

ACIR State Legislative Program

4.

Fiscal and
Personnel
Management

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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 updatings 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**

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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 IV

FISCAL AND PERSONNEL MANAGEMENT

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INTRODUCTION

The fiscal and personnel management relationships between the state government and localities have been a recurring concern to ACIR. The Commission has held consistently that the state must exercise a dual role toward local governments — it must assist and support them and it must enact appropriate statutory bounds within which effective local management can occur. In the mid-70s concern about local fiscal and personnel management began to mount as local payroll and other costs escalated.

A 1973 study by the ACIR, *City Financial Emergencies*, showed that for the most part financial problems facing many cities need not cause financial bankruptcy in a technical sense under conditions of sound local financial management.

Recognizing the growing need for a high degree of budgetary prudence in municipal administration, the ACIR has formulated several new legislative proposals in the fields of fiscal and personnel management.

Fiscal Management. As the source of constitutional and statutory authority for the operation of local governments, the state must both assist and regulate local fiscal management. To meet its responsibilities toward local government, state statutes should provide for:

- designation or establishment of a state agency to be responsible for the improvement of local financial management functions and to monitor and assist local financial operations;
- state regulation of local short term operating debt, review of bond prospectuses, assistance to local governments in arranging for bond issues and provision of marketing services, pooled borrowing, and other means to assist in the aggregation of bond issues of smaller local governments under more favorable marketing arrangements;
- state assistance in enforcement of local taxes and in the interchange of tax information among localities and with other states;
- intervention by the state government in local financial emergencies including action in a capacity resembling that of a receiver in bankruptcy until the local fiscal crisis has passed;
- regularizing and consolidating the administration of state financial aid to local governments;
- establishment of a process by which citizens are informed and are given the opportunity in public budget hearings to express their views on state and local financial policies, services, and taxes;
- removal of state constitutional restrictions on long term local borrowing, leaving the regulation of local government debt to the legislature;
- establishment of a statewide system of standardized fiscal reporting, accounting, and auditing so that the state government, local governments, and the general public have current, accurate, and intelligible information on the fiscal condition of local governments and so that the fiscal operations of local governments may be compared one with another; and
- authorization to local governments to invest idle funds and to join with the state in the pooled purchase of insurance or the provision and administration of selfinsurance against damage or loss to local government facilities.

The development of a legislative basis for control, guidance, and financial and technical assistance on the part of the state toward cities, counties, and other units of local government rests on the recognition that the credit and financial reputation of the state and of all its other local governments are adversely affected by a credit failure or fiscal breakdown of any local government anywhere in the state.

Draft proposals, to carry out the foregoing recommendations are presented below. All but two of these are statutory in nature. They are: (1) establishment of a state agency for improved local fiscal management; (2) state intervention in local government financial emergencies; (3) establishment of improved and standardized accounting, auditing, and reporting; (4) repeal of constitutional restrictions on local borrowing (proposed constitutional amendment); (5) state review and assistance for local borrowing; (6) removal of constitutional restrictions on state borrowing; (7) state assistance in local tax enforcement; (8) exchange of tax records and information; (9) state aid administration; (10) investment of idle funds; (11) pooled insurance; and (12) public hearings on state and local budgeting.

Personnel Management. Personnel administration and management in local government has assumed drastically increased political, fiscal, and administrative importance in recent years. The causative factors include: (1) rapidly increasing employment in the public sector with local government employment reaching 11-million in 1971-72 and an estimated 12-million by 1975; (2) legal, public opinion, and administrative necessities for greatly increasing the opportunities of minority races and women to achieve appointment and advancement in the public service; (3) the rapid growth of public employee unions, and collective bargaining during the 1960-75 period; (4) increasingly complex and technical skills being required of many public employees; (5) a growing public demand for citizen participation in government decisions placing a much higher premium than previously upon qualities of communication and interpersonal relations; (6) the rapid growth in coverage and level of benefits in public employee retirement systems (membership growth from 1962-72 from 5 to 9-million, assets from \$25 to \$70-billion and benefit payments from \$1.5 to \$5-billions, annually); and (7) the political temptation facing local government officials when bargaining with employees to abandon restraint in wage and salary settlement thereby avoiding tax increases and enriching retirement benefits that will come due in future years and perhaps undermine the actuarial soundness of the local retirement system.

For a number of years the Advisory Commission on Intergovernmental Relations has given intermittent attention to local government personnel administration. In the mid-60s the Commission urged that state governments begin to take a more vigorous approach in providing technical assistance to local governments for improving their systems of personnel administration, consolidating and better integrating state and local retirement systems, and assuring intrastate reciprocity in the transferability of retirement rights of employees moving from one local government employer to another or from local government to state government and *vice versa*. In 1969, the Commission issued a comprehensive report on *Labor-Management Policies for State and Local Government*. In its 1973 report on *City Financial Emergencies*, the Commission concluded that underfunded, locally administered retirement systems pose an emerging threat to the financial health of local governments. The Commission proposed that locally administered retirement systems be strictly regulated by state government or alternatively, be consolidated into a single state administered sys-

tem. The Commission urged that, at a minimum, states require substantially full funding of all local systems based on a reliable actuarial computation of funding requirements.

State legislative proposals to carry out the foregoing intergovernmental policy objectives are set forth below; they comprise: (1) local government personnel administration; (2) regulation of local retirement systems; (3) transferability of public employee retirement rights; (4) public labor-management relations (including alternative drafts for "meet and confer" and "collective bargaining" approaches); (5) internal conduct of public employee organizations; and (6) state mandating of local employment conditions.

4.1 Fiscal Management

4.101 STATE STUDY COMMITTEE ON LOCAL FISCAL MANAGEMENT¹

States provide the basic constitutional and statutory authority for the operation of local government. They have the broadest scope of activity and, oftentimes, the best ability and resources to provide assistance in areas of local government needs. There is no need more broadly effective or functionally basic than a proper financial system. Furthermore, the credit and financial reputation of the state and of all the other local governments in the state are adversely affected by poor fiscal management or a credit failure of one unit. Consequently, state governments should assume prime responsibility for preventing and remedying poor local financial management.

The following suggested state legislation recognizes that the basic problem of providing assistance in this area is not necessarily a lack of statutory authority, but rather a failure in communication and an inability to provide a high enough priority for the activity. Therefore, the legislation creates a broadly based advisory committee to provide both communication and encouragement to the appropriate state agency in this vitally needed area. Other aspects of state activity going beyond a passive assistance role are presented in draft legislation, *State Technical Assistance for Local Governments* and *State Department of Community Affairs*.

In addition, suggested state legislation is presented for *State Assistance to Local Debt Management*, *State Intervention in Local Government Financial Emergencies*, and *Improved and Standardized Accounting, Auditing, and Reporting*.

Section 1 creates an advisory committee on local financial management, and delineates its membership and duties, including publication of a state manual on accounting and other financial management systems, and the provision of training or educational aids. *Section 2* provides for an appropriation from the state general fund.

Sections 3 and 4 provide for separability and effective date clauses, respectively.

¹Derived from: Advisory Commission on Intergovernmental Relations, *The Problem of Special Districts in American Government*, Report A-22 (May, 1964), and *City Financial Emergencies: The Intergovernmental Dimension*, Report A-42 (Washington, D.C.: U.S. Government Printing Office, July, 1973).

Suggested Legislation

[AN ACT PROVIDING AN ADVISORY COMMITTEE TO PROVIDE NEEDED COMMUNICATION AND ASSISTANCE IN SETTING PRIORITIES FOR IMPROVED LOCAL FINANCIAL MANAGEMENT PRACTICES]

(Be it enacted, etc.)

1 SECTION 1. [*Advisory Committee on Local Financial Management Practices.*]

2 (a) It is the intent of the [*legislature*] to create an advisory body for the purpose of advising the
3 governor, [*legislature*], and state agencies on appropriate executive and statutory measures to imple-
4 ment fully a modern financial management system, including the type and content of local govern-
5 ment fiscal reports to the state.

6 (b) There is hereby created the [*advisory committee on local financial management practices*] to
7 consist of [15 members] as follows:

8 (1) [two] members of the [*senate*] appointed by the [*president of the senate*];

9 (2) [two] members of the [*house*] appointed by the [*speaker of the house of representatives*];

10 (3) [one] member from the following organizations appointed by the governor based on
11 nominations from the organization:

12 (i) municipal finance officers of [*state*];

13 (ii) [*county clerks and comptrollers'*] association of [*state*];

14 (iii) [*state*] association of certified public accountants;

15 (iv) [*state*] association of [*county commissioners*];

16 (v) [*state*] league of cities; and

17 (vi) other.]

18 (4) the state [*comptroller, chief state school officer, auditor general, and secretary of the de-*
19 *partment of community affairs, or other appropriate state officials*] or their designees, as *ex officio*
20 members; and

21 (5) [two] citizens of the state appointed by the governor.

22 (c) It shall be the duty of the [*advisory committee*] to:

23 (1) study in detail the existing financial management systems in [*state's*] local governments;

24 (2) recommend any statutory changes necessary to improve and assist the development of
25 sound local government financial management practices;

26 (3) review existing local and state financial reporting procedures and recommend any statu-
27 tory or administrative changes necessary to improve and further develop sound financial reporting
28 to local and state officials as well as to the general public;

1 (4) develop financial data and other information, along with analytic procedures for use in
2 preparing financial statements on the impact of changes in local governmental services and activi-
3 ties, including changes in local personnel costs resulting from collective bargaining procedures;

4 (5) develop a manual of guidelines for local government accounting and other financial man-
5 agement systems; and

6 (6) develop and assist in implementing training programs and educational aids, consistent
7 with the principles and guidelines contained or to be contained in the proposed manual.

8 (d) The [committee] shall meet initially upon the call of the governor or the [presiding officer].

9 (e) The [committee] shall hold such meetings at such locations within the state as it deems
10 necessary. Meetings of the [committee] shall be public. Agencies of state
11 and local government shall furnish such information and data as requested by the [committee].

12 (f) Members of the [committee] shall serve without compensation. Members and employees of
13 the [committee] shall be paid for travel and *per diem* as provided by law.

14 (g) The [appropriate state agency] shall provide staff to the [committee] and the [appropriate state
15 officer], or his designee, shall be [presiding officer] of the [committee].

16 (h) The [advisory committee] shall report its findings and the status of the development of its
17 manual to the governor and [legislature] not later than [30 days] prior to the beginning of the next
18 regular session of the legislature.

19 (i) No later than [date], the [advisory committee] shall publish its manual along with training or
20 education aids to improve and assist the development of sound local financial management prac-
21 tices.

22 SECTION 2. *Appropriation.* In order to carry out the provisions of this act, there is hereby ap-
23 propriated from the state general fund to the [advisory committee on local financial management
24 practices] the sum of [amount] for the [dates] fiscal year.

25 SECTION 3. *Separability.* [Insert separability clause.]

26 SECTION 4. *Effective Date.* [Insert effective date.]

4.102 STATE INTERVENTION IN LOCAL GOVERNMENT FINANCIAL EMERGENCIES¹

When outside assistance or intervention is required in local fiscal affairs, state governments should assume prime responsibility because the state provides the basic constitutional and statutory authority for the operation of local governments. A financial emergency occurring in even one unit of local government can cause serious damage to the credit of governments throughout the state. States, therefore, should establish by statute a set of guidelines to determine whether a city's financial condition necessitates state intervention.

This draft legislation assigns a state agency to remedy local financial emergencies. The proposed law specifies critical points for determining when remedial state action is needed and sets forth the procedures to be followed to restore the financial integrity of such local governments. The draft legislation should be considered jointly with the proposed legislation contained in 4.101, 4.103, 4.105 and 4.202, bills which promote sound local financial management by strengthening and improving municipal accounting, reporting, and auditing and provide for public reporting on local pension-retirement funds.

It is essential for each state to know under what conditions a city will be deemed to have reached a financial crisis and exactly what steps it can expect the state to take under those circumstances. Past experiences, both in the Depression years and in more recent times, have shown that in the absence of standby legislative authority, both cities and states waste much valuable time debating the need to take action and in obtaining necessary legislative authority. While these decisions are being made, the financial emergency steadily worsens. The framework for state action on these problems is legislation along the lines of this draft bill.

Section 1 sets out the purpose of the act and *Section 2* gives the definitions of the terms used.

Section 3 mandates those conditions one or more of which shall require the appropriate state agency to declare a financial emergency to exist in a unit of local government.

Section 4 authorizes those actions the agency may take to correct any of the conditions mandated in *Section 3*, which caused the financial emergency in the unit of local government and to assure that the credit standing of other units of local government are not adversely affected.

Section 5 provides for the declaration of a financial emergency to be withdrawn and revoked under specified conditions.

Section 6 requires the agency to represent the interests of the state and all units of local government in any proceedings under the *Federal Bankruptcy Act*.

Section 7 nullifies any part of any special act, municipal charter, or other law in conflict with the act and regulations.

Sections 8 and 9 provide for separability and effective date clauses, respectively.

¹Derived from: Advisory Commission on Intergovernmental Relations, *City Financial Emergencies: The Intergovernmental Dimension*, Report A-42 (Washington, D.C.: U.S. Government Printing Office, July, 1973).

Suggested Legislation

**[AN ACT TO PROVIDE FOR STATE INTERVENTION
IN LOCAL GOVERNMENT FINANCIAL EMERGENCIES]¹**

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* The purpose of this act is:

2 (a) to preserve and protect the fiscal solvency of units of local government through the improve-
3 ment of local financial management and the avoidance of financial obligations that exceed the capacity
4 of the local government;

5 (b) to insure that the financial mismanagement of one unit of local government does not adversely
6 affect the opportunity and the cost of borrowing by other units of local government; and

7 (c) to provide remedial financial and technical assistance from state government in the event of a
8 local financial emergency.

9 SECTION 2. *Definitions.*

10 (a) "Agency" means [*appropriate state agency*].

11 (b) "Special district" means a unit of special government created pursuant to general or special
12 law for the purpose of performing prescribed specialized functions within limited boundaries.

13 (c) "Unit of local government" means a county, city, borough, village, [town, township] special
14 district, or any other political subdivision of the state.

15 SECTION 3. *Declaration of Financial Emergency.* The agency shall by rule, after notice and
16 hearing [*as provided by the state administrative procedures act*], declare a financial emergency to exist
17 in any unit of local government upon a determination that one or more of the following conditions
18 have occurred.

19 (a) The unit of local government fails, within the same fiscal year in which a loan or debt service
20 payment is due, to pay loans from banks or principal or interest due on notes or bonded debt in full
21 within 28 days of the due date.

22 (b) The unit of local government for a period of 28 days or more fails to transfer to the appropri-
23 ate agency:

24 (1) taxes withheld on the income of employees; or

25 (2) employer and employee contributions for:

26 (i) Federal social security; or

27 (ii) any pension, retirement, or benefit plan of an employee.

28 (c) The unit of local government fails for a period of 28 days to pay:

¹Suggested short title: *Local Government Financial Emergency Prevention Act.*

1 (1) wages and salaries owed to employees; or

2 (2) pension and retirement benefits owed to former employees.

3 (d) The total amount of all forms of non-bonded debt of the unit of local government due and
4 payable at the end of the fiscal year, less reserves for payment of same, is in excess of 10 percent of
5 the total expenditures of the unit of local government in the fiscal year.

6 (e) The unit of local government fails to fund any pension program in accordance with its plan
7 filed pursuant to [*applicable state law*].

8 SECTION 4. *Remedy of a Local Financial Emergency.* The agency is authorized to take the
9 following actions with respect to any unit of local government in which a financial emergency has
10 been declared:

11 (a) to make an analysis of all factors and circumstances contributing to the financial condition of
12 the unit and to recommend steps to be taken to correct such conditions;

13 (b) to amend, or revise, or to approve or disapprove the budget of the unit and to limit the total
14 amount of funds appropriated or expended during the balance of the fiscal period and during the peri-
15 od of financial emergency;

16 (c) to require and to approve or disapprove, or to amend or revise a plan of liquidating current
17 debt;

18 (d) to require and prescribe the form of special reports to be made by the finance officer or
19 governing body of the unit to the governing body, the creditors, the agency, or the public;

20 (e) to have access to all records and books of account and to require under the procedures of
21 [*applicable state law*] the attendance of witnesses and the production of books, papers, contracts, and
22 other documents relevant to an analysis of the financial condition of the local unit;

23 (f) to approve or disapprove any appropriation, contract, expenditure, or loan, the creation of any
24 new position, or the filling of any vacancy in a permanent position by any appointing authority;

25 (g) to approve or disapprove payrolls or other claims against the unit prior to payment;

26 (h) to act as an agent of the unit in collective bargaining with employees or representatives and to
27 approve any agreement prior to its becoming effective;

28 (i) to appoint a local administrator of finance to exercise the authority of the agency with respect
29 to the unit and to perform duties under the general supervision of the agency;

30 (j) to employ or contract for, at the expense of the unit of local government, such auditors and
31 other personnel as may be necessary to carry out the provisions of this act;

32 (k) to require compliance with orders of the agency by court action if necessary; and

33 (l) to provide a temporary cash loan or the guarantee of a loan from private sources sufficient
34 to the immediate needs of the city.

35 SECTION 5. *Cessation of Local Financial Emergency.* The declaration of a local financial emer-

1 agency in a unit of local government shall be withdrawn and revoked if the unit of local government
2 completes [two] fiscal years in which none of the conditions enumerated in Section 3 occurs.

3 SECTION 6. *Federal Bankruptcy Act.* The agency shall represent the interests of the state and
4 all units of local government in any proceedings under the *Federal Bankruptcy Act* which pertain to
5 the financial distress of any unit of local government and is further authorized to perform any admin-
6 istrative or supervisory function requested by the court as a part of, or pursuant to, such proceedings.

7 SECTION 7. *Resolution of Conflict.* Any word, sentence, phrase or provisions of any special act,
8 municipal charter, or other law that prohibits or restricts a unit of local government from complying
9 with this act or any rules or regulations promulgated hereunder is hereby nullified and repealed to the
10 extent that it is in conflict with the act and regulations.

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

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

4.103 IMPROVED AND STANDARDIZED ACCOUNTING AUDITING, AND REPORTING¹

The narrow margin of municipal financial flexibility represents a continuing challenge to state and local officials to manage municipal affairs prudently. Budgetary stringency in and of itself need not cause an emergency if a city's fiscal controls are in good working order, but cities lack adequate accounting and reporting systems.

As a consequence of inadequate accounting and reporting, some cities have drifted into a financial emergency without realizing how serious their problems had become. Lacking adequate financial records, some local governments have been too slow in taking steps to avert a potential financial emergency (such as the enactment of a tax rate increase or a reduction in services). Where financial records fail to reflect the full cost of locally administered retirement systems, it can be predicted confidently that a local government will impair its financial health.

Some states have established a state agency with responsibility for assisting local governments in their financial management. The objective of the agency is to identify emerging local fiscal problems and to initiate steps to remedy any adverse local fiscal situation. The state agency can also shield the city from pressures to take unsound financial actions.

To provide imaginative and persistent efforts to improve local financial management practices, the state agency must be competently staffed with sufficient resources and political support. Its efforts should involve both the local government technical personnel and the state educational system in improving local practices. Local officials must also be made aware of the need and the priority they must give to improvement.

The following suggested state legislation, coupled with draft statutes 4.101, *State Study Committee on Local Fiscal Management*, and 4.102, *State Intervention in Local Government Financial Emergencies*, provides the basis for state activity and assistance in local financial management. The draft is adapted primarily from recent Florida law,² which in turn drew upon statutes of North Carolina, Pennsylvania, and Wisconsin.

Section 1 defines terms used in the act.

Section 2 requires every unit of local government to submit a financial report for the preceding fiscal year to the appropriate state agency which shall use the information to provide a report to the governor and legislature. It also provides procedures for the agency to follow should a unit of local government fail to file a report.

Section 3 mandates a uniform fiscal year for all units of local government and authorizes the state agency to make reasonable rules and regulations regarding accounting practices and procedures.

Section 4 and 5 provide separability and effective date clauses, respectively.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Investment of Idle Cash Balances by State and Local Governments*, Report A-3 (January, 1961); *State Constitutional and Statutory Restrictions on Local Government Debt*, Report A-10 (September, 1961); *State Aid to Local Government*, Report A-34 (April, 1969); *City Financial Emergencies; The Intergovernmental Dimension*, Report A-42 (Washington, D.C.: U.S. Government Printing Office, July, 1973).

²Chapter 218, *Florida Statutes*.

Suggested Legislation

[AN ACT PROVIDING FOR IMPROVED AND STANDARDIZED LOCAL GOVERNMENT ACCOUNTING, AUDITING, AND REPORTING AND STATE ASSISTANCE THEREFOR]¹

(Be it enacted, etc.)

1 SECTION 1. *Definitions.* As used in this part, except where the context clearly indicates a dif-
2 ferent meaning:

3 (a) "Department" means the [appropriate state agency].

4 (b) "Unit of local government" means a county, municipality, [town, township, borough, village]
5 or special district.

6 SECTION 2. *Financial Reporting; Units of Local Government.*

7 (a) Every unit of local government shall submit to the department a copy of a financial report
8 covering its operations during the preceding fiscal year within [90] days after the close of the fiscal
9 year. The financial report shall contain such information and be in such form as may be required by
10 the department.

11 (b) The department shall file a report annually on or before [March 1] with the governor and
12 [legislature] showing the revenues, both locally derived revenues and intergovernmental transfers, and
13 expenditures of each unit and any additional data or analyses thereof as may be developed by the
14 department.

15 (c) Failure of a unit of local government to file timely a copy of its financial report shall, in addi-
16 tion to any other penalties provided by law, authorize the department to employ personnel or send de-
17 partmental personnel to such unit of local government in order to complete and file the financial
18 report. The expenses related to the completion and filing of the financial report shall be charged to
19 the unit of local government. [Upon failure by the unit to pay such charge within [15 days] of billing,
20 the department shall so certify to the [chief state fiscal officer] who shall forward the amount certified
21 to the department from any state funds due to the unit of local government under any revenue
22 sharing or tax sharing fund.] The department shall include in its annual report a listing of all units
23 failing to file a report and of those units for which the department provided a report pursuant to
24 this subsection.

25 SECTION 3. *Units of Local Government; Establishment of Uniform Fiscal Years and Accounting*
26 *Practices and Procedures.*

¹Suggested short title: *Uniform Local Government Financial Management and Reporting Act.*

1 (a) Every unit of local government shall begin its fiscal year on [October 1] and end on [September
2 30].

3 (b) The department is authorized to make reasonable rules and regulations regarding uniform
4 accounting practices and procedures by units of local government in this state, including a uniform
5 classification of accounts, to assure the use of proper accounting and fiscal management techniques by
6 such units and to assure comparability of fiscal data contained in reports filed pursuant to Section 2.

7 (c) The department [or other appropriate state agency] is authorized to make such reasonable
8 rules and regulations regarding uniform audit procedures, including performance or management
9 audits, for units of local government.

10 (d) The provision contained in subsection (a) shall apply to all fiscal years beginning after [date].
11 The department may, upon the request of a unit of local government and a showing of inability to
12 conform by [date], extend the time of compliance for [one] year.

13 (e) Any word, sentence, phrase, or provision of any special act, municipal charter, or other law
14 that prohibits or restricts a unit of local government from complying with this section or any rules
15 or regulations promulgated hereunder is hereby repealed to the extent of such conflict.

16 SECTION 4. *Separability.* [Insert separability clause.]

17 SECTION 5. *Effective Date.* [Insert effective date.]

4.104 STATE CONSTITUTIONAL RESTRICTIONS ON LOCAL BORROWING POWERS¹

States have legitimate concern for the proper exercise of borrowing powers by their local governments. The prudent use of debt to finance local government capital outlays frequently indicates the extent of responsible and responsive local fiscal management.

In many states, existing constitutional and statutory restrictions on the borrowing powers of local governments in terms of the assessed valuation of locally taxable property, coupled with requirements for specific referendum approval of proposed bond issues, actually handicap local governments in supplying their citizens and industries with public services and community facilities indispensable to growth and prosperity. They constitute a serious impediment to local selfgovernment, handicap the selfreliance of local communities, and impel them toward increased financial dependence on the state and the Federal government.

These restrictions are the hangover of the reaction to abuses of county and municipal borrowing power dating back as much as a century. The concept of limiting local debt has been rendered obsolete by subsequent developments in the quality and scale of local governments and their financing, in the competence of public finance officials, in more widespread citizen oversight over the conduct of local government, and in the market mechanism for the sale of municipal securities.

While these restrictions may restrain the total volume of local borrowing, any benefits are vastly outweighed by their tendency to lead local governments into devious taxing, borrowing, and financial practices and by their undesirable effect on intergovernmental relationships and on the structure of local government. In resorting to revenue bond financing to evade debt limits, local governments pay higher interest rates, unnecessarily adding to the cost of government. Where local debt is limited to a percentage of assessed valuation, the amount of the limitation tends to be determined by local assessment practices.

State limitations on the borrowing powers of local governments should be confined to basic principles and relationships of enduring and basic importance. States are urged to repeal constitutional restrictions limiting local government indebtedness by reference to the local base for property taxation. The following suggested constitutional amendment removes from the state constitution any details regarding local government borrowing powers and gives the legislature authority to establish and revise local debt policy through the normal legislative process.

¹Derived from: Advisory Commission on Intergovernmental Relations, *State Constitutional and Statutory Restrictions on Local Government Debt*, Report A-10 (Washington, D.C.: Government Printing Office, September, 1961).

Suggested Legislation

[A CONSTITUTIONAL AMENDMENT TO REMOVE CONSTITUTIONAL RESTRICTIONS ON LOCAL GOVERNMENT DEBT [AND TO REQUIRE ISSUANCE OF ONLY GENERAL OBLIGATION DEBT]]

1 SECTION [1], [*Removal of Restrictions on Local Government Debt.*]

2 (a) Subject only to the restrictions imposed by this section or by the [legislature] consistent
3 herewith, the [local governments] [political subdivisions] of the state may borrow amounts of money
4 necessary to meet their duties and responsibilities after a permissive referendum, on petition,
5 decided by a simple majority vote.

6 (b) The [legislature] may prescribe the manner and procedure of local borrowing and, if it chooses
7 to set debt limits for units of local government, shall define such limits in terms of a percentage of total
8 local revenue, as defined by law, over a specific period immediately preceding the year of borrowing.
9 Any debt limits shall apply equally to general obligation and selfliquidating or selfsupporting debt.

10 (c) All provisions of the constitution existing on the date of adoption of this amendment in con-
11 flict herewith shall be repealed to the extent of conflict.

12 [*Add necessary language to submit amendment to electorate.*]

4.105 STATE ASSISTANCE TO LOCAL DEBT MANAGEMENT¹

States have an inescapable interest in, and concern with, the quality of debt management practices of their local governments. Each community's practice is a matter of statewide concern because a blemish on its credit standing, perhaps on only a single bond issue, tends to affect the money market's judgment of other local bond issues in that state. It is appropriate and desirable, therefore, that state governments provide technical assistance in debt management to their cities, counties, and other local units.

Local governments, particularly small ones, can encounter high borrowing costs — the rate of interest they pay — because the official statements which announce their offer to sell bonds and invite underwriters' bids do not contain adequate economic, financial, and other information to permit sound judgment as to the quality of their credit.

Potential buyers of local government bonds need to be able to appraise the borrowing jurisdictions' ability to meet its debt obligations. They need historical data on revenues by sources, tax rates and collection experience, expenditures by purposes, debt outstanding, and debt service requirements. They need to be made aware of limitations on local taxing and borrowing powers. They need data to permit an appraisal of the jurisdiction's prospects for economic growth and development and, in the case of revenue bond offerings, additional information bearing on the ability of the particular activity, say a water system, to support additional debt.

Jurisdictions that borrow infrequently often lack the special staff and skills required to prepare a debt offering "prospectus." Some smaller jurisdictions may even lack a comprehensive official financial statement. As a result, these local governments are obliged to sell their bonds on less favorable terms than their relatively strong economic and financial condition, if known and recognized, might warrant.

To help local governments meet their capital outlay requirements at the lowest possible cost, this legislation establishes a state agency to provide technical and other assistance in managing local debt. *Section 1* sets out the purpose of the bill. *Section 2* defines terms used in the act. *Section 3* authorizes an agency designated by the legislature to render technical and advisory assistance. *Section 4* permits the agency, on request, to render an opinion on the legality of the proposed local debt.

Sections 5 and 6 provide optional language to enable the state to package a number of local issues and guarantee such bonds. These provisions would facilitate the marketing of local issues without actually providing a market under a "bond bank" such as has been established in Vermont. Although some argue that state guarantees of local debt issues may foster and maintain governmental fragmentation, the Commission's recommendations for continuing review of the viability of local government units² would be directly responsive to those considerations.

Section 7 relates the maximum interest rate permitted to be offered on local bonds to a range related to the operation of the security market. To provide for extraordinary market conditions, the act permits the state regulatory agency to allow exceptions upon appeal from the local government proposing a bond issue.

Sections 8 and 9 enumerate the powers and duties of the agency.

Section 10 calls for the cooperation of other state agencies to carry out this act.

Sections 11 and 12 are for separability and effective date clauses.

¹Derived from: Advisory Commission on Intergovernmental Relations, *State Constitutional and Statutory Restrictions on Local Government Debt*, Report A-10 (September 1961) and *Federal Approaches to Aid State and Local Capital Financing*, Report A-37 (Washington, D.C.: U.S. Government Printing Office, September, 1970).

²See *Substate Regionalism and the Federal System*, Vols. I (October 1973), III (February 1974), Advisory Commission on Intergovernmental Relations, and *City Financial Emergencies: The Intergovernmental Dimension*, Report A-43 (Washington, D.C.: U.S. Government Printing Office, July 1973).

Suggested State Legislation

**[AN ACT TO PROVIDE STATE ASSISTANCE AND REGULATION
REGARDING LOCAL GOVERNMENT DEBT OFFERINGS]**

(Be It Enacted, etc.)

1 SECTION 1. *Purposes.* It is the intent of this act to facilitate, through state technical and ad-
2 visory assistance and state standards, the marketing of local government long term debt obligations at
3 the lowest possible net interest cost.

4 SECTION 2. *Definitions.* The following words or terms when used in this act shall have the
5 following meanings:

6 (a) "Chief financial officer" means the clerk, the comptroller, treasurer, director of finance, or
7 other local government official charged with managing the fiscal affairs of a unit of local government.

8 (b) "Agency" means the [*appropriate state agency*].

9 (c) "Governing body" means the body or board charged with exercising the legislative authority
10 of a unit of local government.

11 (d) "Long term debt" means debt payable more than one year after date of issue or incurrence,
12 issued pursuant to the laws authorizing local government borrowing.

13 (e) "Unit of local government" means a county, municipality, or special district as defined in
14 [*appropriate state law*].

15 SECTION 3. *Authorization for State Technical and Advisory Assistance.*

16 (a) The agency is authorized to provide technical and advisory assistance regarding the issuance
17 of long term debt to those local governments whose governing bodies request such assistance. Such
18 assistance may include (1) advice on the marketing of long term debt by local government; (2) advisory
19 review of proposed local government long term debt issues, including the rendering of opinions as to
20 their legality; (3) conduct of training courses in long term debt management for local financial officers;
21 and (4) advice on the use by local governments of systems of local budgeting, accounting, auditing,
22 and reporting to improve local financial management.

23 (b) The agency may establish fees to cover the cost of such services which shall be paid by the
24 unit of local government requesting such service. Such fees shall be deposited to the credit of the
25 appropriation or appropriations from which the cost of providing the services has been paid or is to
26 be charged.

27 SECTION 4. *Advisory Review of Proposed Local Government Long Term Debt Issues.* At the
28 request of the governing body of any local government, the agency is authorized to review a proposed
29 long term debt issue and to render an advisory opinion on the legality of the proposed issue. Any

1 request for an advisory legal opinion shall be submitted to the agency in such form and with such
2 information as the agency may require.

3 SECTION 5. *State Sale of Local Government Long Term Debt Issues.*

4 [(a)] At the request of the governing body of any local government, the agency is authorized to
5 market such local government's long term debt issues by preparing such issues for sale, advertising
6 for sealed bids, receiving bids at its offices, and making the award to the bidder that offers the most
7 favorable terms. The agency may offer for concurrent sale the issues of several local governments.
8 State sale of a local long term debt issue [under this subsection (a)] shall in no way imply a state
9 guarantee of such issue.

10 [(b) (1)] The agency may, upon request of the governing body of any local government, issue
11 state bonds for which is pledged the revenues and/or the full faith and credit of any one or more units
12 of local government resulting from one or more agreements between a unit of local government and
13 the agency. The bond as issued may be further guaranteed, at the discretion of the agency, as pro-
14 vided in Section 6.

15 (2) The agency may enter into loan agreements with units of local government or may agree
16 and commit to purchase fully marketable bonds of units of local government as may be necessary for
17 the purposes of this subsection.

18 (3) Prior to issuance of any state bond, the [*appropriate state official or board*] shall deter-
19 mine that the revenues or pledges of full faith and credit resulting from the agreements upon which a
20 state bond is issued pursuant to paragraph (1) are sufficient to meet fully the fiscal requirements of
21 the state bond proposed to be issued.

22 (4) The provisions of the [*state bond act*] shall be applicable to all state bonds issued pursu-
23 ant to this subsection where not in conflict with the provisions hereof. In cases of conflict, the provi-
24 sions of this act shall be controlling. The agency shall have power to fix, establish, and collect fees,
25 rentals, or other charges for the use or benefit of any facilities financed hereby or may delegate such
26 power to any unit of local government under such terms and conditions and for such periods as may
27 be mutually agreed.]

28 [SECTION 6. *State Guarantee.*¹

29 (a) (1) In the event that a unit of local government fails to either make an annual appropriation
30 for amounts required for payment of principal and interest on bonds held by the agency or its portion
31 of bonds issued by the agency pursuant to an agreement with such unit or fails to actually make such
32 payment, the agency shall certify to the [*appropriate state official*] that the unit of local government
33 has failed to meet its obligations. Such certificate shall be in such form as the agency deems desirable,

¹In some states, a constitutional amendment may be necessary to implement all or part of this optional section.

1 but shall include the exact amount of interest and principal required to satisfy the unit's obligations
2 to the agency.

3 (2) The *[appropriate state official]*, upon receipt of the agency's certification, shall withhold
4 from the unit of local government any state aid payable to such unit to the extent available and neces-
5 sary to meet the certified amount of interest and principal and shall immediately pay over to the
6 agency the amount so withheld.

7 (3) Pending payment to the agency by the *[appropriate state official]* of any such state aid
8 withheld from a unit of local government, the agency may, if payments of interest and principal are
9 due on the agency's bonds, appropriate an amount sufficient to meet such amounts withheld from a
10 unit from its debt service reserve fund. Any such amount appropriated from the debt service reserve
11 fund shall be reimbursed upon receipt by the agency from the *[appropriate state official]* of any
12 state aid withheld.

13 (b) State bonds issued pursuant to this act primarily pledging the project revenues and/or full
14 faith and credit of one or more units of local government pursuant to one or more agreements entered
15 into by the agency and such unit or local bonds marketed by the agency may be further supported, in
16 the discretion of the agency, by a debt service reserve fund which shall be continuously maintained in
17 an amount equal to the minimum debt service requirement and which, if it fails to be maintained at
18 such a level, the agency shall certify to the governor as the amount necessary to maintain the fund at
19 the minimum level. The governor shall include such amount in his budget request, however, the legis-
20 lature is not obligated to appropriate any such amount.

21 (c) State bonds issued pursuant to this act primarily pledging the project revenues and/or full
22 faith and credit of one or more units of local government pursuant to one or more agreements entered
23 into by the agency and such unit or local bonds marketed by the agency may be further guaranteed, in
24 the discretion of the agency, by a state debt service guarantee fund into which shall be paid:

- 25 (1) any moneys appropriated and made available by the state for such purpose;
26 (2) any proceeds of fees or charges made by the agency for such purpose;
27 (3) any moneys directed to be transferred by the agency to such fund;
28 (4) any other moneys which may be made available to the agency for the purpose of such
29 fund, including reimbursement, from any other source or sources; and
30 (5) interest earnings on the investment of any balance in the fund.

31 (d) State bonds issued pursuant to this act primarily pledging the project revenues and/or full
32 faith and credit of one or more units of local government pursuant to one or more agreements entered
33 into by the agency and such unit may, in the discretion of the agency and not to exceed in the aggre-
34 gate [] percent of the total state tax revenues, be further secured by a pledge of the full faith and
35 credit of the state.]

1 SECTION 7. *Maximum Net Interest Cost of Local Government Bond Issues.*

2 (a) A local government shall not issue bonds at a net interest cost that exceeds [] times¹ the
3 current yield rate of the highest grade bonds issued by local governments in this state during the
4 month preceding the month in which sealed bids are opened. The agency on the last day of each
5 month shall promulgate the average yield rate of the highest grade bonds issued by local government
6 in this state during the preceding months.

7 (b) A local government may file an appeal with the agency for an exception, and the agency may
8 grant an exception if market conditions or considerations of general state policy warrant.

9 SECTION 8. *Powers and Duties of the Agency.* The agency shall have the following powers
10 and duties:

11 (a) to require such reports from local governments as will enable it adequately to provide the
12 technical and advisory assistance authorized by this act. The reports shall provide the necessary
13 information for a complete file on local government long term debt, which shall be kept open for
14 public inspection at the agency offices;

15 (b) to encourage, conduct, or participate in training courses in financial management of local
16 government for the benefit of local officials, and in connection therewith, to cooperate with the [*state*
17 *comptroller and department of community affairs,*] associations of public officials, business and pro-
18 fessional organizations, university faculties, or other specialists;

19 (c) to conduct studies in debt management, and in the evaluation of the relative terms of bids for
20 the purchase and marketing of state and local debt offerings;

21 (d) to employ or contract for the services of personnel necessary to carry out the provisions of
22 this act, subject to the provisions of [*state budget law*]; and

23 (e) to assist the [*state department of community affairs*] in compiling, analyzing, and publishing
24 annually a report on state technical assistance and advisory activities related to local debt management
25 and statistical information on local government long term debt issued and retired during the previous
26 fiscal year and outstanding at the close of the previous fiscal year.

27 SECTION 9. *Cooperation by Other State Agencies.* All departments, divisions, boards, bureaus,
28 commissions, or other agencies of the state government shall provide, consistent with their statutory
29 responsibilities, such assistance and information as the agency may require to enable it to carry out
30 its duties under this act.

31 SECTION 10. *Standards for Official Statements on Local Long Term Debt Issues.*

32 (a) It is the intent of this section to facilitate the marketing of long term debt issues by local gov-
33 ernments by providing minimum standards as to the kinds of information to be included in ad-

¹This figure should be set at such a level, say 1.4, as to forestall the payment of unreasonable interest rates by local governments.

1 vertising notices and sales prospectuses.

2 (b) The agency is authorized and directed to prepare regulations concerning the minimum content
3 of any notice of sale, advertisements, and prospectuses used for issuance of long term debt by units
4 of local government. Regulations as to the content of such notices and prospectuses may make an
5 appropriate differentiation among types of long term debt issues and types of local government.

6 (c) The *notice of sale* advertisement shall set forth such information, in accordance with the
7 regulations prepared by the agency, as will permit underwriters to submit bids for the purchase of the
8 long term debt issuances of local governments.

9 (d) The prospectus, *notice of sale*, shall include such data in accordance with the regulations pre-
10 pared by the agency as will permit investors and other interested parties to appraise the ability of the
11 borrowing local government to assume the obligation.

12 (e) The chief financial officer of any unit of local government may, at his discretion, include
13 information in the *notice of sale* advertisement and in the prospectus in addition to that specified as
14 the minimum content in regulations issued by the agency.

15 (f) The agency is authorized and directed to prepare and supply standard bid forms to be used by
16 local governments in securing bids from prospective purchasers.

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

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

4.106 REMOVAL OF CONSTITUTIONAL RESTRICTIONS ON STATE BORROWING¹

Because of the financial crises of the 19th century and ill fated state efforts to finance internal improvements, the great majority of states confront severe restrictions on their power to incur debt.

Only nine states (Connecticut, Delaware, Louisiana, Maryland, Massachusetts, Minnesota, New Hampshire, Tennessee, and Vermont) permit their legislatures to borrow without restriction as to amount. The rest limit borrowing under constitutional provisions, or by the requirement of electoral referendum approval, or both.

Today, however, states increasingly are involved along with the Federal government in capital improvement projects, such as airports, hospitals, and university buildings for which debt appropriately could be incurred.

These demands, added to the capital projects a state must finance on its own, have created intense pressure for expanded borrowing authority.

Some states, while not removing debt ceilings entirely, have changed the measurements for limiting the debt. Rather than tying the debt to a specific percentage of the property tax base, which is frequently understated, the constitutions of Georgia and Washington relate the debt to a specified percentage of state tax revenues.

States with tight debt limits frequently resort to revenue bonds, public corporations, lease-purchase agreements, and reimbursement obligations. Revenue bonds which are not backed by a state pledge of general funds for repayment are called non-guaranteed debt.

Use of non-guaranteed debt and other methods to bypass restrictive debt limits has had some undesirable consequences. Because the states do not pledge their credit or taxing power to retire the bonds, they pay higher interest rates. Prompted by the lower interest rates for bonds backed by the full faith and credit of the state, Florida and Virginia constitutions now authorize such backing for revenue bonds issued for limited purposes such as construction of higher education facilities. Frequently, states have had to create, at additional cost, special administrative organizations. Whenever an independent authority administers an activity financed with non-guaranteed debt, it has the further undesirable effect of moving political accountability one step further from the public than when the legislature itself authorizes debt secured by the full faith and credit of the state. States should reexamine constitutional restraints on state borrowing authority to assure that the state is not deprived of any legitimate fiscal power.

The provisions which follow are patterned after the Maryland constitutional convention draft of 1968. The legislature is given authority to incur indebtedness "for any public purpose," to be secured by an irrevocable pledge of the full faith and credit and unlimited taxing power of the state.

The virtue of placing the full faith and credit of the state and its unlimited taxing power behind such indebtedness is that it expresses clearly and precisely the concept of a state debt. This approach strengthens the state's credit by removing ambiguity that has often led to a stream of litigation. The provision in the fourth sentence, which in effect makes the state debt a first charge upon the general funds of the state, also serves to strengthen the state's credit position.

Nothing in this amendment precludes the state or any of its agencies from continuing to issue revenue bonds secured, not by a pledge of the full faith and credit of the state, but by sufficient revenues from the project to amortize the bonds.

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

[REMOVAL OF CONSTITUTIONAL RESTRICTIONS ON STATE BORROWING]

(Be it enacted, etc.)

1 SECTION 1. The *[legislature]* may incur indebtedness for any public capital program prescribed
2 by law. All such indebtedness shall be secured by an irrevocable pledge of the full faith and credit
3 and unlimited taxing power of the state. Unless the law authorizing the creation of an obligation in-
4 cludes an irrevocable pledge, the obligation shall not be considered an indebtedness of the state. If
5 at any time the *[legislature]* fails to appropriate sufficient funds to provide for the timely payment of
6 the interest upon and installment of principal of all state indebtedness, there shall be set apart from
7 the first revenues thereafter received applicable to the general funds of the state a sum sufficient to
8 pay interest and installments of principal. All state indebtedness shall mature within [] years {but in
9 no case longer than the life of the asset for which the indebtedness is incurred}. The *[legislature]* may
10 authorize the issuance of revenue bonds, which may be an indebtedness of the state, but which shall
11 be secured, either in whole or in part, by receipts from the project for which the bonds are issued.

12 SECTION 2. [All parts of the constitution in conflict with this amendment are hereby repealed.]
13 [OR] [Sections *[identify those sections of constitution to be repealed]* are hereby repealed.]

14 SECTION 3. [*Insert appropriate language, consistent with the referendum requirements for*
15 *amending the constitution and with state election laws, for submission of the proposed amendment*
16 *to the electorate.*]

4.107 STATE ASSISTANCE IN LOCAL TAX ENFORCEMENT¹

In addition to property taxes, many local governments impose a variety of other taxes, including sales and income taxes and license fees. In two other pieces of draft legislation (*Authorization for a Local Sales Tax* and *Authorization for a Local Income Tax*), state administration of these two local taxes is provided. A 1970 New York statute (Ch. 170) authorizing state collection of the New York City income tax is an example of state assumption of collection of a tax previously locally administered.

In addition, states can strengthen the finances of local governments by assisting them to collect other taxes imposed at the local level. In its report on *Intergovernmental Cooperation in Tax Administration*, the Advisory Commission on Intergovernmental Relations pointed out that in some situations the state can condition issuance of state licenses and privileges upon compliance with, and payment of, local taxes. Local administration of personal property taxes on automobiles is measurably eased in some states where evidence of their payment is made prerequisite to state registration of motor vehicles. Similarly, states can condition state motor vehicle registration upon payment of the local motor vehicle registration fee.

The opportunities for state support in the collection of local taxes are particularly good with respect to those activities which are subject to licensing by the state. States usually require annual licenses for certain types of business and occupations. For example, alcoholic beverage wholesalers and retailers are generally required to obtain an annual license. The states could require an affidavit that local personal property taxes have been paid as a precondition to alcoholic beverage license renewal. States also require the payment of an annual renewal fee for corporations. As a precondition to the continued exercise of the corporate business, states could require an affidavit certifying that all local personal property and business license fees have been paid. A similar requirement could be made as a precondition to the renewal of professional licenses.

The suggested legislation that follows sets forth a state policy and accompanying procedures for assisting in local tax enforcement.

Section 1 establishes the legislative findings and purpose.

Section 2 authorizes and directs the state tax commissioner to extend technical assistance in tax administration to local governing bodies, executives, and tax officials.

Section 3 requires evidence of payment of local taxes on automobiles to accompany license applications to the state motor vehicle agency. *Section 4* requires evidence of paid-up local property taxes and business licenses to accompany applications for alcoholic beverage licenses. *Section 5* requires similar evidence in applications for incorporation or renewal of incorporation to the state corporation commissioner.

Sections 6 and 7 provide for separability and effective date clauses, respectively.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Intergovernmental Cooperation in Tax Administration*, Report A-7 (Washington, D.C.: U.S. Government Printing Office, June, 1961).

Suggested Legislation

[AN ACT TO AUTHORIZE STATE SUPPORT OF LOCAL TAX ENFORCEMENT]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* The [legislature] finds that effective and equitable enforcement of tax and
2 license ordinances of local political subdivisions of this state would be enhanced through cooperation
3 and support of the agencies of the state government. It is the purpose of this act to provide a policy
4 and administrative framework for such assistance and support by designated agencies of the state.

5 SECTION 2. *Technical Assistance in Tax Administration.* The [director] of [state revenue
6 agency] shall render, upon request and within the limitations of available staff and other resources,
7 professional assistance to the governing bodies, chief executives, and tax officials of political sub-
8 divisions of this state in the formulation and administration of local measures for the imposition and
9 collection of tax and other revenues.

10 SECTION 3. *Automobile Taxes.*

11 (a) The [director] of the [state motor vehicle licensing authority and its agents] shall assure that
12 no vehicle be registered and licensed unless satisfactory evidence [signed statement] [tax receipt]
13 accompanies the application, showing that all county and municipal taxes legally due by the applicant
14 on the vehicle concerned have been paid.

15 (b) [Appropriate penalty provision or reference to a statutory citation providing a penalty for
16 making a false statement on a tax return.]

17 SECTION 4. *Liquor Licenses.* The [director] of [state agency responsible for licensing the sale of
18 alcoholic beverages] shall assure that no license for the sale of alcoholic beverages be issued unless
19 satisfactory evidence [signed statement] [tax receipts] accompanies the application for such license or
20 renewal thereof, showing full payment of all local taxes and license fees to which the applicant is
21 subject.

22 SECTION 5. *Corporation Fees.* The [state corporation commissioner] shall assure that all
23 applications for incorporation or for renewal thereof, are accompanied by satisfactory evidence
24 [signed statement] [tax receipts] showing full payment of all local property taxes and local license
25 fees to which the applicant is subject.

26 SECTION 6. *Separability.* [Insert separability clause.]

27 SECTION 7. *Effective Date.* [Insert effective date.]

4.108 EXCHANGE OF TAX RECORDS AND INFORMATION¹

Administrative cooperation between Federal, state, and local tax administrations has had legislative and executive endorsement, at both state and Federal levels for more than a generation. Its application, however, continues to be limited despite the significant dividends it can yield in terms of increased revenues, enforcement cost economics, and improved taxpayer compliance.

The case for intergovernmental cooperation among state and local tax administrators and between them and the Federal government is selfapparent. Tax information assembled by one can be useful to one or more of the others. Just as taxpayers' respect for Federal tax administration has complementary benefits for state administrations, so improved state and local tax enforcement eases the Federal task.

The exchange of tax records and information among states and between the states and the U.S. Internal Revenue Service is basic to intergovernmental efforts to secure better reporting by taxpayers. The *Revenue Act of 1926* and subsequent Congressional enactments contain explicit authority for giving state tax officials access to Federal tax returns. Nearly all states have entered into agreements with the Internal Revenue Service to provide reciprocal access to tax records. In some states, however, statutory authority for the exchange of tax information with other states and even with their own political subdivisions is either limited or may be completely lacking as to a specific tax.

Accordingly, states are urged to examine their existing statutes relative to the exchange of tax information with tax officials of other jurisdictions so as to insure that they are clear cut and adequate. Consideration might also be given to the enactment of a generally applicable statute which would uniformly authorize the exchange of information as to all taxes imposed in the state instead of enacting such authority separately in connection with each different tax. The suggested legislation limits the exchange of information to jurisdictions which reciprocate the service and undertake to use the information solely for tax enforcement purposes.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Intergovernmental Cooperation in Tax Administration*, Report A-7 (Washington, D.C.: U.S. Government Printing Office, June, 1961).

Suggested Legislation

[EXCHANGE OF TAX RECORDS AND INFORMATION]

(Be it enacted, etc.)

1 SECTION 1. The [*tax commissioner*] at his discretion may furnish to the taxing officials of any
2 other state and its political subdivisions, the political subdivisions of this state, the District of Colum-
3 bia, the United States and its territories, [Canada and the provinces of Canada] any information con-
4 tained in tax returns and reports and related schedules and documents filed pursuant to the tax laws
5 of this state, or in the report of an audit or investigation made with respect thereto, provided that
6 said jurisdictions grant similar privileges to this state and provided further that such information is
7 to be used only for tax purposes.

8 SECTION 2. The political subdivisions of this state may enter into agreements with the [*tax com-*
9 *missioner*] to provide for exchange of tax information authorized by Section 1 of this act.

4.109 STATE AID ADMINISTRATION¹

As states increasingly are involved in the financing of local government functions, the need for each state to systemize its state-local fiscal relations becomes more urgent. State aid to local governments has quadrupled in the past decade and is now (fiscal 1975) approaching the \$40-billion mark.

An effective state-local fiscal partnership requires a state organizational framework within which all state aid programs can be codified, reviewed, and evaluated periodically. To this end, the states should place responsibility in either an executive agency or a joint committee of the legislature for continuing oversight of state aid programs, and establish an information system to provide data on local fiscal needs and resources. (See also *State Study Committee on Improved Local Fiscal Management and Improved and Standardized Accounting, Auditing, and Reporting.*)

The suggested legislation provides for the establishment of both fiscal standards (accounting, auditing, reporting) and performance standards. Performance standards are needed by local program administrators as a basis for carrying out the programs in accordance with the intent of the state policymakers. By the same token, those charged at the state level with reviewing and evaluating grant programs need standards in order to measure results against intended goals.

When enacting new state aid programs or reviewing those already on the statute books, states should require that the aided functions and projects conform to state and areawide planning objectives as well as local plans. Such a requirement will help assure that state financial assistance contributes to statewide and regional goals, produces programs that complement one another, furthers the state's urban development policies, and avoids overlap and duplication of programs.

The organization and structure of local government, its authority to provide public services, and its power to levy and collect taxes to pay for those services in full or in part all are derived from the state. The state has a concurrent responsibility to make sure that the benefits and costs of local governmental services are distributed equitably throughout the state. Too often, state aid and shared revenue formulas are constructed in such a way that state aid serves to prop up and keep alive incorporated areas that are not economically, geographically, and politically viable. One way for states to halt the chaotic spread of special districts and non-viable units of local government is to establish a state boundary adjustment agency to determine whether proposed new incorporations or annexations would result in viable communities and to compel the consolidation or dissolution of non-viable local government units.¹

An equally objectionable side effect of many state aid formulas is that they perpetuate or even increase disparities in fiscal capacity among units of local government by subsidizing wealthy incorporated communities that do not need state aid to provide an adequate level of public services for their residents. (See also *State Revenue Sharing, State Broad Based Sales Tax, and Authorization for a Local Sales Tax.*)

The draft legislation provides for the governor to submit proposals annually to the legislature for improvement of state-local fiscal relations, including revisions of state aid formulas in the light of data on local fiscal needs and resources and on the political and economic viability of local units of government. States should consider amending state aid formulas so as to eliminate or reduce aid allotments to non-viable local units.

Section 1 sets forth findings and a declaration of policy.

Section 2 enumerates those responsibilities to be undertaken by the appropriate state agency in order to provide for an effective system of state aid to local governments.

Section 3 requires conformance of state aided activities to local, regional, and statewide comprehensive and functional plans and authorizes the head of each grant administering agency to issue criteria and guidelines for preparation of local functional plans.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System*, Vols. 1 and 2, Report A-31 (October, 1968), and *State Aid to Local Government*, Report A-34 (Washington, D.C.: U.S. Government Printing Office, April, 1969).

¹See suggested legislation on *Local Government Creation, Dissolution, and Boundary Adjustments*.

Section 4 provides for the governor to make annual proposals to the legislature for improvement of state-local fiscal relations.

Sections 5 and 6 provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT GOVERNING STATE AID ADMINISTRATION]¹

(Be it enacted, etc.)

1 SECTION 1. *Findings and Declaration of Policy.* The [legislature] finds and declares that the
2 present system of state aid to local governments has developed piecemeal, and that a unified system
3 of state aid is urgently needed for the orderly development of a state-local partnership to assure that
4 essential public services are provided in the most effective manner. It is the purpose of this act to
5 establish an organizational and procedural framework governing the formulation, evaluation, and
6 continuing review of all state aid programs; and to establish general policy governing the adminis-
7 tration of state aid.

8 SECTION 2. *State-Local Fiscal System.*

9 (a) In order to provide an effective system of state aid to local governments, the [appropriate
10 state agency]¹ shall:

11 (1) compile and maintain in a unified, concise, and orderly form information about all state
12 programs which involve the distribution of funds to local government, hereinafter referred to as
13 "state aid;"

14 (2) continuously review and evaluate all state aid programs to determine the extent to
15 which they meet fiscal, administrative, and program objectives;

16 (3) evaluate Federal aid programs, including direct Federal-local aid programs, in terms of
17 their compatibility with state objectives and their fiscal and administrative impact on state and local
18 programs;

19 (4) formulate, for consideration and promulgation by the governor, criteria, standards, and
20 procedures to ensure that state aid programs are administered effectively, equitably, and economically
21 and in consonance with statewide policies and priorities. Upon issuance by the governor, such cri-
22 teria, standards, and procedures shall be effective throughout the executive branch of state govern-
23 ment;

24 (5) bring to the attention of the governor the effectiveness, or lack thereof, of the criteria,
25 standards, and procedures issued pursuant to paragraph (4) of this subsection; and

26 (6) develop, in conjunction with other state agencies, an information system to provide
27 data on comparative local fiscal needs and resources. Data provided pursuant to this paragraph shall

¹Suggested short title: *State-Local Fiscal Relations Act of (year)*.

¹Budget or planning agency or department of community affairs or similar agency if such had been established. In addition, some state legislatures may wish to retain the responsibility by delegating it to a joint standing committee.

1 include, but shall not be limited to, the following:

2 (i) total population, as indicated by the last preceding Federal census or other official
3 state population estimate authorized by state law;

4 (ii) total equalized assessed valuation of taxable property, as indicated by the most re-
5 cent official state sources of such data; and

6 (iii) total revenues received by each county and municipality during its most recent
7 fiscal year for which data are available, from state aid, and from all local general revenue sources of
8 each such unit, which for this purpose shall comprise all receipts, exclusive of amounts from borrow-
9 ing, state aid, Federal government grants-in-aid, Federal revenue sharing or block grants, and any
10 charges and earnings derived from, and used in, the operation of water supply, electric power, gas
11 supply, transit system, or other proprietary activities.

12 (b) In reviewing and evaluating state aid programs, the [agency] shall take account of appropri-
13 ate fiscal and performance standards and, where adequate standards are lacking, shall recommend
14 standards to the [appropriate agencies] of the state government. The standards shall include, but not
15 be limited to:

16 (1) accounting, auditing, and reporting procedures;

17 (2) minimum service levels;

18 (3) eligibility of recipient governments and program beneficiaries; and

19 (4) where appropriate, citizen participation and public hearings.

20 (c) To assist in establishing criteria for minimum service levels and eligibility of recipient gov-
21 ernments, the [agency] shall publish a list, with supporting data, which identifies each county and
22 municipality having any or all of the following characteristics:

23 (1) counties with:

24 (i) a population of less than 5,000;

25 (ii) a ratio of total state aid received to total receipts from its own general revenue

26 sources as identified in subsection (a) (6) (iii) of this section at least 50 percent greater than the

27 corresponding average ratio for all county governments in the state;

28 (2) municipalities with:

29 (i) a population of less than 10,000 if located wholly or mainly within a county whose
30 population was more than 50 percent urban, as reported by the last official census of population or
31 estimate thereof, or less than 500 if not wholly or mainly in such a county.

32 (ii) a ratio of state aid to total receipts from its own general revenue sources at least
33 50 percent greater than the corresponding average ratio for all municipal governments in the state;

34 (iii) a *per capita* amount of equalized assessed valuation of taxable property which
35 varies by at least 50 percent from the average *per capita* amount of equalized assessed valuation of the

1 entire county in which the municipality is located;

2 (iv) a *per capita* amount of personal income which varies by at least 50 percent from
3 the average *per capita* amount of personal income of the entire county in which the municipality is
4 located.

5 SECTION 3. *Conformance of State Aid Programs to Comprehensive and Functional Planning*
6 *Objectives.*

7 (a) Every agency administering state aid to local governments shall require that the aided ac-
8 tivities conform to local, regional, and statewide comprehensive and functional plans in accordance
9 with [cite the appropriate statutes relating to state, regional, and local planning].¹ As a condition to re-
10 ceiving financial assistance, a local government may be required to submit a functional plan for ap-
11 proval of the agency head administering the program.

12 (b) The head of each grant administering agency, in conformance with Section 2 of this act,
13 shall issue criteria and guidelines for the preparation of local functional plans, which shall include,
14 but shall not be limited to, provisions for:

15 (1) conformance to local, regional, and statewide comprehensive plans;

16 (2) survey of needs in the functional area being aided;

17 (3) economic, social, and demographic data to be incorporated in the functional plan and
18 in any applications for state aid, provided that such data requirements shall conform to the common
19 data base to be prepared under the provisions of subsection (c).

20 (c) The [agency] shall compile economic, social, and demographic data, applicable elements of
21 which shall be incorporated in the data requirements of all state aid programs subject to the provi-
22 sions of this section.

23 SECTION 4. *Governor's Report to the [Legislature].* The governor shall annually submit pro-
24 posals to the [legislature] for improvement of state-local fiscal relations. The proposals shall include,
25 but shall not be limited to:

26 (1) grant consolidation plans;

27 (2) simplification and standardization of grant requirements;

28 (3) revisions of equalization formulas in the light of data on local fiscal needs and re-
29 sources and the political and economic viability of local units of government;

30 (4) new state aid programs; and

31 (5) improvements in the flow of information concerning state and Federal grants-in-aid.

32 SECTION 5. *Separability Clause.* [Insert separability clause.]

33 SECTION 6. *Effective Date.* [Insert effective date.]

¹See Advisory Commission on Intergovernmental Relations' suggested legislation, *State Planning and Growth Management Act.*

4.110 INVESTMENT OF IDLE FUNDS¹

State and local governments in the United States are hard pressed to raise the revenues necessary to keep abreast of an ever broadening and intensifying demand for more governmental services arising from an increasing population and the quickening pace of technological change. It is possible, through a prudent yet vigorous program of investment of idle cash balances, to increase a state or a local government's revenues appreciably without raising its taxes and without increasing non-tax charges.

Cash balances of local funds which are in excess of operating needs can either be put to work drawing interest and thereby producing additional revenue for the local government, or they may be allowed to lie idle. If the latter course is followed, a waste of public funds occurs, one as real and as unnecessary as an overpriced procurement contract or an uncollected tax obligation. Although considerable improvement in the management of public funds has been registered in recent years, the investment of otherwise idle balances constitutes a significant potential revenue source which still is sometimes overlooked completely and is frequently underutilized. In a number of states, statutory authority for the investment of idle funds of counties, municipalities, and other local units of government does not exist or is restrictive or unclear. To continue in effect state legislative restrictions which preclude the investment by local governments of otherwise idle funds is not only inconsistent with constructive state-local relations in general but deprives local units of government of much needed revenue. To assist the local governments so affected, the *Investment of Idle Funds Act* has been developed.

It is the purpose of the suggested act to authorize the governing body of a municipality, county, school district, or other local governmental unit or political subdivision to invest and reinvest its funds in certain interest bearing obligations.

Some local governments fail to avail themselves of the opportunity to earn interest income because their officials, particularly in the smaller governmental units far removed from the financial centers, are not sufficiently familiar with the opportunities and mechanics for investing governmental funds for short periods. Their officials often perform a combination of different functions which in the larger jurisdictions are shared by a number of officials. Some of them are understandably reluctant to invest government funds in their custody in investment media with which they are unfamiliar.

Since many state governments regularly invest their free balances in short term obligations, their officials possess technical expertise in this activity. It is urged that states consider authorizing and directing their financial managers to share their specialized knowledge in the investment of short term public funds with the appropriate financial officials of the smaller subdivisions. The suggested act provides for such state technical assistance to local governments.

Many of the states provide for regular investment of their own surplus funds, even allowing the transfer of funds from special accounts so that they can be pooled for short term investment purposes. It is suggested that states consider the possibility of extending their investment facilities to those local governments that elect to pool their funds for short term investment. The additional funds thus made available to the state investment pool would make for greater flexibility in the state's use of the various short term investment opportunities available to it. A Montana statute¹ authorizes this type of activity on the part of the state government.

The question of how far to go in the type of investments authorized is a matter of judgment which will vary from state-to-state. At the very least, as provided in *Section 2* of the suggested act, authority should be provided for the placement of idle funds in (a) obligations of the United States and of its agencies and instrumentalities; (b) bonds or certificates of indebtedness of the state concerned and of its agencies and instrumentalities; and (c) shares of any building and loan association insured by the government of the United States or any agency thereof, up to the amount so insured. Particular states may wish to authorize

¹Derived from: Advisory Commission on Intergovernmental Relations, *Investment of Idle Cash Balances by State and Local Governments*, Report A-3 (Washington, D.C.: U.S. Government Printing Office, January, 1961).

¹Montana R. C., 79-1202.

additional types of investment, such as the securities of the local unit of government concerned, the securities of other states, or of municipalities or other local governments within the state, or other types of securities that meet appropriate tests of liquidity and security.

Section 1 sets forth the purpose and findings of the act.

Section 2 provides that the act not impair the power of a local unit of government to hold funds in deposit accounts with banking institutions as otherwise authorized by law. In other words, the terms of the suggested act are designed to avoid conflict with other statutory provisions governing the placing of funds with banking institutions.

Section 3 authorizes the governing body of a local unit of government to delegate the investing authority provided by *Section 2* to the treasurer or other financial officer charged with the custody of the funds of the local government.

Section 4 authorizes the state official or agency responsible for investing state funds to provide technical assistance to local governments in investing their temporarily idle funds.

Section 5 establishes the pooled investment fund and provides for its administration.

Section 6 authorizes an appropriation from general funds to establish a revolving fund to defray administrative costs of the pooled investment fund.

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

Suggested Legislation

[AN ACT PROVIDING FOR INVESTMENT OF IDLE CASH BY LOCAL GOVERNMENT AND CREATION OF A STATE POOLED INVESTMENT FUND]

(Be it enacted, etc.)

1 SECTION 1. *Purpose and Findings.* The purpose of this act is to enable local governments to
2 participate with the state in providing maximum opportunities for the investment of idle public
3 funds. The [legislature] finds and declares that the public interest is found in providing maximum in-
4 vestment of idle funds, thereby reducing the need for imposing additional taxes.

5 SECTION 2. *Investment Authority.*

6 (a) The governing body of a municipality, county, school district, or other local governmental
7 unit or political subdivision may invest and reinvest money subject to its control and jurisdiction in:

8 (1) obligations of the United States and of its agencies and instrumentalities;

9 (2) bonds or certificates of indebtedness of this state and of its agencies and instrumen-
10 talities;

11 (3) stock or shares of any [financial] corporation or association [insured by an agency of
12 the government of the United States] or — in the alternative — up to the amount collateralized by
13 obligations insured by an agency of the government of the United States or of this state];

14 (4) the pooled investment fund established by this act;

15 (5) [];¹

16 (b) The provisions of this act shall not impair the power of a municipality, county, school
17 district, or other local governmental unit or political subdivision to hold funds in deposit accounts
18 with banking institutions or to invest funds as otherwise authorized by law.

19 SECTION 3. *Delegation.* The governing body of a municipality, county, school district, local
20 governmental unit or political subdivision may delegate the investment authority provided by Section
21 2 of this act to the [treasurer] or other financial officer charged with custody of the funds of the local
22 government, who shall thereafter assume full responsibility for such investment transactions until
23 the delegation of authority terminates or is revoked.

24 SECTION 4. *State Assistance.* The state [insert title of the state official or agency responsible for
25 investing state funds] is authorized and directed to assist local governments in investing funds that are
26 temporarily in excess of operating needs by:

27 (a) explaining investment opportunities to such local governments through publication and
28 other appropriate means;

¹Individual states may wish to augment the list of authorized investments set forth in this section.

1 (b) acquainting such local governments with the state's practice and experience in investing
2 short term funds; and

3 (c) providing technical assistance in investment of idle funds to local governments that request
4 such assistance.

5 SECTION 5. *Pooled Investment Fund.*

6 (a) There is hereby established the pooled investment fund for the purpose of receiving and in-
7 vesting any money, in the custody of any officer or officers of the state or of any [municipal cor-
8 poration, county, school district, special tax district, or other political subdivision], designated or per-
9 mitted by statute to be invested.

10 (b) The state [*insert title of the state official or agency responsible for investment of state*
11 *funds*] shall administer the pooled investment fund on behalf of the participants.

12 (c) The state [*insert title of the state official or agency responsible for investment of state*
13 *funds*] shall invest moneys in the pooled investment fund with that degree of judgment and care,
14 under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise
15 in the management of their own affairs, not for speculation, but for investment, considering the
16 probable safety of their capital as well as the probable income to be derived.

17 (d) All investments purchased belong jointly to the participants in the fund and the partici-
18 pants will share capital gains, income, and losses *pro rata*.

19 (e) The state [*insert title of state official or agency responsible for investment of state funds*]
20 shall keep a separate account, designated by name and number of each participant. Individual trans-
21 actions and totals of all investments belonging to each participant shall be recorded in the accounts.

22 (f) The state [*insert title of the state official or agency responsible for investment of state*
23 *funds*] shall report monthly to every participant having a beneficial interest in the pooled investment
24 fund. The report shall show the changes in investments made during the preceding month. The state
25 [*insert title of the state official or agency responsible for investment of state funds*] shall furnish upon
26 request the details of an investment transaction to any participant.

27 (g) (1) The principal, and any part thereof, of each and every account constituting the pooled
28 investment fund, shall be subject to payment at any time from the moneys in the fund.

29 (2) An order or warrant may not be issued upon any account for a larger amount than the
30 sum total of the particular account to which it applies, and if such order or warrant is issued, the
31 [*state official responsible for the investment of state funds*] shall be personally liable under his official
32 bond for the entire overdraft resulting from the payment if made.

33 SECTION 6. *Appropriation.* There is hereby appropriated from general funds the sum of
34 [\$] to establish a revolving account under the custody of the state [*insert title of the state official or*
35 *agency responsible for investment of state funds*] to defray administrative costs of the pooled invest-

1 ment fund. The state [*insert title of state official or agency responsible for investment of state funds*]
2 may deduct from each participant's *pro rata* earnings through the fund a reasonable charge for ad-
3 ministering the fund, which shall be deposited and expended through the revolving account.

4 SECTION 7. *Separability.* [*Insert separability clause.*]

5 SECTION 8. *Effective Date.* [*Insert effective date.*]

4.111 POOLED INSURANCE¹

Local and state governments confront a growing need to manage carefully their insurance and employee performance bonding programs. Because these programs involve increasing costs, careful management of them can make the tax dollar go farther. Some local governments are too small to provide self-insurance and some may not be able to afford commercial insurance even with fairly high deductibility limits. Not infrequently, local governments lack the necessary expertise and/or political will to initiate insurance and performance bonding programs of sufficient scope and adequate reserve funding.

Both state and local governments have recently introduced additional complexity into their insurance programs through enactment of absolute or modified waivers of sovereign immunity under specified conditions. Moreover, the increasing extent of direct state and local provision of professional services in health and related functions, as well as the traditional governmental responsibility for protecting the integrity of public funds requires a review of existing "faithful performance" bond and professional liability insurance coverages.

This act is designed to provide a system of pooled insurance coverages to be sponsored and administered by the state for the benefit of all state and local agencies and, consequently, for the ultimate benefit of taxpayers. It is based on a Florida act¹ with the provisions relating to local participation added.

Section 1 sets out the purpose of the act.

Section 2 establishes an insurance risk management trust fund to provide insurance to all state departments, unless specifically excluded, and to any local government upon request.

Section 3 enumerates the powers and duties of the state agency authorized to administer the fund.

Section 4 deals with premiums charged the state departments and local governments for their insurance coverage.

Section 5 requires the state agency to submit a formal report, which must include certain enumerated items, to the governor and legislature annually. *Section 6* provides an appropriation for the initial reserve fund.

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

¹Derived from: Advisory Commission on Intergovernmental Relations, *Investment of Idle Cash Balances by State and Local Governments*, Report A-3 (January, 1961); *State Constitutional and Statutory Restrictions on Local Government Debt*, Report A-10 (September, 1961); and *State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Government*, Report A-12 (Washington, D.C.: U.S. Government Printing Office, October, 1962).

²Chapter 284, *Florida Statutes* (1973).

Suggested Legislation

[AN ACT PROVIDING FOR A STATE ADMINISTERED POOLED INSURANCE PROGRAM FOR STATE AGENCIES AND UNITS OF LOCAL GOVERNMENT]²

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* The purpose of this act is to provide for a state administered insurance
2 trust fund for state agencies and, upon request, units of local government. The fund shall provide
3 a mechanism for the state and participating units of local government to obtain insurance or provide
4 selfinsurance against unexpected losses resulting from fire and other natural catastrophies, from
5 actions of public employees, and from other insurable hazards at the lowest possible cost to the state,
6 its units of local governments, and the taxpayers. It is the further intent of the [legislature] that the
7 fund shall be selfsupporting. It shall, at all times, retain balances and excess coverages, and charge
8 sufficient premiums to protect the state and its participating local governments from losses and from
9 the need to appropriate or borrow substantial amounts of money.

10 SECTION 2. [Insurance Risk Management Trust Fund.]

11 (a) There is hereby created an [insurance risk management trust fund] to provide insurance, as
12 authorized by Section 3, for workmen's compensation, general and professional liability, fidelity and
13 faithful performance, fleet automotive liability, fire, and extended [, and additional areas] insurance
14 coverages.

15 (b) The [insurance risk management trust] fund shall, unless specifically excluded by the [appro-
16 priate state agency], cover all departments of the state and shall provide separate accounts for work-
17 men's compensation, general liability, professional liability, fidelity bond, fleet automotive liability,
18 fire, and extended [, and additional areas of] insurance coverages.

19 (c) Any unit of local government, including special and school districts, of this state may apply
20 for participation in the fund and, upon acceptance by [the appropriate state official], shall participate
21 upon such terms and conditions as may be provided by rule.

22 SECTION 3. [State Agency]; Powers and Duties.

23 (a) The [appropriate state agency] is hereby authorized to consolidate and combine all state in-
24 surance coverages into one insurance program consisting of commercial insurance and selfinsurance
25 in any combination or separately as is in the best interests of the state and local governments.

26 (b) The [appropriate state agency] is authorized to provide selfinsurance, and to provide such

²Suggested short title: *Government Risk Management Act.*

1 other insurance, specific excess insurance, and aggregate excess insurance through the [purchasing
2 agency], as necessary to provide insurance coverages authorized by this act, consistent with market
3 availability. The [appropriate state agency] is further authorized to purchase such risk management
4 services as may be required and pay claims as may arise under any deductible provisions.

5 (c) The [agency] is further authorized to provide technical assistance and services to any unit of
6 local government upon request, to assist in developing programs of selfinsurance, and to extend
7 coverage through the [insurance risk management trust fund] and services upon such conditions as are
8 consistent with the intent of this act.

9 (d) The [agency] is hereby authorized, in accordance with current budget and personnel require-
10 ments, to employ administrative and clerical personnel and actuarial consultants, to maintain, operate,
11 and administer the [fund]. All salaries and expenses of administration and operation of the [fund] shall
12 be paid from the [fund].

13 (e) The [agency] is authorized to promulgate rules and regulations for the proper management
14 and maintenance of the [fund] and for the terms and conditions of local government participation.

15 SECTION 4. *Premiums and Charges.*

16 (a) Premiums as calculated on all coverages shall be billed and charged to each state agency and
17 participating unit of local government according to coverages obtained by the [fund] for their bene-
18 fit, and such obligations shall be paid promptly by each agency from its operating budget or by each
19 participating unit of local government upon presentation of a bill therefor. After the first year of
20 operation, premiums to be charged to all departments of the state and participating local units are to
21 be computed as provided by rule of the [appropriate state agency] promulgated pursuant to [statutory
22 citation of state administrative procedures act], taking into account reasonable expectations, the main-
23 tenance and stability of the fund, and the cost of insurance. New units shall pay on an estimated
24 basis.

25 (b) All premiums paid into the [fund], investment income, and other revenue of the [fund] shall be
26 held by the [appropriate state agency] and used for the purpose of paying losses, premiums for in-
27 surance, risk and claims management services, refunds for excess premium payments, and operating
28 expenses.

29 [Optional Subsection.]

30 [(c) In the event sovereign immunity is waived in whole or in part, the insurance programs deve-
31 loped herein shall provide coverage only to the extent of such waiver of sovereign immunity.]

32 SECTION 5. *Reports.*

33 (a) The [agency] shall submit to the governor and [legislature] annually a report and analysis of
34 the state insurance program, which shall include:

35 (1) complete underwriting information as to the nature of the risks accepted for selfinsurance

1 and those risks that are transferred to the insurance market;

2 (2) a list of the participating units of local government, the extent of their participation, and
3 all requests, approved or not, for assistance, services, or participation;

4 (3) the funds allocated to the [*risk management trust fund*], premiums paid for insurance
5 through the market, and final balances, including all reserves;

6 (4) the method of handling legal matters and the cost allocated;

7 (5) the method and cost of handling inspection and engineering of risks;

8 (6) the cost of risk management service purchased; and

9 (7) the cost of managing the state insurance program by the [*agency*].

10 (b) The [*agency*] shall also make available complete claims of history including description of
11 loss, claims paid and reserved, and the cost of all claims handled by the state.

12 SECTION 6. *Appropriations.* In order to carry out the provisions of this act, there is hereby
13 appropriated from the state general fund to the [*risk management trust fund*], as a special reserve fund
14 thereof, the sum of [*amount*] for the [*dates*] fiscal year. Such appropriation shall be repayable, in in-
15 stallments, as the [*risk management trust fund*] and its reserves become selfsufficient.

16 SECTION 7. *Separability.* [*Insert separability clause.*]

17 SECTION 8. *Effective Date.* [*Insert effective date.*]

4.112 CITIZEN PARTICIPATION IN THE BUDGET PROCESS¹

Citizens should have explicit legal authority to contribute to the development of the budget, the prime instrument for determining financial policy, governmental service levels, and revenue system changes. The Commission recommends that each state reexamine its open meeting and public access laws to insure that each public body is required to follow a process for a public hearing on its budget.

States like California and Florida require their public bodies (cities, counties, and other organizations responsible for spending public funds, and the state itself) to conduct their meetings in the open. Only 24 states, however, require public notification of scheduled meetings, and even fewer states make requirements as to the nature and scope of these notifications. Thus, while many state and local governments have active programs to involve citizens in the governmental process, others still lack specific procedures for obtaining citizen input on the budget and other significant financial decisions.

The essential features of a process to obtain citizen input on the budget usually include:

- a hearing on the budget of the government;
- advanced notice of the hearing either by newspaper or other suitable method of reaching the general public; and
- availability of the budget, along with narrative highlights, at the principal office of the government sufficiently in advance of the hearings.

Citizen input on financial decisions may occur directly with respect to tax rates in some states and outside the budget context in other states. For example, state law requires the advertising of the local property tax rate required to balance the budget in Indiana and Virginia. In Florida, where the legislature has provided for the automatic rollback in the local property tax rate when the local tax base has increased by more than a specified percentage of the previous year's tax, local governments must hold a public hearing in order to avoid the tax rate rollback or adopt a higher tax rate.

Section 1 spells out the purpose of requiring a public hearing on the budget of each unit of local government. *Section 2* prescribes the notice of public hearing and the content of budget material that the unit must make available to the citizens. *Sections 3 and 4* comprise separability and effective date clauses, respectively.

¹ACIR policy on this subject was set in a resolution adopted at its regular meeting on December 14, 1974.

Suggested Legislation

[AN ACT TO REQUIRE A PUBLIC HEARING ON
THE BUDGET OF EACH UNIT OF GOVERNMENT
AND FOR RELATED PURPOSES]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* In order to establish a process by which citizens have the opportunity to
2 give their views on state and local financial policies, services, and taxes, it is the intention of the
3 [general assembly] that the state and every unit of local government conduct annually, or with
4 greater frequency if necessary, public hearings on its budget.

5 SECTION 2. *Notification.*

6 (a) Prior to the adoption of a budget, the [general assembly] or the governing body of any unit of
7 local government shall publish in one or more newspapers of general circulation the general sum-
8 mary of the budget and post a notice at the government's main office announcing:

9 (1) the time and place, not less than two weeks after such publication, for one or more pub-
10 lic hearings on the budget. Whenever practicable the announcement shall appear in a newspaper
11 that is published at least six days a week. Also, whenever practicable, the newspaper selected shall
12 be one of general interest and readership in the state or community and not one of limited subject
13 matter; and

14 (2) the times and places where copies of the proposed budget and narrative highlights are
15 available for public inspection.

16 (b) In lieu of publishing the announcement set out in subsection (a), a unit of local govern-
17 ment may mail a copy of its summary budget along with narrative highlights and notice of the time
18 and place for a public hearing on the budget to each residence within its boundaries.

19 SECTION 3. *Separability.* [Insert separability clause.]

20 SECTION 4. *Effective date.* [Insert effective date.]

4.2 Personnel Management

4.201 LOCAL GOVERNMENT PERSONNEL ADMINISTRATION¹

The Commission, over 13 years ago, recommended that: "State government extend, upon request, technical assistance to local units of government with respect to personnel administration."² Since that time, public employees and an increasing number of states have obtained collective bargaining rights and the Federal government has activated programs of equal employment opportunity and fair labor practices. The need for a comprehensive training program in personnel administration, as well as information sharing, can best be served effectively by state government as provided in this act.

Section 1 sets out the findings and purpose of the act.

Section 2 defines the employment policy of the state.

Section 3 provides for employee training programs.

Section 4 authorizes the appropriate state official to render technical assistance, upon request, to any unit of local government in the state and directs the official to carry out certain functions.

Section 5 charges the appropriate state official with maintaining continuing and current information on the public employee retirement systems of all units of local government in the state and requires the chief executive officer of each public employee retirement system in the state to file a report with the state official.

Sections 6 and 7 provide for separability and effective date clauses, respectively.

¹Advisory Commission on Intergovernmental Relations, *State Constitutional and Statutory Restrictions upon the Structural, Functional and Personnel Powers of Local Governments*, Report A-12 (Washington, D.C.: U.S. Government Printing Office, October, 1962). See also draft legislation providing state technical services to local governments.

²*Ibid*, p. 77.

Suggested Legislation

[AN ACT PROVIDING A COMPREHENSIVE APPROACH TO LOCAL
GOVERNMENT PERSONNEL ADMINISTRATION INCLUDING
STATE ASSISTANCE THEREFOR]¹

(Be it enacted, etc.)

1 SECTION 1. *Purpose.*

2 (a) The [legislature] finds:

3 (1) that many local governments in the state are facing the necessity of substantially chang-
4 ing previous methods, practices, and procedures of internal management in order to carry out new
5 and complex responsibilities arising from continued population growth, economic development, and
6 technological advance;

7 (2) that, in particular, the functions of personnel classification, compensation, training,
8 and productivity need attention and improvement;

9 (3) that [civil service] systems need continual updating in order to provide fully for an effi-
10 cient and equitable means of recruiting, advancing, and separating personnel;

11 (4) that the upward and lateral mobility of people pursuing public service careers in state
12 and local government needs to be encouraged;

13 [(5) that recent extensions of the Federal *Equal Employment Opportunity Act* to cover state
14 and local government will necessitate some further changes and refinements in local personnel ad-
15 ministration;]

16 (6) that training needs in personnel administration to provide and update technical and
17 managerial proficiency are becoming difficult to meet by any but the largest local governments; and

18 (7) that, as the state government imposes additional tasks upon local governments, it has
19 a commensurate obligation to provide technical assistance to those local governments toward an im-
20 proved state of readiness to discharge effectively the new responsibilities placed upon them.

21 [Optional Subsection.]

22 [(b) The [legislature] finds further that the various employee retirement systems maintained by
23 local governments are in need of an improved framework of fiscal accounting, reporting, and audit-
24 ing to ensure full disclosure to employees, the [legislature], and the public of the actuarial status of the
25 respective funds so that problem areas may be identified at an early stage and needed corrective ac-
26 tion taken on a timely basis in order to assure adequate protection to the employees and to improve

¹Suggested short title: *The Local Government Personnel Administration Act.*

1 morale and personnel administration.]¹

2 (c) It is the purpose of this act to designate focal points of responsibility within the state gov-
3 ernment for:

4 (1) rendering technical assistance to local governments in improving internal management,
5 including, but not limited to, personnel administration, productivity, and training; and

6 [(2) receiving and publishing information on the actuarial, fiscal, and administrative status
7 of employee retirement systems maintained by political subdivisions of the state.]¹

8 (d) It is the further purpose of this act to set forth general statewide policies for local govern-
9 ment personnel and retirement systems including the transferability among units and levels of state
10 and local governments of employee retirement, employment, and reemployment rights and benefits.

11 SECTION 2. *Employment Policy.*

12 (a) It is the policy of this state that:

13 (1) recruitment, selection, and appointment of employees by [political subdivisions] [local
14 governments] of the state shall be on the basis of merit and without regard to ancestry, national
15 origin, religion, race, sex, or color;

16 (2) advancement of employees in the public service of [political subdivisions] [local govern-
17 ments] shall be based on performance, supplemented by length of service and such other factors as
18 are deemed relevant by the governing body of the unit of local government concerned; and

19 (3) separation of employees shall be on the basis of inadequate performance or actions
20 contrary to public law or policy under rules and procedures equitable to both employees and the
21 public.

22 (b) The provisions of subsection (a) above are supplemented to include responsiveness to the
23 policies of the elected officials in the case of:

24 (1) department heads appointed by the governing body or chief executive of the unit of
25 local government concerned; and

26 (2) persons serving in a confidential capacity in relation to an elected official.

27 (c) Within 12 months following the effective date of this act, the governing body of each
28 [political subdivision] [local government] of the state having [five] or more full-time employees shall file
29 with the [appropriate state official] a copy of the employment policy and procedures of the local gov-
30 ernmental unit along with a certification stating the extent to which such policy and procedure are
31 believed to be in full accord with the provisions of (a) above, and, if not in full accord therewith, the
32 steps being taken to effect such accord. All filings resulting herefrom shall be maintained by the
33 [appropriate state official] as a matter of public record.

34 SECTION 3. *Employee Training.*

¹See draft legislation, *State Review and Assistance in Local Retirement Systems*.

1 (a) It is the policy of the state that opportunity be provided for upgrading the skills and quali-
2 fications of employees of [*the state*] and local governments so that they may discharge more effectively
3 and economically the responsibilities placed upon them. Governing bodies of [political subdivisions]
4 [local governments] are authorized and encouraged to grant leaves of absence with or without pay or
5 with partial pay so that employees may participate in training courses and programs that relate to
6 employee duties and hold reasonable promise of improving employee proficiency.

7 (b) Educational institutions maintained by the state or its political subdivisions are hereby en-
8 couraged to cooperate with local governments of the state in designing and conducting suitable em-
9 ployee training programs.

10 (c) It is the further policy of the state to provide maximum opportunity for both the employee
11 and the unit of local government to develop productivity standards and to encourage various pro-
12 grams to increase productivity in employment.

13 SECTION 4. *Technical Assistance.*

14 (a) Upon request from a city, county, special district, or other local unit of government in this
15 state for technical assistance to improve its management capability in delivering public services to its
16 citizens, the [*appropriate state official*]¹ shall render such assistance to the requesting unit of local
17 government within the limitations of available staff, funds, and other resources.

18 (b) Such assistance may include such components as technical advice, written reports, and other
19 information or materials relevant to the problem at hand and may include such subjects as manage-
20 ment and personnel systems, central administrative and supporting services, employee training, and
21 employee productivity.

22 (c) With respect to public employee productivity, the [*appropriate state official*] is authorized
23 and directed to carry out the following functions:

24 (1) conduct studies of definitions, reporting systems, and other instruments and criteria
25 for productivity measurement in public service occupations in collaboration with educational and re-
26 search organizations and otherwise, and take such administrative action as appropriate to codify and
27 publicize such information;

28 (2) circulate and publicize among [state and] local governments and agencies thereof ex-
29 emplary programs and experiences of productivity improvement; and

30 (3) collect and publish comparative work load and salary cost information relative to
31 [state and] local government agencies and units.

32 (d) Technical assistance rendered to local governments pursuant to this act may be on a non-
33 reimbursable basis or may be partly or wholly reimbursable, as determined mutually by the [*ap-
34 propriate state official*]

¹Commissioner of administration, director of personnel, secretary of community affairs, or other department or agency heads.

1 nature, and duration of the requested assistance, the extent of resources required, and the degree to
2 which the problem being attacked is such that reports or other results of the assistance are usable to
3 local governments elsewhere in the state.

4 [Optional Section.]

5 SECTION 5. *Public Employee Retirement Systems.*¹

6 (a) The [appropriate state official] is hereby charged with maintaining continuing and current
7 information as to the actuarial, fiscal, and administrative status of each public employee retirement
8 system operated by a [county, municipality, special district, or other unit of local government] in the
9 state.

10 (b) On or before the first day of [date] and each year thereafter, there shall be submitted to the
11 [appropriate state official] from the chief executive officer of each public employee retirement system in
12 the state [other than state system, et. al.], on such form and in such manner as the [state official] shall
13 prescribe, a statement on the assets, contingent and other liabilities, and other pertinent financial and
14 actuarial information of the retirement system. These reports shall be available for inspection by em-
15 ployees, annuitants, and other persons with an interest in such systems.

16 SECTION 6. *Separability.* [Insert separability clause.]

17 SECTION 7. *Effective date.* [Insert effective date.]

¹This asserts the responsibility of a designated state agency for exercising general oversight with regard to local retirement systems. If more comprehensive regulation is desired, see draft legislation *State Review and Assistance in Local Retirement Systems*.

4.202 STATE REVIEW AND ASSISTANCE IN LOCAL RETIREMENT SYSTEMS¹

State and local governments confront a growing need to assure sound management of their retirement systems and other fringe benefit packages. In this era of expanding collective bargaining in the public sector, as well as cycles of restricted revenues, the public must be assured of sound management practices regarding long range fiscal commitments. Many existing retirement systems are paying the price for a lack of sound management practices in the past and, as indicated in studies of financial emergencies, may be faced with overwhelming commitments from the past which greatly impede the ability of the government to respond to present concerns. The proposed legislation would place the state government in the picture not only to monitor local programs but also to provide assistance whenever necessary.²

There are over 2,200 state and local public employee retirement systems in the nation. More than two-thirds of these systems have a membership of less than 100. It is difficult, if not impossible in the long run, to operate these small systems on a sound financial basis. Most small systems are operated by municipalities. Some authorities in the public employee retirement field recommend that systems with less than 1,500 members should be merged. States should provide the necessary leadership for retirement system consolidation by encouraging the merger of economically precarious small systems, preferably by making it possible for all local units of government to participate in state administered retirement systems.

Section 1 sets forth findings and purpose of the legislation. *Section 2* provides definitions of terms used.

Section 3 requires that: (a) persons charged with administration of the local retirement system shall file an annual report with the state retirement agency; (b) the agency shall make an annual survey of all local retirement systems; and (c) every local retirement system shall be actuarially surveyed at least every year.

Section 4 provides for a summary of fiscal impact to be attached to any proposed change in benefits of a local or the state retirement system.

Section 5 authorizes any unit of local government to apply for and receive coverage of its employees under the state retirement system.

Sections 6 and 7 provide for separability and effective date clauses, respectively.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Transferability of Public Employee Retirement Rights Among Units of Government*, Report A-16 (March, 1963) and *City Financial Emergencies: The Intergovernmental Dimension*, Report A-42 (Washington, D.C.: U.S. Government Printing Office, July, 1973).

²See also the legislation on *State Intervention in Local Government Financial Emergencies and Improved and Standardized Accounting, Auditing, and Reporting*.

Suggested Legislation

[AN ACT TO PROVIDE FOR STATE STANDARDS, REVIEW, AND ASSISTANCE IN LOCAL RETIREMENT SYSTEMS]

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purpose.* The [legislature] finds a need to provide taxpayers with full
2 knowledge of present and future public personnel costs and, therefore, for state standards and
3 assistance to units of local governments in providing for the future retirement of their employees.

4 SECTION 2. *Definitions.*

5 (a) "Department" means the [state retirement agency].

6 (b) "Employee" means a full-time employee of any agency or unit of local government in this
7 state [and shall further include certain temporary employees who are on loan from another agency].

8 (c) "Unit of local government" means any county, municipality, special district of the state, or
9 agency or subdivision thereof [and shall further include any non-profit organization providing
10 services which are paid in excess of [50] percent by public money through a state, Federal, or local
11 government appropriation or grant].¹

12 SECTION 3. *Reports and Surveys Relative to Local and State Retirement Systems.*²

13 (a) Beginning [February 1, 19 - -] and prior to [February 1] each year thereafter, the chairman or
14 secretary of the board of trustees of each municipal or local retirement system or other person charged
15 with the administration of such retirement system shall file a report with the department containing
16 such information as the department may require. A copy of each actuarial survey made of such local
17 retirement system shall also be filed with the department.

18 (b) The department shall survey annually, the retirement provisions and financial condition
19 of each locally administered retirement system operated by one or more units of local government
20 in the state.

21 (c) Beginning [February 1, 19 - -] and every year thereafter, each local retirement system shall
22 have an actuarial survey made of its fund and operation and report such survey to the department.

23 (d) The department shall file an annual report with its findings and recommendations with the
24 governor and the [presiding officers of the legislature] no later than [30 days] prior to the regular
25 session of the [legislature].

¹This option would provide for coverage of certain semipublic agencies; such as, non-profit community mental health centers.

²Shouldn't duplicate any other provision for financial reporting and filing, which includes sufficient reporting of retirement fund data, with the state. (See legislation on *State Intervention in Local Government Financial Emergencies and Improved and Standardized Accounting, Auditing, and Reporting*.)

1 SECTION 4. *Changes in Benefits.*

2 (a) No local government shall agree to a proposed change in retirement benefits either through
3 collective bargaining or otherwise unless the proposed change shall have attached by the [*adminis-*
4 *trator of the system or other appropriate agency*], prior to adoption by the governing body, and prior
5 to the last public hearing thereof, a statement of the actuarial impact of such change in the retire-
6 ment system. [Any proposed change in the state retirement system shall also have attached a state-
7 ment from the [*administrator of the system*] of the local fiscal impact of such change on those units
8 participating in the state program.]

9 SECTION 5. *Participation in State Retirement Plan.*

10 [Optional Subsection.]

11 [(a) The department shall study steps necessary to consolidate local retirement systems or any
12 specialized portion thereof under state administration. A report setting forth findings of fact and
13 recommendations for administrative and legislative action shall be filed with the governor and the
14 [*presiding officers of the legislature*] no later than [30 days] prior to the regular session of the [*leg-*
15 *islature*] beginning in [19--].]

16 [Optional Subsection.]

17 [(b) Any unit of local government may apply for, and receive, coverage of its employees under the
18 state retirement system [*appropriate citation*] in the same manner as if such employees were state
19 employees, subject to necessary action by the unit to pay employee contributions into the state
20 retirement fund.]¹

21 SECTION 6. *Separability.* [*Insert separability clause.*]

22 SECTION 7. *Effective Date.* [*Insert effective date.*]

¹This optional section primarily applies to those smaller units of government who do not offer retirement benefits to their employees. If one is presently in existence, the transfer to the state system would entail greater detail relative to employee credits and vested rights and would seem to apply more to the general study and recommendation provision under subsection (a).

4.203 TRANSFERABILITY OF PUBLIC EMPLOYEE RETIREMENT RIGHTS¹

The principal purposes for which retirement systems were established have undergone considerable reconsideration in the last two decades. Retirement systems for public employees were originally intended, in addition to other things, to serve as an anchor on the employee to keep him employed by the same unit of government. This was accomplished by denying the employee much of his retirement credits if he changed employers.

However, since retirement coverage for public employees has become nearly universal, and since the training and development of employees in the administrative, professional, and technical fields are becoming so important to strengthening public administration, it no longer is considered sound personnel policy to maintain roadblocks to employee mobility. Employees often will not accept public employment that appears to lead to a dead end; one governmental jurisdiction may have an over supply of employees in one technical specialty while another may have a critical shortage in the same category; and it is generally believed that over the long run a given unit of government will not gain or lose either in talent or pension funds at the expense of other units merely because of liberalized provisions permitting greater mobility of employees.

A study conducted by the ACIR in 1963 disclosed three major aspects of the counter-mobility policies pervading state-local retirement systems at that time: (1) multiplicity of systems; (2) delayed testing — that is, ineligibility for retirement benefits in the absence of lengthy service with a single public service employer; and (3) formidable and often insuperable barriers to transfer of retirement rights from one system to another even within a single state ("portability"). Developments over the past decade render the 1963 recommendations compelling rather than merely persuasive. These recommendations pointed toward: (1) consolidation of systems; (2) early vesting; (3) interstate and intrastate transferability of credits.

Multiplicity of Systems. According to the 1972 *Census of Governments* state and local governments employed at that time about 11-million persons (state, 3.0; county, 1.3; city, 2.4; township, 0.3; school districts, 3.6; and other special districts, 0.3). As of October, 1972 only 2.1 percent of full-time state and local employees were reported as without retirement coverage of any kind; 7.6 percent were covered only by social security; 73.5 percent were covered by a state or locally administered retirement system; 13.7 percent were unreported.¹

In the fiscal year 1971-72, there were 8.4-million state-local employees listed as current contributors to 2,304 separate state-local retirement systems. Of these, 176 were state administered systems embracing 6.9-million of the contributing members and 2,128 locally administered systems embracing the other 1.5-million. Of the 2,128 locally administered systems 534 were general coverage; of the special coverage systems 1,275 were for police and firemen. A great many of the locally administered systems are extremely small. Of the 1,818 municipal systems, for example, 1,308 had less than 100 members.¹ These small systems present serious problems of fiscal and actuarial soundness and difficult barriers to employee mobility.

Consolidation of small locally administered systems into integrated statewide systems is widely urged. As of 1971-72, the number of systems ranged from one in Hawaii and Nevada to 280 in Illinois and 279 in Pennsylvania. Among populous states with numerous local governments, Ohio has gone farthest in terms of consolidation with a total of eight systems — one general state system embracing both state and local employees and covering all local general governments except Cincinnati; four state administered systems covering school employees, teachers, police, firemen, and police and firemen combined; the Cincinnati system and two extremely small local systems.

¹Derived from: Advisory Commission on Intergovernmental Relations, *Transferability of Public Employee Retirement Credits Among Units of Government*, Report A-16 (Washington, D.C.: U.S. Government Printing Office, March, 1963).

¹Bureau of the Census, *1972 Census of Governments*, Vol. 3, No. 2, *Compendium of Public Employment* (Washington, D.C.: U.S. Government Printing Office, 1974), p. 19.

¹Bureau of the Census, *1972 Census of Governments*, Vol. 6, No. 1, *Employee Retirement Systems of State and Local Governments* (Washington, D.C.: U.S. Government Printing Office, 1973), pp. 9, 11.

States should provide the necessary leadership for retirement system consolidation by encouraging the merger of small systems, preferably by making it possible for all local units of government to participate in state administered retirement systems. The general guidelines in the preceding section are equally appropriate for legislation to deal with the consolidation problem. Action in this regard is essential or state and local governments risk failure to attract qualified personnel, and employees risk the loss of pension dollars.¹

Interstate Transfer — Vesting. The vesting-deferred benefit approach to the interstate retirement credit transfer problem has been one of the most practical and acceptable solutions for public employees generally. Essentially, those retirement systems that have vesting provisions afford the employee who accepts employment elsewhere the opportunity to leave his contributions with the system, after fulfilling a specified number of years service requirement, and receive a deferred benefit at the normal retirement age. Most state administered retirement systems have vesting provisions. However, the service requirement ranges from first year vesting in the Wisconsin state teachers' system, and two years in the South Carolina public employee system, to a 25 year requirement in the Michigan public school employees' system. Many special coverage systems for police and firemen provide no vesting prior to retirement age. The ACIR has proposed a five year vesting requirement as a reasonable balance of employer and employee interests.

No legislative amendment is presented here to accomplish the suggested vesting proposal because, for most retirement systems, this may be achieved simply by inserting the desired number of years in lieu of the existing requirement (apart from any actuarial considerations). Retirement systems with vesting requirements that exceed five years or those with no vesting provisions may need to be phased into an earlier vesting basis. There is little information available to indicate how many years the service requirement for vesting may be reduced without increasing the cost to the government and/or to the employee. This depends on such variables as age, length of service, and turnover rates of employees which need to be considered by each retirement system in determining the financial implications of reducing its vesting requirement.

Intrastate Transfer. The problems involved in the interstate and intrastate transfer of retirement credits are very similar, but the obstacles to solutions are less within states than between them. In Hawaii and Nevada there is no problem because each state has only one retirement system. More than half of the states have limited provisions for the reciprocal transfer of retirement credit but usually between only two or three major systems. Only a few states have provisions for general intrastate transfer of retirement credits among most systems; in a substantial number of states there is no provision for transfer of credit between their different systems.

Among the states with general provisions for intrastate transfer of credits varying approaches are followed. Some provide for the transfer of the contributions of both the employer and the employee when the employee changes positions among the participating reciprocal units or systems. This poses, however, legal and actuarial barriers in a considerable number of states. Illinois and Michigan legislation provides for retention of credit within the previous system instead of lump sum transfers of contributions between systems.

The suggested retirement act presented here is patterned largely after the *Illinois Reciprocal Retirement Act*. This draft bill provides that after the employe has completed at least two years in the employment of a participating reciprocal retirement unit, he may change his employment to another participating unit without loss of credit. When the employee reaches retirement age in the participating unit in which he is employed, he may receive proportional retirement benefits based on his service in each system from all the participating retirement systems in which he has at least five years service, if he has not withdrawn any of his contributions; if he has enough total years service in all systems to meet the minimum requirement in any system; and if he has reached the minimum age required by each system. If he has not reached the minimum age in all systems, he may begin receiving benefits from those systems in which he has reached the required age, and then receive benefits from the other systems when he reaches the required age.

Section 6 of the suggested act presents an alternative method for providing benefits which states may or may not wish to include in their legislation. Under the alternative, an employee may pay to the system

¹See preceding suggested legislation, *State Review and Assistance in Local Retirement Systems*.

from which he will retire, prior to his retirement, an amount equal to a fixed percentage of his salary for every year he has been employed under other retirement systems within the state, then he may receive benefits as if he had always been employed under the final system. The other participating retirement systems would continue to pay at least their proportional share of the employee's benefits. The final system would incur the additional obligation.

Section 1 establishes the purpose of the legislation and *Section 2* is concerned with definitions.

Section 3 provides for reciprocal retirement credit among participating employers for employee retirement annuities. *Section 4* limits the provisions of this act only to a retirement annuity and survivor's annuity, and to the pension credit established for such purpose.

Section 5 deals with the method for computing multiple annuities for employee retirement. *Section 6* provides for alternative annuity formulas for employee retirement.

Section 7 deals with minimum retirement age requirements by the various retirement systems. *Section 8* sets out the manner by which employee pension credits under multiple retirement systems shall be vested, and *Section 9* establishes a maximum retirement annuity which may be paid.

Section 10 allows an employee who is concurrently employed by employers under different retirement systems to contribute to each of the retirement systems and provides a mechanism to deal with duplication of retirement credits resulting from such concurrent employment. *Section 11* prohibits duplicate retirement credits for the same period of service being credited in one or more retirement systems.

Section 12 allows retirement systems to exchange certain information on retirement accounts and enter into joint agreements to facilitate payment of retirement annuities. *Section 13* is concerned with mechanisms for adopting the act.

Sections 14 and 15 provide for separability and effective date clauses, respectively.

Suggested Legislation

[AN ACT TO ESTABLISH CONTINUITY AND PRESERVATION OF PENSION CREDITS FOR EMPLOYEES IN GOVERNMENTAL SERVICE IN THIS STATE]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.*¹ The purpose of this act is to promote the mobility of specialized techni-
2 cal, administrative, and professional personnel in the interest of economy and efficiency in the provi-
3 sion of government services. The act is designed to remove a major obstacle, the lack of transferabil-
4 ity of pension credits, which often impedes the movement of personnel between units of government
5 in this state. This act assures full and continuous pension credit for all service rendered by a person
6 in public employment covered by a retirement system or pension fund authorized by state law.

7 SECTION 2. *Definitions.* As used in this act:

8 (a) "Effective date" means July 1, [19], or in the case of any retirement system becoming sub-
9 ject to the provisions of this act after such date, the date when such retirement system comes under
10 the provisions of this act.

11 (b) "Employee" means any person in the service of an employer on or after the effective date,
12 who has pension credit because of service previous or subsequent to the effective date, who is an ac-
13 tive or inactive member or participant of a retirement system.

14 (c) "Employer" means any governmental unit in the state.

15 (d) "Governmental unit" means the state government, including any agency or instrumentality
16 thereof, or any political subdivision or municipal corporation, which maintains a retirement system
17 for the benefit of its employees.

18 (e) "Pension credit" means credits or equities acquired by an employee toward a retirement an-
19 nuity from a public employees' retirement system in the form of contributions or services defined
20 under the provisions of the act authorizing and governing each retirement system in which the em-
21 ployee has such credits or equities, except credits and equities:

22 (1) of less than two years in any one system; or

23 (2) which were granted during the periods when the employee was in receipt of a retirement
24 annuity from any of the retirement systems covered by this act; or

25 (3) which have previously been applied towards a retirement annuity and have not been
26 reestablished in accordance with the provisions of the act governing the retirement system from which
27 the retirement annuity has been received.

¹See draft legislation, *State Review and Assistance in Local Retirement Systems*, for proposals relating to multiplicity of retirement systems.

1 (f) "Retirement annuity" includes any pension, retirement allowance, retirement annuity, dis-
2 ability pension, disability retirement allowance, or disability retirement annuity, and shall refer to an
3 annuity payable on account of retirement for age, years of service, or total and permanent disability.

4 (g) "Retirement system" means any retirement system or pension fund, by whatever name
5 called, which has been created or authorized by statute for the purpose of providing an annuity to
6 public employees, upon attainment of a specified age and after completion of a specified period of
7 service and which is financed in whole or in part by contributions by the state or by any govern-
8 mental unit of the state.¹

9 SECTION 3. *Reciprocal Retirement Credit.*

10 (a) Any employee, who has withdrawn or withdraws from the service of one employer and then
11 or later enters the service of another employer and who has not forfeited his pension credit in the re-
12 tirement system maintained by the employer from whose service he has withdrawn, shall be entitled
13 to a proportional retirement annuity, computed as stated herein, for the periods of credited service in
14 each retirement system.

15 (b) Eligibility for a proportional retirement annuity in each retirement system shall be deter-
16 mined by taking into account the entire length of service of the employee for which he has been
17 granted pension credit under all retirement systems participating under this act even though the
18 employee may not have fulfilled the minimum service requirement prescribed by any retirement
19 system.

20 (c) If a retirement system provides no refund of contributions, the pension credit in the case
21 of any employee who shall have participated in such system shall be considered effective for the
22 purposes of this act.

23 (d) Interest on pension credit in retirement systems of previous employees shall continue to ac-
24 cumulate in accordance with the provisions of the acts governing the respective systems during the
25 time an employee is in the service of a subsequent employer.

26 SECTION 4. *Limitation of Application.* The provisions of this act shall be applicable and limited
27 only to a retirement annuity and survivor's annuity, and to the pension credit established for such
28 purposes.

29 SECTION 5. *Employee Retirement; Multiple Annuities.*

30 (a) Upon retirement in the retirement system from which the employee last received pension
31 credit, a proportional retirement annuity shall be computed by each retirement system in which pen-
32 sion credit has been established by the employee on the basis of salary and service credits under each
33 system. The computations shall be in accordance with the formula or method prescribed by each sys-

¹This definition provides statewide reciprocity for credit transfer. If it is desired to limit reciprocity to major systems, the systems to be covered should be specified.

1 tem and in effect at the date of the employee's latest withdrawal from the service of the employer
2 maintaining the retirement system, except as modified by this act.

3 (b) If, at the date of retirement, the employee shall have attained the age prescribed for the re-
4 ceipt of a minimum retirement annuity under any retirement systems participating under this act suf-
5 ficient to meet the service qualification prescribed in the applicable retirement system for the receipt
6 of a minimum retirement annuity, the employee shall have the option of receiving the proportional
7 retirement annuity based upon the minimum annuity formula applicable in each system.

8 (c) If (1) a minimum annuity formula available for the completion of a specified minimum
9 period of service under the retirement system provides a definite sum or percentage of average com-
10 pensation for completion of such minimum service, in addition to a certain percentage of average
11 compensation for each year of service, and (2) the employee has not received credit in the retire-
12 ment system for the minimum number of years required to qualify for such minimum benefit formula,
13 and (3) the combined pension credits under all systems are equal to or more than the period of
14 service prescribed in the system for the receipt of a minimum annuity, the employee shall be en-
15 titled to that portion of the definite sum or percentage of average compensation which his service in
16 such retirement system bears to the minimum service required by that system to qualify for such min-
17 imum formula.

18 (d) If any proportional retirement annuity is calculated upon the basis of the average salary
19 of an employee for a specified number of years of service, and the employee has to his credit in a
20 system fewer years than the prescribed number, [the actual number of years of credited service in the
21 retirement system computing the proportional annuity] [*Alternative*][the additional years necessary
22 to reach the specified number shall be added from his most recent employment with previous em-
23 ployer(s)] shall be used as the basis for such calculation.

24 [Optional Section.]

25 SECTION 6. *Employee Retirement; Alternative Formula for Annuity.*

26 (a) Notwithstanding the provisions of the other sections of this act, or the acts governing those
27 retirement systems covered by this act, the alternative formula prescribed in this section for calcula-
28 tion and payment of the retirement annuity, shall be applicable in lieu of the formula prescribed in
29 the other sections of this act, if the employee, prior to the date his retirement annuity begins, pays
30 to the system under which retirement occurs an amount equal to [1] percent of the actual annual full-
31 time rate of salary on the date of separation from service under each of the other systems, multiplied
32 by the number of years of pension credits in each of these systems which are considered by the sys-
33 tem under which retirement occurs in determining the retirement annuity payable under this section
34 and for which contributions were made by the employee.

35 (b) The system under which retirement occurs shall calculate and pay a retirement annuity

1 based upon the combined pension credits under all systems participating under this section, using the
2 final average salary and formula prescribed by the system under which retirement occurs. Service
3 rendered prior to a break in employment of more than [12 months] under governmental units covered
4 by the retirement systems which are subject to this act shall not be considered by the system under
5 which retirement occurs in determining the retirement annuity payable under this section. If during
6 a period of service which is used in determining the average salary on which his annuity is based, an
7 employee is concurrently employed by governmental units covered by two or more systems participat-
8 ing under this section, his earning credits under all of these systems during the period of concurrent
9 employment shall be considered by the system under which retirement occurs in computing his final
10 average salary.

11 (c) If an employee who becomes entitled to retirement benefits under this section has elected a
12 deferred annuity under any of the systems participating under this section and in which he has pen-
13 sion credits, the system under which retirement occurs shall reduce the retirement annuity otherwise
14 payable under this section by the actuarial equivalent of the amount required to provide the deferred
15 annuity. This actuarial equivalent shall be determined by, and in accordance with, the actuarial tables
16 of the system under which the election of the deferred annuity is made.

17 (d) Each of the other systems participating under this section in which the employee has pen-
18 sion credits shall assume a portion of the annuity liability by paying at least annually to the system
19 under which retirement occurs the amount of the proportional requirement annuity which would oth-
20 erwise have been payable under the other sections of this act, and the employee concerned shall, by
21 the acceptance of the retirement annuity payable under this section, waive and forfeit the right to re-
22 ceive such proportional retirement annuity from such other systems. If the minimum age requirement
23 of the system under which the retirement occurs is lower than that of any of the other systems in
24 which the employee has pension credits, the payment by such other system to the system under
25 which retirement occurs shall be deferred until the minimum age requirement of such other system
26 has been met.

27 (e) For the purpose of this section, the system under which retirement occurs and to which the
28 employee last contributes for a period of [four] or more years shall be the system to which this section
29 applies. If the employee contributes concurrently to two or more participating systems during this
30 period, the system under which retirement occurs shall be that system under which he has the great-
31 est earnings credits during the period of concurrent employment, or if he has equal earnings credits
32 under these systems during this period, the system under which he has the longest period of pension
33 credits.

34 (f) The alternative formula prescribed in this section shall be used only in determining the re-
35 tirement annuity.]

1 SECTION 7. *Employee Retirement; Variable Minimum Ages.* If the minimum qualifying age of
2 retirement in any of the retirement systems is lower than the minimum age of retirement in any of
3 the other retirement systems which are to provide a proportional retirement annuity, payments by
4 such other system shall be deferred until the employee has attained the minimum age of retirement
5 prescribed for such system; but early retirement under any system below the normal retirement age
6 shall be subject to reduction as may be prescribed by each retirement system.

7 SECTION 8. *Vesting Requirements.* If the measure of pension credit in any retirement annuity
8 is apportioned upon the basis of length of service rendered by an employee, the combined service
9 under all retirement systems in which the employee has established service credit shall be effective in
10 establishing such vesting of pension credit in any retirement system.

11 SECTION 9. *Maximum Annuity.* In the event the combined retirement annuities of an employee
12 exceeds the highest maximum annuity prescribed by any retirement system in which the employee
13 has established pension credit, the respective retirement annuities payable by the several retirement
14 systems shall be reduced proportionately according to the ratio which the amount of each propor-
15 tional annuity bears to the aggregate of all such annuities.

16 SECTION 10. *Concurrent Employment.* Any employee who is concurrently employed by em-
17 ployers under two or more of said systems shall be entitled to establish a pension credit in accordance
18 with the provisions of each system, provided that if such concurrent employment results in a duplica-
19 tion of credits, each of the systems involved in such concurrent employment shall reduce the service
20 credit for the period of concurrent employment to its full-time equivalent, using as a basis for such
21 adjustment the earnings credited for each employment.

22 SECTION 11. *Duplication Prohibited.* In no event shall pension credit for the same period of
23 service rendered by an employee be accredited more than once in one or more retirement systems.

24 SECTION 12. *Reports and Joint Agreements.*

25 (a) Each retirement system shall submit to the other retirement systems, upon request, a report,
26 properly certified regarding the length of service rendered for the purpose of establishing the em-
27 ployee's eligibility for retirement and any other pertinent information as may be necessary in the ad-
28 ministration of this act.

29 (b) It shall be the duty and responsibility of an employee having pension credit in any retire-
30 ment system to make available to the retirement system in which he last finds himself information
31 bearing on his pension credit, in order that such pension credit may be applied in the manner herein
32 provided. A retirement system subject to the provisions hereof shall be under no obligation or re-
33 sponsibility to initiate any inquiry or investigation for the purpose of establishing pension credit in
34 the case of any employee, in the absence of a request from the employee, accompanied by sufficient
35 facts bearing upon such credit which the employee may have accumulated.

1 (c) Two or more retirement systems subject to the provisions hereof may agree, at the time of
2 retirement of an employee, to have the retirement system under which the employee retires to pay
3 currently the combined amounts of the proportional payments on account of the retirement annuity.
4 Such agreement shall be evidenced by a written document between two or more retirement systems
5 in the form agreed upon between them. At the end of each fiscal year of the last retirement system,
6 reimbursement thereto shall be made by the other retirement systems providing proportional annui-
7 ties of the amount paid on their account by the last retirement system. Such arrangement shall be
8 optional with the several retirement systems. If no such arrangement is made, each retirement system
9 shall pay its own proportional annuities to the beneficiaries entitled thereto.

10 SECTION 13. *Adoption of Act.* The provisions of this act shall apply only to a retirement sys-
11 tem whose governing board by a majority vote has subscribed thereto with the affirmative approval
12 of such action by the legislative body of the governmental unit whose employees are covered by the
13 system.¹ [In such approval the governing body may reject the application of the alternative formula
14 as provided in Section 6 of this act.] Within ten days after the date on which coverage under this act
15 has been approved by the legislative body of such governmental unit, the governing board of the re-
16 tirement system shall file written certification thereof with the [secretary of state]. The [secretary of
17 state] shall maintain a list of the retirement systems that have adopted this act which shall be avail-
18 able to any retirement system requesting a copy.

19 SECTION 14. *Separability.* [Insert separability clause.]

20 SECTION 15. *Effective Date.* [Insert effective date.]

¹If coverage is limited to specified systems in Section 2 (g), this section is not applicable. Also, states may wish to exert stronger pressure upon individual systems to provide reciprocity instead of the strictly voluntary approach used here. Participation might be made mandatory unless a particular system applies for exclusion because of special circumstances. Such appeal should be approved by the state retirement administrator or other designated state official.

4.204 STATE PUBLIC LABOR-MANAGEMENT RELATIONS ACT¹

Although most states forbid public employees to strike, work stoppages of government personnel at all levels have been skyrocketing. At the same time, the right of government workers to organize is now recognized in virtually all of the states, and more and more states are adopting public employer-employee relations acts.²

In *Labor Management Policies for State and Local Government*, the Advisory Commission on Intergovernmental Relations asserted that state efforts "will have little significance unless there is appropriate machinery to resolve recognition and representation disputes, ensure adherence by all parties to the law, and provide the means of facilitating the resolution of controversies arising out of employer-employee impasses." The Commission adopted, not always unanimously, 16 recommendations addressed to the problem. The following suggested laws were drafted to implement the recommendations. The majority of the Commission viewed the "meet and confer in good faith" approach as most appropriate in a majority of situations under present and evolving conditions. Therefore, the first draft takes this approach. However, a substantial minority of the Commission called for "collective negotiations." The second draft embodies that viewpoint.

The first substantive title of the meet and confer bill establishes a public employee relations agency (PERA) with significant administrative and dispute settlement responsibilities.

To safeguard public employee rights, the bill contains a section authorizing public employees to form, join, participate in, or refrain from joining or participating in, the activities of employee organizations of their own choice. Procedures relating to the internal conduct of public employee organizations also are included. The bill recognizes the right of supervisory personnel to form their own associations but bars them from units of non-supervisory employees and from formal recognition privileges in order to strengthen the management orientation of supervisors and to stabilize the basic administrative discretion of public employers. In addition, a management rights section is provided.

The suggested legislation establishes procedures for formal recognition of an employee organization, for determination by the public employee relations agency of the appropriate unit, and for certification of the majority employee representatives when interunion disputes arise. Certain privileges may be accorded recognized employee organizations, including dues checkoff.

The bill seeks to balance the need for a large measure of flexibility in employer-employee dealings with the need to preserve the integrity of merit systems. Therefore, it permits the memoranda of agreement to cover all issues relating to employment — including wages, hours, and other terms and conditions — but exempts certain critical issues, such as issues preempted by law and the authority of civil service commissions and boards to impartially recruit candidates, to conduct and grade merit examinations, and to rate candidates.

Strikes are banned, but a wide range of formal devices to resolve disagreements is mandated. Local governments are given the option of substituting their own provisions and procedures, as long as they are substantially equivalent to the rights granted under the act.

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

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

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

¹Derived from: Advisory Commission on Intergovernmental Relations, *Labor-Management Policies for State and Local Government*, Report A-35 (Washington, D.C.: U.S. Government Printing Office, September, 1969).

²As of 1975, five states had "meet and confer" type statutes and 29 states, including the District of Columbia, had some type of collective bargaining statutes with only six states not recognizing the right of public employees to organize and bargain.

Section 3 creates a public employee relations agency and specifies the agency's powers, responsibilities, and membership. All members of the agency are appointed by the governor and significant administrative and dispute settlement functions are assigned to it.

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

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

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

Section 7 provides procedures for formal recognition of an employee organization, for the public employee relations agency's determination of the appropriate unit, and for certification by the public employee relations agency of the designated representative of such unit when interunion disputes arise.

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

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

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

Section 11 specifies procedures for implementing a memorandum of agreement.

Section 12 provides machinery for resolving disputes arising in the course of discussions, including mediation, fact finding, and "show cause" hearings; meet and confer and dispute settlement procedures are exempted from state "right to know" laws; and cost sharing arrangements for mediation and fact finding services are specified.

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

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

Section 15 deals with the internal conduct of public employee organizations, and provides for standards and safeguards over the conduct of organizational elections, for regulation of trusteeships and fiduciary responsibilities of organizational officers, and for maintenance of accounting and fiscal controls and regular financial reports.

Section 16 contains a local public agency option, wherein localities are permitted to substitute their own provisions and procedures for those established for the state, provided the rights granted under the act are not abrogated.

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

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

Section 3 creates a public employee relations agency and specifies the agency's powers, responsibilities, and membership. Two alternative approaches to appointing members are provided: all of the agency's members may be appointed by the governor; or two members may be appointed by the governor, two by

a state labor committee established pursuant to the act, and the fifth — the chairman — by the other four members. Significant administrative and dispute settlement functions are assigned to the agency.

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

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

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

Section 7 provides procedures for exclusive recognition of an employee organization, for the public employee relations agency's determination of the appropriate unit, and for certification (by the public employee relations agency) of the designated representative of such unit when interunion conflicts arise.

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

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

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

Section 11 specifies procedures for implementing a collective negotiation agreement.

Section 12 provides machinery for resolving disputes arising in the course of negotiations, including mediation, fact finding, voluntary arbitration, and "show cause" hearings; collective negotiations and dispute settlement proceedings are exempted from state "right to know" laws; and cost sharing arrangements for mediation, fact finding, and arbitration services are specified.

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

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

Section 15 deals with the internal conduct of public employee organizations, and provides for standards and safeguards over the conduct of organizational elections, for regulation of trusteeships and fiduciary responsibilities of organizational officers, and for maintenance of accounting and fiscal controls and regular financial reports.

Section 16 contains a local public agency option, wherein localities are permitted to substitute their own provisions for those established for the state provided the rights granted under the act are not abrogated.

Sections 17 and 18 in both bills allow for separability and effective date provisions, respectively.

Suggested Legislation

[*Alternative 1.*]

[AN ACT TO ESTABLISH A FRAMEWORK OF PUBLIC EMPLOYER-EMPLOYEE RELATIONS BY PROVIDING UNIFORM AND ORDERLY METHODS FOR DEALINGS BETWEEN EMPLOYEES AND ORGANIZATIONS THEREOF AND EMPLOYING PUBLIC AGENCIES AND FOR RELATED PURPOSES]

(*Be it enacted, etc.*)

1 SECTION 1. *Findings and Purpose.* The [*legislature*] hereby finds and declares that:

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

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

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

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

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

19 It is the purpose of this act to obligate public agencies, public employees, and their representa-
20 tives to enter into discussions with affirmative willingness to resolve grievances and disputes relating
21 to wages, hours, and other terms and conditions of employment, acting within the framework of laws
22 and charter provisions. It is also the purpose of this act to promote the improvement of employer-
23 employee relations within the various public agencies of the state and its political subdivisions by
24 providing a uniform basis for recognizing the right of public employees to join organizations of
25 their own choice, or to refrain from joining, and be represented by such organizations in their em-
26 ployment relations and dealings with public agencies.

27 SECTION 2. *Definitions.* As used in this act:

1 (a) "Advisory arbitration" means interpretation of the terms of an existing or a new mem-
2 orandum of agreement or investigation of disputes by an impartial third party whose decision is not
3 binding upon the parties.

4 (b) "[Agency]" means the [*public employee relations agency*] established pursuant to this act.

5 (c) "Confidential employee" means one whose unrestricted access to confidential personnel
6 files or information concerning the administrative operations of a public agency, or whose functional
7 responsibilities or knowledge in connection with the issues involved in the meet and confer in good
8 faith process, would make his membership in the same organization as rank-and-file employees in-
9 compatible with his official duties.

10 (d) "Employee organization" means any organization which includes employees of a public
11 agency and which has as one of its primary purposes representing such employees in discussions
12 with that public agency over grievances and wages, hours, and other terms and conditions of em-
13 ployment.

14 (e) "Fact finding" means investigation of such a dispute by an individual, panel, or board with
15 the fact finder submitting a report to the parties describing the issues involved.

16 (f) "Governing body" means the legislative body of the public employer or the body possessing
17 legislative powers. In the case of independent school districts, it means the board of education, board
18 of trustees, or sole trustee, as the case may be.

19 (g) "Mediation" means effort by an impartial third party to assist in reconciling a dispute re-
20 garding wages, hours, and other terms and conditions of employment between representatives of the
21 public agency and the recognized employee organization through interpretation, suggestion, and
22 advice.

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

28 (i) "Memorandum of agreement" means a written memorandum of understanding arrived at
29 by the representatives of the public agency and a recognized employee organization, which may be
30 presented to the governing body or its statutory representative and to the membership of such organi-
31 zation for appropriate action.

32 (j) "Public agency" or "public employer" means the state of [*name*] and every governmental sub-
33 division; school and non-school special district; [public and quasipublic corporation;] public agency;
34 town, city, county, city and county, and municipal corporation; and authority, board, or commission,
35 whether incorporated or not and whether chartered or not.

1 (k) "Public employee" means any person employed by any public agency excepting those per-
2 sons classed as legislative, judicial, or supervisory public employees; elected and top management
3 appointive officials; and certain categories of confidential employees including those who have re-
4 sponsibility for administering the public labor-management relations law as a part of their official
5 duties.

6 (l) "Recognized employee organization" means any employee organization which has been
7 formally acknowledged by the public agency or certified as representing a majority of the non-
8 supervisory employees of an appropriate unit.

9 (m) "Representative of the public employer" and "designated representative" mean the chief
10 executive officer of the public employer or his designee, except where the governing body provides
11 otherwise.

12 (n) "Strike" means the failure by concerted action with others to report for duty, the willful ab-
13 sence from one's position, the stoppage of work, or the abstinence in whole or in part from the full,
14 faithful, and proper performance of the duties of employment, or in any manner interfering with the
15 operation of any public agency, for the purpose of inducing, influencing, or coercing a change in the
16 conditions or compensation or the rights, privileges, or obligations of employment.

17 (o) "Supervisory employee" means any individual having authority, in the interest of the em-
18 ployer:

19 (1) to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or disci-
20 pline other employees;

21 (2) responsibly to direct them;

22 (3) to adjust their grievances; or

23 (4) effectively to recommend such action, if, in connection with the foregoing, the exercise
24 of such authority is not of a merely routine or clerical nature, but requires the use of independent
25 judgment.

26 (p) "Voluntary arbitration" means a procedure wherein both parties jointly agree to submit
27 their dispute over the interpretation of the terms of an existing agreement or over a new memoran-
28 dum of agreement to an impartial third party whose decision may be final and binding or advisory
29 and non-binding, depending on the nature of the initial agreement.

30 SECTION 3. *[Public Employee Relations Agency.]*

31 (a) There is hereby created [*in the state department of []*] a [*board*] to be known as the [*public em-*
32 *ployee relations agency*], which shall consist of [*five*] members appointed by the governor, by and with
33 the advice and consent of the [*senate*] from persons representative of the public. Not more than [*three*]
34 members of the [*agency*] shall be members of the same political party. Each member shall be appointed
35 for a term of [*six*] years, except that [*two*] shall be appointed for a term to expire [*two*] years follow-

1 ing the effective date of this act, [two] for a term that shall expire [four] years following the effective date
2 of this act, and [one] for a term that shall expire [six] years following the effective date of this act. A
3 member appointed to fill a vacancy shall be appointed for the unexpired term of the member whom
4 he is to succeed.

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

7 (c) Members of the [agency] other than the chairman, when performing the duties of the agency,
8 shall be compensated at the rate of [\$100] a day, together with an allowance of actual and necessary
9 expenses incurred in the discharge of their duties. The chairman shall receive an annual salary to be
10 fixed [by the governor] within the amount available therefor by appropriation, in addition to an al-
11 lowance for expenses actually and necessarily incurred by him in the performance of his duties.

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

18 (e) The [agency] may:

19 (1) make studies and analyses of, and act as a clearinghouse of information relating to
20 wages, hours, and conditions of employment of public employees throughout the state;

21 (2) provide technical assistance and training programs to assist public employers in their
22 dealings with employee organizations;

23 (3) request from any public agency such assistance, services, and data as will enable the
24 [agency] properly to carry out its functions and powers;

25 (4) establish procedures for the prevention of improper public employer and employee or-
26 ganization practices as provided in Section 13 of this act, provided that in the case of a claimed vio-
27 lation of subsection (b)(5) or subsection (c)(4) of such section, procedures shall provide only
28 for an entering of an order directing the public agency or employee organization to meet and confer
29 in good faith. The pendency of proceedings under this paragraph shall not be used as the basis to
30 delay or interfere with determination of representation status pursuant to Section 7 of this act or
31 with meeting and conferring. The [agency] shall exercise exclusive non-delegable jurisdiction of the
32 power granted to it by this paragraph:

33 (5) establish, after consulting with representatives of employee organizations and public
34 agencies, panels of qualified persons broadly representative of the public to be available to serve as
35 mediators, members of fact finding boards, or arbitrators;

1 (6) hold such hearings and make such inquiries, as it deems necessary, to carry out prop-
2 erly its functions and powers;

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

8 (8) make, amend, and rescind such rules including but not limited to those governing its
9 internal organization and conduct of its affairs and, where necessary, defining appropriate units,
10 and exercise such other powers, as may be appropriate to effectuate the purposes and provisions of
11 this act.

12 SECTION 4. *Public Employee Rights.* Public employees may form, join, and participate in the
13 activities of employee organizations of their own choosing for the purpose of meeting and conferring
14 with public employers or their designated representatives with respect to grievances concerning
15 wages, hours, and conditions of employment. Public employees may refuse or fail to join or partici-
16 pate in the activities of employee organizations.

17 SECTION 5. *Supervisory Employees.* Supervisory employees may form, join, and participate in
18 the activities of employee organizations, provided such organizations do not include non-supervisory
19 employees. A public agency shall not extend formal recognition to a supervisory organization for the
20 purpose of meeting and conferring with respect to grievances and conditions of employment, but
21 may consult or otherwise communicate with such an organization on appropriate matters. The pub-
22 lic employer shall determine which individuals are to be considered supervisory or confidential em-
23 ployees for meet and confer purposes, subject to appeal to the [agency].

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

- 26 (a) direct the work of its employees;
- 27 (b) hire, promote, assign, transfer, and retain employees in positions within the public agency;
- 28 (c) demote, suspend, or discharge employees for proper cause;
- 29 (d) maintain the efficiency of governmental operations;
- 30 (e) relieve employees from duties because of lack of work or for other legitimate reasons;
- 31 (f) take actions as may be necessary to carry out the duties of the agency in emergencies; and
- 32 (g) determine the methods, means, and personnel by which operations are to be carried on.

33 SECTION 7. *Recognition of Employee Organizations.*

34 (a) [Agency] determinations of an appropriate unit for purposes of meeting and conferring be-
35 tween public employers and employee organizations shall be upon petition filed by the public em-

1 ployer, public employee, or employee organization.

2 (b) Within 30 days of receipt of a petition, or of notice to all interested parties if on its own ini-
3 tiative, the [agency] shall conduct a public hearing, receive written or oral testimony, and promptly
4 thereafter file an order defining the appropriate unit. In defining the unit, the [agency] shall take into
5 consideration, along with other relevant factors, the principles of efficient administration of govern-
6 ment, the existence of a community of interest among public employees, the history and extent of
7 public employee organization, geographical location, and the recommendations of the parties in-
8 volved.

9 (c) [Agency] certification of an employee organization as the representative of an appropriate
10 unit shall be upon a petition filed with the [agency] by a public employer, public employee, or an em-
11 ployee organization and an election conducted pursuant to subsections (h), (i), (j), (k), (l), and
12 (m) of this section.

13 (d) The petition of an employee organization shall allege that:

14 (1) the employee organization has submitted a request to a public employer to meet and
15 confer with a designated group of public employees; and

16 (2) the petition is accompanied by written evidence that 30 percent of such public em-
17 ployees are members of the employee organization or have authorized it to represent them for the
18 purposes of meeting and conferring.

19 (e) The petition of a public employee shall allege that an employee organization which has been
20 certified as the representative does not represent a majority of such public employees and that the
21 petitioners do not want to be represented by an employee organization or seek certification of an em-
22 ployee organization.

23 (f) The petition of a public employer shall allege that it has received a request to meet and con-
24 fer from an employee organization which has not been certified as the representative of the public
25 employees in an appropriate unit.

26 (g) The [agency] shall investigate the allegations of any petition to all public employees, em-
27 ployee organizations, and public employers named or described in such petitions or represented in
28 the representation questioned. The [agency] shall thereafter call an election unless:

29 (1) it finds that less than 30 percent of the public employees in the unit appropriate for
30 meeting and conferring support the petition for decertification or for certification;

31 (2) the appropriate unit has not been determined pursuant to this section.

32 (h) Upon the filing of a petition for certification of an employee organization, the [agency] shall
33 submit two questions to the public employees at an election in an appropriate unit. The first question
34 on the ballot shall permit the public employees to determine whether or not such public employees
35 desire representation for purposes of meeting and conferring. The second question on the ballot shall

1 list any employee organization which has petitioned for certification or which has presented proof
2 satisfactory to the [board] of support of 10 percent or more of the public employees in the appropri-
3 ate unit.

4 (i) If a majority of the votes cast on the first question are in the negative, the public employees
5 shall not be represented by an employee organization. If a majority of the votes cast on the first ques-
6 tion is in the affirmative, the employee organization receiving a majority of the votes cast on the sec-
7 ond question shall represent the public employees in the appropriate unit.

8 (j) If none of the choices on the ballot receives the vote of a majority of the public employees
9 voting, the [agency] shall conduct a runoff election among the two employee organizations receiving
10 the greatest number of votes.

11 (k) Any party to the election may, within ten days after notice of the results of the election, file
12 written objections with the [agency] and if it finds that misconduct or other circumstances prevented
13 the public employees eligible to vote from freely expressing their preferences the [agency] may invali-
14 date the election and hold a second election for the public employees.

15 (l) Upon completion of a valid election in which the majority choice of the employees is deter-
16 mined, the [agency] shall certify the results of the election and shall give reasonable notice of the order
17 to all employee organizations listed on the ballot, the public employers, and the public employees in
18 the appropriate unit.

19 (m) A petition for certification as an exclusive representative shall not be considered by the
20 [agency] for a period of one year from the date of the certification or non-certification of an exclusive
21 representative or during the duration of a memorandum of agreement. However, if a petition for de-
22 certification is filed during the duration of a memorandum of agreement, the agency shall award an
23 election under this section not more than 180 days nor less than 150 days prior to the expiration of
24 the memorandum of agreement. If an employee organization is decertified, the agency may receive
25 petitions under subsections (c), (d), (e), (f), and (g) of this section, provided that no such peti-
26 tion and no election conducted pursuant to such petition within one year from decertification shall
27 include as a party the decertified employee organization.

28 *SECTION 8. Rights Accompanying Formal Recognition.*

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

34 (b) A public employer may extend to such an organization the right to membership dues de-
35 duction, upon presentation of dues deduction authorization cards signed by individual employees.

1 (c) A reasonable number of representatives of formally recognized employee organizations may
2 be given time off without compensation during normal working hours to meet and confer with pub-
3 lic employers on matters falling within the scope of discussions.

4 SECTION 9. *Procedures for Determining the Recognition of Local Employee Organizations.*

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

10 (b) In the absence of such procedures, these disputes shall be submitted to the [public employee
11 relations agency] in accordance with Section 7 of this act.

12 SECTION 10. *Scope of a Memorandum of Agreement.* The scope of a memorandum of agree-
13 ment may extend to all matters relating to employment conditions and employer-employee relations,
14 including, but not limited to, wages, hours, and other conditions of employment except, however,
15 that the scope of a memorandum of agreement shall not include proposals relating to:

16 (a) any subject preempted by Federal or state law or by municipal charter;

17 (b) public employee rights defined in Section 4 of this act;

18 (c) public employer rights defined in Section 6 of this act; or

19 (d) the authority and power of any [civil service commission], personnel agency, or its agents
20 established by constitutional provision, statute, charter, or special act to set and administer standards
21 dealing with the impartial recruitment of candidates, to conduct and grade merit examinations, and
22 rate candidates in the order of their relative excellence from which appointments or promotions may
23 be made to positions in the competitive division of the classified service of the public employer served
24 by such [civil service commission] or personnel board.

25 A memorandum of agreement may contain a grievance procedure culminating in advisory arbi-
26 tration of unresolved grievances and disputed interpretations of such agreement.

27 SECTION 11. *Implementation of a Memorandum of Agreement.* If agreement is reached by the
28 representative of the public employer and the recognized employee organization, they shall jointly
29 prepare a memorandum of proposed agreement and, within [14] days, present it to the governing body
30 for determination. After receiving a report from the chief financial officer of the public agency as to
31 the effect the terms of such memorandum will have upon the agency, the governing body, as soon
32 as practicable shall consider the memorandum and take appropriate action. If the governing body
33 approves the memorandum of proposed agreement reached with an employee organization, the gov-
34 erning body or the representative of the public employer shall implement the settlement by appropri-
35 ate action. If the governing body rejects the memorandum of proposed agreement, it shall be returned

1 to the parties for further deliberation.

2 SECTION 12. *Resolution of Disputes Arising in the Course of Discussions.*

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

11 (b) On the request of either party, or upon the [agency's] own motion, if it determines an im-
12 passe exists in meet and confer proceedings between a public employer and a formally recognized or
13 certified employee organization, the [agency] shall aid the parties in effecting a resolution of the dis-
14 pute, and appoint a mediator or mediators, representative of the public, from a list of qualified per-
15 sons maintained by the [agency].

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

20 It shall make written findings of facts and recommendations, if any, for resolution of the dispute
21 and, not later than [20] days from the day of appointment, shall serve such findings on the public em-
22 ployer and the recognized employee organization. If the dispute continues [ten] days after the report is
23 submitted to the parties, the report may be made public by the [agency].

24 (d) If the parties have not resolved the impasse by the end of a [40] day period commencing with
25 the date of appointment of the fact finding board,

26 (1) the representative of the public employer involved shall submit to the governing body
27 or its duly authorized committee(s) a copy of the findings of fact and recommendations of the fact
28 finding board, together with his recommendations for settling the dispute;
29 committee(s) its recommendations for settling the dispute;

30 (2) the employee organization may submit to the governing body or its duly authorized
31 committee(s) its recommendations for settling the dispute;

32 (3) the governing body or such committee(s) shall forthwith conduct a hearing at which
33 the parties shall be required to explain their positions with respect to the board; and

34 (4) thereafter, the governing body shall take such action as it deems to be in the public
35 interest, including the interest of the public employees involved.

1 (e) Meet and confer proceedings and mediation, fact finding, and voluntary arbitration meet-
2 ings and investigations shall not be subject to the provisions of [insert state "right to know" law].

3 (f) The costs for mediation services provided by the [agency] shall be borne by the [agency]. All
4 other costs, including that of fact finding services, shall be borne equally by the parties to a dispute.

5 SECTION 13. *Prohibited Practices; Evidence of Bad Faith.*

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

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

9 (1) interfere, restrain, or coerce public employees in the exercise of rights granted in Sec-
10 tion 4 of this act;

11 (2) dominate, interfere, or assist in the formation, existence, or administration of any em-
12 ployee organization;

13 (3) encourage or discourage membership in any employee organization, agency, committee,
14 association, or representation plan by discrimination in hiring, tenure, or other terms or conditions
15 of employment;

16 (4) discharge or discriminate against an employee because he has formed, joined, or
17 chosen to be represented by any employee organization;

18 (5) refuse to meet and confer with representatives of recognized employee organizations
19 as required in Section 7 of this act;

20 (6) deny the rights accompanying certification or formal recognition granted in Section 8
21 of this act;

22 (7) blacklist any employee organization or its members for the purpose of denying them
23 employment because of their organizational activities; or

24 (8) avoid mediation and fact finding endeavors as provided in Section 12 of this act.

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

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

28 (2) interfere with, restrain, or coerce a public employer with respect to rights protected in
29 Section 6 of this act or with respect to selecting a representative for the purposes of meeting and
30 conferring;

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

32 (4) avoid mediation and fact finding efforts as provided in Section 12 of this act; or

33 (5) engage in a strike.

34 (d) In applying this section, fundamental distinctions between private and public employment
35 shall be recognized, and no body of Federal or state law applicable, wholly or in part, to the private

1 employment, shall be regarded as a binding or controlling precedent.

2 SECTION 14. *Violations of Prohibited Practices.*

3 (a) Any controversy concerning prohibited practices may be submitted to the [agency]. Proceed-
4 ings against the party alleged to have committed a prohibited practice shall be commenced by service
5 upon it by the [agency] of a written notice, together with a copy of the charges. The accused party shall
6 have [seven] days within which to serve a written answer to such charges. The [agency's] hearing shall
7 be held promptly thereafter and at such hearing, the parties shall be permitted to be represented by
8 counsel and to summon witnesses in their behalf. Compliance with the technical rules of evidence
9 shall not be required. The [agency] may use its rule making power, as provided in Section 3, to make
10 any other procedural rules it deems necessary to carry on this function.¹

11 (b) The [agency] shall presents its findings of facts upon all the testimony in writing and shall
12 either dismiss the complaint or determine that a prohibited practice has been or is being committed.
13 If the [agency] finds that the party accused has committed or is committing a prohibited practice, the
14 [agency] shall petition the [court of appropriate jurisdiction] to punish such violation, and shall file in
15 the [court] the record of the proceedings. Any person aggrieved by a final order of the [agency] granting
16 or denying in whole or in part the relief sought may obtain a review of such order in the [court of ap-
17 propriate jurisdiction] by filing a complaint praying that the order of the [agency] be modified or set
18 aside, with a copy of the complaint filed on the [agency], and thereupon the aggrieved party shall file
19 in the [court] the record of the proceedings, certified by the [agency].

20 SECTION 15. *Internal Conduct of Public Employee Organizations.*

21 (a) Every employee organization which has or seeks recognition as a representative of public
22 employees of this state and of its political subdivisions shall file with the [public employee relations
23 agency] a registration report, signed by its president or other appropriate officer, within [90] days after
24 the effective date of this act. Such report shall be in a form prescribed by the [agency] and shall be ac-
25 companied by [two] copies of the employee organization's constitution and bylaws. A filing by a na-
26 tional or international employee organization of its constitution and bylaws shall be accepted in lieu
27 of filing of such documents by each subordinate organization. All changes or amendments to such
28 constitutions and bylaws shall be promptly reported to the [agency].

29 (b) Every employee organization shall file with the [agency] an annual report and an amended
30 report whenever changes are made. Such reports shall be in a form prescribed by the [agency], and
31 shall provide the following information:

32 (1) the names and addresses of the organization, any parent organization or organizations
33 with which it is affiliated, the principal officers, and all representatives;

34 (2) the name and address of its local agent for service of process;

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

1 (3) a general description of the public employees or groups of employees the organization
2 represents or seeks to represent;

3 (4) the amounts of the initiation fee and monthly dues members must pay;

4 (5) a pledge, in a form prescribed by the [agency], that the organization will conform to the
5 laws of the state and that it will accept members without regard to age, race, sex, religion, or national
6 origin; and

7 (6) a financial report and audit.

8 (c) The constitution or bylaws of every employee organization shall provide that:

9 (1) accurate accounts of all income and expenses shall be kept, an annual financial report
10 and audit shall be prepared, such accounts shall be open for inspection by any member of the organi-
11 zation, and loans to officers and agents shall be made only on terms and conditions available to all
12 members;

13 (2) business or financial interests of its officers and agents, their spouses, minor children,
14 parents, or otherwise, that conflict with the fiduciary obligation of such persons to the organization
15 shall be prohibited; and

16 (3) every official or employee of an employee organization who handles funds or other
17 property of the organization, or trust in which an organization is interested, or a subsidiary organiza-
18 tion, shall be bonded. The amount, scope, and form of the bond shall be determined by the agency.

19 (d) The governing rules of every employee organization shall provide for: [periodic]¹ elections
20 by secret ballot subject to recognized safeguards concerning the equal right of all members to nom-
21 inate, seek office, and vote in such elections; the right of individual members to participate in the
22 affairs of the organization; fair and equal treatment of its members; the right of any member to sue
23 the organization; and fair and equitable procedures in disciplinary actions.

24 (e) The [agency] shall prescribe such rules and regulations as may be necessary to govern the
25 establishment and reporting of trusteeships over employee organizations.¹ Establishment of such
26 trusteeships shall be permitted only if the constitution or bylaws of the organization set forth rea-
27 sonable procedures.

28 (f) An employee organization that has not registered or filed an annual report, or that has failed
29 to comply with other provisions of this act, shall not be recognized for the purpose of meeting and
30 conferring with any public employer regarding the terms and conditions of work of its members.
31 Recognized employee organizations failing to comply with this act may have such recognition re-
32 voked by the agency. All proceedings under this subsection shall be conducted in accordance with
33 [the state administrative procedures act]. Prohibitions shall be enforced by injunction upon the peti-

¹Some states may wish to use alternative language, "local elections not less often than once every three years and state elections not less often than once every four years," as required in the Federal *Landrum-Griffin Act*.

1 tion of the [agency] to a [court of appropriate jurisdiction]. Complaints of violation of this act shall be
2 filed with the [agency].

3 SECTION 16. *Local Public Agency Options.* This act, except for Sections 2, 3(e) (3), 4, 5, 6, 7,
4 8, 13, 14, and 15, shall be inapplicable to any public employer, other than the state and its authori-
5 ties, which, acting through its governing body, has adopted by local law, ordinance, or resolution its
6 own provisions and procedures which have been submitted to the [agency] by such public employer
7 and as to which there is in effect a determination by the [agency] that such provisions and procedures
8 and the continuing implementation thereof do not derogate the right granted under this act.

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

10 SECTION 18. *Effective date.* [Insert effective date.]

¹Some states may desire to be more specific in this section of the statute. Title 29 U.S.C.A., Section 461, *et seq.* will provide the types of detail to guide the establishment of such specifics.

[OR]
[Alternative 2.]

[AN ACT TO ESTABLISH A FRAMEWORK OF PUBLIC EMPLOYER-EMPLOYEE RELATIONS BY PROVIDING UNIFORM AND ORDERLY METHODS FOR COLLECTIVE NEGOTIATIONS BETWEEN EMPLOYEES AND ORGANIZATIONS THEREOF AND EMPLOYING PUBLIC AGENCIES AND FOR RELATED PURPOSES]¹

(Be it enacted, etc.)

1 SECTION 1. *Findings and Purpose.* The [legislature] hereby finds and declares that:

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

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

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

15 (d) the state has a basic obligation to protect the public by attempting to assure the orderly and
16 uninterrupted operations and functions of government.

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

24 SECTION 2. *Definitions.* As used in this act:

¹States will wish to consider whether to legislate separately for state and local employment.

1 (a) "[Agency]" means the [public employee relations agency] established pursuant to this act.

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

6 (c) "Binding arbitration" means interpretation of the terms of an existing or a new agreement
7 by an impartial third party whose decision shall be final and binding.

8 (d) "Collective negotiations" means performance of the mutual obligation of the employer
9 through its chief executive officer or designated representative and the recognized employee organiza-
10 tion to meet at reasonable times and negotiate in good faith with respect to wages, hours, and other
11 conditions of employment, or the negotiation of an agreement, or any question arising thereunder,
12 and the exception of a written contract in incorporating any agreement reached if requested by either
13 party, but such obligations do not compel either party to agree to a proposal or require the making
14 of a concession.

15 (e) "Confidential employee" means one whose unrestricted access to confidential personnel files
16 or information concerning the administrative operations of a public agency or whose functional re-
17 sponsibilities or knowledge in connection with the issues involved in the collective negotiations proc-
18 ess would make his membership in the same organization as rank-and-file employees incompatible
19 with his official duties.

20 (f) "Employee organization" means any organization which includes employees of a public
21 agency and which has as one of its primary purposes representing such employees in collective ne-
22 gotiations with that public agency over grievances and wages, hours, and other terms and conditions
23 of employment.

24 (g) "Fact finding" means investigation of such a dispute by an individual, panel, or board with
25 the fact finder submitting a report to the parties describing the issues involved.

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

29 (i) "Mediation" means effort by an impartial third party to assist in reconciling a dispute re-
30 garding wages, hours, and other terms and conditions of employment between representatives of the
31 public agency and the recognized employee organization through interpretation, suggestion, and ad-
32 vice.

33 (j) "Public agency" or "public employer" means the state of [name] and every governmental sub-
34 division; school and non-school special district; [public and quasipublic corporation;] public agency;
35 town, city, county, city and county, and municipal corporation; and authority, board, or commis-

1 sion, whether incorporated or not and whether chartered or not.

2 (k) "Public employee" means any person employed by any public agency excepting those per-
3 sons classed as legislative, judicial, or supervisory public employees; elected and top management ap-
4 pointive officials; and certain categories of confidential employees including those who have respon-
5 sibility for administering the public labor-management relations law as a part of their official duties.

6 (l) "Recognized employee organization" or "exclusive representative" means an employee or-
7 ganization which has been formally acknowledged by the public agency or certified as representing a
8 majority of the non-supervisory employees of an appropriate unit.

9 (m) "Representative of the public employer" and "designated representative" means the chief
10 executive officer of the public employer or his designee, except where the governing body provides
11 otherwise.

12 (n) "Strike" means the failure by concerted action with others to report for duty, the willful
13 absence from one's position, the stoppages of work, or the abstinence in whole or in part from the
14 full, faithful, and proper performance of the duties of employment, or in any manner interfering with
15 the operation of any public agency, for the purpose of inducing, influencing, or coercing a change
16 in the conditions or compensation or the rights, privileges, or obligations of employment.

17 (o) "Supervisory employee" means an individual having authority, in the interest of the em-
18 ployer:

19 (1) to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or disci-
20 pline other employees;

21 (2) to responsibly direct them;

22 (3) to adjust their grievances; or

23 (4) to effectively recommend such action, if in connection with the foregoing, the exercise
24 of such authority is not of a merely routine or clerical nature, but requires the use of independent
25 judgment.

26 (p) "Voluntary arbitration" means a procedure wherein both parties jointly agree to submit
27 their dispute over the interpretation of the terms of an existing agreement or over a new agreement
28 to an impartial third party whose decision may be final and binding or advisory and non-binding, de-
29 pending on the nature of the initial agreement.

30 SECTION 3. *[Public Employee Relations Agency]*.

31 *[Alternative 1.]*

32 [(a) There is hereby created [*in the state department of* { }] a [*board*], to be known as the [*public*
33 *employee relations agency*], which shall consist of [*five*] members appointed by the governor, by and
34 with the advice and consent of the [*senate*], from persons representative of the public. Not more than
35 [*three*] members of the [*agency*] shall be members of the same political party. Each member shall be ap-

1 pointed for a term of [six] years, except that [two] shall be appointed for a term to expire [two] years fol-
2 lowing the effective date of this act, [two] for a term that shall expire [four] years following the effective
3 date of this act, and [one] for a term that shall expire [six] years following the effective date of this act.
4 A member appointed to fill a vacancy shall be appointed for the unexpired term of the member whom
5 he is to succeed.]

6 [Alternative 2.]

7 [(a) There is hereby created the [public employee relations agency], which shall be composed of
8 [five] members. The governor shall appoint two members who shall serve at his pleasure.

9 A [state labor committee] also may be created and its membership shall be open to any labor or-
10 ganization which represents employees as defined in the act. The committee shall adopt reasonable
11 rules for the purpose of designating and removing labor members of the [agency]. The first meeting of
12 the committee shall be convened by a representative of the labor organization having the largest
13 number of members who are employees as defined in the act. This representative shall serve as act-
14 ing chairman of the [state labor committee] until a permanent chairman is selected in accordance with
15 the rules adopted by the committee.

16 The [state labor committee], in accordance with its rules, shall appoint [two] members of the [public
17 employee relations agency], who shall serve at the pleasure of the committee. If the committee fails to
18 appoint such members within [28] days following the naming of the governor's appointees, the gov-
19 ernor shall appoint [two] additional members representative of employee organizations who shall serve
20 at his pleasure. The fifth member of the [agency] shall be elected and designated chairman by the
21 unanimous vote of the other [four] members, after which he shall be appointed by the governor. If a
22 chairman has not been elected within [ten] days following the appointment of the other [four] members,
23 the governor shall designate the chairman. The chairman shall serve for [three] years, commencing
24 from the date of his appointment. Vacancies in the office of any member shall be filled in the same
25 manner as herein provided for appointment. [Three] members, consisting of the chairman, at least one
26 member appointed by the governor, and at least one member appointed by the committee shall at all
27 times constitute a quorum of the [agency].]

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

30 (c) Members of the [agency] other than the chairman, when performing the duties of the [agency],
31 shall be compensated at the rate of [\$100] a day, together with an allowance of actual and necessary
32 expenses incurred in the discharge of their duties. The chairman shall receive an annual salary to be
33 fixed [by the governor] within the amount available therefor by appropriation, in addition to an al-
34 lowance for expenses actually and necessarily incurred by him in the performance of his duties.

35 (d) The [agency] may appoint an [executive director] and such other persons, including but not

1 limited to mediators, members of fact finding boards, and representatives of employee organizations
2 and public employers to serve as technical advisers to such fact finding boards, as it may from time-
3 to-time deem necessary for the performance of its functions. The [agency] shall prescribe their du-
4 ties, fix their compensation, and provide for reimbursement of their expenses within the amounts
5 made available therefor by appropriation.

6 (e) The [agency] may:

7 (1) make studies and analyses of, and act as a clearinghouse of information relating to
8 wages, hours, and conditions of employment of public employees throughout the state;

9 (2) provide technical assistance and training programs to assist public employers in their
10 dealings with employee organizations;

11 (3) request from any public agency such assistance, services, and data as will enable the
12 [agency] to properly carry out its functions and powers;

13 (4) establish procedures for the prevention of improper public employer and employee or-
14 ganization practices as provided in Section 13 of this act, provided that, in the case of a claimed vio-
15 lation of subsection (b)(5) and subsection (c)(4) of such section, procedures shall provide only
16 for an entering of an order directing the public agency or employee organization to negotiate col-
17 lectively. The pendency of proceedings under this paragraph shall not be used as the basis to delay
18 or interfere with determination of representation status pursuant to Section 7 of this act or with ne-
19 gotiating collectively. The [agency] shall exercise exclusive non-delegable jurisdiction of the power
20 granted to it by this paragraph;

21 (5) establish, after consulting with representatives of employee organizations and of public
22 agencies, panels of qualified persons, broadly representative of the public, to be available to serve as
23 mediators, members of fact finding boards, or arbitrators;

24 (6) hold such hearings and make such inquiries, as it deems necessary, to carry out prop-
25 erly its functions and powers;

26 (7) for the purpose of such hearings and inquiries, administer oaths and affirmations, ex-
27 amine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses
28 and the production of documents by the issuance of subpoenas, and delegate such powers to any
29 member of the [agency] or any person appointed by the [agency] for the performance of its functions.
30 Such subpoenas shall be regulated and enforced [*under the civil practice law and rules*]; and

31 (8) make, amend, and rescind rules including but not limited to those governing its internal
32 organization and conduct of its affairs and, where necessary, defining appropriate units, and exer-
33 cise such other powers, as may be appropriate, to effectuate the purposes and provisions of this act.

34 SECTION 4. *Public Employee Rights.* Public employees may form, join, or assist any employee
35 organization to negotiate collectively through representatives of their own choosing on questions

1 concerning grievances, wages, hours, and other conditions of employment and to engage in other
2 concerted activities for the purpose of collective negotiations or other mutual aid or protection, free
3 from interference, restraint, or coercion. Public employees may refuse to join employee organizations.

4 SECTION 5. *Supervisory Employees.* Supervisory employees may form, join, and participate in
5 the activities of employee organizations, provided such organizations do not include non-supervisory
6 employees. A public agency shall not extend exclusive recognition to a supervisory organization for
7 the purpose of negotiating collectively with respect to grievances and conditions of employment, but
8 may consult or otherwise communicate with such an organization on appropriate matters. The pub-
9 lic employer shall determine which individuals are to be considered supervisory or confidential em-
10 ployees for collective negotiation purposes, subject to appeal to the [agency].

11 [Optional Section.]

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

- 14 (a) direct the work of its employees;
- 15 (b) hire, promote, assign, transfer, and retain employees in positions within the public agency;
- 16 (c) demote, suspend, or discharge employees for proper cause;
- 17 (d) maintain the efficiency of governmental operations;
- 18 (e) relieve employees from duties because of lack of work or for other legitimate reasons;
- 19 (f) take actions as may be necessary to carry out the duties of the agency in emergencies; and
- 20 (g) determine the methods, means, and personnel by which operations are to be carried on.]

21 SECTION 7. *Recognition of Employee Organizations.*

22 (a) [Agency] determination of an appropriate bargaining unit shall be upon petition filed by a
23 public employer, public employee, or employee organization.

24 (b) Within 30 days of receipt of a petition, or of notice to all interested parties if on its own
25 initiative, the [agency] shall conduct a public hearing, receive written or oral testimony, and promptly
26 thereafter file an order defining the appropriate bargaining unit. In defining the unit, the [agency] shall
27 take into consideration, along with other relevant factors, the principles of efficient administration
28 of government, the existence of a community of interest among public employees, the history and
29 extent of public employee organization, geographical location, and the recommendations of the
30 parties involved.

31 (c) [Agency] certification of an employee organization as the exclusive bargaining representative
32 of a bargaining unit shall be upon a petition filed with the [agency] by a public employer, public em-
33 ployee, or an employee organization and an election conducted pursuant to subsections (h), (i), (j),
34 (k), (l), and (m) of this section.

35 (d) The petition of an employee organization shall allege that:

1 (1) the employee organization has submitted a request to a public employer to bargain col-
2 lectively with a designated group of public employees; and

3 (2) the petition is accompanied by written evidence that 30 percent of such public em-
4 ployees are members of the employee organization or have authorized it to represent them for the
5 purposes of collective bargaining.

6 (e) The petition of a public employee shall allege that an employee organization which has
7 been certified as the bargaining representative does not represent a majority of such public employees
8 and that the petitioners do not want to be represented by an employee organization or seek certifica-
9 tion of an employee organization.

10 (f) The petition of a public employer shall allege that it has received a request to bargain from
11 an employee organization which has not been certified as the bargaining representative of the public
12 employees in an appropriate bargaining unit.

13 (g) The [agency] shall investigate the allegations of any petition and shall give reasonable notice
14 of the receipt of such a petition to all public employees, employee organizations, and public employ-
15 ers named or described in such petitions or represented in the representation questioned. The [agency]
16 shall thereafter call an election unless:

17 (1) it finds that less than 30 percent of the public employees in the unit appropriate for
18 collective bargaining support the petition for decertification or for certification;

19 (2) the appropriate unit has not been determined pursuant to this section.

20 (h) Upon the filing of a petition for certification of an employee organization, the [agency] shall
21 submit two questions to the public employees at an election in an appropriate bargaining unit. The
22 first question on the ballot shall permit the public employees to determine whether or not such public
23 employees desire bargaining representation. The second question on the ballot shall list any employee
24 organization which has petitioned for certification or which has presented proof satisfactory to the
25 [board] of support of 10 percent or more of the public employees in the appropriate unit.

26 (i) If a majority of the votes cast on the first question are in the negative, the public employees
27 shall not be represented by an employee organization. If a majority of the votes cast on the first ques-
28 tion is in the affirmative, the employee organization receiving a majority of the votes cast on the sec-
29 ond question shall represent the public employees in the appropriate unit.

30 (j) If none of the choices on the ballot receive the vote of a majority of the public employees
31 voting, the [agency] shall conduct a runoff election among the two employee organizations receiving
32 the greatest number of votes.

33 (k) Any party to the election may, within ten days after notice of the results of the election, file
34 written objections with the [agency] and if it finds that misconduct or other circumstances prevented
35 the public employees eligible to vote from freely expressing their preferences, the [agency] may invali-

1 date the election and hold a second election for the public employees.

2 (l) Upon completion of a valid election in which the majority choice of the employees is deter-
3 mined, the [agency] shall certify the results of the election and shall give reasonable notice of the order
4 to all employee organizations listed on the ballot, the public employers, and the public employees in
5 the appropriate bargaining unit.

6 (m) A petition for certification as an exclusive bargaining representative shall not be consid-
7 ered by the [agency] for a period of one year from the date of the certification or non-certification of an
8 exclusive bargaining representative or during the duration of a collective bargaining agreement. How-
9 ever, if a petition for decertification is filed during the duration of a collective bargaining agreement,
10 the [agency] shall award an election under this section not more than 180 days nor less than 150 days
11 prior to the expiration of the collective bargaining agreement. If an employee organization is decerti-
12 fied, the [agency] may receive petitions under subsections (c), (d), (e), (f), and (g) of this section,
13 provided that no such petition and no election conducted pursuant to such petition within one year
14 from decertification shall include as a party the decertified employee organization.

15 *SECTION 8. Rights Accompanying Exclusive Recognition.*

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

21 (b) A public employer shall extend to such an organization the right to membership dues de-
22 duction upon presentation of dues deduction authorization cards signed by individual employees
23 provided that all employee organizations may have the right to membership dues deduction until the
24 formally recognized representative has been determined. Public employees who are not members of
25 the exclusively recognized employee organization may be required to pay fees to such organization
26 for its representational services, [provided that such fees shall not exceed the amount of regular mem-
27 bership dues.]

28 (c) A reasonable number of representatives of exclusively recognized organizations shall be
29 given time off without loss of compensation during normal working hours to bargain collectively
30 with the public employers on matters falling within the scope of negotiations.

31 *SECTION 9. Procedures for Determining the Recognition Status of Local Employee Organi-*
32 *zations.*

33 (a) Every public agency, other than the state and its authorities, acting through its governing
34 body, may establish procedures, not inconsistent with the provisions of Sections 7 and 8 of this act
35 and after consultation with interested employee organizations and employer representatives, to re-

1 solve disputes concerning the recognition status of employee organizations composed of employees
2 of such agency.

3 (b) In the absence of such procedures, these disputes shall be submitted to the [public employee
4 relations agency] in accordance with Section 7 of this act.

5 SECTION 10. *Scope of an Agreement.* The scope of an agreement may extend to all matters re-
6 lating to employment conditions and employer-employee relations, including, but not limited to, wages,
7 hours, and other conditions of employment. An agreement may contain a grievance procedure cul-
8 minating in final and binding arbitration of unresolved grievances and disputed interpretations of
9 such agreement. Where there is a conflict between any agreement reached by a public employer and
10 a recognized employee organization and approved in accordance with the provisions of this act on
11 matters appropriate to collective negotiations, as defined in this act, and any rule or regulation
12 adopted by the public employer or its agent such as a personnel board or [civil service commission], the
13 terms of such agreement shall prevail. Where there is a conflict between any agreement reached by
14 a public employer and a recognized employee organization and approved in accordance with provi-
15 sions of this act and any charter, special act, ordinance, and general statute directly relating to hours
16 of work of policemen or firemen, or any general statute providing for the method of covering or re-
17 moving employees from coverage under the [] employees retirement system, the terms of such agree-
18 ment shall prevail. Nothing herein shall diminish the authority and power of any [civil service com-
19 mission], personnel board, personnel agency, or its agents established by constitutional provision,
20 statute, charter, or special act to conduct and grade merit examinations and to rate candidates in the
21 order of their relative excellence from which appointments or promotions may be made to positions
22 in the competitive division of the classified service of the public employer served by such [civil serv-
23 ice commission] or personnel board.¹

24 SECTION 11. *Implementation of an Agreement.*

25 (a) Any agreement reached by the public employer and the exclusive representative shall be re-
26 duced to writing and executed by both parties.

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

29 (c) A request for funds necessary to implement the written agreement, and for approval of any
30 other matter requiring the approval of the governing body, shall be submitted by the representative
31 of the public employer to the governing body within [14] days of the date on which such agreement is
32 executed. Matters requiring the approval of the governing body shall be submitted by the representa-
33 tive of the public employer within [14] days of the date the body convenes if it is not in session at
34 the time the agreement is executed. Failure by the representative of the public employer to submit

¹See also the legislation on state mandating of local employment conditions.

1 such request to the governing body within the appropriate period shall be a refusal to negotiate in
2 good faith, in violation of Section 13(b)(5) of this act. The request shall be considered ap-
3 proved if the governing body fails to vote to approve or reject the request within [30] days of the end
4 of the period for submission to the body. The representative of the public employer may implement
5 provisions of the agreement not requiring action by the governing body to be effective and operative
6 in accordance with the terms of the agreement. If the governing body rejects the provisions submitted
7 to it by the designated representative, either party may reopen all or part of the remainder of the
8 agreement.

9 SECTION 12. *Resolution of Disputes Arising in the Course of Negotiations.*

10 (a) Public employers may include in agreements concluded with exclusively recognized or certi-
11 fied employee organizations a provision setting forth the procedures to be invoked in the event of
12 disputes which reach an impasse in the course of negotiating proceedings. For purposes of this sec-
13 tion, an impasse shall be deemed to exist if the parties fail to achieve agreement at least [60] days prior
14 to the budget submission. In the absence or upon the failure of dispute resolution procedures con-
15 tained in agreements resulting in an impasse, either party may request the assistance of the [public em-
16 ployee relations agency] or the [agency] may render such assistance on its own motion, as provided in
17 subsection (b) of this section.

18 (b) On the request of either party, or upon the [agency's] own motion, in the event it determines
19 an impasse exists in negotiating proceedings between a public employer and an exclusively recog-
20 nized or certified employee organization, the [agency] shall aid the parties in effecting resolution of the
21 dispute, and appoint a mediator or mediators, representative of the public, from a list of qualified
22 persons maintained by the [agency].

23 (c) If the impasse persists [ten] days after the mediator(s) has been appointed, the [agency] shall
24 appoint a fact finding board of not more than [three] members, each representative of the public, from
25 a list of qualified persons maintained by the [agency]. The fact finding board shall conduct a hearing,
26 may administer oaths, and may request the [agency] to issue subpoenas. It shall make written findings
27 of facts and recommendations, if any, for resolution of the dispute and, no later than [20] days from
28 the day of appointment, shall serve such findings on the public employer and the recognized em-
29 ployee organization. If the dispute continues [ten] days after the report is submitted to the parties, the
30 report shall be made public by the [agency].

31 (d) If an impasse persists after the findings of fact and recommendations are made public by
32 the fact finding board, the [agency] shall have the power to take whatever steps it deems appropriate
33 to resolve the dispute, including:

34 (1) the making of recommendations after giving due consideration to the findings of fact
35 and recommendations of the fact finding board, but no other such board shall be appointed; and

- 1 (2) upon request of the parties, assisting in providing for voluntary arbitration.
- 2 (e) In the event that the parties have not resolved their impasse by the end of a [50] day period
3 commencing with the date of appointment of the fact finding board:
- 4 (1) the representative of the public employer involved shall submit to the governing body
5 or its duly authorized committee(s) a copy of the findings of fact and recommendations of the fact
6 finding board, together with his recommendation for settling the dispute;
- 7 (2) the employee organization may submit to such governing body or its duly author-
8 ized committee(s) recommendations for settling the dispute;
- 9 (3) the governing body or such committee(s) shall forthwith conduct a hearing at which
10 the parties shall be required to explain their positions with respect to the [board]; and
- 11 (4) thereafter, the governing body shall take such action as it deems to be in the public in-
12 terest, including the interest of the public employees involved.
- 13 (f) Collective negotiations proceedings and mediation, fact finding, and voluntary arbitration
14 meetings and investigations shall not be subject to the provisions of [insert state "right to know" law].
- 15 (g) The costs for mediation services provided by the [agency] shall be borne by the [agency]. All
16 other costs, including those of fact finding and arbitrating services, shall be borne equally by the
17 parties to a dispute.
- 18 SECTION 13. *Prohibited Practices; Evidence of Bad Faith.*
- 19 (a) Commission of a prohibited practice, as defined in this section, among other actions, shall
20 constitute evidence of bad faith in collective negotiations proceedings.
- 21 (b) It shall be a prohibited practice for a public employer or its designated representative will-
22 fully to:
- 23 (1) interfere, restrain, or coerce public employees in the exercise of rights granted in Sec-
24 tion 4 of this act;
- 25 (2) dominate, interfere, or assist in the formation, existence, or administration of any em-
26 ployee organization;
- 27 (3) encourage or discourage membership in any employee organization, agency, commit-
28 tee, association, or representation plan by discrimination in hiring, tenure, or other terms or condi-
29 tions of employment;
- 30 (4) discharge or discriminate against an employee because he has filed any affidavit, peti-
31 tion, or complaint or given any information or testimony under this act, or because he has formed,
32 joined, or chosen to be represented by any employee organization;
- 33 (5) refuse to negotiate collectively with representatives of recognized employee organi-
34 zations as required in Section 7 of this act;
- 35 (6) deny the rights accompanying certification or exclusive recognition granted in Section

1 8 of this act;

2 (7) blacklist any employee organization or its members for the purpose of denying them
3 employment because of their organizational activities;

4 (8) avoid in mediation, fact finding, and arbitration endeavors as provided in Section 12 of
5 this act;

6 (9) institute or attempt to institute a lockout; or

7 (10) deal directly with employees on matters falling within the scope of negotiations, cir-
8 cumventing the exclusive representative.

9 (c) It shall be a prohibited practice for public employees or employee organizations willfully
10 to:

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

13 (2) interfere with, restrain, or coerce a public employer with respect to rights protected in
14 Section 6 of this act or with respect to selecting a representative for the purposes of negotiating col-
15 lectively.

16 (3) refuse to bargain collectively with a public employer as required in Section 7 of this act;

17 (4) avoid in mediation, fact finding, and arbitration efforts as provided in Section 12 of this
18 act; or

19 (5) engage in a strike.

20 SECTION 14. *Violations of Prohibited Practices.*

21 (a) Any controversy concerning prohibited practices may be submitted to the [agency]. Proceed-
22 ings against the party alleged to have committed a prohibited practice shall be commenced by service
23 upon it by the [agency] of a written notice, together with a copy of the charges. The accused party shall
24 have [seven] days within which to serve a written answer to such charges. The [agency's] hearing will
25 be held promptly thereafter and at such hearing, the parties shall be permitted to be represented by
26 counsel and to summon witnesses in their behalf. Compliance with the technical rules of evidence
27 shall not be required. The [agency] may use its rule making power, as provided in Section 3, to make
28 any other procedural rules it deems necessary to carry on this function.¹

29 (b) The [agency] shall state its findings of facts upon all the testimony and shall either dismiss
30 the complaint or determine that a prohibited practice has been or is being committed. If the [agency]
31 finds that the party accused has committed or is committing a prohibited practice, the [agency] shall
32 petition the [court of appropriate jurisdiction] to punish such violation, and shall file in the [court] the
33 record in the proceedings. Any person aggrieved by a final order of the [agency] granting or deny-
34 ing, in whole or in part, the relief sought may obtain a review of such order in the [court of appropri-

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

1 *ate jurisdiction*] by filing in the [court] a complaint praying that the order of the [agency] be modified or
2 set aside, with copy of the complaint filed on the [agency], and thereupon the aggrieved party shall file
3 in the [court] the record in the proceedings, certified by the [agency].

4 SECTION 15. *Internal Conduct of Public Employee Organizations.*

5 (a) Every employee organization which has or seeks recognition as a representative of public
6 employees of this state and of its political subdivisions shall file with the [public employee relations
7 agency] a registration report, signed by its president or other appropriate officer, within [90] days after
8 the effective date of this act. Such report shall be in a form prescribed by the [agency] and shall be
9 accompanied by [two] copies of the employee organization's constitution and bylaws. A filing by a
10 national or international employee organization of its constitution and bylaws shall be accepted in
11 lieu of a filing of such documents by each subordinate organization. All changes or amendments to
12 such constitutions and bylaws shall be promptly reported to the [agency].

13 (b) Every employee organization shall file with the [agency] an annual report and an amended
14 report whenever changes are made. Such reports shall be in a form prescribed by the [agency], and shall
15 provide information on the following:

16 (1) the names and addresses of the organization, any parent organization or organizations
17 with which it is affiliated, the principal officers, and all representatives;

18 (2) the name and address of its local agent for service of process;

19 (3) a general description of the public employees or groups of employees the organiza-
20 tion represents or seeks to represent;

21 (4) the amounts of the initiation fee and monthly dues members must pay;

22 (5) a pledge, in a form prescribed by the [agency], that the organization will conform to the
23 laws of the state and that it will accept members without regard to age, race, sex, religion, or national
24 origin; and

25 (6) a financial report and audit.

26 (c) The constitution of bylaws of every employee organization shall provide that:

27 (1) accurate accounts of all income and expense shall be kept, an annual financial report
28 and audit shall be prepared, such accounts shall be open for inspection by any member of the or-
29 ganization, and loans to officers and agents shall be made only on terms and conditions available
30 to all members;

31 (2) business or financial interests of its officers and agents, their spouses, minor children,
32 parents, or otherwise, that conflict with the fiduciary obligation of such persons to the organization
33 shall be prohibited; and

34 (3) every official or employee of an employee organization who handles funds or other
35 property of the organization, or trust in which an organization is interested, or a subsidiary organi-

1 zation, shall be bonded. The amount, scope, and form of the bond shall be determined by the [agency].

2 (d) The governing rules of every employee organization shall provide for: [periodic]¹ elections
3 by secret ballot subject to recognized safeguards concerning the equal right of all members to nom-
4 inate, seek office, and vote in such elections; the right of individual members to participate in the
5 affairs of the organization; and fair and equitable procedures in disciplinary actions.

6 (e) The [agency] shall prescribe such rules and regulations as may be necessary to govern the
7 establishment and reporting of trusteeships over employee organizations.² Establishment of such
8 trusteeships shall be permitted only if the constitution or bylaws of the organization set forth rea-
9 sonable procedures.

10 (f) An employee organization that has not registered or filed an annual report, or that has
11 failed to comply with other provisions of this act, shall not be recognized for the purpose of ne-
12 gotiating with any public employer regarding the terms and conditions of work of its members. Rec-
13 ognized employee organizations failing to comply with this act may have such recognition revoked
14 by the [agency]. All proceedings under this subsection shall be conducted in accordance with [the state
15 administrative procedure act]. Prohibitions shall be enforced by injunction upon the petition of the
16 [agency] to the [court of appropriate jurisdiction]. Complaints of violation of this act shall be filed
17 with the [agency].

18 SECTION 16. *Local Public Agency Options.*

19 (a) This act, except for Sections 2, 3(e)(3), 4, 5, 6, 7, 8, 13, 14, and 15, shall be inapplicable
20 to any public employer, other than the state and its authorities, which, acting through its governing
21 body, has adopted by local law, ordinance, or resolution its own provisions and procedures which
22 have been submitted to the [agency] by such public employer and as to which there is in effect a de-
23 termination by the [agency] that such provisions and procedures and the continuing implementation
24 thereof are substantially equivalent to the rights granted under this act.

25 (b) The provisions of any general or special law providing for local terms and conditions in ex-
26 istence on the effective date of this act that conflict with the collective negotiations statute are hereby
27 repealed and shall stand null and void.

28 (c) Any contract entered into under the provisions of this act shall provide a full statement of
29 all local employment terms and conditions, including those heretofore mandated by state or local law,
30 and any terms and conditions not stated therein shall be no longer of any force and effect.

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

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

¹Some states may wish to use alternative language, "local elections not less often than once every three years and state elections not less often than once every four years," as required in the Federal Landrum-Griffin Act.

²Some states may desire to be more specific in this section of the statute. Title 29 U.S.C.A., Section 461, *et. seq.* will provide the types of detail to guide the establishment of such specifics.

4.205 INTERNAL CONDUCT OF PUBLIC EMPLOYEE ORGANIZATIONS¹

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

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

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

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

This draft legislation is also contained as Section 15 in the draft legislation *State Public Labor-Management Relations Act*. Some states may wish to amend existing public employee relations law to include these provisions, other states might find separate legislation to be more appropriate.

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

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

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

Section 6 requires that the governing rules of every public employee organization provide for periodic elections by secret ballot. All members of the organization must be accorded an equal right to participate in the affairs of the organization including the nomination of officers, seeking office, and voting in elections. Members also must be given the right to sue the organization and have access to fair and equitable procedures in disciplinary actions brought against them by the organization.

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

Section 8 establishes procedures covering violations of the act. An organization that fails to comply with

¹Derived from Advisory Commission on Intergovernmental Relations, *Labor-Management Policies for State and Local Governments*, Report A-35 (Washington, D.C.: U.S. Government Printing Office, September, 1969). See also Section 15 of the draft legislation, *State Public Labor-Management Relations Act*.

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

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

Suggested Legislation

[AN ACT GOVERNING THE CONDUCT OF PUBLIC EMPLOYEE UNIONS,
ASSOCIATIONS, AND ORGANIZATIONS]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* It is the purpose of this act to promote high standards of responsibility
2 and ethical conduct in administering the affairs of public employee unions, associations, and organi-
3 zations, especially as they affect public employer-employee relations and protection of the rights and
4 interests of the members of public employee organizations and the citizens of this state generally.

5 SECTION 2. *Definitions.* As used in this act:

6 (a) "Public agency" or "public employer" means the state of [name], every governmental subdivi-
7 sion, every district, every public and quasi public corporation, every public agency, and every town,
8 city, county, city and county, and municipal corporation, whether incorporated or not, and whether
9 chartered or not.

10 (b) "Public employee" means any person employed by any public agency.

11 (c) "Public employee organization" means any organization which includes employees of a pub-
12 lic agency and which has as one of its primary purposes representing such employees in their re-
13 lations with that public agency.

14 (d) "Recognized employee organization" means an employee organization which has been for-
15 mally acknowledge by the public agency or certified as representing a majority of the employees of
16 an appropriate unit.

17 SECTION 3. *Registration of Public Employee Organizations.* Every public employee organiza-
18 tion which has or seeks recognition as a representative of public employees of this state, and of its
19 political subdivisions, shall file with the [state public employee relations agency] a registration report,
20 signed by its president or other appropriate officer within [90] days after the date this act becomes
21 effective. Such report shall be in a form prescribed by the [agency] and shall be accompanied by
22 [two] copies of the public employee organization's constitution and bylaws. A filing by a national
23 or international organization of its constitution and bylaws will be accepted in lieu of filing of such
24 documents by each subordinate public employee organization. All changes or amendments to such
25 constitutions and bylaws shall be promptly reported to the [agency].

26 SECTION 4. *Annual Report.* Every public employee organization shall file an annual report,
27 and an amended report whenever changes are made, with the [state public employee relations agency].
28 Such reports shall be in a form prescribed by the [agency] and shall provide information on the
29 following:

- 1 (a) the name and address of the organization and of any parent organization or organizations
2 with which it is affiliated and the principal officers and all representatives;
- 3 (b) the name of its local agent for service of process and the address where such person can be
4 reached;
- 5 (c) a general description of the public employees or groups of employees the organization rep-
6 resents or seeks to represent;
- 7 (d) the amount of the initiation fee and of monthly dues which members must pay;
- 8 (e) a pledge, in a form prescribed by the [agency], that the public employee organization will
9 accept members without regard to age, race, sex, religion, or national origin; and
- 10 (f) a financial report and audit.

11 SECTION 5. *Maintenance of Fiscal Integrity.*

12 (a) For the maintenance of fiscal integrity, the constitution or bylaws of every employee organi-
13 zation shall provide for ensuring accurate accounts of its income and expenses and an annual finan-
14 cial report and audit. Provision shall be made that such accounts be open for inspection by any
15 member of the organization and that loans to officers and agents may be made only on terms and
16 conditions available to all members.

17 (b) The constitutions or bylaws of all public employee organizations shall include provisions
18 prohibiting business or financial interests of officers and agents, their spouses, minor children, par-
19 ents, or otherwise, that conflict with the fiduciary obligation of such persons to the organization.

20 (c) Every official or employee of a public employee organization who handles funds or other
21 property of the organization, or trust in which an organization is interested, or a subsidiary organi-
22 zation, shall be bonded. The amount, scope, and form of the bond shall be determined by the [state
23 public employee relations agency].

24 SECTION 6. *Democratic Procedures.* For the maintenance of democratic procedures and prac-
25 tices, the governing rules of every public employee organization shall provide for: local elections not
26 less often than once every three years and state elections not less often than once every four years;
27 secret ballot subject to recognized safeguards concerning the equal right of all members to nominate,
28 seek office, and vote in such elections; the right of individual members to participate in the affairs
29 of the organization; fair and equal treatment of its members; the right of any member to sue the
30 organization; and fair and equitable procedures in disciplinary actions.

31 SECTION 7. *Trusteeships.* The [state public employee relations agency] shall prescribe such
32 rules and regulations as may be necessary to govern the establishment and reporting of trusteeships
33 over public employee organizations.¹ Establishment of such trusteeships shall be permitted only if

¹Some states may desire to be more specific in this section of the statute. Title 29 U.S.C.A., Section 461 *et. seq.*, will provide the types of detail to guide the establishment of such specifics.

1 the constitution or bylaws of the organization set forth reasonable procedures.

2 SECTION 8. *Violations.* A public employee organization that has not registered or filed an an-
3 nual report, or that has failed to comply with other provisions of this act shall not be recognized for
4 the purpose of bargaining, negotiating, or meeting and conferring, with any public employer regard-
5 ing the terms and conditions of work of its members. Recognized employee organizations failing to
6 comply with this act may have such recognition revoked by the [*state public employee relations*
7 *agency*]. All proceedings under this section shall be conducted in accordance with [*the state adminis-*
8 *trative procedure act*]. Prohibitions shall be enforced by injunction upon the petition of the [*agency*]
9 to [*court of appropriate jurisdiction*]. Complaints of violation of this act shall be filed with the
10 [*agency*].

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

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

4.206 STATE MANDATING OF LOCAL EMPLOYMENT CONDITIONS¹

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

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

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

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

Consequently, the Commission urged states to refrain from setting terms and conditions of local public employment which are most properly subject to discussion or negotiation between employers and employees. The sole justification for retaining such requirements is that they clearly assist in improving the local public service on a statewide basis. State legislatures may wish to reexamine existing statutes in light of their effect on local labor-management relations policy and — especially those states that have enacted a comprehensive public employee relations law — take steps to repeal mandating legislation. The basic provision contained in this draft legislation may also be found in *Section 16* of the draft legislation, *State Public Labor-Management Relations Act*.

Section 1 sets out the purpose of the legislation. *Section 2* provides the definition of local employment terms and conditions.

Section 3 authorizes the repeal or modification of provisions of any general or special law providing for local employment terms and conditions in the case of contracts entered into under the provisions of the state labor-management relations act.

Sections 3 and 4 provide for separability and effective date clauses, respectively.

¹Deprived from: Advisory Commission on Intergovernmental Relations, *Labor-Management Policies for State and Local Government*, Report A-35 (Washington, D.C.: U.S. Government Printing Office, September 1969); also *State Constitutional and Statutory Restrictions Upon the Structural, Functional, and Personnel Powers of Local Governments*, Report A-12 (Washington, D.C.: U.S. Government Printing Office, October, 1962).

Suggested Legislation

[AN ACT RELATING TO STATE MANDATING OF LOCAL EMPLOYMENT
CONDITIONS]

(Be it enacted, etc.)

1 SECTION 1. *Purpose.* It is the purpose of this act to repeal those previous mandates of em-
2 ployment conditions as enumerated in Section 3.

3 SECTION 2. *Definition.*

4 (a) "Local employment terms and conditions" means any provision affecting employee salaries
5 and wages, employee fringe benefits [including without limitation insurance, health, and medical care
6 programs but specifically excluding pension and retirement programs], employee qualifications and
7 training (except when any civil service commission, professional licensing board, or personnel board
8 or agency established by law sets and administers standards dealing with impartial recruitment of
9 candidates for employment or conducts and grades merit examinations and rates candidates in order
10 of their relative excellence for purposes of making appointments or promotions to positions in the
11 competitive division of the classified service of the public employer served by such commission,
12 board, or agency), hours and places of employment, and working conditions at places of employ-
13 ment.

14 (b) The term "local government" means a county, municipality, town, township, school district,
15 and special district.

16 SECTION 3. *Repeal of Certain Mandated Local Employment Terms and Conditions.*

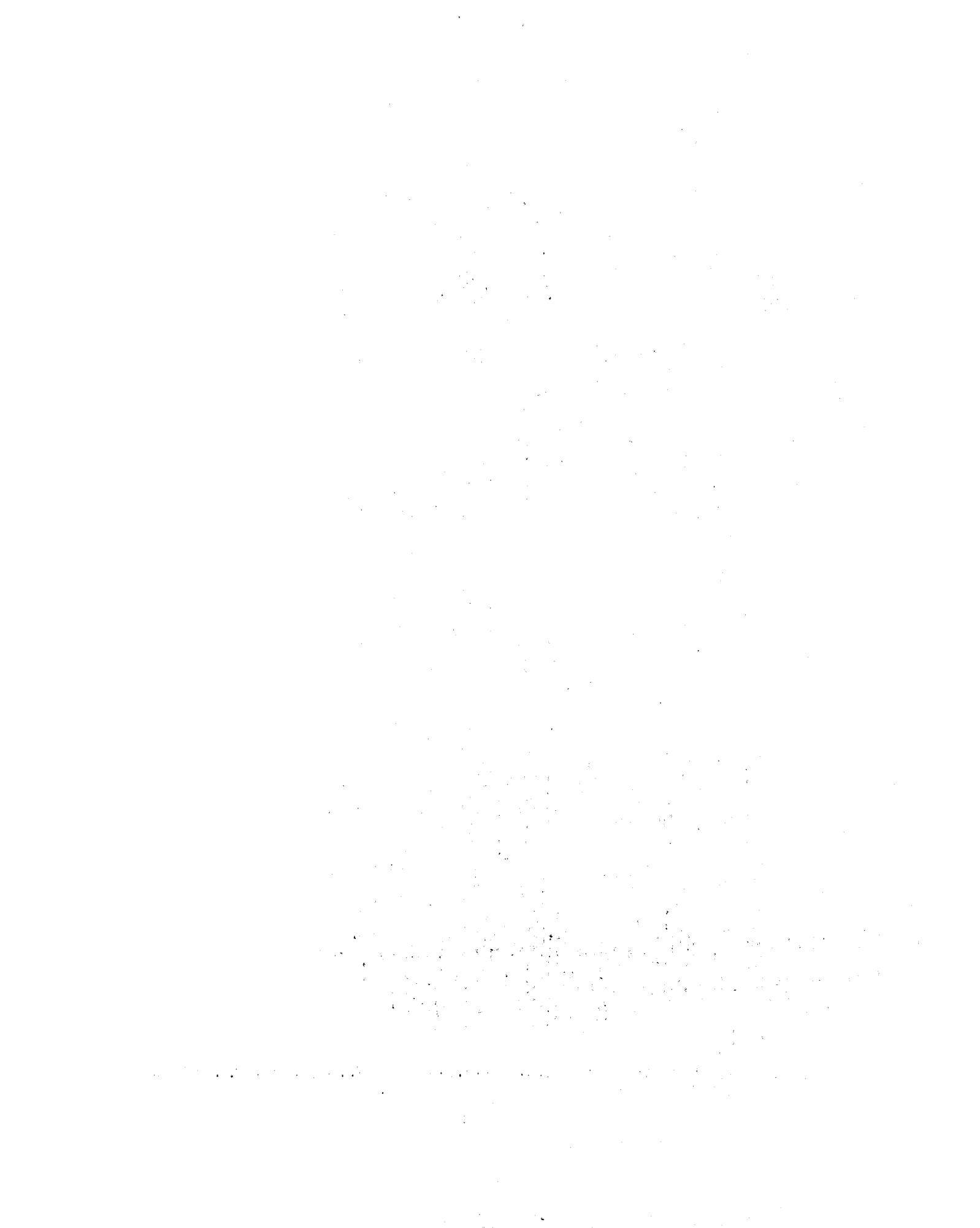
17 (a) Any general or special law providing for local employment terms and conditions in existence
18 on the effective date of this act [may be modified pursuant to any contract entered into under the pro-
19 visions of [state public labor-management relations act] [Alternative.] [in conflict with the provisions of
20 this act and the [state public labor-management relations act] are hereby repealed and shall become
21 null and void.]¹

22 (b) Any contract entered into under the provisions of [state public labor-management relations act]
23 shall specify all local employment terms and conditions, including those heretofore mandated by
24 state or local law, and any terms and conditions not stated therein shall have no force and effect.

25 SECTION 4. *Separability.* [Insert separability clause.]

26 SECTION 5. *Effective Date.* [Insert effective date.]

¹States may desire to consider the various alternatives in light of their constitutional provisions and should also identify and specifically repeal designated statutes outright.



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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 states 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.

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