

ACTR State Legislative Program

1.

State
Government
Structure
and
Processes

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Advisory Commission on Intergovernmental Relations
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FOREWORD

ACIR's Legislative Program

The Advisory Commission on Intergovernmental Relations is a permanent, national bipartisan body established by Act of Congress in 1959 to give continuing study to the relationships among local, state, and national levels of government. The Commission does not function as a typical Federal agency, because a majority of Commission members come from state and local government. The Commission functions as an intergovernmental body responsible and responsive to all three levels of government.

It should not be inferred, however, that the Commission is a direct spokesman for any single level or branch of government — whether the Congress, the Federal Executive Branch, or state and local government. Nevertheless, many of the Commission's policy recommendations are paralleled by policies of the organizations of state and local government — including the National League of Cities, U.S. Conference of Mayors, and National Association of Counties — and a substantial number of the Commission's draft legislative proposals are disseminated by the Council of State Governments in its annual volume entitled *Suggested State Legislation*. The National Governors' Conference in its report of the 67th Annual Meeting carries 38 of ACIR's legislative proposals as an appendix entitled *State Responsibilities to Local Governments: Model Legislation from the Advisory Commission on Intergovernmental Relations*.

The Commission recognizes that its contribution to strengthening 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, with considerable emphasis upon the strengthening of state and local governments.

ACIR's *State Legislative Program* represents those recommendations of the Commission for state action which have been translated into legislative language for consideration by the state legislatures. Though ACIR has drafted individual bills from time-to-time following the adoption of various policy reports, its suggested state legislation was brought together into a cumulative *State Legislative Program* initially in 1970. This 1975 edition is the first complete updating of the original cumulative program. It contains a number of new bills as well as major rewrites and minor datings of previously suggested legislation.

Scope of the Legislative Program. ACIR's reports, over the years, have dealt with state and local government modernization and finances, as well as a variety of functional activities. Commission recommendations to the states, contained in these reports, have addressed all of these subjects. The suggested legislation contained in the Commission's *State Legislative Program* has been organized into ten booklets (parts) in which the draft bills are grouped logically by subject matter. The groupings for all ten booklets are listed in the summary contents of the full legislative program which follows this foreword. Then, the detailed contents of this booklet, including the title of all bills, are listed with the page numbers where they can be found.

Process for Developing Suggested Legislation. Most of the proposals in the *State Legislative Program* are based on existing state statutes and constitutional provisions. Initial drafts were prepared by the ACIR staff or consultants. Individual proposals were reviewed by state officials and others with special knowledge in the subject matter fields involved. The staff, however, takes full responsibility for the final form of these proposals.

How to Use the Suggested Legislation

The Commission presents its proposals for state legislation in the hope that they will serve as useful references for state legislators, state legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Additional copies of this booklet and the other booklets in the full *Program* are available upon request. Any of the materials in the *Program* may be reproduced without limitation.

The Commission emphasizes that legislation which fits one state may not fit another. Therefore, the following advice is offered to users of the Commission's suggested state legislation.

Fit Proposals to Each State. Many states have standard definitions, administrative procedures acts, standard practices in legislative draftsmanship, and established legislation and constitutional provisions related to new proposals. These differ widely from one state to another, yet they vitally affect the drafting of new proposals for state legislation. No model legislation can possibly reflect the variations which apply in all 50 states. Thus, ACIR strongly recommends that any user of its suggested state legislation seek the advice of legislative draftsmen familiar with the state or states in which such proposals are to be introduced.

Alternative Provisions and Optional Policies. Likewise, the Commission recognizes that uniform policies are frequently not appropriate for application nationwide. Accordingly, its adopted recommendations frequently include alternative procedures and optional policies among which the states should make conscious choices as they legislate. Consequently, the suggested legislation which follows includes bracketed language which alerts the users of these materials to the choices which are to be made. In many cases, the bracketed language is also labeled as an alternative or an option. In the case of alternatives, one (or in some cases more than one) should be chosen and the others rejected. In the case of options, the suggested language may be included or deleted without reference to other provisions unless otherwise noted.

Three types of bracketed information [] are provided in the suggested legislation. Brackets containing *italicized* information indicate wording that is essential to the legislation, but must be rewritten to conform to each particular state's terminology and legal references. Information in regular type within brackets presents alternative or optional language. The third type of brackets contains blank space and requires the insertion of a date, amount, time span, quantity, or the like, as required by each state to comply with its individual circumstances or recommendations.

Caution About Excerpting. Frequently one provision in the suggested legislation may be related to another in the same bill. Thus, any state wishing to en-

act only certain portions of the suggested legislation should check carefully to make sure that essential definitions and related provisions are taken into account in the process of excerpting those portions desired for enactment.

ACIR Assistance

Each item of suggested state legislation in this *Program* is referenced to the ACIR policy report upon which it is based. These reports may be obtained free of charge in most cases, by writing to ACIR, and usually may also be purchased from the U.S. Government Printing Office (especially if multiple copies are required). In those cases where a policy report is out of print, copies may be found in ACIR's numerous depository libraries throughout the nation as well as in many other libraries. In addition, where copies are otherwise unavailable, the ACIR library will arrange to loan a copy.

The ACIR staff, though limited in size, is available upon request to answer questions about the suggested legislation, to help explain it to legislators and others in states where it is under active consideration, and to assist the legislative process in other appropriate ways.

September 1975

Robert E. Merriam
Chairman

Summary Contents

ACIR STATE LEGISLATIVE PROGRAM

PART I – STATE GOVERNMENT STRUCTURE AND PROCESSES

- 1.1 Legislative Branch
- 1.2 Executive Branch
- 1.3 Relations with Federal and Local Governments

PART II – LOCAL GOVERNMENT MODERNIZATION

- 2.1 Formation, Boundaries, and Dissolution
- 2.2 Organization and Functions
- 2.3 Areawide Units

PART III – STATE AND LOCAL REVENUES

- 3.1 Property Taxes
- 3.2 Non-property Taxes and Other Revenues

PART IV – FISCAL AND PERSONNEL MANAGEMENT

- 4.1 Fiscal Management
- 4.2 Personnel Management

PART V – ENVIRONMENT, LAND USE, AND GROWTH POLICY

- 5.1 State Growth Policy
- 5.2 Land Use and Environmental Planning and Regulation

PART VI – HOUSING AND COMMUNITY DEVELOPMENT

- 6.1 Program Operations and Assistance
- 6.2 Fair Housing
- 6.3 Building Regulation

PART VII– TRANSPORTATION

PART VIII– HEALTH

PART IX – EDUCATION

PART X – CRIMINAL JUSTICE

- 10.1 Police
- 10.2 Courts
- 10.3 Corrections and Legislative Oversight

ACKNOWLEDGMENTS

The suggested state legislation in this part of the *ACIR State Legislative Program* is based largely upon existing state statutes. Robert N. Alcock, William G. Colman, and James Tait acted as consultants to the Commission in tailoring these enactments to ACIR policy.

The following persons served diligently on a panel which reviewed each proposal: Richard Carlson, director of research, Council of State Governments; Honorable Charles A. Docter, Maryland House of Delegates; Marcus Halbrook, director, Arkansas Legislative Council; David Johnston, director, Ohio Legislative Service Commission; William J. Pierce, executive director, National Conference of Commissioners for Uniform State Laws; Bonnie Reese, executive secretary, Wisconsin Joint Legislative Council; Honorable Karl Snow, Utah state senator; and Troy R. Westmeyer, director, New York Legislative Commission on Expenditure Review.

The suggested legislation was also circulated in draft form to the following national organizations for their review and comment:

Council of State Governments
International City Management Association
National Association of Counties
National Conference of State Legislatures
National Governors' Conference
National League of Cities
U.S. Conference of Mayors

The Commission acknowledges the financial assistance of the U.S. Department of Housing and Urban Development in updating and publishing this new edition of the *State Legislative Program*.

The Commission is grateful to all who helped to produce this volume, but the Commission alone takes responsibility for the policies expressed herein and any errors of commission or omission in the draftsmanship.

Wayne F. Anderson
Executive Director

Part I

STATE GOVERNMENT
STRUCTURE AND PROCESSES

Table of Contents

Introduction 10

1.1 Legislative Branch 13

 1.101 Legislative Apportionment Procedure 14

 1.102 Removal of Constitutional Restrictions on
 Legislative Sessions and Compensation 18

 1.103 Year-Round Professional Staffing of Major
 State Legislative Standing Committees 21

1.2 Executive Branch 23

 1.201 Constitutional Provision for Short
 Ballot for State Officials 24

 1.202 Authorization for Gubernatorial Selfsuccession 26

 1.203 Reorganization of the State Executive Branch 28

 1.204 Strong Executive Budget 30

1.3 Relations with Federal and Local Governments 38

 1.301 Constitutional Barriers to Intergovernmental Cooperation 39

 1.302 State Legislative Contact with Congress 41

 1.303 State Advisory Commission on
 Intergovernmental Relations 43

 1.304 State Technical Assistance for Local Governments 49

INTRODUCTION

Restrictive provisions in state constitutions which were designed originally to protect citizens against powerful government have often kept states from becoming fully effective partners in the American federal system. The effect of many of these provisions has been to prevent states from discharging their responsibilities in a responsive and expeditious fashion, thereby requiring a more dominant role for the national government than would have been the case under conditions of adequate state performance. Inflexible provisions in state constitutions have weakened both the legislative and executive functions. As a result, neither the legislature nor the governor is able to assert the full strength and potential of state government in dealings with Federal and local officials and agencies.

Legislative Branch. The state legislature plays a very important role in the effectiveness of state government. Yet in many states, legislative organization, staff assistants, specialized services, and institutional spirit are still geared largely to the simple problems and small populations of bygone days. Although significant progress in modernizing the structure and operation of some state legislatures has occurred in recent years, much remains to be done.

The proposals that follow are designed to: (1) provide, through a draft constitutional amendment, a sound and politically equitable apportionment procedure; (2) constitutionally enable the legislature to meet at such times and for such session lengths as the legislature itself feels is necessary to deal with its agenda, and to provide that legislative salaries be set by statute but with no change becoming effective during a current term of office; and (3) authorize, through a draft concurrent resolution, major standing committees of the legislature to employ full-time professional staff assistants.

Executive Branch. Despite very substantial progress in recent years in streamlining the administrative side of many state governments, relatively few governors actually command that branch of government. The basic weakness lies in the fact that gubernatorial power has been diffused through the independent election of various state administrative officials, an average of nearly 12 per state. Six states still prohibit the governor from succeeding himself, and many other states have limitations on the number of terms the governor can serve. Fortunately, most states formerly providing a two year term for the governor have extended the term to four years.

Governors in many states lack the power to reorganize the state executive branch and to maintain a strong and decisive budgetary process. Those who argue against the removal of existing limitations on gubernatorial authority often raise the spectre of unbridled use of power. Yet, practical barriers to arbitrary gubernatorial action are numerous and powerful. They include the marked increase in interparty competition in every state, strong program and functional interests within the state administration, the ever present cluster of special interest groups, and the prospect of a modernized, strong legislature. The electorate in fact, and the state constitutions in theory, assign the governor the responsibility of being chief executive, but the gap between expectations and effective power is usually great. The removal of formal limitations placed on the governor stands out as the best method of closing this gap.

The draft proposals that follow suggest constitutional amendments to: (1)

provide for gubernatorial appointment of heads of each administrative department of state government; (2) authorize gubernatorial selfsuccession and a four year term; and (3) authorize, gubernatorial reorganization of the state government subject to veto by the legislature. In addition a draft legislation proposal calls for a strong executive budget process.

Relations with Federal and Local Governments. An effective federal system depends upon close and continuing relationships between state and Federal governments and between state and local governments. One of the important means for achieving Federal-state cooperation is through the use of intergovernmental advisory bodies in various areas of domestic government. Some constitutions inhibit participation in such bodies by their state officials, and also preclude service by local officials on state advisory bodies. Another essential element of state-local cooperation is the provision of technical services and assistance by state agencies to their counterparts in local government, particularly those in smaller localities.

Over recent years Federal-state relations have been conducted mainly through the executive side of state governments interacting with the Federal executive branch on administrative matters and with the national Congress on proposed legislation affecting the states. Most state legislatures, until recently maintained only limited interest in, and contact with, developments at the national level.

The proposals that follow comprise: (1) a draft constitutional amendment authorizing state and local officials to serve on intergovernmental bodies; (2) a suggested concurrent resolution charging officers and committee chairmen of the state legislature to follow the development of proposed legislation at the national level and present their views on that legislation; (3) a draft statute creating a state advisory commission on intergovernmental relations to be responsible for studying and making recommendations concerning relationships between the state and other levels of government; and (4) a draft statute authorizing agencies of the state government to provide technical advice and assistance to local governments upon request, and specifically to authorize local government participation in state procurement contracts and telecommunications facilities.

1.1 Legislative Branch

1.101 LEGISLATIVE APPORTIONMENT PROCEDURE¹

The standards for apportioning seats in the legislative bodies of a state is a matter of individual state concern, subject to limitations by the courts. However, it is essential that state constitutions specifically provide procedures that will insure that the states themselves are in a position to comply with all requirements of the U.S. Constitution concerning periodic reapportionment of legislative bodies.

The suggested amendment deals primarily with apportionment procedure; it does not treat definitively the substantive issues (population, and political subdivision) that arise in the allocation of state legislative seats nor questions such as those involved in the use of weighted voting or single versus multimember districts.

The Supreme Court's "one man — one vote" rulings seem to require a fairly stringent degree of population equality among legislative districts. At the same time the experience of the 60s indicates that apportionment bodies flounder unless they have as a negotiating base some fixed figure specifying a maximum allowable percentage deviation. A specification of absolute population equality does not solve the problem because a computer can provide literally hundreds of numerically equal, but politically different, plans if population equality is the sole consideration. Hence the suggested amendment provides for specifying a maximum percentage deviation. To avoid having all the districts at the maximum deviation figure, an average deviation figure also could be included.

The amendment directs the legislature to reapportion itself in accordance with constitutional requirements following each decennial census. The amendment contains optional clauses dealing with the failure of the legislature and governor to agree on an apportionment plan: these include (a) apportionment by a non-legislative, non-judicial agency consisting of named state officials, or (b) apportionment by a bipartisan commission with a tie breaker. Although not specified in the amendment, the apportionment function could be vested initially in such a body other than the legislature. Since the "one man — one vote" decisions, several states have transferred the apportionment function to a bipartisan commission with a tie breaker (New Jersey, 1966; Pennsylvania, 1968; Hawaii, 1968), and Illinois (1970) has provided for apportionment by such a commission in the event the legislature and governor cannot agree on a plan.

As of late 1973, 15 states provided for participation of a board or commission in the apportionment process. In seven of these, the board is the initial apportioning agency, while in the other eight, the board enters the process if the legislature fails to act within a specified period.

Section 1 would spell out the standard for apportioning seats in the state legislature in accordance with appropriate provisions inserted by each state. These standards should be as clear and as specific as possible in order to permit the state supreme court to determine easily whether the reapportionment statute complies with the state constitutional provision. It may be best for a state constitution in defining "population" in its standards to express that definition in mathematical terms. The following three alternatives might be included at the appropriate place or places:

(a) The [population] of no [senatorial or representative] district shall deviate by more than [10] percent from the figure obtained by dividing the total [population] of the state by the number of [senators or representatives], and the average deviation shall not exceed [5] percent.

(b) [Senatorial and representative] districts shall be established with appropriate boundaries so as to permit at least 45 percent of the total [population] of the state to elect 50 percent of the state [senators] and 50 percent of the state [representatives].

(c) The aim of the reapportionment plan shall be to provide fair and effective representation and to avoid diluting or cancelling out the voting strength of racial or political elements of the voting population.

Section 2 directs the state legislature to reapportion itself in the first legislative session immediately fol-

¹Derived from: Advisory Commission on Intergovernmental Relations, *Apportionment of State Legislatures*, Report A-15 (Washington, D. C.: U.S. Government Printing Office, December, 1962).

lowing availability of data from each decennial census of the United States. It should be noted that several states still require reapportionment, based on population, at intervals which do not coincide with the decennial census. This is a carryover from the 18th century when states themselves conducted censuses. It is suggested that the timing of reapportionment be keyed to the Federal census, except in those few states where a state census creates an adequate base.

Section 3 gives the state supreme court original jurisdiction to determine whether a reapportionment statute enacted by the legislature complies with the provisions of the state constitution and Federal constitutional requirements being developed by the United States Supreme Court. Any qualified voter of the state can bring this question before the court within 30 days after enactment of the reapportionment. If the court finds that the reapportionment does not comply with Federal and state constitutional requirements, the court shall direct either the named state official or the apportionment board to develop a constitutional plan. The court is also granted authority to review a reapportionment plan so prepared and if it is found that such plan does not comply with constitutional requirements, the court is authorized to direct the named state official or apportionment board to make appropriate changes.

Section 4 authorizes the named state official or apportionment board to prepare a reapportionment of the state legislature where the legislature, by July 1st of the year of the first regular legislative session following a decennial census, has not enacted reapportionment legislation. Here again, such a reapportionment is subject to court review if challenged by a qualified voter of the state.

Section 5 is to be used only if the state determines that an apportionment board, rather than a single state official, shall reapportion seats in the event that the legislature itself fails to do so. It would create the apportionment board and determine its membership. Two alternatives are presented. The first would consist of named state officials. Most states that have apportionment boards follow this approach. It is important to note that members of the judiciary should not be members of an apportionment board, because the state supreme court is granted jurisdiction over cases involving apportionment.

Suggested Constitutional Amendment

[LEGISLATIVE APPORTIONMENT]

(Be it enacted, etc.)

1 SECTION 1. *Apportionment of Senators and Representatives.*

2 (a) *Senators.* [Insert provisions for the apportionment of state senators.]

3 (b) *Representatives [or Assemblymen, Delegates, Other Appropriate Title].* [Insert provisions
4 for apportionment of house of representatives or assembly.]

5 SECTION 2. *Reapportionment Duty.* The number of [senators and representatives] shall, not
6 later than [July 1st] at the first regular session of the legislature next following the official report to
7 the states of data from the latest decennial census conducted by the United States government, be
8 reapportioned by the legislature in accordance with Federal and state constitutional requirements.

9 SECTION 3. *Jurisdiction of [State Supreme Court].* Original jurisdiction is vested in the [state
10 court of last resort], upon the petition of any qualified voter of the state filed with the [clerk of the
11 supreme court] within [30] days after enactment of a reapportionment measure, to review, in whole
12 or part, any measure so enacted. If the [supreme court] determines that the measure complies with
13 Federal and state constitutional requirements, it shall dismiss the petition by written opinion within
14 [30] days after the petition was filed and the legislation enacted shall become law upon the date of
15 opinion. If the [supreme court] determines that the measure shall be null and void and the court shall
16 direct [the named state official] [the apportionment board] to prepare a reapportionment of the legis-
17 lature in compliance with Federal and state constitutional requirements and return its reapportion-
18 ment to the [supreme court] within [30] days after the finding and it shall become law upon the date
19 of filing; provided however that if the [supreme court] shall determine that the draft returned to it by
20 the [named state official] [apportionment board] does not comply with Federal and state constitu-
21 tional requirements, the court shall return it forthwith, accompanied by a written opinion specifying
22 with particulars wherein it fails to comply, for preparation of a revised plan within [30] days.

23 SECTION 4. *Failure of Legislature to Reapportion Itself.* If the legislature fails to enact any
24 reapportionment measure by [July 1st] of the year of the first regular session of the legislature next
25 following the official report to the states of the decennial census conducted by the United States gov-
26 ernment, showing population by civil subdivision, the [named state official] [apportionment board]
27 shall make a reapportionment of the legislature in accordance with Federal and state constitutional
28 requirements. The reapportionment so made shall be filed with the governor on or before [August
29 1st] of such year and shall become law, subject to [supreme court] review, upon date of filing.

1 Original jurisdiction is vested in the [supreme court], upon petition of any qualified voter of the
2 state filed with the [clerk of the supreme court] within [30] days after any reapportionment made by
3 the [named state official] [apportionment board] has been filed with the governor, to review, in whole
4 or part, any such reapportionment. If the court determines that the reapportionment thus made com-
5 plies with Federal and state constitutional requirements it shall dismiss the petition by written opinion
6 within [30] days after the petition was filed and the reapportionment shall become law upon the date
7 of the opinion. If the [supreme court] determines that the reapportionment does not comply with
8 Federal and state constitutional requirements, said reapportionment shall be null and void and the
9 [supreme court] shall return it forthwith to the [named state official] [apportionment board] accom-
10 panied by a written opinion specifying with particulars wherein the reapportionment fails to comply
11 with Federal and state constitutional requirements. The opinion shall further direct the [named state
12 official] [apportionment board] to correct the reapportionment in those particulars and in no others
13 and file the corrected reapportionment with the [supreme court] within [30] days after issuance of
14 the order and it shall become law upon the date of filing.

15 [Optional Section.]

16 [SECTION 5. *Apportionment Board.* There is hereby created an [apportionment board] consist-
17 ing of [named state officials; do not include members of the judiciary] [consisting of [two] members
18 appointed by the chairman of the political party whose candidate for governor in the last preceding
19 gubernatorial election received the largest number of votes, [two] members appointed by the chairman
20 of the political party whose candidate for governor received the second largest number of votes at the
21 last preceding gubernatorial election, and one member who shall be the chairman of the apportion-
22 ment board, appointed by the [supreme court] [chief justice of the supreme court]]. The [apportion-
23 ment board] shall convene prior to [July 10th] of any year in which the legislature has failed to com-
24 ply with its responsibility under Section 2 of this article and reapportion the state legislature in ac-
25 cordance with Federal and state constitutional requirements. In that event the [apportionment board]
26 shall, on or before [August 1st] of such year, reapportion seats in the state legislature in accordance
27 with Federal and state constitutional requirements and file a copy of such reapportionment with the
28 governor. Such reapportionment shall become law, subject to [supreme court] review, upon date of
29 filing; provided however that in the event the [supreme court] shall declare that a reapportionment
30 law enacted by the legislature fails to comply with Federal and state constitutional requirements, [the
31 apportionment board] shall convene within [ten] days after the decision of the court and shall proceed
32 to reapportion seats in the legislature as if no reapportionment action was taken by the legislature.
33 [The [secretary of state] shall be secretary of the [apportionment board], and in that capacity shall
34 furnish, under its direction, all necessary technical services.]]

1.102 REMOVAL OF CONSTITUTIONAL RESTRICTIONS ON LEGISLATIVE SESSIONS AND COMPENSATION¹

American state legislatures frequently have been the moving force in state governmental reform. It is widely recognized that the modernization of state legislative machinery is imperative if the states are to be politically viable partners in the federal system, but progress in this area has been slow. The attempts of many state legislatures to equip and organize themselves to cope effectively with 20th century problems, particularly the increasing needs and demands of their local governments, have been frustrated by constitutional provisions which were responses to 19th century conditions. Requirements for biennial sessions of limited length are representative of the variety of impediments to effective legislative action which still are found in many state constitutions.

In its 1967 report on *Fiscal Balance in the American Federal System*, the Advisory Commission on Intergovernmental Relations said:

In order to help strengthen the position of state government generally and to afford adequate time for legislative consideration of state financial participation in Federal grant-in-aid programs, the Commission recommends state constitutional or other appropriate action, where necessary, to remove such restrictions on the length and frequency of sessions of the state legislature as may interfere with the most effective performance of its functions. Specifically, the Commission recommends that the holding of annual sessions be given serious consideration in those states now holding biennial sessions. Further, in order that legislative compensation not deter the holding of annual sessions, the Commission recommends that legislators be paid on an annual basis in an amount commensurate with demands upon their time.

Perhaps the most important impediment in the state legislative process is the continuity of the legislature's attention to state affairs. At the end of World War II, only four state constitutions allowed annual regular sessions. By 1975, 41 states were holding annual sessions. However, a few populous states were still endeavoring to cope with a growing agenda of state problems on a biennial basis (Oregon, Texas, Washington) despite repeated efforts to secure voter approval of annual sessions. In 1974, Montana voters chose to revert to biennial sessions.

Presently, 36 state legislatures have annual regular sessions while four others meet annually with off-year sessions being limited primarily to budgetary or fiscal matters but with some provisions for the consideration of other subjects. In only 14 states, however, are annual legislative sessions unlimited in length, and in two others, biennial sessions are unlimited in length. Sessions in all other legislatures average roughly 65 legislative working days a year.

There are still 25 states where the legislature cannot go into special sessions independently of the call of the governor, including California, Michigan, Minnesota, New York, Texas, and Washington. Without such flexibility the legislature can hardly be considered a co-equal branch of state government.

States still holding biennial sessions should give serious consideration to the adoption of annual regular sessions of unlimited duration. This would strengthen the legislature's capacity to deal effectively with policy, program, administrative, and fiscal issues, and would facilitate its continuing oversight of the activities of the executive branch. By becoming more active, the legislature's public visibility also would be increased.

Closely related to the frequency and length of sessions is the problem of legislative compensation. Inadequate compensation has eliminated some potential candidates who lacked sufficient financial resources to sustain them during their term of office. Severe financial hardships have also been placed upon many incumbent legislators.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Vol. 1, Report A-31 (Washington, D.C.: U.S. Government Printing Office, October, 1967).

The salutary features of annual sessions will fail to have maximum impact if legislative stipends fail to keep pace with the increases in the time, responsibilities, and prestige of state legislators which are implicit in a change to annual sessions. State legislators should be compensated on an annual basis in an amount commensurate with growing demands on their time.

Despite substantial efforts in many states by late 1973, 18 states were still compensating their legislators at a level below \$2,500 per year. In 1974, legislative pay increases or proposals for creation of compensation commissions met with voter disapproval in Arizona, Arkansas, New Mexico, North Dakota, and Nebraska. Between 1964 and 1974, the average legislative salary increased by 202 percent, from \$2,129 to \$6,453 per year. Stated in 1964 dollars, however, the 1974 salary figure is \$3,935, an increase of 85 percent. Average total annual compensation, including salary, daily pay, and unvouchered expense allowance, increased from \$3,057 to \$8,576 over the same period of time.

Because of the close interrelationship between the length and frequency of sessions and increased compensation, it is suggested that the following two amendments, which are based upon the Michigan, Missouri, and New Jersey constitutions, should be considered together. The first provides for annual regular sessions of unlimited duration, and also offers a procedure by which either the governor or the legislature itself may call special sessions. Since the exact amount of the legislative stipend should not be frozen into a state constitution, the second amendment is advanced as a means of providing the necessary flexibility to enable the legislature to adjust the compensation of its members to amounts commensurate with the increases in their time, responsibilities, and prestige resulting from the adoption of annual sessions. However, the amendment also stipulates that these changes will not be applicable to the members during the term for which they are elected.

Suggested Constitutional Amendment

[LENGTH AND FREQUENCY OF LEGISLATIVE SESSIONS]

(Be it enacted, etc.)

- 1 The *[legislature]* shall be a continuous body during the term for which the members of the more
- 2 numerous house are elected. It shall meet as provided by law. The *[legislature]* may be convened in
- 3 special session by the governor or, at the written request of a majority of the members *[of each*
- 4 *house]*, by the presiding officers *[of both houses]*.

Suggested Constitutional Amendment

[LEGISLATIVE COMPENSATION]

(Be it enacted, etc.)

- 1 Members of the *[legislative body]* shall receive an annual salary and such other compensation as
- 2 may be prescribed by law, but no change in salary shall become effective until the next succeeding
- 3 *[legislature]* *[general assembly]* convenes.

1.103 YEAR-ROUND PROFESSIONAL STAFFING OF MAJOR STATE LEGISLATIVE STANDING COMMITTEES¹

A critical factor affecting the capacity of state legislative leaders, committees, and individual members to carry out their growing responsibilities is the availability of adequate staff assistance. In most states active legislative participation in the framing of statewide programs is hampered by the shortage or absence of staff help. Too often state legislators are not kept fully informed concerning developments in Federal-state and state-local program relationships which might have an impact on future legislative decisions. Efforts by the state executive to keep the legislature advised of important developments experience, at best, only limited success. In its 1967 report on *Fiscal Balance in the American Federal System* (Volume 1), the Advisory Commission on Intergovernmental Relations cited the foregoing factors in recommending that "states provide for year-round professional staffing of major committees of their state legislatures."

The predominant means of providing professional staff assistance is by permanent legislative research agencies, reference bureaus, or councils. Every state has at least one agency filling a research function, and several have more than one. During the late 1960's, states began developing more specialized agencies, particularly for fiscal analysis. In some cases research staff has been assigned directly to committees. Another development has been the addition, in some states, of partisan and personal staff to legislative leaders, committees, and the rank and file members.

According to the 1974-75 *Book of the States*, this has led "in about one-fourth of the states to the legislative council being one among many offices doing research and policy analysis. These were the conditions under which five of the states abolished their legislative councils and replaced them with joint management or coordinating committees." In several states, councils have reorganized into interim subcommittees, the membership of which is identical to that of the corresponding standing committee, thus providing a year-round continuity of committee work. However, only New York, California, and Florida provide full-time professional staff for all major standing committees.

Despite the improvements noted above, the legislatures in many states, especially their standing committees, are not equipped to deal effectively with national developments or with state and local problems. The staff of the legislative council or special interim committee often is overloaded with its usual assignments and unable to perform satisfactorily the added task of providing a full range of services for standing committees.

Much of this information gap could be bridged if the major standing committees of state legislatures were professionally staffed on a year-round basis, and if the staffs were made responsible for keeping abreast of major statewide issues and developments in Federal-state and state-local relations. In this way a great deal of valuable investigatory and preparatory work, including bill drafting, dealing with initiation of legislation, as well as budget review, analysis, and evaluation could be performed by legislative committees between sessions. Improving legislative information resources and communications channels should also generally strengthen the state legislature's capacity to develop programs and to exercise oversight of the executive branch.

To achieve this objective it may be advisable in some states to expand substantially the staff of the legislative council to provide the necessary additional personnel. In others it may be preferable to set up separate staffs for each of the major committees. The following concurrent resolution is offered as one means of providing year-round professional staff assistance for major legislative standing committees. General guidelines for the selection of staff members should include education, experience, and competence. Salary and compensation should be commensurate with the qualifications of, and the responsibilities assigned to, the professional staff and be competitive with other areas of the public service and the private sector. Finally, to provide continuity the tenure of the staff members should not be limited to a specified period; they should be employed as long as they continue to render satisfactory service.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Vol. 1, Report A-31 (Washington, D.C.: U.S. Government Printing Office, October, 1967).

Suggested Concurrent Resolution

[PROVIDING FOR CONTINUING YEAR-ROUND PROFESSIONAL STAFFING OF MAJOR STATE LEGISLATIVE STANDING COMMITTEES]

1 WHEREAS, the scope and complexity of modern society, including urbanization, economic de-
2 velopment, technological advance, and population growth, have greatly increased the [legislature's]
3 need for technical research and information service; and

4 WHEREAS, there is a need for the [legislature] to participate actively in the framing of statewide
5 policies and Federal-state and state-local cooperative programs, as well as to keep abreast of the
6 executive branch in maintaining complete, accurate, and current information concerning these areas;
7 and

8 WHEREAS, there is a need for major legislative standing committees to be provided with year-
9 round professional staff assistance to conduct research and provide other technical services during
10 the interim periods as well as during legislative sessions;

11 NOW, THEREFORE, BE IT RESOLVED, by the [legislature] of the state of [name] [that major
12 legislative standing committees, including but not limited to finance, ways and means, appropriations,
13 and judiciary] shall be provided with professional staff personnel to serve on a year-round basis.

14 AND BE IT FURTHER RESOLVED, that these staff personnel shall be appointed by the [appro-
15 priate committees or officers of the respective houses] of the [legislature] on the basis of education,
16 competence, and experience and in compliance with standards fixed for all [legislative and committee]
17 employees of the [central personnel authority], without regard to political party affiliation. These
18 committee employees shall retain their positions so long as they render satisfactory performance of
19 their duties. Staff members shall receive salary and other compensation as determined by the [central
20 personnel authority] of the [legislature]. [Optional. Staff members shall be assigned to chairman and
21 ranking minority members of each committee.]¹

¹The legislative body may select all professional personnel on a strictly non-partisan basis, in which case appointment by committee chairmen or other appropriate officers of the legislature would be in order. However, if staffing is done by the chairmen of individual committees, it may be desirable to provide for "minority staffing."

1.2 Executive Branch

1.201 CONSTITUTIONAL PROVISION FOR SHORT BALLOT FOR STATE OFFICIALS¹

In several states, executive authority has been fragmented by the "long ballot," in which the heads of major administrative agencies are either elected independently or are appointed by elected boards or commissions over which the governor lacks substantive control. Despite the progress which has been made through reorganization efforts, the number of elected executive and administrative officials in many states is still considerable, averaging almost 12 per state. In 18 states, the head of the state educational agency is elected, and many state departments of health, mental health, highways, and welfare are administered by complex systems of boards and commissions, usually comprised of a large bipartisan membership serving for long overlapping terms.

This electoral fragmentation often is complicated further by the existence of an unnecessarily large number of separate, autonomous agencies. The relatively large number of administrative agencies in most states may be attributed to such factors as the normal drive for agency autonomy, traditions of separate responsibility of administrative officials to the electorate, reform movements designed to remove agencies from the governor's control in order to keep them "out of politics," and the desire of interest groups to insulate certain agencies from executive or legislative authority.

The major impact of this diffusion of administrative responsibility is to prevent governors from exercising effective supervision and control over the executive branch. In order to strengthen the governor's position, states should limit the number of separately elected administrative officials.

The following amendment, which draws upon the Alaska, Hawaii, Michigan, and New Jersey constitutions, is suggested for adoption as a means of eliminating the "long ballot" by enabling the governor to appoint and remove the heads of principal administrative agencies. This would establish direct channels of responsibility between the governor and agency heads charged with formulating and implementing policies within the framework of the governor's program. The amendment also provides for gubernatorial appointment of boards and commissions which direct major administrative departments as a means of further buttressing the governor's authority as the head of the state administration.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Vol. 1, Report A-31 (Washington, D.C.: U.S. Government Printing Office, October, 1967).

Suggested Constitutional Amendment

[APPOINTMENT OF HEADS OF
ADMINISTRATIVE DEPARTMENTS]

(Be it enacted, etc.)

1 The head of each administrative department shall be a single executive unless otherwise provided
2 by law. The heads of all state administrative departments shall be appointed by the governor [sub-
3 ject to *[legislative]* confirmation] and shall serve at the pleasure of the governor or until the appoint-
4 ment and qualification of their successors.¹

5 Whenever the head of an administrative department is a board, commission, or other body, the
6 members thereof shall be appointed by the governor [subject to *[legislative]* confirmation]. The term
7 of office and removal of the members shall be provided by law. Whenever a board, commission, or
8 other body appoints a principal executive officer as authorized by law, the appointment shall be sub-
9 ject to the approval of the governor. All principal executive officers so appointed shall be removable
10 by the governor or the board, commission, or other body which the executive serves.

¹Recent trends in state constitutional revision indicate a preference for the appointment of the heads of all administrative departments including the secretary of state, the state treasurer, and the attorney general. The governor and lieutenant governor run for election as a team.

1.202 AUTHORIZATION FOR GUBERNATORIAL SELFSUCCESSION¹

If the states are to serve as viable partners in the American federal system, and if unnecessary centralization of power and responsibility in the national government is to be avoided, it is imperative that the states be equipped with the tools necessary to cope effectively with the problems of the 20th century.

In many states, the office of governor needs to be strengthened. Relatively few governors actually command the entire executive branch of state government. This is due in part to restrictions which have been placed upon the office.

Constitutional limitations upon gubernatorial succession represent a major constraint upon the development of strong executive leadership. In the past, a major justification for provisions restricting the term of the governor was the fear that he would become so powerful through perpetuation in office that neither the electorate, the legislature, nor the courts could keep him in check.

However, current trends indicate that other factors have emerged which effectively serve to restrain excessive gubernatorial authority. For example, the marked increase in inter- and intraparty competition — particularly for the governorship — in practically all states; the growing strength and professionalism of state bureaucracies; the impact of interest groups upon the state political process; the progress being made in reapportionment; and the structural and procedural modernization of state legislative machinery combine to create a complex of forces which serve to prevent arbitrary gubernatorial actions.

Tenure limitations disregard the need for long range program and policy planning, restrict the opportunity for the development of gubernatorial expertise, and ignore the growing influence of many line agency officials who are often more concerned with their own particular function than with its contribution and relationship to overall state policy. A governor elected to a single term begins his or her tenure as a political "lame duck," with speculation in the press and positioning among political rivals commencing early in the term, as a prelude to choosing a successor. Tenure limitations also prevent the reelection of governors of proven ability, and remove from the electoral field those candidates about whom voters usually are most fully informed. An important effect of these restrictions is to weaken the position of the states in the federal system.

The following draft constitutional amendment draws upon the Pennsylvania and Wisconsin constitutions.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Vol. 1, Report A-31 (Washington, D.C.: U.S. Government Printing Office, October, 1967).

Suggested Constitutional Amendment

**[ELECTION, QUALIFICATIONS, AND SUCCESSION
OF THE GOVERNOR]**

(Be it enacted, etc.)

1 The governor shall be elected by a direct vote of the people at the general election every fourth
2 year, beginning in []. The candidate receiving [the greatest number] [a majority] of votes cast
3 for that office shall be elected governor. The governor shall serve for a term of four years, beginning
4 on the [first] day of [December] [January] next following his or her election. The governor is eligible
5 for election as his or her own successor. Any qualified voter who is at least [25] years of age at the
6 time of the election, and who has resided in this state for a period of not less than [two] years im-
7 mediately preceding the election, is eligible for the office of governor.

1.203 REORGANIZATION OF THE STATE EXECUTIVE BRANCH¹

The burgeoning demands on state government to expand traditional services and initiate new programs emphasizes the need for greater flexibility in administrative reorganization. Reorganization of state government structure can be facilitated and the governor's role as chief administrator can be strengthened by authorizing the chief executive to submit reorganization plans to the legislature subject to legislative veto. A similar procedure has been provided at the Federal level under the *Reorganization Act of 1949*, as amended. Under it, the President has initiated modifications in the Federal executive branch, subject to congressional veto. With this power at the state level, the governor's responsibility for the efficient day-to-day operation of the government would be accompanied by authority to propose the revision of outmoded administrative structures and practices.

In its "pure" form, the plan provides for executive initiation of reorganization proposals, subject to legislative veto. The governor presents the proposals to the legislature and, after a specified time, the plans go into effect unless the legislature disapproves them. A legislative veto of executive initiative is substituted for the more common executive veto over legislative enactment.

This "pure" form is authorized by the constitutions of ten states — Alaska, California, Illinois, Kansas, Maryland, Massachusetts, Michigan, Missouri, New Jersey, and Vermont; and by statute in three additional states; Georgia, Minnesota, and North Carolina. In three other states — Kentucky, Pennsylvania, and South Carolina — reorganization proposals must be introduced as regular bills requiring legislative approval.

In order to strengthen the role of the states in the federal system, it is desirable to provide an expeditious method by which administrative agencies may be organized into a rational structure with the governor serving as the major top management official.

A strong legislative branch, well organized and equipped with the necessary staff, can maintain continuing review of the operations of a strong executive branch. This will assure effective functioning of appropriate checks and balances.

The following amendment draws upon the Alaska, Massachusetts, and Michigan constitutions. It is consistent with the *Executive Reorganization Act* contained in the Council of State Government's 1957 *Suggested State Legislation*.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Vol. 1, Report A-31 (Washington, D.C.: U.S. Government Printing Office, October, 1967).

Suggested Constitutional Amendment

[REORGANIZATION OF THE EXECUTIVE BRANCH]

(Be it enacted, etc.)

1 Except for organizational arrangements specified in this constitution, the governor may make
2 such changes in the organization of the executive branch or in the assignment of functions among
3 its units as the governor considers necessary for efficient administration. Changes that would modify
4 statutory law shall be set forth in executive orders and submitted to the [legislature] while it is in ses-
5 sion. Thereafter, the [legislature] shall have [60] days of a regular session, or a full session if of
6 shorter duration, to disapprove each executive order. Unless disapproved by resolution concurred in
7 by a majority of the members of [either house], each order shall become effective at a later date desig-
8 nated by the governor. Changes in statutory law effected by this section shall be incorporated in [ses-
9 sion laws and subsequent codes or supplements].

1.204 STRONG EXECUTIVE BUDGET¹

The principal device for guiding the activities of state government is the budget. All but two states have adopted, to some extent, an executive budget system, but in many cases its effectiveness is compromised by gaps in the overall picture of fiscal resources and needs, or by agency practices that contravene the authority of the governor. Furthermore, the executive power of the governor often is diluted by constitutional or statutory provisions for legislative participation in the preparation of the budget.

The executive budget system contemplates that the governor be given primary authority and responsibility for preparing a budget that reveals the full scope of all administrative programs and operations, and that the legislature review and render final judgment on the budget that the governor presents. The governor and the legislature should be cognizant of all funds from every source available to state agencies. Earmarked funds should be reflected in the analysis accompanying the budget presentation, even though their expenditure is not subject to ordinary executive or legislative controls. In the model budget law which follows, the governor presents to the legislature a comprehensive budget for all state programs. This draft legislation assumes that the state's higher education system is not constitutionally independent of the executive budget process, although in some states the university system has separate constitutional status.

All budget requests should be channelled exclusively through the governor. In some states, the legislature receives the agency estimates at the same time the governor does. In many states, agencies are free to argue for their original requests in hearings before legislative committees. Either situation is undesirable to the extent that it permits the administrative agencies to play off the legislature against the governor.

After the legislature has made an appropriation, the governor should have authority to transfer funds within an agency from one purpose to another, as provided in the draft bill. This is a necessary fiscal tool which permits the chief executive to make adjustments to meet changing circumstances.

The suggested legislation assigns to the governor the final responsibility for budget preparation. Although the model bill does not include provisions for specific administrative organization, it anticipates that the budget personnel would be an integral part of the governor's staff.

The proposed bill calls for the governor to present to the legislature a budget and supporting information that is related to comprehensive state program and fiscal planning.²

A constitutional amendment may be needed in some states to assure that the governor has full authority for budget preparation and execution. A suggested amendment, based on the Missouri Constitution, follows the draft legislation.

Section 1 gives the short title of the proposed legislation, and *Section 2* outlines the purpose of the act.

Section 3 gives the governor the authority and responsibility for preparation and administration of the state budget. *Section 4* spells out the responsibilities of the legislature in the budgetary process, and *Section 5* outlines the responsibilities of state budget agency in preparing and executing the budget.

Section 6 sets forth the procedures by which state agencies shall prepare their programs and compile financial information for submission to the state budget agency. *Section 7* details the steps in preparing and submitting the governor's program and financial recommendations to the legislature, and *Section 8* provides for legislative review of the governor's budgetary and program proposals. *Section 9* vests authority and responsibility for program execution in the several state agencies. *Section 10* requires that these same state agencies submit annual performance reports to the state budget agency.

Sections 11 and 12 provide for separability and effective date clauses, respectively.

Section 1 of the suggested constitutional amendment to support this act makes the governor the chief state budget officer and requires submission of an annual budget to the legislature.

¹Derived from: Advisory Commission on Intergovernmental Relations. *Fiscal Balance in the American Federal System*, Vol. 1, Report A-31 (Washington, D.C.: U.S. Government Printing Office, October, 1967).

²The Advisory Commission on Intergovernmental Relations has developed draft legislation on state planning which contains a provision designating the governor as the chief state planning officer. Considered jointly, the budget and planning bills provide the basis for gubernatorial coordination of administrative policy making and execution.

Section 2 gives the governor power of partial veto of appropriation bills, sets out the procedure for effecting such veto, and establishes the limits beyond which amounts necessary for the payment of principal and interest on public debt may not be reduced.

Section 3 gives the governor power to control and reduce expenditures.

Section 4 repeals all parts of the constitution in conflict with this amendment.

Section 5 provides for submission of the proposed amendment to the electorate.

Suggested Legislation

[AN ACT TO PROVIDE FOR A COMPREHENSIVE SYSTEM FOR STATE PROGRAM BUDGETING AND FINANCIAL MANAGEMENT]

(Be it enacted, etc.)

1 SECTION 1. *Short Title.* This act may be cited as *The Executive Budget Act.*

2 SECTION 2. *Purpose.* It is the purpose of this act to establish a comprehensive system for bud-
3 geting and financial management which furthers the capacity of the governor and [legislature] to
4 plan and finance the services which they determine the state will provide for its citizens. The system
5 shall include procedures for:

6 (a) the orderly establishment, continuing review, and periodic revision of the program and finan-
7 cial goals and policies of the state;

8 (b) the development, coordination, and review of long range program and financial plans that
9 will implement established state goals and policies;

10 (c) the preparation, coordination, analysis, and enactment of a budget, organized to focus on
11 state services and their costs, that authorizes the implementation of policies and plans in the succeed-
12 ing budget period;

13 (d) the evaluation of alternatives to existing policies, plans, and procedures that offer potential
14 for more efficient or effective state services; and

15 (e) the regular appraisal and reporting of program performance.

16 SECTION 3. *Responsibilities of the Governor.* The governor shall direct the preparation and
17 administration of the state budget. He shall evaluate the long range program plans, requested budg-
18 ets, and alternatives to state agency policies and programs, and formulate and recommend for con-
19 sideration by the [legislature], a proposed comprehensive program and financial plan which shall
20 cover all estimated receipts and expenditures of the state government, including all grants, loans,
21 and moneys received from the Federal government. Proposed expenditures shall not exceed estimated
22 revenues and resources.

23 SECTION 4. *Responsibilities of the [Legislature].* The [legislature] shall:

24 (a) consider the program and financial plan recommended by the governor, including proposed
25 goals and policies, tax rate and other revenue changes, and long range program plans;

26 (b) adopt programs and alternatives it deems appropriate to the plan recommended by the gover-
27 nor;

28 (c) adopt legislation to authorize the implementation of a comprehensive program and financial
29 plan; and

1 (d) provide for a post-audit of financial transactions, program accomplishments, and execution
2 of legislative policy direction.

3 SECTION 5. *Responsibilities of [State Budget Agency]*. The *[state budget agency]* shall:

4 (a) assist the governor in the preparation and explanation of the proposed comprehensive pro-
5 gram and financial plan, including the coordination and analysis of state agency program goals and
6 objectives, program plans, and program budget requests;

7 (b) develop procedures to produce the information needed for effective decision making;

8 (c) assist agencies in preparing their statement of goals and objectives, program plans, program
9 budget requests, and reporting of program performance;

10 (d) administer its responsibilities under the program execution provisions of this act so that the
11 policy decisions and budget determination of the governor and the *[legislature]* are implemented to the
12 fullest extent possible within the concepts of proper management; and

13 (e) provide the *[legislature]* with any budget information it may request.

14 SECTION 6. *Agency Program and Financial Plans*.

15 (a) Each state agency, [other than the *[legislature]* and the courts], on the date and in the form and
16 content prescribed by the *[state budget agency]*, shall prepare and forward to the *[state budget agency]*
17 the following program and financial information:

18 (1) the goals and objectives of the agency programs, together with proposed supplements,
19 deletions, and revisions to such programs;

20 (2) its proposed plans to implement the goals and objectives including estimates of future
21 service needs, planned methods of administration, proposed modification of existing program ser-
22 vices and establishment of new program services, and the estimated resources needed to carry out the
23 proposed plan;

24 (3) the budget requested to carry out its proposed plans in the succeeding fiscal *[year]*. The
25 budget request information shall include the expenditures during the last fiscal *[year]*, those estimated
26 for the current fiscal *[year]*, those proposed for the succeeding fiscal *[year]*, and any other information
27 requested by the *[state budget agency]*;

28 (4) a report of the revenues during the last fiscal *[year]*, an estimate of the revenues during the
29 current fiscal *[year]*, and an estimate for the succeeding fiscal *[year]*;

30 (5) a statement of legislation required to implement the proposed programs and financial
31 plans; and

32 (6) an evaluation of the advantages and disadvantages of specific alternatives to existing or
33 proposed program policies or administrative methods.

34 (b) The state agency proposals prepared under subsection (a) shall describe the relationships of
35 their program services to those of other state agencies, other branches of state government, other

1 governments, and non-governmental bodies.

2 (c) The [state budget agency] shall assist agencies in the preparation of their proposals under sub-
3 section (a). This assistance may include technical assistance; organization of materials; centrally col-
4 lected accounting, budgeting, and personnel information; standards and guidelines formulation; pop-
5 ulation and other required data; and any other assistance that will help the state agencies produce
6 the information necessary for efficient agency management and effective decision making by the
7 governor and the [legislature].

8 (d) If any state agency fails to transmit the program and financial information provided under
9 subsection (a) on the specified date, the [state budget agency] may prepare such information.

10 (e) The [state budget agency] shall compile and submit to the governor-elect in any year when a
11 new governor has been elected, not later than [November 20], a summary of the program and financial
12 information prepared by state agencies.

13 SECTION 7. *Governor's Recommendation.*

14 (a) The governor shall formulate the program and financial plan to be recommended to the
15 [legislature] after considering each state agency's proposed program and financial plan. The governor's
16 plan shall include his recommended goals and policies, recommended plans to implement the goals
17 and policies, recommended budget for the succeeding fiscal [year], and recommended revenue measures
18 to balance the budget.

19 (b) The governor shall present the proposed comprehensive program and financial plan in a
20 message to a [joint session of the legislature] on or before [February 15] prior to each fiscal [year]. The
21 message shall be accompanied by an explanatory report which summarizes recommended goals, plans,
22 and appropriations. The explanatory report shall be furnished each member of the [legislature] and
23 each state agency on or before [February 15]. The report shall contain the following information:

24 (1) the coordinated program goals and objectives that the governor recommends to guide the
25 decisions on the proposed program plans and budget appropriations;

26 (2) the program and budget recommendations of the governor for the succeeding fiscal [year];

27 (3) a summary of state revenues in the last fiscal [year], a revised estimate for the current
28 fiscal [year], and an estimate for the succeeding fiscal [year];

29 (4) a summary of expenditures during the last fiscal [year], those estimated for the current
30 fiscal [year], and those recommended by the governor for the succeeding fiscal [year]; and

31 (5) any additional information which will facilitate understanding of the governor's pro-
32 posed program and financial plan by the [legislature] and the public.

33 (c) After delivery of the governor's message, the bills incorporating his recommendations may be
34 introduced in [either house].

35 SECTION 8. *Legislative Review.* The [legislature] shall consider the governor's proposed com-

1 comprehensive program and financial plan, evaluate alternatives to the governor's recommendations,
2 and determine the comprehensive program and financial plan to support the services to be provided
3 the citizens of the state, provided, however, that in such determination authorized expenditures shall
4 not exceed estimated revenues and resources.

5 SECTION 9. *Program Execution.*

6 (a) Except as limited by policy decisions of the governor, appropriations by the [legislature], and
7 other provisions of law, the several state agencies shall have full authority for administering their
8 program assignments and appropriations, and shall be responsible for their proper management.

9 (b) Each state agency, [other than the [legislature] and the courts], shall prepare an annual plan
10 for the operation of each of its assigned programs except for programs that are exempted from this
11 requirement by the [state budget agency]. The operations plan shall be prepared in the form and con-
12 tent and be transmitted on the date prescribed by the [state budget agency].

13 (c) The [state budget agency] shall:

14 (1) review each operations plan to determine that it is consistent with the policy decisions
15 of the governor and appropriations by the [legislature], that it reflects proper planning and efficient
16 management methods, that appropriations have been made for the planned purpose and will not be
17 exhausted before the end of the fiscal year;

18 (2) approve the operations plan if satisfied that it meets the requirements under paragraph
19 (1). Otherwise the [state budget agency] shall require revision of the operations plan in whole or in
20 part; and

21 (3) modify or withhold the planned expenditures at any time during the appropriation period
22 if the [state budget agency] finds that such expenditures are greater than those necessary to execute
23 the programs at the level authorized by the governor and the [legislature], or that the revenues and
24 resources will be insufficient to meet the authorized expenditure levels.

25 (d) No state agency, [except the [legislature] and the courts], may increase the salaries of its employ-
26 ees, employ additional employees, or expend money, or incur any obligations except in accordance
27 with law and with a properly approved operations plan.

28 (e) Appropriation transfers or changes as between objects of expenditures within a program may
29 be made by the [head of a state agency]. Appropriation transfers or changes between programs within
30 an agency may be made by the [governor], and shall be reported to the [legislature] quarterly. No trans-
31 fers shall be made between agencies, except pursuant to interagency agreements executed for pur-
32 poses of accomplishing objectives for which the funds involved were appropriated.

33 (f) The [state budget agency] shall report quarterly to the governor and the [legislature] on
34 the operations of each state agency, relating actual accomplishments to those planned, and modi-
35 fying, if necessary, the operations plan of any agency for the balance of the fiscal [year].

1 SECTION 10. *Performance Reporting.*

2 (a) Each state agency, [other than the [*legislature*] and the courts], shall submit a performance re-
3 port to the [*state budget agency*] on or before [September 1] for the preceding fiscal [*year*]. These reports
4 shall be in the form prescribed by the [*state budget agency*] after consultation with the [*appropriate*
5 *legislative agencies*], and shall include statements concerning:

6 (1) the work accomplished, and the services provided, in the preceding fiscal [*year*] or other
7 meaningful work period, relating actual accomplishments to those planned under Section 9(b);

8 (2) the relationship of accomplishments and services to the policy decisions and budget de-
9 terminations of the governor and the [*legislature*];

10 (3) the costs of accomplishing the work, and providing the services, and, to the extent fea-
11 sible, citing meaningful measures of program effectiveness and cost; and

12 (4) the administrative improvements made in the preceding year, potential improvements in
13 future years, and suggested changes in legislation or administrative procedures to make further im-
14 provements.

15 (b) The [*state budget agency*] shall summarize the performance reports and forward copies to each
16 member of the [*legislature*].

17 SECTION 11. *Separability.* [*Insert separability clause.*]

18 SECTION 12. *Effective Date.* [*Insert effective date.*]

Suggested Constitutional Amendment

[EXECUTIVE BUDGET]

(Be it enacted, etc.)

1 SECTION 1. *Governor's Budget and Recommendations as to Revenue.* The governor shall have
2 the authority to prepare and administer the state budget and shall submit the budget prepared by
3 him, for the ensuing fiscal period, to the [legislature], at a time fixed by law.¹ The budget shall set
4 forth a complete plan of proposed expenditures [by program] of the state and all its agencies, together
5 with the governor's estimate of available revenues and resources and his recommendations for raising
6 any additional revenues that may be needed.

7 SECTION 2. *Power of Partial Veto of Appropriation Bills; Procedure; Limitations.* The governor
8 may disapprove or reduce one or more items of appropriation of money in any bill presented to him,
9 while approving other portions of the bill. On signing the bill he shall append to it a statement of
10 the items which he has disapproved or reduced, and these items or portions of items shall not take
11 effect. If the [legislature] is in session he shall transmit to the house in which the bill originated a copy
12 of the statement, and the items he has disapproved or reduced shall be reconsidered separately. If the
13 [legislature] is not in session he shall transmit the bill within [45] days to the office of the [secretary of
14 state] with his approval or reasons for disapproval. The governor shall not reduce any appropriation
15 below the amount necessary for the payment of principal and interest on the public debt.

16 SECTION 3. *Power of Governor to Control and Reduce Expenditures.* The governor, at his dis-
17 cretion, may control the rate at which any appropriation to a department or agency of the executive
18 branch is expended during the period of the appropriation, by allotment, or other means, and may, as
19 provided by law, reduce the expenditures of any department or agency of the executive branch be-
20 low the amounts appropriated.

21 SECTION 4. [All parts of the constitution in conflict with this amendment are hereby repealed.]
22 [Sections [identify those sections of the constitution to be repealed] are hereby repealed.]

23 SECTION 5. [Insert appropriate language, consistent with the referendum requirements for
24 amending the constitution and with state election laws, for submission of the proposed amendment
25 to electorate.]

¹States should consider the desirability of an arrangement in the schedule for submitting the budget that will allow an incoming governor enough time, after his inauguration, to study the budget prepared by his predecessor, and to make changes that reflect his own plans and programs.

1.3 Relations with Federal and Local Governments

1.301 CONSTITUTIONAL BARRIERS TO INTERGOVERNMENTAL COOPERATION¹

In view of the widespread establishment of various arrangements for intergovernmental cooperation, a constitutional barrier that exists in some states needs to be reexamined. In those states the constitution bars certain persons who hold state office from serving on commissions or other agencies which are administratively attached to other governmental units, but which have as their purpose the promotion or performance of a project for intergovernmental cooperation.

A suggested constitutional amendment formulated by the New York State Joint Legislative Committee on Interstate Cooperation authorizes state and local officials to serve on bodies concerned with intergovernmental affairs. It is offered for consideration in those states where it is desired to remove possible constitutional obstacles to such service.

An incomplete survey of state constitutions has revealed that at least 30 states have provisions in their constitutions which could be construed to bar such service for state and local officials. While it seems almost certain that the drafters of such provisions did not intend them to have any such effects, and while virtually all of them are far from compelling any such construction, at least three known episodes in recent years suggest that thought should be given to the problem.

The attorney general of Texas declined appointment as a member of the Commission on International Rules of Judicial Procedure because of a provision in the Texas constitution. The statute establishing the commission provided for two members of the nine man body to be state officials whose positions gave them experience and knowledge of the effect of the commission's work on state courts and administrative agencies.

A New York state senator resigned from the Advisory Commission on Intergovernmental Relations after being advised that the availability of compensation for service on the Commission (whether he accepted such payment or not) would raise a question under the state constitution as to his continuance in his senate seat. A governor of Massachusetts declined to accept an appointment to the Commission because of a similar constitutional provision.

As the activities and interests of the Federal and state governments become ever more closely intertwined, and as regional councils become a common means of dealing with areawide problems, it is important that state and local officials be able to serve on such intergovernmental bodies so that they may provide responsible and direct representation for the states and localities in matters of concern to them. Furthermore, such officials, while they are in office, have current and valuable experience coupled with a direct concern for the problems that are likely to call for service on intergovernmental bodies. Private citizens who accept appointment to intergovernmental bodies (however useful and appropriate their service may be on many occasions) cannot serve quite the same function.

The constitutional provisions which have begun to cause difficulty were originally designed to guard against "conflict of interest". They were adopted on the generally sound premise that a man who serves two masters may be in a difficult position dangerous to the public interest. But this premise would seem to be inapplicable and unreasonably confining in those instances where service in one capacity is actually in furtherance of the state's interest and is compatible with it.

It is possible that similar problems may arise for local officials whose services are desirable on intergovernmental bodies, although such instances of actual hardship in the recent past are not readily at hand. Indeed, the entire problem is a relatively new one because the use of such intergovernmental bodies as an instrument of Federal-state relations is a recent development. Because the technique is so promising and valu-

¹Derived from: Advisory Commission on Intergovernmental Relations, *Governmental Structure, Organization and Planning in Metropolitan Areas*, Report A-5 (Washington, D.C.: U.S. Government Printing Office, July, 1961); and also Advisory Commission on Intergovernmental Relations, *Regional Decision Making: New Strategies for Substate Districts*, Report A-43 (Washington, D.C.: U.S. Government Printing Office, October, 1973).

able as a means of achieving coordination within the federal system, it is desirable for the states to examine their constitutions to make sure that no obstacles exist.

It should be noted that no constitutional difficulties appear to have been encountered by state officials serving on purely interstate bodies such as those created by interstate compact. However, in order to encourage the maximum degree of flexibility possible and to guard against any limiting implications from adoption of language specifically authorizing one type of intergovernmental service, but silent as to others, the suggested constitutional amendment is written in comprehensive terms. Further, the amendment recognizes that the "conflict of interest" question could be real in some situations. Consequently, it authorizes the state legislature by statute to impose such restrictions as it may find appropriate. Since the bulk of our "conflict of interest" laws are statutory in any case, such an arrangement would accord with well known patterns in this field.

Suggested Constitutional Amendment

[INTERGOVERNMENTAL COOPERATION]

(Be it enacted, etc.)

1 Any other provision of this constitution to the contrary notwithstanding, an officer or employee
2 of the state or any municipal corporation or other subdivision or agency thereof may serve on or with
3 any governmental body as a representative of the state or any municipal corporation or other subdivi-
4 sion or agency thereof, for the purposes served by such governmental body, including such activities
5 as participating or assisting in the consideration or performance of joint or cooperative undertakings
6 or for the study of governmental problems, and he shall not be required to relinquish his office or
7 employment by reason of such service. The [legislature] by statute may impose such conditions on
8 such services as it may deem appropriate.

1.302 STATE LEGISLATIVE CONTACT WITH CONGRESS¹

Studies of the impact of Federal grant-in-aid programs on state government administration reveal that there is insufficient communication between members of the Congress and state legislatures at the time that important policy decisions are being made. The witnesses appearing before congressional committees dealing with Federal legislation affecting the states and their local governments usually include a wide assortment of local officials and representatives of other interests. State administrative officials participate occasionally in these hearings, and governors testify from time-to-time. But until fairly recently, through efforts of the Council of State Governments, state legislators have seldom appeared as witnesses before congressional committees. The traditional state legislative practice of presenting memorials to Congress is largely unsatisfactory as a form of communication on policy questions, and in no sense is it an adequate substitute for direct dialogue with members of Congress.

In its 1967 report on *Fiscal Balance in the American Federal System*, Volume 1, the Advisory Commission on Intergovernmental Relations proposed:

In order that the state legislative voice may be heard in the formulation, financing, and operation of Federal grant programs and other intergovernmental matters . . . , state legislatures . . . [should charge] elective presiding officers and/or chairmen and ranking members of those committees having jurisdiction in fields involving Federal-state relations with (1) following the development of proposed (Federal) legislation . . . and (2) . . . presenting the views of legislators to congressional committees considering new or modified grant programs coming within the concern of state legislatures.

Beginning in the early 70s, the Council of State Governments and the National Legislative Conference² initiated procedures whereby legislative service agencies were apprised of pending congressional actions affecting the states, and the views of their respective legislatures were solicited. This has resulted in some improvement, but it also has underscored the need for each legislature to establish machinery for ascertaining the views of committees or of individual legislators and for expeditious reporting of these views.

A fuller interchange of views between key state legislators and members of congressional committees would strengthen the role of state legislatures in the formulation of important policies affecting the nation's domestic affairs. It would improve intergovernmental relations, and it would assist congressional committees in their deliberations. Appropriate coordination of a state's legislative views with the views of the state's executive branch may be assured by advance consultation.

The following concurrent resolution suggests one method of formally instructing and authorizing state legislative leaders to make personal appearances before congressional committees when Federal programs significantly affecting their state are under consideration.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Vol. 1, Report A-31 (Washington, D.C.: U.S. Government Printing Office, October, 1967).

²Merged into National Conference of State Legislatures in 1974.

Suggested Concurrent Resolution

[PROVIDING FOR STATE LEGISLATIVE CONTACT WITH CONGRESS]

1 WHEREAS, it is important that the [legislature] make known its views concerning the formula-
2 tion, financing, and operation of Federal programs affecting the state and its political subdivisions;
3 and

4 WHEREAS, a fuller interchange of views between state legislators and congressional committees
5 is a necessary means of strengthening the state's role in the formulation of policy decisions affecting
6 major areas of the nation's domestic affairs; and

7 WHEREAS, the [legislature] recognizes that there is no substitute for direct dialogue between
8 members of the Congress and the [legislature];

9 NOW, THEREFORE, BE IT RESOLVED by the [legislature] of [insert name of state] that the
10 presiding officer[s] of the [legislature], the majority and minority leaders, and the chairmen of com-
11 mittees having jurisdiction in fields involving Federal-state relations, are authorized and directed to
12 follow the development of proposed legislation in the Federal executive branch and the Congress and
13 to present their views through personal testimony or by written statement to congressional commit-
14 tees considering new or modified Federal programs significantly affecting the state.

15 AND BE IT FURTHER RESOLVED, that the presiding officer[s] arrange meetings, in the state
16 capital and in Washington, D.C., with the members of Congress from this state, for the purpose of
17 discussing matters affecting the state that are under consideration by Congress or that should be
18 brought to the attention of Congress.

1.303 STATE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS¹

The public service needs generated by urbanization, technological change, and economic uncertainty many times surpass the geographic base, administrative structure, and fiscal capacity of individual local governments. Pollution, crime, congestion, unemployment, inferior education, substandard housing, and inadequate health care, among others, are problems of national and statewide as well as local significance.

The states in particular have a major role in meeting these challenges, either directly or in concert with their political subdivisions. While many states have begun to take remedial action or have provided local governments with the fiscal, functional, structural, and personnel authority to do so, much more needs to be done to ensure that coordination rather than conflict will characterize state-local relationships. One way in which this objective can be achieved is through the creation of a state advisory commission on intergovernmental relations.

The attached suggested legislation provides for the establishment of a permanent state advisory commission on intergovernmental relations to study governmental structure, finances, functional performance, and relationships at the local, regional, state, and interstate levels. It establishes a framework for the formulation of recommended solutions to interlevel problems.

Through a broad based, bipartisan membership structure, diverse viewpoints can be applied to the difficult challenges facing state and local governments, and workable approaches to resolving them can be developed. Such commission representation is achieved through a balanced mix of members coming from the general public, the executive and legislative branches of state government, and all of the basic local units within the state — counties, cities, and other political subdivisions. While the latter could include school districts or special districts, the basic thrust of the commission's work should be oriented to general purpose governmental units. In addition, even though the state advisory commission on intergovernmental relations is essentially a state-local body, the significant impact of Federal assistance and policy decisions on state and local operations requires consideration of an option for representation from Federal agencies doing business in the state. Depending on the nature of state and local elections, members might be appointed without regard to political affiliation, or in such a way as to achieve an even or nearly even partisan balance.

The permanence of the state advisory commission on intergovernmental relations is underscored by the assignment of an ongoing mandate to the commission, the procedures for readily filling vacancies, and avoidance of a termination date. Professionalism is ensured by authorizations for an executive director and staff. Finally, conducting hearings, submitting reports, and drafting and disseminating statutes, constitutional amendments, and model local ordinances, are means for calling the recommendations of the commission to the attention of decisionmakers and enhancing implementation prospects.

Several states already have units that perform some of the functions that a state advisory commission on intergovernmental relations would assume. Over four-fifths have a Federal-state coordinating body. Thirty-one states have active commissions on interstate cooperation, and 42 have departments, offices, or other agencies that give exclusive attention to community affairs. A number of other states have set up councils of local affairs, usually by executive order, as advisory and coordinating units attached to the governor or to specific state agencies.

These organizations are indicative of growing state and local awareness of the need to deal with problems on an interlevel basis. Their informational, technical assistance, and tension reducing functions are undoubtedly useful. Yet the absence of local representation in many cases, along with their predominantly operational thrust and relatively narrow jurisdictional focus, makes most of these instrumentalities unsuitable for the broad gauge research, analysis, problem solving, and advisory activities that will be needed in the years ahead and that are anticipated by this bill.

¹Derived from: Advisory Commission on Intergovernmental Relations, *The Challenge of Local Governmental Reorganization*, Volume III of *Substate Regionalism and the Federal System* (Washington, D.C.: U.S. Government Printing Office, February, 1974).

Another approach that has been taken by 17 states since 1968 has been the appointment of temporary study commissions to address certain pressing state-local and local governmental problems. While the reports that they have produced are generally impressive, the effectiveness of these bodies has been limited by their temporary nature. Once the studies were completed, their recommendations were left to others for explanation and attempted implementation.

This suggested legislation is geared to overcoming the shortcomings of these more limited approaches to state-local cooperation. The recommendation on which it is based is contained in Volume III of the Commission's report on *Substate Regionalism and the Federal System*. The bill is based upon experience with state ACIR's in Arizona, California, Kansas, Maine, and Texas.

Section 1 sets out the need and purpose for a state advisory commission on intergovernmental relations.

Sections 2 creates the commission; *Section 3* establishes its membership; and *Section 4* outlines the commission's functions and duties.

Section 5 makes provisions for the commission to hold meetings, conduct hearings, and establish committees. *Section 6* authorizes the employment of appropriate support staff; *Section 7* deals with finances; and *Section 8* requires that the commission issue reports on its findings, recommendations, and performance.

Sections 9 and 10, respectively, provide for separability and effective date clauses.

Suggested Legislation

[AN ACT TO ESTABLISH A STATE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS]¹

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purpose.*

2 (a) The [legislature] finds and declares that there is a need for a permanent intergovernmental
3 body to study and report on:

4 (1) the current pattern of local governmental structure and its viability;

5 (2) the powers and functions of local governments, including their fiscal powers;

6 (3) the existing, necessary, and desirable relationships between and among local govern-
7 ments and the state;

8 (4) the existing, necessary, and desirable allocation of state and local fiscal resources;

9 (5) the existing, necessary, and desirable roles of the state as the creator of the local
10 governmental systems;

11 (6) the special problems in interstate areas facing their general local governments, intrastate
12 regional units, and areawide bodies, such studies where possible to be conducted in conjunction with
13 those of a pertinent sister state commission(s); and

14 (7) any constitutional amendments and statutory enactments required to implement appro-
15 priate commission recommendations.

16 SECTION 2. *Commission Created.* There is hereby created a [insert state] [Advisory Commission
17 on Intergovernmental Relations].

18 SECTION 3. *Membership.*

19 (a) The commission shall be composed of 20 members, as follows:

20 (1) four elected county officials, four elected city officials, two state executive branch
21 officials, and four private citizens, all of whom shall be appointed by the governor, except that the
22 county and city members shall be appointed from lists of at least eight nominees submitted by their
23 respective state associations;

24 [(2) three state senators appointed by the president pro tem of the senate;¹ [and]

25 (3) three state representatives appointed by the speaker of the house of representatives]²

26 (b) The chairman and vice chairman of the commission shall be designated by the governor from
27 among the members and shall serve in these respective capacities at his pleasure. In the event of the

¹Suggested short title: *State Advisory Commission on Intergovernmental Relations.*

²Individual states should insert the appropriate names of the upper and lower houses of the legislature and titles of their presiding officers.

1 of the absence or disability of both the chairman and vice chairman, the members of the commission
2 shall elect a temporary chairman by a majority vote of those present and voting.

3 (c) Of the first members appointed by the governor after the effective date of this act, two of the
4 elected county officials, two of the elected city officials, one of the officials of other political sub-
5 divisions, one of the state executive branch officials, two of the private citizens, and three of the state
6 legislators, shall hold office for a term of two years. The remaining members, and members sub-
7 sequently appointed, shall be appointed for a period of four years; *provided that* a member appoin-
8 ted to succeed another member whose term has not expired shall be appointed for the period of the
9 unexpired term, and may be subsequently appointed for a four year term.¹ Should any member cease
10 to be an officer or employee of the unit or agency he is appointed to represent, his membership on
11 the commission shall terminate immediately and a new member shall be appointed in the same manner
12 as his predecessor to fill the unexpired term.

13 [Alternative 1.]

14 [(d) The members appointed from private life under subsection (a) shall be appointed without re-
15 gard to political affiliation. Of each class of local government members appointed by the governor,
16 not more than half shall be from any one political party. Of each class of state members appointed
17 by the [*president pro tem of the senate and the speaker of the house of representatives*], two shall be
18 from the majority party of their respective houses.]¹

19 [OR]

20 [Alternative 2.]

21 [(d) Members of the commission shall be appointed without regard to political affiliation.]¹

22 (e) Twelve members of the commission shall constitute a quorum.

23 SECTION 4. *Functions and Duties.*

24 (a) The commission shall carry out the following functions and duties:

25 (1) serve as a forum for the discussion and resolution of intergovernmental problems;

26 (2) engage in such activities and make such studies and investigations as are necessary or
27 desirable in the accomplishment of the purposes set forth in Section 1 of this act;

28 (3) consider, on its own initiative, ways and means of fostering better relations among local
29 governments and between local governments and the state government;

30 (4) draft and disseminate legislative bills, constitutional amendments, and model local or-
31 dinances necessary to implement recommendations of the commission;

32 (5) encourage, and where appropriate, coordinate studies relating to intergovernmental re-
33 lations conducted by universities, state, local, and Federal agencies, and research and consulting or-
34 ganizations; and

¹States having two year terms for either house or senate members may wish to adjust the terms of members of the commission.

1 (6) review the recommendations of national commissions studying Federal, state, and local
2 government relationships and problems and assess their possible application to [insert state].

3 SECTION 5. *Meetings, Hearings, Committees.*

4 (a) The commission shall hold meetings quarterly and at such other times as it deems necessary.
The commission may hold public hearings from time-to-time on matters within its purview. [By
5 its subpoena the commission may compel the attendance of witnesses and the production of books,
6 papers, and records of any agency of the state or any of its political subdivisions.]

7 (b) Each officer, board, commission, council, department, or agency of state government, and
8 each political subdivision of the state, shall make available all facts, records, information, and data
9 requested by the commission and in all ways cooperate with the commission in carrying out the func-
10 tions and duties imposed by this act.

11 (c) The commission may establish committees as it deems advisable and feasible, whose mem-
12 bership shall include at least one member of the commission, but only the commission itself may set
13 policy or take other official action.

14 (d) The commission shall promulgate rules of procedure governing its operations, provided they
15 are in accordance with the provisions of [insert state administrative procedures act].

16 (e) All meetings of the commission, or any committee thereof, at which public business is dis-
17 cussed or formal action is taken shall conform to [insert state open meetings act].

18 SECTION 6. *Staff.*

19 (a) The commission shall employ and set the compensation of an [executive director], who shall
20 serve at its pleasure. The [executive director] may employ professional, technical, legal, clerical or
21 other staff, as necessary and authorized, and may remove such staff.

22 (b) The staff of the commission shall be within the unclassified service of the [insert state civil
23 service act], and their compensation shall be determined by the commission within the limitations of
24 appropriations for commission staff purposes.

25 SECTION 7. *Finances.*

26 (a) A member of the commission is not entitled to a salary for duties performed as a member of
27 the commission. Members who are not full-time salaried government officers shall receive [\$50] *per*
28 *diem*. Each member is entitled to reimbursement for travel and other necessary expenses incurred in
29 the performance of official duties.

30 (b) The commission is authorized to apply for, contract for, receive, and expend for its pur-
31 poses any appropriations or grants from the state, its political subdivisions, the Federal government,
32 or any other source, public or private.

33 (c) Political subdivisions of the state are authorized to appropriate funds to the commission to
34 share in the cost of its operations.
35

1 (d) To assist financially with the exercise of the functions and duties provided in Section 4,
2 state appropriations are hereby authorized in such amounts as may be necessary.

3 SECTION 8. *Reports.* The commission shall issue reports of its findings and recommendations
4 from time-to-time, and shall issue annually a public report on its work. Copies of the annual report
5 shall be submitted to the governor, presiding officer[s] of the [*legislature*], each county, city, re-
6 gional unit and other political subdivisions of the state, and appropriate state departments and agen-
7 cies. Reports of the commission shall be available to the public.

8 SECTION 9. *Separability.* [*Insert separability clause.*]

9 SECTION 10. *Effective Date.* [*Insert effective date.*]

1.304 STATE TECHNICAL ASSISTANCE FOR LOCAL GOVERNMENT¹

State agencies are frequently authorized to provide specific types of technical assistance or services to local governments. In some instances, the cost of such services is financed by the state, while in others, they are jointly financed; and in still others, they are financed solely by the unit of local government requesting the service. In almost all instances, such authority is authorized by individual statute adopted by the legislature.

Areas in which such services are often available to local governments include property assessment, procurement services, public health services, police services, highway planning and construction, preparation of local charters and ordinances, and preparation of community development plans. The initiation of new programs at both state and local levels of government in recent years would seem to dictate that, while existing financing patterns remain undisturbed, state agencies should also have broad authority to provide technical services to local government on a reimbursable basis, with reimbursement waived under certain circumstances.

While certain services may not directly affect state interests, costs of providing those services would be reduced where state expertise and equipment are available for use by the local government (e.g., laboratory, computer, and training services). The suggested act provides general authorization for all state agencies to provide special and technical services on a reimbursable or non-reimbursable basis to local governments. However, under an optional provision of the draft, such authority could not be utilized to obtain services from the state which could be readily obtained from private business channels. The act is adapted from a Missouri statute.²

Section 1 sets forth briefly the purpose of the act and *Section 2* defines the terms used. *Section 3* provides the general authority to state agencies to enter into such arrangements; optional language is included to bar the provision of any service available on a reasonable and expeditious basis through ordinary business channels. The department of community affairs (or other appropriate agency) of the state government is charged with general responsibility for providing technical assistance and services to local units of government in subject matter areas not lying within the competence and jurisdiction of the other functional agencies and for the formulation of statewide guidelines on state technical services to local governments.

Section 4 indicates that the cost of financing services on a reimbursable basis will not be charged against the appropriation of the state agency; *Section 5* provides certain specific services as options for directing specific activities as well as providing general authority; and *Section 6* requires that the head of a state agency furnishing such services make an annual report to the governor and the legislature indicating the scope of the services provided.

Sections 7 and 8 provide for separability and effective date clauses, respectively.

¹Derived from: Advisory Commission on Intergovernmental Relations, *State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Government*, Report A-12 (October 1962); and *Investment of Idle Cash Balances by State and Local Governments*, Report A-3 (Washington, D.C.: U.S. Government Printing Office, January, 1961).

²Section 67.330 et. seq., *Missouri Revised Statutes* (1969).

1 **Suggested Legislation**

2
3 **[AN ACT TO PROVIDE STATE TECHNICAL ASSISTANCE**
4 **AND SERVICES TO LOCAL GOVERNMENT]**

5
6 *(Be it enacted, etc.)*

7 SECTION 1. *Purpose.* It is the purpose of this act to direct state agencies to provide as a matter of
8 course continuing technical advice and assistance to agencies of local government engaged in similar
9 fields of activity and operation, to authorize state agencies to provide specialized or technical services
10 to units of local government, and to enable units of local government to avoid unnecessary duplica-
11 tion and expense in performing necessary governmental services.

12 SECTION 2. *Definitions.*

13 (a) "Specialized or technical services" means special statistical or other studies and compilations,
14 [development projects, demonstration projects], technical tests and evaluations, technical information,
15 training activities, professional services, surveys, reports, and any other similar service functions
16 which the [*administrative head*] of any agency is authorized by law to perform.

17 (b) "Unit of local government" means a county, municipality, city [town, township, metropolitan
18 regional agency, authority, or a school or other special district].

19 SECTION 3. *Authority to Provide Service.*

20 (a) The [*administrative head*] of any agency of the state is authorized, within his discretion and
21 upon written request from a unit of local government, to provide such unit with specialized or tech-
22 nical services [, but the services shall not include those that can be as reasonably and expeditiously
23 obtained through ordinary business channels]. This authority in no way reduces the responsibility of
24 any state agency to provide services otherwise required by law.

25 (b) Since effective and efficient delivery of services by units of local government to their residents
26 and the knowledge gained therefrom will ultimately benefit the state as a whole, the [*administrative*
27 *heads*] of state agencies and departments are authorized and directed to include as a part of the
28 operating mission of their respective units the provision, on a continuing basis, of advice and assist-
29 ance to their local counterparts.

30 (c) The [*department of community affairs or other agency charged with continuing responsibility*
31 *for state-local relations*] shall formulate, for the approval of the governor, regulations, criteria,
32 and procedures for carrying out the purposes of this act.

33 (d) The [*department*] shall disseminate information regarding this act and regulations for its
34 implementation to the governing bodies of local units of government in the state and shall bring to the
35 attention of departments and agencies of the state government, the governor, and the [*legislature*], as

1 appropriate, proposals for more effective utilization of the authority conferred under this act.

2 SECTION 4. *Reimbursement to Appropriation.* The [administrative head] of any agency of the
3 state may require payment of the cost of such services by the unit of local government making the
4 request by a rule of uniform application [and shall deposit such payment to the credit of the appro-
5 priation or appropriations from which the cost of providing the services has been paid or is to be
6 charged or as otherwise specifically provided by law].¹

7 SECTION 5. *Specific services.*²

8 (a) Units of local government are authorized to enter into agreements with [state data processing
9 center or agency] within the limits of the appropriations of, or fees available to, said [agency]
10 [center] for this purpose, and are authorized to utilize the services of the state agency, transport
11 records to the [agency] [center] for processing and delegate such responsibilities as required to the
12 state agency performing the function for the unit of local government. The state agency shall give a
13 receipt for records and materials delivered to it and shall assure the security of the records so handled
14 or stored.

15 (b) Units of local government are authorized to enter into agreements with [state purchasing or
16 procurement officer] within the limits of the appropriation of, or fees available to, that state agency
17 for this purpose. The governing bodies of the units of local government may require all offices
18 and individuals of their political subdivision to conform to the requirements, as promulgated by the
19 governing body of the units of local government involved in the purchasing agreement entered into
20 with the state agency. Governing bodies of all units of local government of the state are hereby
21 authorized to enter into agreements with the state agency covering the purchase of materials, supplies,
22 services, and equipment meeting their legal needs, and are authorized to delegate to the state agency
23 such functions relating to the purchases as shall be covered by the cooperative agreement with the
24 state agency. Whenever possible, the state agency shall further provide in all state purchase contracts,
25 that the state purchase contract price be made available to units of local government upon the same
26 conditions as agreed upon by the state.

27 (c) Units of local government are authorized to enter into an agreement with [state communica-
28 tions agency] within the limits of the appropriation of, or fees available to, that state agency for this
29 purpose and are authorized to utilize the services of the agency. The state agency shall provide such
30 tie-ins to state operated or leased lines and other communication services as may be feasible and shall
31 attempt to provide communication services similar to that offered state agencies.

32 SECTION 6. *Reports.* The [administrative head] of any agency of the state, providing specialized
33 or technical services under this act, shall furnish annually to the governor and the [legislature] a

¹This section may require adjustment to comply with state constitutional requirements.

²See also draft legislation on debt assistance, pooled insurance, retirement systems, etc.

- 1 report on the scope of the services so provided.¹
- 2 SECTION 7. *Separability.* [*Insert separability clause.*]
- 3 SECTION 8. *Effective date.* [*Insert effective date clause.*]

¹Alternatively, this section could place reporting responsibility upon the department of community affairs [or other agency charged with overall responsibility for state-local relations], with such agency obtaining information on specific services provided from the respective functional agencies and consolidating such information with other relevant data and with recommendations formulated pursuant to Section 3 into a single, comprehensive report for the governor and legislature.

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what is acir?

The Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. ACIR is a permanent national bipartisan body representing the executive and legislative branches of Federal, state, and local government and the public. The Commission is composed of 26 members — nine representing the Federal government, 14 representing state and local government, and three representing the public. The President appoints 20 — three private citizens and three Federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from slates nominated by the National Governors' Conference, the Council of State Governments, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Congressmen by the Speaker of the House. Each Commission member serves a two year term and may be reappointed.

As a continuing body, the Commission approaches its work by addressing itself to specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning

of the federal system. In addition to dealing with the all important functional and structural relationships among the various governments, the Commission has also extensively studied critical stresses currently being placed on traditional governmental taxing practices. One of the long range efforts of the Commission has been to seek ways to improve Federal, state, and local governmental taxing practices and policies to achieve equitable allocation of resources, increased efficiency in collection and administration, and reduced compliance burdens upon the taxpayers.

Studies undertaken by the Commission have dealt with subjects as diverse as transportation and as specific as state taxation of out-of-state depositories; as wide ranging as sub-state regionalism to the more specialized issue of local revenue diversification. In selecting items for the work program, the Commission considers the relative importance and urgency of the problem, its manageability from the point of view of finances and staff available to ACIR and the extent to which the Commission can make a fruitful contribution toward the solution of the problem.

After selecting specific intergovernmental issues for investigation, ACIR follows a multistep procedure that assures review and comment by representatives of all points of view, all affected levels of government, technical experts, and interested groups. The Commission then debates each issue and formulates its policy position. Commission findings and recommendations are published and draft bills and executive orders developed to assist in implementing ACIR policies.

