amount
9 available therefor by appropriation, in addition to an allowance for expenses actually and necessarily incurred by him in the
10 performance of his duties. [The chairman of the Agency shall receive a salary of [] [and shall not engage in any
11 other business, vocation, or employment]].

12 (d) The Agency may appoint an executive director and such other persons, including but not limited to mediators,
13 members of fact-finding boards, and representatives of employee organizations and public employers to serve as technical advisers
14 to such fact-finding boards, as it may from time to time deem necessary for the performance of its functions. The agency shall
15 prescribe their duties, fix their compensation, and provide for reimbursement of their expenses within the amounts made
16 available therefor by appropriation.

17 (e) In addition to the authority provided in other sections, the Agency may:

18 (1) Make studies and analyses of, and act as a clearing-house of information relating to,
19 conditions of employment of public employees throughout the State.

20 (2) Provide technical assistance and training programs to assist public employers in their
21 dealings with employee organizations.

22 (3) Request from any public agency such assistance, services, and data as will enable the Agency properly
23 to carry out its functions and powers.

24 (4) Establish procedures for the prevention of improper public employer and employee organization
25 practices as provided in Section 13 of this act, provided that in the case of a claimed violation of paragraph (5) of sub-
26 division (b) or paragraph (4) of subdivision (c) of such section, procedures shall provide only for an entering of an order
27 directing the public agency or employee organization to negotiate collectively. The pendency of proceedings under this
28 paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to Section 7
29 of this act or with negotiating collectively. The Agency shall exercise exclusive nondelegable jurisdiction of the power granted
30 to it by this paragraph.

31 (5) Establish, after consulting with representatives of employee organizations and of public agencies,
32 panels of qualified persons, broadly representative of the public, to be available to serve as mediators, arbitrators, members of
33 fact-finding boards or arbitrators.

34 (6) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly, its functions
35 and powers;

1 (7) For the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses
2 and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the
3 issuance of subpoenas, and delegate such powers to any member of the Agency or any person appointed by the Agency for the
4 performance of its functions. Such subpoenas shall be regulated and enforced [under the civil practice law and rules].

5 (8) Make, amend, and rescind, from time to time, such rules and regulations, including but not limited
6 to those governing its internal organization and conduct of its affairs, and exercise such other powers, as may be appropriate
7 to effectuate the purposes and provisions of this act.

8 *Section 4. Public Employee Rights.* Public employees shall have the right of self-organization, and may form, join, or
9 assist any employee organization, to negotiate collectively through representatives of their own choosing on questions of grievances
10 and wages, hours, and other terms and conditions of employment and to engage in other concerted activities for the purpose of
11 collective negotiations or other mutual aid or protection, free from interference, restraint or coercion. Public employees also
12 have the right to refuse to join employee organizations.

13 *Section 5. The Special Case of Supervisory Employees.* Supervisory employees may form, join, and participate in the
14 activities of employee organizations, provided such organizations do not include non-supervisory employees. A public agency
15 shall not extend exclusive recognition to a supervisory organization for the purpose of negotiating collectively with respect to
16 grievances and conditions of employment, but may consult or otherwise, communicate with such an organization on appropriate
17 matters.

18 [*Section 6. Public Employer Rights.* Nothing in this act is intended to circumscribe or modify the existing right of a
19 public agency to:

- 20 (1) direct the work of its employees;
21 (2) hire, promote, demote, transfer, assign, and retain employees in positions within the public agency;
22 (3) suspend or discharge employees for proper cause;
23 (4) maintain the efficiency of governmental operations;
24 (5) relieve employees from duties because of lack of work or for other legitimate reasons;
25 (6) take actions as may be necessary to carry out the mission of the agency in emergencies; and
26 (7) determine the methods, means, and personnel by which operations are to be carried on.]

27 *Section 7. Recognition of Employee Organizations.* (a) Public employers shall recognize employee organizations for
28 the purpose of representing their members in collective negotiations with such employers. Employee organizations may
29 establish reasonable restrictions regarding who may join and may make reasonable provisions for the individual's admission
30 to dismissal from membership.

31 (b) Where an employee organization has been certified by the Agency as representing a majority of the employees in
32 an appropriate unit, or recognized exclusively, pursuant to the provisions of this act, the public employer shall negotiate collectively
33 with such employee organization in the determination of, and the administration of grievances arising under, the terms and
34 conditions of employment of their public employees as provided in this act, and may enter into an agreement with such
35 employee organization.

1 (c) When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization,
2 or employees, the Public Employee Relations Agency, established pursuant to this act, shall, at the request of any of the parties,
3 investigate such question and, after a hearing, rule on the definition of the appropriate unit. In defining the unit, the Agency shall
4 take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of
5 a community of interest among employees, the history and extent of employee organization, geographical location, the provisions
6 of Section 5 of this act, and the recommendations of the parties involved.

7 (d) Following investigation of a question concerning the representation of employees, the Public Employee Relations Agency
8 at the request of any of the parties, shall examine such questions and certify to the parties in writing the name(s) of the representative(s)
9 that has been designated. The filing of a petition for the investigation or certification of a representative of employees by any of the
10 parties shall constitute a question within the meaning of this section. In any such investigation, the Agency may provide for an
11 appropriate hearing, shall determine voting eligibility, and shall take a secret ballot of employees in the appropriate unit involved
12 to ascertain such representatives for the purpose of exclusive recognition. If the Agency has certified an exclusively recognized
13 representative in an appropriate unit, as provided in this section, it shall not be required to consider the matter again for a period
14 of one year, unless it appears that sufficient reason exists. The Agency may promulgate such rules and regulations as may be
15 appropriate to carry out the provisions of subsections (c) and (d) of this section.

16 *Section 8. Rights Accompanying Exclusive Recognition.* (a) A public employer shall extend to an employee
17 organization certified or recognized exclusively, pursuant to this act, the right to represent the employees of the appropriate
18 unit involved in collective negotiations proceedings and in the settlement of grievances and the right to unchallenged
19 representation status, consistent with Section 7 (d), during the 12 months following the date of certification or exclusive
20 recognition.

21 (b) A public employer shall extend to such an organization the right to membership dues deduction, upon presentation
22 of dues deduction authorization cards signed by individual employees, provided that all employee organizations may have the
23 right to membership dues deduction until the formally recognized representative has been determined.

24 (c) Representatives of exclusively recognized employee organizations shall be given reasonable time off without loss
25 of compensation during normal working hours to bargain collectively with public employers on matters falling within the scope
26 of negotiations.

27 *Section 9. Procedures for Determining the Recognition Status of Local Employee Organizations.* (a) Every public agency,
28 other than the State and its authorities, acting through its governing body, may establish procedures, not inconsistent with the
29 provisions of Sections 7 and 8 of this act and after consultation with interested employee organizations and employer
30 representatives, to resolve disputes concerning the recognition status of employee organizations composed of employees of
31 such agency.

32 (b) In the absence of such procedures, these disputes shall be submitted to the Public Employee Relations Agency in
33 accordance with Section 7 of this act.

34 *Section 10. Scope of Agreement.* The scope of an agreement may extend to all matters relating to employment
35 conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of

1 employment. An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved
2 grievances and disputed interpretations of such agreement. Where there is a conflict between any agreement reached by a public
3 employer and an employee organization and approved in accordance with the provisions of this act on matters appropriate to
4 collective negotiations, as defined in this act, and any charter, special act, ordinance, rules or regulations adopted by the public
5 employer or its agents such as a personnel board or civil service commission, or any general statute directly relating to hours of
6 work of policemen or firemen, or any general statute providing for the method of covering or removing employees from coverage
7 under the [] employees retirement system, the terms of such agreement shall prevail. Nothing herein shall
8 diminish the authority and power of any civil service commission, personnel board, personnel agency or its agents established
9 by constitutional provision, statute, charter, or special act to conduct and grade merit examinations and to rate candidates in
10 the order of their relative excellence from which appointments or promotions may be made to positions in the competitive
11 division of the classified service of the public employer served by such civil service commission or personnel board.

12 *Section 11. Implementation of an Agreement.* (a) Any agreement reached by the public employer and the exclusive
13 representative shall be reduced to writing and executed by both parties.

14 (b) The agreement shall be valid and enforced under its terms when entered into in accordance with the provisions
15 of this act. No publication thereof shall be required to make it effective.

16 (c) A request for funds necessary to implement the written agreement and for approval of any other matter requiring
17 the approval of the governing body, shall be submitted by the representative of the public employer to the governing body
18 within [14] days of the date on which such agreement is executed. Matters requiring the approval of the governing body shall
19 be submitted by the representative of the public employer within [14] days of the date the body convenes if it is not in
20 session at the time the agreement is executed. Failure by the representative of the public employer to submit such request to
21 the governing body within the appropriate period shall be a refusal to negotiate in good faith, in violation of Section 13 (b) (5)
22 of this act. The request shall be considered approved if the governing body fails to vote to approve or reject the request within
23 [30] days of the end of the period for submission to the body. The representative of the public employer may implement
24 provisions of the agreement not requiring action by the governing body, to be effective and operative in accordance with the
25 terms of the agreement. If the governing body rejects the provisions submitted to it by the designated representative, either
26 party may reopen all or part of the remainder of the agreement.

27 *Section 12. Resolution of Disputes Arising in the Course of Negotiations.* (a) Public employers may include in agreements
28 concluded with exclusively recognized or certified employee organizations a provision setting forth the procedures to be invoked
29 in the event of disputes which reach an impasse in the course of negotiating proceedings. For purposes of this section, an impasse
30 shall be deemed to exist if the parties fail to achieve agreement at least [60] days prior to the budget submission. In the absence
31 or upon the failure of dispute resolution procedures contained in agreements resulting in an impasse, either party may request the
32 assistance of the Public Employee Relations Agency or the Agency may render such assistance on its own motion, as provided in
33 subdivision (b) of this section.

34 (b) On the request of either party, or upon the Agency's own motion, in the event it determines an impasse exists in
35 negotiating proceedings between a public employer and an exclusively recognized or certified employee organization, the Agency

1 shall aid the parties in effecting a voluntary resolution of the dispute, and appoint a mediator or mediators, representative of
2 the public, from a list of qualified persons maintained by the Agency.

3 (c) If the impasse persists [10] days after the mediator(s) has been appointed, the Agency shall appoint a fact-finding
4 board of not more than [3] members, each representative of the public, from a list of qualified persons maintained by the
5 Agency. The fact-finding board shall conduct a hearing, may administer oaths, and may request the Agency to issue subpoenas.
6 It shall make written findings of facts and recommendations for resolution of the dispute and, no later than [20] days from the
7 day of appointment, shall serve such findings on the public employer and the recognized employee organization. If the dispute
8 continues [10] days after the report is submitted to the parties, the report shall be made public.

9 (d) If an impasse persists after the findings of fact and recommendations are made public by the fact-finding board, the
10 Agency shall have the power to take whatever steps it deems appropriate to resolve the dispute, including (i) the making of
11 recommendations after giving due consideration to the findings of fact and recommendations of the fact-finding board, but no
12 other such board shall be appointed, and (ii) upon request of the parties, assisting in providing for voluntary arbitration.

13 (e) In the event that the parties have not resolved their impasse by the end of a [50] day period commencing with the
14 date of appointment of the fact-finding board (i) the representative of the public employer involved shall submit to the governing
15 body or its duly authorized committee(s) a copy of the findings of fact and recommendations of the fact-finding board, together
16 with his recommendations for settling the dispute; (ii) the employee organization may submit to such governing body or its duly
17 authorized committee(s) recommendations for settling the dispute; (iii) the governing body or such committee(s) shall forthwith
18 conduct a hearing at which the parties shall be required to explain their positions with respect to the board; and (iv) thereafter,
19 the governing body shall take such action as it deems to be in the public interest, including the interest of the public employees
20 involved.

21 (f) The costs for mediation services provided by the Agency shall be borne by the Agency. All other costs, including those
22 of fact-finding and arbitrating services, shall be borne equally by the parties to a dispute.

23 *Section 13. Prohibited Practices; Evidence of Bad Faith.* (a) Commission of a prohibited practice, as defined in this
24 section, among other actions, shall constitute evidence of bad faith in collective negotiations proceedings.

25 (b) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

- 26 (1) interfere, restrain, or coerce public employees in the exercise of rights granted in Section 4 of this act;
27 (2) dominate, interfere, or assist in the formation, existence, or administration of any employee organization;
28 (3) Encourage or discourage membership in any labor organization, employee agency, committee, association,
29 or representation plan by discrimination in hiring, tenure, or other terms or conditions of employment;
30 (4) Discharge or discriminate against an employee because he has filed any affidavit, petition, or complaint
31 or given any information or testimony under this act, or because he has formed, joined, or chosen to be represented by any
32 labor organization or employee organization;
33 (5) Refuse to negotiate collectively with representatives of recognized employee organizations as required in
34 Section 7 of this act;
35 (6) Deny the rights accompanying certification or exclusive recognition granted in Section 8 of this act;

- 1 (7) Blacklist any employee organization or its members for the purpose of denying them employment;
- 2 (8) Avoid in mediation, fact-finding, and arbitration endeavors as provided in Section 12 of this act;
- 3 (9) Institute or attempt to institute a lockout; or
- 4 (10) Deal directly with employees on matters falling within the scope of negotiations circumventing the
- 5 exclusive representative.

6 (c) It shall be a prohibited practice for public employees or employee organizations wilfully to:

- 7 (1) Interfere with, restrain, or coerce public employees in the exercise of rights granted in Section 4 of this act;
- 8 (2) Interfere with, restrain, or coerce a public employer with respect to rights protected in Section 6 of this act
- 9 or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances;
- 10 (3) Refuse to bargain collectively with a public employer as required in Section 7 of this act;
- 11 (4) Avoid in mediation, fact-finding, and arbitration efforts as provided in Section 12 of this act; or
- 12 (5) Engage in a strike.

13 *Section 14. Violations of Prohibited Practices.* (a) Any controversy concerning prohibited practices may be submitted
14 to the Agency. Proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon
15 it by the Agency of a written notice, together with a copy of the charges. The accused party shall have [7] days within which to
16 serve a written answer to such charges. The Agency's hearing will be held promptly thereafter and at such hearing, the parties
17 shall be permitted to be represented by counsel and to summon witnesses in their behalf. Compliance with the technical rules
18 of evidence shall not be required. The Agency may use its rule-making power, as provided in Section 3, to make any other
19 procedural rules it deems necessary to carry on this function. *

20 (b) The Agency shall state its findings of facts upon all the testimony and shall either dismiss the complaint or determine
21 that a prohibited practice has been or is being committed. If the Agency finds that the party accused has committed or is
22 committing a prohibited practice, the Agency shall petition the [court of appropriate jurisdiction] to punish such violation,
23 and shall file in the [court] the record in the proceedings. Any person aggrieved by a final order of the Agency granting or
24 denying in whole or in part the relief sought may obtain a review of such order in the [court of appropriate jurisdiction] by
25 filing in the [court] a complaint praying that the order of the Agency be modified or set aside, with copy of the complaint
26 filed on the Agency, and thereupon the aggrieved party shall file in the [court] the record in the proceedings, certified by the
27 Agency. Findings of the Agency as to the facts shall be conclusive unless it is made to appear to the satisfaction of the [court
28 of appropriate jurisdiction] that the findings of fact were not supported by substantial evidence.

29 *Section 15. Local Public Agency Options.* This act, except for Sections 2, 3(e) (3), 4, 5, 6, 7, 8, 13, and 14, shall be
30 inapplicable to any public employer, other than the State and its authorities, which, acting through its legislative body, has
31 adopted by local law, ordinance, or resolution its own provisions and procedures which have been submitted to the Agency
32 by such public employer and as to which there is in effect a determination by the Agency that such provisions and procedures
33 and the continuing implementation thereof do not derogate the rights granted under this act.

34 *Section 16. Separability.* [Insert separability clause.]

35 *Section 17. Effective Date.* [Insert effective date.]

* Where a State has adopted an administrative procedures act, this section should be made to conform to it.

INTERNAL CONDUCT OF PUBLIC EMPLOYEE ORGANIZATIONS

The question of union and associational democracy and integrity is a vital aspect of public employer-employee relations. Experience in the private sector demonstrates the need to include this matter in State public labor-management legislation, but existing State laws on the subject generally fail to provide adequately for the protection of individual members in their employee organizations.

The Federal Landrum-Griffith Act covers the conduct of all major national labor unions. This act, however, does not apply to the large number of State and local public employees who belong to professional associations and independent employee organizations that are recognized by public employers for bargaining or discussion purposes.

In its report, *Labor-Management Policies for State and Local Government*, the Commission recommended that State labor relations laws bar recognition to any public employee organization that fails to provide:

- for standards and safeguards over the conduct of organization elections;
- for regulation of trusteeships and fiduciary responsibilities of organizational officers; and
- for maintenance of accounting and fiscal controls and regular financial reports.

This draft legislation is a companion to the State Public Labor-Management Relations Act (71-80-10). Some States may wish to amend existing public employee relations law to include these provisions; other States might find separate legislation to be more appropriate.

Section 1 of the draft bill sets forth the purposes of the act; Section 2, the definitions. Section 3 requires every public employee organization which has or seeks recognition to register with the State public employee relations agency. To minimize paper work and avoid unnecessary duplication, the bill permits the State agency to accept documentation submitted by a national or international organization under the Federal Landrum-Griffin Act, rather than requiring each subordinate public employee organization within the State to file separate documents.

Section 4 requires public employee organizations to file an annual report including information on the organization's dues, finances and officers. Each organization must pledge that it will conform to the laws of the State and that it will accept members without regard to age, race, sex, religion or national origin.

Section 5 requires the constitution or bylaws of the employee organization to insure the maintenance of fiscal integrity. It must keep accurate accounts of income and expenses and make an annual financial report and audit to the State. These accounts must be open for inspection by any member of the organization. Terms and conditions for loans to officers and agents must be the same as to all members of the organization. Officers and their immediate families are prohibited from business or financial interests that conflict with their fiduciary obligation to the organization. All officials and employees of the organization who handle funds or properties must be bonded in accordance with rules and regulations set forth by the State public employee labor relations agency.

Section 6 requires that the governing rules of every public employee organization provide for periodic elections by secret ballot. All members of the organization must be accorded an equal right to participate in the affairs of the organization including the nomination of officers, seeking office, and voting in elections.

Members also must be given the right to sue the organization and have access to fair and equitable procedures in disciplinary actions brought against them by the organization.

Establishment of trusteeships are permitted in Section 7 only if the constitution or bylaws of the organization set forth reasonable procedures.

Section 8 establishes procedures covering violations of the act. An organization that fails to comply with the act shall not be recognized for the purpose of bargaining, negotiating or meeting and conferring with any public employer regarding the terms and conditions of work of its members. Public employee organizations already recognized by public employers may have such recognition withdrawn through failure to comply with the act by the State public employee relations agency. All proceedings held under this section must be conducted in accordance with the State administrative procedures act. The agency is authorized to enforce its decisions by petitioning the courts for an injunction.

Suggested Legislation

[Title should conform to State requirements. The following is a suggestion: "An Act governing the conduct of public employee unions, associations, and organizations."]

(Be it enacted, etc.)

1 *Section 1. Purpose.* It is the purpose of this act to promote the highest standards of responsi-
2 bility and ethical conduct in administering the affairs of public employee unions, associations, and
3 organizations, especially as they affect public employer-employee relations and protection of the
4 rights and interests of the members of public employee organizations and the citizens of this State
5 generally.

6 *Section 2. Definitions.* As used in this act:

7 (1) "Public agency" or "public employer" means the State of _____, every govern-
8 mental subdivision, every district, every public and quasi-public corporation, every public agency and
9 every town, city, county, city and county, and municipal corporation, whether incorporated or not
10 and whether chartered or not.

11 (2) "Public employee" means any person employed by any public agency.

12 (3) "Public employee organization" means any organization which includes employees of a
13 public agency and which has as one of its primary purposes representing such employees in their rela-
14 tions with that public agency.

15 (4) "Recognized employee organization" means an employee organization which has been
16 formally acknowledged by the public agency or certified as representing a majority of the employees
17 of an appropriate unit.

1 *Section 3. Registration of Public Employee Organizations.* Every public employee organization
2 which has or seeks recognition as a representative of public employees of this State and of its political
3 subdivisions shall file with the [State public employee relations agency] a registration report, signed
4 by its president or other appropriate officer within [90] days after the date this act becomes effective.
5 Such report shall be in a form prescribed by the [agency] and shall be accompanied by [two] copies
6 of the public employee organization's constitution and bylaws. A filing by a national or international
7 organization of its constitution and bylaws will be accepted in lieu of filing of such documents by each
8 subordinate public employee organization. All changes or amendments to such constitutions and by-
9 laws shall be promptly reported to the [agency].

10 *Section 4. Annual Report.* Every public employee organization shall file an annual report, and
11 an amended report whenever changes are made, with the [State public employee relations agency].
12 Such reports shall be in a form prescribed by the [agency] and shall provide information on the follow-
13 ing:

- 14 (1) The name and address of the organization and of any parent organization or organizations
15 with which it is affiliated and the principal officers and all representatives;
- 16 (2) The name of its local agent for service of process and the address where such person can be
17 reached;
- 18 (3) A general description of the public employees or groups of employees the organization
19 represents or seeks to represent;
- 20 (4) The amount of the initiation fee and of monthly dues which members must pay;
- 21 (5) A pledge, in a form prescribed by the [agency], that the public employee organization will
22 conform to the laws of the State and that it will accept members without regard to age, race, sex,
23 religion, or national origin; and
- 24 (6) A financial report and audit.

25 *Section 5. Maintenance of Fiscal Integrity.* (a) For the maintenance of fiscal integrity, the
26 constitution or bylaws of every employee organization shall provide for ensuring accurate accounts of
27 its income and expenses and an annual financial report and audit. Provision shall be made that such
28 accounts be open for inspection by any member of the organization and that loans to officers and
29 agents may be made only on terms and conditions available to all members.

30 (b) The constitutions or bylaws of all public employee organizations shall include provisions
31 prohibiting business or financial interests of officers and agents, their spouses, minor children, parents,

1 or otherwise, that conflict with the fiduciary obligation of such persons to the organization.

2 (c) Every official or employee of a public employee organization who handles funds or other
3 property of the organization, or trust in which an organization is interested, or a subsidiary organiza-
4 tion, shall be bonded. The amount, scope and form of the bond shall be determined by the [State
5 public employee relations agency].

6 *Section 6. Democratic Procedures.* For the maintenance of democratic procedures and practices,
7 the governing rules of every public employee organization shall provide for periodic elections by secret
8 ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek
9 office and vote in such elections; for the right of individual members to participate in the affairs of the
10 organization; for fair and equal treatment of its members; for the right of any member to sue the
11 organization; and for fair and equitable procedures in disciplinary actions.

12 *Section 7. Trusteeships.* The [State public employee relations agency] shall prescribe such
13 rules and regulations as may be necessary to govern the establishment and reporting of trusteeships
14 over public employee organizations. Establishment of such trusteeships shall be permitted only if the
15 constitution or bylaws of the organization set forth reasonable procedures.

16 *Section 8. Violations.* A public employee organization that has not registered or filed an annual
17 report, or that has failed to comply with other provisions of this act shall not be recognized for the
18 purpose of bargaining, negotiating or meeting and conferring, with any public employer regarding the
19 terms and conditions of work of its members. Recognized employee organizations failing to comply
20 with this act may have such recognition revoked by the [State public employee relations agency].
21 All proceedings under this section shall be conducted in accordance with [the State administrative
22 procedure act]. Prohibitions shall be enforced by injunction upon the petition of the [agency] to
23 [court of appropriate jurisdiction]. Complaints of violation of this act shall be filed with the [agency].

24 *Section 9. Separability.* [Insert separability clause.]

25 *Section 10. Effective Date.* [Insert effective date.]

STATE MANDATING OF LOCAL EMPLOYMENT CONDITIONS

(A Policy Statement)

More and more States are directing local governments to recognize public employee organizations and to "meet and confer in good faith" or to negotiate with them (see draft bills). Yet, more than two-thirds of the States circumscribe this local discretion by mandating, through special legislation, specific terms and conditions of local public employment.

Before public labor-management relations acts were passed, State mandating could be justified as an effort to upgrade the local public service. Over the years, certain employee organizations -- especially those representing teachers, policemen, and firemen -- have been notably successful in securing passage of special State legislation requiring their employers to improve their benefits and working conditions. The result is some loss of control by local public employers over personnel matters affecting their employees.

Thirty-two States engage in mandating, according to *Labor-Management Policies for State and Local Government*, an Advisory Commission on Intergovernmental Relations report, adopted in September 1969. Of these 32 States, 21 have enacted special legislation affecting the salaries or wages of certain groups of local public employees, 20 have imposed requirements in connection with employee qualification, 19 with hours of work, 13 with working conditions, and 11 with fringe benefits.

Obviously, mandatory educational and training requirements are necessary for professional and technical personnel in the critical health and safety fields. Licensing and certification requirements also are essential to ensure a reasonable level of competence in the administration of State-aided education and welfare programs. But the Commission is convinced that, with these exceptions, State mandating of local public employment conditions interferes with the ability of local jurisdictions to establish effective systems of personnel management, and it violates the principles of constitutional and statutory home rule. In the final analysis, it does not benefit public employees as a whole because preferential treatment of certain categories of employees undermines an effective government-wide labor-management relations system.

Therefore, the Commission urges States to refrain from setting terms and conditions of local public employment which are most properly subject to discussion or negotiation between employers and employees. The sole justification for retaining such requirements is that they clearly assist in improving the local public service on a statewide basis. State legislatures may wish to reexamine existing statutes in light of their effect on local labor-management relations policy and -- especially those States that have enacted a comprehensive public employee relations law -- take steps to repeal mandating legislation.

PUBLISHED REPORTS OF THE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS ¹

- Coordination of State and Federal Inheritance, Estate and Gift Taxes. Report A-1, January 1961. 134 pages.
- Investment of Idle Cash Balances by State and Local Governments. Report A-3, January 1961. 61 pages (out of print; summary available).
- State and Local Taxation of Privately Owned Property Located on Federal Areas. Report A-6, June 1961. 34 pages, offset (out of print; summary available).
- Local Nonproperty Taxes and the Coordinating Role of the State. Report A-9, September 1961. 68 pages.
- Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas. Report A-13, October 1962. 135 pages.
- Transferability of Public Employee Retirement Credits Among Units of Government. Report A-16, March 1963. 92 pages.
- *The Role of the States in Strengthening the Property Tax. Report A-17, June 1963. Vol. I (187 pages) and Vol. II (182 pages). \$1.25 ea.
- Statutory and Administrative Controls Associated with Federal Grants for Public Assistance. Report A-21, May 1964. 108 pages.
- The Intergovernmental Aspects of Documentary Taxes. Report A-23, September 1964. 29 pages.
- State-Federal Overlapping in Cigarette Taxes. Report A-24, September 1964. 62 pages.
- Federal-State Coordination of Personal Income Taxes. Report A-27, October 1965. 203 pages.
- Building Codes: A Program for Intergovernmental Reform. Report A-28, January 1966. 103 pages.
- *State-Local Taxation and Industrial Location. Report A-30, April 1967. 114 pages. \$.60.
- *Fiscal Balance in the American Federal System. Report A-31, October 1967. Vol. 1, 385 pages. \$2.50; Vol. 2 Metropolitan Fiscal Disparities, 410 pages. \$2.25.
- *Urban and Rural America: Policies for Future Growth. Report A-32, April 1968. 186 pages. \$1.25.
- *Intergovernmental Problems in Medicaid. Report A-33, September 1968. 122 pages. \$1.25.
- *State Aid to Local Government. Report A-34, April 1969. 105 pages. \$1.00.
- *Labor-Management Policies for State and Local Government. Report A-35, September 1969. 263 pages. \$2.00.
- *Making the Safe Streets Act Work: An Intergovernmental Challenge. Report A-36, September 1970. 78 pages.
- Factors Affecting the Voter Reactions to Government Reorganization in Metropolitan Areas. Report M-15, May 1962. 80 pages.
- *Performance of Urban Functions: Local and Areawide. Report M-21, September 1963. 281 pages. \$1.50.
- State Technical Assistance to Local Debt Management. Report M-26, January 1965. 80 pages.
- *A Handbook for Interlocal Agreements and Contracts. Report M-29, March 1967. 197 pages. \$1.00.
- *Federalism and the Academic Community: A Brief Survey. Report M-44, March 1969. 55 pages. \$.60.
- The Advisory Commission on Intergovernmental Relations. A Brochure. M-46, August 1969.
- *Urban America and the Federal System. Report M-47, September 1969. 140 pages. \$1.25.
- 1970 Cumulative ACIR State Legislative Program. Report M-48, August 1969.
- *State and Local Finances, Significant Features, 1967 to 1970. Report M-50, 307 pages. \$2.25.
- *The Commuter and the Municipal Income Tax. A Background Paper. Report M-51, April 1970. 30 pages.
- *The Gap Between Federal Aid Authorizations and Appropriations, Fiscal Years 1966-1970. A Staff Analysis. Report M-52, June 1970, 46 pages. \$.50.

¹ Publications marked with an asterisk may be purchased directly from the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402. Single copies of other publications may be obtained without charge from the Advisory Commission on Intergovernmental Relations, Washington, D. C. 20575.

