New Proposals For 1971

ACIR
STATE LEGISLATIVE
PROGRAM

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

October 1970

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FOREWORD

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

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

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

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

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

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

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

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

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

Charles Wheeler
Director, North Carolina Commission on
Higher Education Facilities and
Vice Chairman, Council of State Governments
Committee on Suggested State Legislation
These proposals for State legislation are offered in the hope that they will serve as a useful reference aid for State legislators, State legislative service agencies, and others interested in strengthening the legislative framework of intergovernmental relations. Reprints of individual proposals are available in "slip bill" form upon request.

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

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

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

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

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

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

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

Corporate Income Tax

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

Location of Tangible Personal Property. Personal property shall be considered located in this state if it is physically present in the state.
Personal property which is rented out by a corporation to another person and which is characteristically mobile property, shall be considered to be located in this state if the location at or from which the property is regularly delivered to a lessee is in this state.

Location of employee. An employee shall be considered to be located in this state if the employee’s service is either localized in this state, or not localized in any state but some of the service is performed in this state and the employee’s base of operation is in this state.

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

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

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

1. The solicitation of orders, for sales of tangible personal property, which are sent outside this state for approval or rejection and (if approved) are filled by shipment or delivery from a point outside the state.
2. The solicitation of orders in the name of or for the benefit of a prospective customer of his employer, if orders by the customer to the employee to enable the customer to fill orders resulting from the solicitation are orders described in paragraph (1).

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

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

Sales and Use Tax

General rule. A person shall be required to pay a sales tax or to collect a sales and use tax imposed with respect to taxable sales of tangible personal property and services to persons within this state.
15-13-00

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

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

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

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

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

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

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

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

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

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

(Be it enacted, etc.)

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

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

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

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

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

1 As an alternative for states in which organization for tax administration is diffused, the agency should be given prominence as a separate department or bureau. It may be desirable to have the career administrator serve under a multi-member commission appointed for overlapping terms.
Section 3. Collection and Publication of Property Tax Data. (a) The division annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and overall compliance with assessment requirements for each major class of property in each county in the state. In order to determine the degree of assessment uniformity and compliance in the assessment of major classes of property within each county, the division shall compute measures of central tendency and dispersion in accordance with appropriate standard statistical analysis techniques. [As used in this section, “average dispersion” means the percentage which the average of the deviations of the assessment ratio of individual sold [or appraised] properties bears to their median ratio.]

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

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

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

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

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

2Subsection (a) of this section is similar to section 3, and subsection (c) of this section is similar to section 5 of the act entitled “An act establishing assessment standards and performance measurements; establishing interdistrict and intra-district tax equalization procedures, and for related purposes,” which appears below. This duplication is necessary because the provisions are desirable in each act standing alone.
Section 6. Tax Maps. The division shall require each county assessor to maintain tax maps in accordance with standards specified by the division. Whenever necessary to correct mapping deficiencies, the division shall install standard maps or approve mapping plans and supervise map production. The [state tax agency] [shall] [may] require the county to reimburse the state for tax maps installed by the division. The amount or amounts of such reimbursement shall be deposited in the [state treasury] to the account of the [state tax agency]. 3

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

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

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

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

3 In place of the last two sentences of section 6, a state may prefer the following: Costs of map production and installation incurred pursuant to this section shall be county charges.
[Alternative Section 10. Appraisal of Industrial Property. (a) Notwithstanding other provisions of the law, industrial property in this state whether real estate or personal property shall be valued and assessed by the [state tax agency].

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

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

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

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

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

Section 13. Enforcement of Assessment and Appraisal Standards. (a) In order to promote compliance with the requirements of law, the division shall issue and, from time to time, may amend or revise rules and regulations containing minimum standards of assessment and appraisal performance. Such standards shall relate to: (1) adequacy of tax maps and records; (2) types and qualifications of personnel; (3) methods and specifications for the appraisal or reappraisal of property; and (4) administration. For failure to meet the standards contained in the rules and regulations the division may suspend, in whole or in part, performance of the assessment or appraisal function by a county.

4 States that consider direct state assessment of industrial property desirable (rather than strong state supervision over local administration of the tax on such property) may wish to consider alternative section 10.
(b) If the division finds that a county has failed or is failing to meet the standards contained in
the rules or regulations in force pursuant to subsection (a) of this section, it shall notify the county
assessor of the fact and nature of the failure. The notice shall be in writing and shall be served upon
the county assessor and the [county governing board].

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

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

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

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

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

(c) Notwithstanding any provision of this section, any county assessor holding office on the
effective date of this act by virtue of election by the people shall be entitled to complete the term for
which he was elected.
[(d) If other statutes or provisions of local law do not affirmatively empower county assessors to assess, appraise and classify property, use this subsection to confer such power.]

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

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

(b) The agreement shall provide for:

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

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

(3) the rights and responsibilities of the parties with respect to the direction and supervision of work to be performed under the agreement;

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

and

(5) any other necessary or appropriate matters.

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

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

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

The possibility of including this paragraph may depend in a particular state on constitutional or statutory considerations. Furthermore, references to counties in this paragraph should be changed in states where other units of local government are the basic assessing jurisdictions.
(f) Copies of any agreement made pursuant to this section, and of any amendment thereto, shall
be filed in the office of the [secretary of state] and the [state office of local government].

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

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

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

Section 20. Separability. [Insert separability clause.]

Section 21. Effective Date. [Insert effective date.]
ASSESSMENT NOTIFICATION, REVIEW AND APPEAL PROCEDURE

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

— the property owner has no standard by which to compare his assessment with those on other properties;

— the tribunals to which the taxpayer must appeal frequently are ill constituted or staffed for the purpose; and

— the burden of providing his case is too onerous and costly.

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

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

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

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

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

Suggested Legislation

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

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

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

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

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

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

Section 3. Assessors and Boards of Review. (a) In all counties of less than [ ] population according to the last decennial census there shall be a [local board of property tax review] to consist of [specify membership, method of appointment, and term]. The board shall hear and determine assessment protests, and shall have power to alter or modify any protested assessment in order that it conform to law. The board may review assessments and order equalization thereof as may be necessary. Whenever the county assessor has in his regular employ [three] or more appraisers holding appraiser’s certificates issued by the division of property taxation [of the state tax agency], hereinafter called “division,” one of the appraisers shall sit with and advise the board, but no appraiser shall sit with the board on its hearing of, or advise the board concerning any protest of, an assessment of property previously appraised by him.
(b) In counties of \[\text{[ ]}\] or more population according to the last decennial census, the county assessor shall have in his regular employ at least \[\text{three}\] appraisers holding appraiser's certificates issued by the division and the county assessor shall have the functions and jurisdictions of a \[\text{[local board of property tax review]}\] and there shall be no board. In hearing and determining a protest of an assessment the assessor shall be assisted by an appraiser regularly employed in his office who has not previously appraised the property in question.

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

(d) In the case of property assessed by the state, the protest shall be heard and determined solely by the \[\text{[head of the state tax agency]}\].

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

Section 4. Initiation of Protests. (a) Within \[\text{[thirty]}\] days of his receipt of a notice of assessment or reassessment of property, the owner thereof may protest his assessment or reassessment. The protest shall be in writing on a form provided by the \[\text{[county assessor]}\] \[\text{[division]}\]. The protest may include or be accompanied by a written statement of the grounds for the protest, and may include a request for a hearing. The protest, together with the accompanying statement, if any, shall be filed with the county assessor having jurisdiction to hear the protest or the \[\text{[local board of property tax review]}\], as the case may be. Thereupon, the county assessor or \[\text{[local board of property tax review]}\], if a hearing has been requested, shall fix the time and place where the protest shall be heard and shall serve a notice thereof on the protesting taxpayer.

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

(c) Any agent who appears for or with a taxpayer at a hearing held pursuant to this section shall not be deemed to be engaged in the practice of any licensed trade or profession by reason of his appearance.
Section 5. Tax Court.* (a) There is hereby established the state tax court which, for administrative purposes only, shall be in the [state tax agency], but which shall be an independent administrative tribunal. The court shall consist of a chief judge and [four] associate judges, appointed from members of the bar by the governor [with the consent of the state senate] [with the consent of the state legislature]. The term of each judge of the court shall be [six] years. The initial appointments shall be as follows: the chief judge for a term of [six] years; one associate judge for a term of [two] years; one associate judge for a term of [three] years; one associate judge for a term of [four] years; and one associate judge for a term of [five] years. Vacancies on the court shall be filled for the unexpired term in the same manner as appointments to full terms. During his continuance in office neither the chief judge nor an associate judge shall have any other employment, but shall devote full time to his duties as judge.

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

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

(d) Consistent with this act and [cite statutes applicable to proceedings of administrative tribunals], the state tax court shall provide by rule for practice before it and the conduct of its proceedings.

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

* States may wish to extend the jurisdiction of the tax court to all matters involving the administration of state taxes. Alternatively States may wish to create a simple, efficient tax appeal process in an existing state judicial system.
(f) If a protested assessment cannot otherwise be brought into conformity with law, the state
tax court may order such adjustments with respect to other assessments of property as are necessary
to produce full conformity with law.

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

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

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

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

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

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

(c) The appellant shall file with the state tax court a written statement of the facts in the case,
together with a waiver of the right to appeal to the [state supreme court]. The state tax court shall
cause a notice of the appeal and a copy of the statement to be served on the county assessor or [head
of the state tax agency] whose assessment is in question. If the sole defense offered is that the prop-
erty was not over-assessed, no further pleadings shall be required.

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

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

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

Section 10. Separability. [Insert separability clause.]

Section 11. Effective Date. [Insert effective date.]
STATE PUBLIC LABOR–MANAGEMENT RELATIONS ACT

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

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

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

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

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

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

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

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

The “collective negotiations” draft is similar in many respects. The focus, however, is somewhat different; bilateral negotiations is the prime purpose of this draft.
71-80-10

Section-by-Section Analysis

(Meet and Confer in Good Faith)

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

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

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

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

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

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

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

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

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

Section 10 extends the scope of a memorandum of agreement to cover wages, hours, and other conditions of employment; but it excludes proposals relating to any subjects pre-empted by Federal or State law or municipal charter, to public employee and public employer rights defined under the act, and to the authority of civil service commissions and personnel boards to examine and rate candidates. The parties are authorized to include in a memorandum of agreement procedures for advisory arbitration of unresolved grievances and disputed interpretations of the memorandum of agreement.
Section 11 specifies procedures for implementing a memorandum of agreement.

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

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

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

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

Section-by-Section Analysis

(Collective Negotiations)

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

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

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

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

Section 5 permits supervisory employees to join and participate in employee organizations, provided that such organizations do not include non-supervisory employees. It prohibits the public employer from extending exclusive recognition to supervisor organizations, but permits informal consultation at the discretion of the employer.
Section 6 specifies certain traditional public employer rights under the act, but makes this section optional.

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

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

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

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

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

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

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

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

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

SUGGESTED LEGISLATION

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

(Exhibited, etc.)

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

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

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

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

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

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

The following statute incorporates a “meet and confer in good faith” approach to labor-management relations in the State and local public service. A draft embodying a “collective negotiations” approach appears on page 15. On balance, the Advisory Commission on Intergovernmental Relations tends to favor the meet and confer in good faith approach but recognizes that different States will take varying positions regarding sections of this draft legislation; hence, the inclusion of alternate language.
It is the purpose of this act to obligate public agencies, public employees, and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to wages, hours, and other terms and conditions of employment, acting within the framework of laws and charter provisions. It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the State and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be represented by such organizations in their employment relations and dealings with public agencies.

Section 2. Definitions. As used in this act:

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

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

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

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

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

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

(7) “Employee organization” means any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in discussions with that public agency over wages, hours, and other terms and conditions of employment.
(8) "Recognized employee organization" means an employee organization which has been formally acknowledged by the public agency or certified as representing a majority of the nonsupervisory employees of an appropriate unit.

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

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

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

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

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

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

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

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

Section 3. Public Employee Relations Agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) direct the work of its employees;

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

(3) suspend or discharge employees for proper cause;

(4) maintain the efficiency of governmental operations;

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

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

(7) determine the methods, means, and personnel by which operations are to be carried on.
Section 7. Recognition of Employee Organizations.

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

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

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

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

Section 8. Rights Accompanying Formal Recognition.

(a) A public employer shall extend to an employee organization certified or recognized formally, pursuant to this act, the right to represent the employees of the appropriate unit involved in meet and confer proceedings and in the settlement of grievances and the right to unchallenged representation status, consistent with Section 7(d), during the 12 months following the date of certification or formal recognition.
(b) A public employer may extend to such an organization the right to membership dues deduction, upon presentation of dues deduction authorization cards signed by individual employees, provided that all employee organizations may have the right to membership dues deductions until the formally recognized representative has been determined.

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


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

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

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

Section 11. Implementation of Memoranda of Agreement. If agreement is reached by the representative of the public employer and the recognized employee organization, they shall jointly prepare a memorandum of understanding and, within [14] days, present it to the governing body for determination. The body, as soon as practicable, shall consider the memorandum and take appropriate action. If a settlement is reached with an employee organization, the governing body or the representative of the public employer shall implement the settlement in the form of a law, ordinance, resolution, executive order, rule, or regulation, as the case may be. If the governing body or the designated representative rejects a proposed memorandum, the matter shall be returned to the parties for further deliberation.
Section 12. Resolution of Disputes Arising in the Course of Discussions.

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

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

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

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

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

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

Section 13. Prohibited Practices; Evidence of Bad Faith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Engage in a strike.

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


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

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

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

Section 16. Separability. [Insert separability clause.]

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

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

1 Where a State has adopted an administrative procedures act, this section should be made to conform to it.
STATE PUBLIC LABOR-MANAGEMENT RELATIONS ACT
(Collective Negotiations)

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

(Enacted, etc.)

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

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

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

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

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

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

Section 2. Definitions. As used in this act:

1. "Public employee" means any person employed by any public agency excepting those persons classed as legislative, judicial, or supervisory public employees; elected and top management appointive officials; and certain categories of confidential employees including those who have responsibility for administering the public labor-management relations law as a part of their official duties.
(2) "Supervisory employee" means any individual having authority, in the interest of the employer, (i) to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or (ii) responsibly to direct them, or (iii) to adjust their grievances, or (iv) effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

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

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

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

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

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

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

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

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

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

(12) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the public agency and the recognized employee organizations through interpretation, suggestion, and advice.
(13) "Fact-finding" means investigation of such a dispute by an individual, panel, or board with the fact-finder submitting a report to the parties describing the issues involved. The report may contain recommendations for settlement and may be made public.

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

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

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

Section 3. Public Employee Relations Agency. [ (a) There is hereby created [ in the State department of ]

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

[ (a) There is hereby created the Public Employee Relations Agency, which shall be composed of [5] members.]

The Governor shall appoint two members who shall serve at his pleasure.

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

The State Labor Committee, in accordance with its rules, shall appoint [2] members of the Public Employee Relations Agency, who shall serve at the pleasure of the Committee. If the Committee fails to appoint such members within [28] days following the naming of the Governor's appointees, the Governor shall appoint [2] additional members representative of employee organizations who shall serve at his pleasure. The fifth member of the Agency shall be elected and designated chairman by the unanimous vote of the other [4] members, after which he shall be appointed by the Governor. The chairman shall serve
for [3] years, commencing from the date of his appointment. Vacancies in the office of any member shall be filled in the same manner as herein provided for appointment. [3] members, consisting of the chairman, at least one member appointed by the Governor and at least one member appointed by the Committee shall at all times constitute a quorum of the Agency.]

(b) Members shall hold no other public office or public employment in the State or its political subdivisions.

[The chairman shall give his full time to his duties.]

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

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

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

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

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

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

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

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

(6) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly, its functions and powers;
(7) For the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the Agency or any person appointed by the Agency for the performance of its functions. Such subpoenas shall be regulated and enforced [under the civil practice law and rules].

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

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

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

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

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

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

(b) Where an employee organization has been certified by the Agency as representing a majority of the employees in an appropriate unit, or recognized exclusively, pursuant to the provisions of this act, the public employer shall negotiate collectively with such employee organization in the determination of, and the administration of grievances arising under, the terms and conditions of employment of their public employees as provided in this act, and may enter into an agreement with such employee organization.
(c) When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization, or employees, the Public Employee Relations Agency, established pursuant to this act, shall, at the request of any of the parties, investigate such question and, after a hearing, rule on the definition of the appropriate unit. In defining the unit, the Agency shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among employees, the history and extent of employee organization, geographical location, the provisions of Section 5 of this act, and the recommendations of the parties involved.

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

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

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

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

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

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

Section 10. Scope of Agreement. The scope of an agreement may extend to all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of
employment. An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved
grievances and disputed interpretations of such agreement. Where there is a conflict between any agreement reached by a public
employer and an employee organization and approved in accordance with the provisions of this act on matters appropriate to
collective negotiations, as defined in this act, and any charter, special act, ordinance, rules or regulations adopted by the public
employer or its agents such as a personnel board or civil service commission, or any general statute directly relating to hours of
work of policemen or firemen, or any general statute providing for the method of covering or removing employees from coverage
under the [ ] employees retirement system, the terms of such agreement shall prevail. Nothing herein shall
diminish the authority and power of any civil service commission, personnel board, personnel agency or its agents established
by constitutional provision, statute, charter, or special act to conduct and grade merit examinations and to rate candidates in
the order of their relative excellence from which appointments or promotions may be made to positions in the competitive
division of the classified service of the public employer served by such civil service commission or personnel board.

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

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

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

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

(b) On the request of either party, or upon the Agency's own motion, in the event it determines an impasse exists in
negotiating proceedings between a public employer and an exclusively recognized or certified employee organization, the Agency
shall aid the parties in effecting a voluntary resolution of the dispute, and appoint a mediator or mediators, representative of
the public, from a list of qualified persons maintained by the Agency.

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

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

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

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

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

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

(1) interfere, restrain, or coerce public employees in the exercise of rights granted in Section 4 of this act;
(2) dominate, interfere, or assist in the formation, existence, or administration of any employee organization;
(3) Encourage or discourage membership in any labor organization, employee agency, committee, association,
or representation plan by discrimination in hiring, tenure, or other terms or conditions of employment;
(4) Discharge or discriminate against an employee because he has filed any affidavit, petition, or complaint
or given any information or testimony under this act, or because he has formed, joined, or chosen to be represented by any
labor organization or employee organization;
(5) Refuse to negotiate collectively with representatives of recognized employee organizations as required in
Section 7 of this act;
(6) Deny the rights accompanying certification or exclusive recognition granted in Section 8 of this act;
(7) Blacklist any employee organization or its members for the purpose of denying them employment;
(8) Avoid in mediation, fact-finding, and arbitration endeavors as provided in Section 12 of this act;
(9) Institute or attempt to institute a lockout; or
(10) Deal directly with employees on matters falling within the scope of negotiations circumventing the
exclusive representative.

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

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

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

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

Section 16. Separability. [Insert separability clause.]

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

* Where a State has adopted an administrative procedures act, this section should be made to conform to it.
INTERNAL CONDUCT OF PUBLIC EMPLOYEE ORGANIZATIONS

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

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

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

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

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

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

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

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

Section 6 requires that the governing rules of every public employee organization provide for periodic elections by secret ballot. All members of the organization must be accorded an equal right to participate in the affairs of the organization including the nomination of officers, seeking office, and voting in elections.
Members also must be given the right to sue the organization and have access to fair and equitable procedures in disciplinary actions brought against them by the organization.

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

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

Suggested Legislation

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

(.Be it enacted, etc.)]

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

Section 2. Definitions. As used in this act:

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

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

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

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

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

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

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

(b) The constitutions or bylaws of all public employee organizations shall include provisions prohibiting business or financial interests of officers and agents, their spouses, minor children, parents,
or otherwise, that conflict with the fiduciary obligation of such persons to the organization.

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

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

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

Section 8. Violations. A public employee organization that has not registered or filed an annual report, or that has failed to comply with other provisions of this 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. Recognized employee organizations failing to comply with this act may have such recognition revoked by the [State public employee relations agency]. All proceedings under this section shall be conducted in accordance with [the State administrative procedure act]. Prohibitions shall be enforced by injunction upon the petition of the [agency] to [court of appropriate jurisdiction]. Complaints of violation of this act shall be filed with the [agency].

Section 9. Separability. [Insert separability clause.]

Section 10. Effective Date. [Insert effective date.]
More and more States are directing local governments to recognize public employee organizations and to "meet and confer in good faith" or to negotiate with them (see draft bills). Yet, more than two-thirds of the States circumscribe this local discretion by mandating, through special legislation, specific terms and conditions of local public employment.

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

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

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

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