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Suggestions for
A MODEL STATE
PERSONNEL MANAGEMENT LAW
for Consideration of State Governments
in the United States

Developed as part of
Intergovernmental Personnel Act
Project 80MN02

with the assistance of the

Governor's Task Force on Personnel Management
State of Minnesota

September 30, 1980

Suggestions For

A M O D E L S T A T E

P E R S O N N E L M A N A G E M E N T

L A W

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GOVERNOR'S TASK FORCE ON PERSONNEL MANAGEMENT

STATE OF MINNESOTA

September 30, 1980

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Patrick Halvorsen, Director of Planning and Evaluation, Minnesota Department of Employee Relations, served as Project Director and Vera J. Likins, Ph.D. as Project Coordinator.

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**Suggestions For
A MODEL STATE PERSONNEL MANAGEMENT LAW**

TABLE OF CONTENTS

	PAGE
THE GOVERNOR'S TASK FORCE ON PERSONNEL MANAGEMENT	1
RESOURCE PERSONS APPOINTED BY THE GOVERNOR	2
INTRODUCTION	3
SECTIONS	
I. Purpose; Policy	8
II. Career Service; Exemptions	9
III. The Personnel Management Department	10
A. Organization; Structure; Authorities	10
B. Program Elements	13
IV. Citizen Input	17
V. Appeals; Hearings; Due Process	18
VI. Agreements Between Governments	18
VII. Political Activities	18
VIII. Labor Management	20
IX. Prohibition of Unlawful Acts	20
X. Penalties	21
XI. Current Employee Status	21
XII. Separability	22
XIII. Effective Date	23

THE GOVERNOR'S TASK FORCE ON PERSONNEL MANAGEMENT

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Mr. Thomas resigned early in the course of the Task Force activities and was not replaced.

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INTRODUCTION

The Governor's Task Force on Personnel Management commissioned under Executive Order #79-37 of Governor Albert H. Quie in November of 1979, was charged with:

1. Preparation by August 15, 1980 of a report and recommendations, following a period of study, on improvement in the personnel management system in Minnesota state government.
2. Assisting in the development by September 30, 1980 of a model state personnel management law.

During the period prior to August 15, 1980, while the Task Force was considering various aspects of the personnel management system in Minnesota, it had occasion to make comparisons with personnel management systems in other states. The Task Force became aware of the many variations in personnel management systems throughout the country and concluded that differences are desirable and necessary to accommodate diversity in societal needs and wants and political variations among state jurisdictions.

It occurred to the Task Force that a model law in prescriptive form would be applicable only in a fictitious state untouched by the concerns discussed herein. Concluding that such a state is non-existent, the Task Force offers not draft legislation but suggestions and alternatives for a model law as a set of guidelines to be modified as appropriate in state governments within the United States. The concerns are sufficiently universal so that the observations may be applicable at least in part to political subdivisions of states and to territorial governments of the United States.

The Task Force observed that, because of the dynamics and diversity of public personnel management, any law promulgated to establish or maintain a personnel management system covering state employment should contain only the broad framework of the system, i.e.,

1. Purpose and policy statement in the public interest;
2. Basic structure and authorities;
3. Broad functional areas;
4. Protections for the public and participants in the system;
5. Prohibitions and penalties for non-conformance.

Some of the basic concerns involve:

1. Extent of coverage of the merit system;
2. Responsiveness to the public, including principles of equal employment opportunity;
3. Selection and retention policy and practice;
4. Labor relations;
5. Relationships and accountabilities of all those responsible for administration of an effective personnel management system;
6. Fairness, equity and openness in all aspects of the system.

Some states have statewide merit systems while others have merit system coverage only for positions in programs involving federal funding. Positions funded by federal monies in all states are subject to federal Merit System Standards issued by the United States Office of Personnel Management, federal Uniform Selection Guidelines published in the Federal Register in 1978 and the federal Hatch Act provisions covering political activity. The great majority of positions in any jurisdiction should be covered by the merit system if consistency and fairness in employment is to prevail.

A related consideration of concern to all governments, however, is the degree of responsiveness of government to the citizen user of public services. In one sense, a merit system is internal to public personnel management within a given jurisdiction. In a larger sense, the personnel management system has considerable impact on the general welfare through its recruiting and selection practices and their impact on the job-seeking public and through the influence which its salary setting practices have on costs of government. For this reason, the system should be open and available to public scrutiny as it affects directly the effectiveness of all program areas within the state government.

The Task Force believes that responsiveness should be assured through selection and retention of individuals based on qualifications and performance within a merit-based career service accountable to elective and appointed executives who are in turn accountable to the public. Sufficient flexibility within the career service should be available to public managers to allow employees to serve in sensitive positions at an agency head's expectation level while protecting their rights within the larger service. Positions excluded from the career service should be exempt on the basis of well established, well publicized principles applied consistently throughout the system.

The area of labor relations presents an uneven development in the states. Some states have moved far along the labor relations continuum toward collective bargaining processes and practices which are similar, with slight differences, to processes and practices in the private sector. Thirty-five states have some kind of collective bargaining law

for some public employees, but many states have not enacted legislation permitting or requiring collective bargaining for state employees. Some states have chosen to adopt a "meet and confer" model for state employees and/or employees of their political sub-divisions or some alternative "good faith" system which provides for formal procedures in labor relations short of collective bargaining to determine conditions of employment. In these latter states there is no obligation on either party that the process culminate in a contract.

The states that have had merit systems on a statewide basis for the longest period of time, with some exceptions, tend to recognize employees' rights to bargain collectively. This phenomenon appears to be less a function of age and evolution of the system, however, than of the sophistication and acceptance in the various regions of the country of labor-management practices and of the concept of exclusive representation.

State merit systems vary in their approaches to employee relations from a unilateral, government-oriented decision-making process in the civil service of state governments to governance of some employee relations functions through a bilateral contractual process. The Task Force foresees a greater involvement of both unorganized and organized public employees in matters affecting their employment as the decade progresses. Unorganized employees can be expected to be serving on problem-solving and other committees and contributing in other ways to decision-making. Among organized employees increased involvement is likely to come in the form of formal collective bargaining or meet and confer arrangements and within both structures the formulation for specific purposes of labor-management committees. Greater employee involvement will require heightened managerial understanding of management, supervision and leadership.

The study of the personnel management system in Minnesota led to general agreement among members of the Task Force that personnel management in any state or other government jurisdiction must be viewed as an integral part of general management. Assuming attention on the part of effective general management to continuing organizational and staffing analysis, personnel management's contribution to effective government grows out of professional job analysis and skilled leadership. Although only one of many personnel management functions, job analysis provides the foundation for others. Consistent concentration on sophisticated job analysis will help public personnel management systems of the 1980's to maintain credibility and acceptance and to function as a valid and valued part of general management.

The modernization of public personnel management systems will require in the 1980's an emphasis on strategic staff functions i.e., an emphasis on anticipation of different needs of the public, management and the jurisdiction's employees and less emphasis on internal operational functions. Various human resources strategies should include analysis of the motivational effects of managerial and supervisory practices; the use of primary work groups to permit personalization of the work; effectively relating people, including women, blacks, native Americans, ethnics in all categories, the elderly, the disabled and others in protected classes

to the personnel management system; managing information in a dynamic, prospective sense rather than in a strictly procedural manner; and using employees imaginatively on advisory councils, productivity committees, management-labor committees, task forces and in problem-solving groups. The 1980's, in the opinion of the Task Force, will demand the release of employee talent and energy in more productive and personally satisfying ways.

The personnel management system of the 1980's must provide leadership to meet current challenges through innovation and must evaluate its programs and processes in order to continue to improve them. The Task Force concluded in its study that public personnel management, though necessarily retaining merit principles, must be a partner in helping all segments of the government to become service-oriented while maintaining controls to prevent excesses and abuses in the system. The system should reflect and respect the shared responsibilities in personnel management of the central personnel agency and of operating agencies.

To maximize the benefits of the partnership between the central personnel agency and operating agency personnel management, the central agency should be authorized in law to delegate authority for personnel functions as appropriate. The responsibility for policy-making and interpretation, standards setting, monitoring and evaluating should remain with the central agency, but so long as standards are maintained, many personnel operations can be effectively managed at the operating level. Such delegation can lead to greater personalization of personnel management, allow for more individualized decision-making and better serve operating management, employees and applicants. Delegation of decision-making can help to develop managers and to create opportunity for participation and a greater sense of operating agency involvement in personnel management processes. Delegation or de-centralization of personnel management functions should not be mandated in law but should be adapted to the capability of operating agencies to carry out these functions. The executive head of the central personnel management agency should be the judge of the extent and timeliness of delegations to other state agencies. (Top-level managerial talent is always difficult to find regardless of labor market conditions and as governments compete with the private sector for qualified managerial prospects during the 80's, numerous executive development strategies and approaches, of which effective delegation is one, will be required.)

The suggested format for the model law contained herein follows the pattern of A Model Public Personnel Administration Law published in 1970 by the National Civil Service League, Washington, D.C. The basic principles of merit remain unchanged although the challenges of the 1980's place the merit system in a different perspective from that of the early 1970's. The problems of the two decades are not substantially different except that they have become accentuated in later years. The problems recognized in the 70's have not been solved and new and creative approaches and a growing maturity in accommodating public personnel management systems to the realities of the 1980's remain high priorities.

Issues involve:

1. Governments' personnel management responsibilities to the public, to the administrations served and to employees of the jurisdictions.
2. The continuing need for effective top-level executives.
3. Effective accommodation of merit system and management-labor concerns.
4. Realistic approaches to protected group representation at all levels of the state work force.
5. Intergovernmental relationships.
6. Governments' competition with the private sector for key personnel in occupational fields where qualified individuals are in short supply.

A modern merit system should be able to address itself to the concerns above without resorting to periodic law changes to meet the issues before it and others that may arise. It should embrace the principles of efficient management and organization in order to deliver effective public services and provide state management with a progressive and accountable personnel management system.

The suggestions for a model law that follow embody the principles of a merit system. These principles should be retained in government despite modifications necessary to tailor a model to a particular jurisdiction.

A MODEL STATE PERSONNEL MANAGEMENT LAW

A Model Law should be arranged in logical order reflecting: 1) purpose and policy, 2) structure, functions and authorities, 3) mechanics and process only to the extent necessary, 4) protections, and 5) prohibitions and penalties.

Section I: Purpose; Policy

A model personnel management law should begin with a statement of public policy objectives. The statement should include the scope of jurisdiction and the merit principles on which the law is based. (On the whole, the Task Force members feel that the same principles should be embodied in labor contracts or that contracts be required by law to observe these principles.)

The general purpose statement below revises the language of A Model Public Personnel Administration Law published in 1970 by the National Civil Service League, Washington, D.C. by adding underlined new material representing suggested revisions to meet requirements of the 1980's. Deletions are indicated by striking language to be removed. In view of implications for the states of the recently revised federal Merit System Standards and the Uniform Guidelines on Employee Selection, these documents should be taken into account. Jurisdictions which operate merit-based personnel management systems within a meet and confer or a collective bargaining environment also must accommodate to provisions of their labor relations laws. The suggested statutory language needs modification for specific jurisdictions.

The general purpose of this act is to establish a an efficient and effective merit-based system of personnel administration management that meets the management needs of the state and the social, economic and program needs of the people of the state. This system shall provide means to recruit, select, develop and maintain an effective, productive and responsive work force representative of the labor market according to the demands of society, equity and law, and shall include policies and procedures for employee hiring and advancement, training and career development, job classification, salary administration, retirement, fringe employee benefits, discipline, discharge, retirement and other related activities as appropriate taking into consideration formal and informal labor relations arrangements. All appointments and promotions in the state service shall be made without regard to any conditions that do not prevent performance of a job including but not limited to sex, race, religion, color, creed, marital status, age, national origin, disability, status with regard to public assistance, Vietnam-era veterans' status or political affiliation. and-shall-be-based-on merit-and-fitness.

Beyond a statement of public policy and intent, the following sections of law should be included, beginning with the kinds of positions covered by the law and those that are excluded.

Section II Career Service; Exemptions

The following types of positions are customarily excluded in statute from merit system provisions, however, the appointing authority may elect to follow the policies and procedures established under the law and rules.

A. The career service shall comprise all tenured positions in the permanent civil service of the state except those positions filled by the following:

- 1. Elective officials.*
- 2. Employees of the legislative and judicial branches of the state.*
- 3. Heads of departments designated in law as appointees of the chief executive.*
- 4. Members of boards and commissions and persons employed to conduct a special inquiry, investigation or examination on behalf of the legislature or the chief executive.*
- 5. Confidential and/or key policy-determining employees whose positions cannot or should not appropriately be included in the career service.*

B. Nothing herein shall preclude the appointing authority from using the selection and referral processes provided in this law and the rules and policies established thereunder.

The following comments refer only to the executive branch of a government. Provisions of law should balance two concerns: 1) the necessity for the great majority of positions in the executive branch to be in the career service if merit principles are to be maintained and 2) the need for responsiveness to the chief executive and his or her cabinet level appointees requiring that certain sensitive policy-making positions be exempt from the career service. Too many non-career positions raise the spectre of the spoils system; too few unnecessarily burden a public official who needs a certain number of appointees attuned to his or her program objectives.

Each state should put into law a set of principles for excluding top policy-level positions from the career service. This will permit such determinations to be made consistently.

Key policy-making officials in program areas where continuity and precedent are not prime considerations should be selected by the chief executive and serve at his or her pleasure in order that the administration's policies and approaches can be systematically and sympathetically executed.

Principles developed by the Task Force which might be considered for statutory provision follow:

These principles start from the premise that the public interest will be best served if state employees are selected, compensated, and retained on the basis of merit; and that exclusion of positions from the merit system should occur only in those instances where a position's primary responsibilities are to assist the department head in developing and implementing his or her policies and priorities.

The positions which meet this standard include:

1. Agency heads.
2. Deputy agency heads.
3. Confidential secretary to agency head.
4. Assistant agency and institution heads and depending on the organization, some program directors and others who meet all of the following criteria:
 - a) Report to the agency head or deputy.
 - b) Designated by the agency head as part of his or her management team.
 - c) Participate directly in agency policy development and implementation.
 - d) Focus of the position involves a special sensitivity to the Governor's and/or the agency head's goals and broad freedom to act or is primarily on the implementation of new program concepts or major changes in existing programs as opposed to managing established on-going internal administrative programs where continuity and, therefore, precedent are important.

Section III The Personnel Management Department

A. Organization; Structure; Authorities

In the past, a multi-member civil service commission or board appointed and could remove the personnel department head. This kept the head of the state civil service or personnel management department one step removed from the jurisdiction's elected chief executive. Many jurisdictions today give the chief executive appointive and removal power over the personnel department head to recognize the concept of accountability in personnel management and the need for more responsive government.

The Task Force recognized the desirability of having the chief executive appoint the personnel department head in the interest of increasing accountability to a given administration. However, basic professional and managerial qualifications for the top personnel management job in the jurisdiction should be included in law. Chief executives need this

guidance to resist pressures to appoint an unqualified head of a personnel management department. Because the chief executive is responsible both for satisfying personnel needs of employees in the jurisdiction as well as meeting program objectives, he or she can find responsiveness and accountability only by selecting an appointee who can implement sound professional personnel practices.

Some jurisdictions may be better served by establishing or retaining a board or commission with policy-making, appeal and/or administrative functions. Others, like the federal government, may wish to separate personnel management functions, with an appointive personnel agency head responsible for program leadership and a board or commission responsible for appellate functions. A multi-member board to advise the personnel department head might be considered as a possible neutral professional adjunct to the system in those state jurisdictions which opt for a personnel department head appointed by, and accountable to, the chief executive.

The law should not specify the details of departmental organization but should suggest a brief outline for the establishment and/or maintenance of a personnel management agency. An "accountability" model seems appropriate for most jurisdictions for the 1980's:

1. *There shall be in the state service, a personnel management department, the executive head of which shall be the director/administrator of personnel management. (Some states may use other titles, such as secretary or commissioner.)*
2. *The director/administrator of personnel management shall have wide, successful, professionally recognized, and demonstrated managerial experience in personnel and labor relations systems embodying merit concepts and shall be appointed by, and serve at the pleasure of, the Governor in the same manner as other appointive department heads. (It may be appropriate to add "without regard to political affiliation".)*
3. *The director/administrator of personnel management as the executive head of the department shall direct all its management, professional, administrative and technical services and appoint its employees.*
4. *The director/administrator with the approval of the Governor (board, commission) shall issue personnel management rules and policies for the state giving appropriate public notice and an opportunity for hearing.*
5. *The director/administrator shall negotiate contracts with exclusive representatives of state employees on behalf of the state and submit them for ratification as required by law. (For jurisdictions with collective bargaining legislation.)*

The law should provide to the head of the personnel management department rule making power and other appropriate authorities including the authority to delegate personnel management functions. As much

flexibility as possible to permit innovative actions, to react to changing conditions, to delegate as necessary and appropriate, and to develop rules appropriate to the jurisdiction should be made available to the personnel department head.

The law should include broad philosophical and policy statements covering major responsibilities of a central personnel management department. The concepts should be stated briefly in law either as department functions or as duties and responsibilities of the department head. Statutory authority should be granted the personnel department head to effect standards and programs in personnel management operations. Whichever option is selected, the required functions or responsibilities for a merit-based personnel management system at a minimum include:

1. *The exercise of leadership in the development, maintenance and improvement of effective personnel management and employee relations management programs and processes.*
2. *Leadership in the performance of the strategic planning function for human resources utilization.*
3. *Establishment and maintenance of a system for employing, advancing and retaining employees in the state service on the basis of their relative ability, knowledge and skill.*
4. *Establishment and maintenance of a classification system to assure that employees in the state service are provided equitable and adequate compensation for their assigned duties and the quality of their performance.*
5. *Development of a system for evaluation and training of employees in the state service to assure high quality performance.*
6. *The provision of leadership and assistance to management to assure that employees at all levels in the state service are representative of all segments of society in the external work force of the state.*
7. *Accommodation of merit system principles with operations under provisions of existing labor relations and other related laws considering the needs of management and employees and recognizing the public interest.*
8. *Evaluation of the effectiveness of the personnel management system with initiation of or recommendation for appropriate changes to improve the system.*
9. *Establishment and maintenance of a system of personnel records, reports and statistics as needed for legal and personnel management purposes.*
10. *Establishment and maintenance of systems providing for appropriate safeguards for the fair treatment of applicants and employees in the state service with proper regard for their privacy and constitutional rights as citizens.*

11. *Promulgation and interpretation of rules to carry out provisions of the law.*
12. *Enforcement actions to assure compliance with applicable provisions of law and rules.*

To effect compliance, the law should provide the head of the personnel management department certification of payroll authority. There is no more effective method of assuring the legality and propriety of personnel actions taken under the law or rules. Others are civil or administrative actions of a punitive nature.

13. *Development and encouragement of programs for the operation of the system toward the improvement of employee performance, job satisfaction and productivity.*
14. *Assurances for protections and obligations regarding political activity, ethics and conduct and legitimate dissent.*

B. Program Elements

Whether the functions of the department or the duties and responsibilities of the department head are included in law, personnel management program development and maintenance should be placed with the personnel management department head who should be held accountable for program performance. The personnel department head should be given sufficient authority in law to carry out his or her statutory charge through promulgation of rules under the jurisdiction's established system for the development of administrative procedures.

Program elements of a merit-based personnel management system require the following activities as a minimum. The first two items below must be dealt with before a new merit-based personnel management system can begin to function.

1. *Promulgation of rules under law for operation of the personnel management system and to provide management/supervision with tools for making sound decisions regarding employees.*

Rules should cover conditions and procedures under which personnel actions are taken with regard to probationary periods, promotions, merit increases, leaves of absence, demotions, suspensions, dismissals and all other personnel actions and conditions. Certain rules may apply statewide, others only to unrepresented employees and still others may be modified by existing labor contracts.

2. *Preparation, maintenance and revision of a position classification plan, authority for which should be established in law.*

The classification system is an essential tool of management. It reduces to writing the characteristics of each position

within the career service and categorizes positions into classes and classes into occupational groupings. The classification system is an administrative language by which commonalities and differences among positions are established. The classification system provides the necessary foundation on which all personnel actions and activities are based.

3. Maintenance of a total compensation system which assures equity among individuals within the state service and comparability in compensation with individuals working in similar jobs for other employers in the same labor market.

The pay plan(s) including benefits for public employees, unlike the classification system, affects both administrative and fiscal policies. Each jurisdiction must outline in its laws the roles that the chief executive, the legislature, fiscal and personnel officers and employees' representatives, if any, should play in determination of total compensation.

Professional and recognized principles for designing pay structures should be basic to pay discussions. Recommendations should be made by the personnel management department to the chief executive who might modify them for fiscal reasons or to accommodate labor-management agreements before submitting proposals to the legislative body. Once the pay structure is approved, pay administration should be monitored by the central personnel management department.

Total compensation also includes employee benefits in addition to salaries. These benefits are a substantial and increasing part of compensation in today's personnel management systems. Benefits may also be considered "conditions of employment" over which collective bargaining is authorized in some states. Leadership in the development or modification of benefit programs should be a responsibility of the central personnel management agency which should also assure consistent administration.

4. Recruitment of capable persons, administration of valid, job related, non-discriminatory selection procedures and referral to vacancies of qualified candidates.

States must actively compete for talent with the private sector and other governments. The time has passed when governments can passively await prospective applicants. Special efforts should be made to meet affirmative action requirements of state and federal laws and regulations.

A merit-based employment process should include selection and appointment standards which are job-related and designed both to select persons who possess the ability to perform the required work and to meet state agency needs, including achieving and maintaining a representative work force through affirmative action. The central agency should have authority to use any kinds of professionally accepted testing techniques to measure qualifications appropriate to the job. Public jurisdictions during the last decade have become conscious of

the necessity for using non-discriminatory and valid selection procedures the results of which show a valid relationship to job performance. Although the impacts of present methods are not fully understood, equal employment opportunity guidelines may be extended during the 1980's to require similar job-related and non-discriminatory methods of selection of employees for opportunities and activities involving career progression, training and participation in decision-making.

The referral of names from lists established following examination, or certification of eligibles, represents a program area in which the central agency should have sufficient authority to serve operating agency needs. In an age when test scores have been severely questioned for making valid distinctions among candidates in their ability to perform a job, the Task Force felt that agencies should receive upon request a substantial but predictable number of names on certification to assure a wide and representative selection and to reduce the necessity for repeated referrals while yet providing applicants an understandable means of assessing their scores and employment possibilities in relation to others. Special accommodations should be made in law to assist agencies in meeting affirmative action goals without unduly burdening them with an excessive number of candidates to be further individually screened.

Provisions should be made for probationary periods following appointment to a position. Probation, or a working test, is part of the examining process allowing operating agency involvement in selection.

5. Development of appropriate programs and guidelines to provide effective leadership in employee development.

One of the most important shared responsibilities of a personnel department head and operating agency management is the continuing development of individuals competent to meet the needs of ever-more-complex government programs. The law should establish a training and development policy with rule-making, standards-setting and monitoring roles for the central agency and program development and course administration roles for operating agencies. The central agency should provide as a service to agencies leadership, guidelines and technical assistance and maintain basic training capability to accommodate operating management in training programs addressing common needs and cooperate with operating agencies in designing special development programs.

6. Development and maintenance of a sound system of individual employee performance appraisal based on standards or objectives.

The development and maintenance of a sound appraisal system which encourages and fosters continuing improvement is necessary in the maintenance of high level job satisfaction and in achieving agency goals. Appraisal results should be used as one factor in consideration of most personnel actions.

7. Provision of a system of rewards and retention related to performance.

Few public jurisdictions consistently relate rewards to performance or effectively discipline employees for inadequate performance. The general public expects such a relationship. The Task Force suggests that states address this public concern in law and adjust other systems to remove obstacles to accomplishing this goal.

8. A system(s) for orderly and fair separation procedures including where appropriate provisions for appeals, hearings and due process.

There is a need in all jurisdictions to protect employees by law or contract from arbitrary and capricious actions. The system(s) devised must have credibility and acceptance of employees and be fair and understandable.

Layoffs occasioned by lack of work or funds or organizational changes should be carefully considered in the law of each jurisdiction. Although layoffs are often made in inverse order of seniority, the Task Force felt that, in the interest of maintaining a competent work force, the quality of performance appraisals should have some bearing on retention and ideally should take precedence. Each jurisdiction will need to work out its own formula for layoff criteria which might involve some combination of seniority and job performance and, for affirmative action purposes, make special provision for retention of protected class members.

The arrangements for separation and the provisions under which employees may return to the service will be governed by existing laws and/or labor contracts.

9. Provisions for protection from political coercion, a code of ethical performance and tolerance and acceptance of legitimate dissent.

Employees should be assured their rights as citizens and as thinking adults in a progressive personnel management system. Employees have obligations on the other hand to serve their public employers in a competent, ethical manner. Each jurisdiction should design either in law or rule provisions to accommodate these concerns.

10. In a collective bargaining environment or where other labor relations laws exist, representation of the jurisdiction in all facets of labor relations including setting objectives, contract negotiations and contract administration and for relating those activities to pay, benefits, work rules and administrative systems.

The Task Force felt that a state government involved in collective bargaining should represent itself as a single employer, i.e., that operating agencies should not bargain individually. Labor relations is one personnel management function that should be centralized and the personnel management department should be responsible for coordination of all labor relations activities.

11. Provision for investigation and/or hearing on request or upon the initiative of the director/administrator (board, commissioner) on any matters concerning the administration of this law, rules promulgated thereunder and policies on personnel management.

In the interest of equity and openness each jurisdiction needs to assure objective procedures for dealing with misunderstandings and complaints, not only in individual matters but also with regard to practices and processes.

The subject matter of rules and programs are not limited to those listed above. All areas of personnel management will need to be addressed in the rules of individual jurisdictions.

Section IV Citizen Input

The Task Force suggests that commissions or boards may be the most appropriate form of organization for some states. Commissions and boards serving as heads of personnel agencies can provide a forum for citizen input into policy interpretation and operations.

Trends seem to indicate, however, that the public is demanding accountability and responsiveness over and above administration by legalistic controls and bureaucratic procedures. The Task Force believes that the personnel management department head, as much a part of a state's management team as any other agency head, should meet the demands for accountability and responsiveness and provide personnel management leadership through sound, professional programs designed to improve the state service.

In the absence of a board or commission, some method or mechanism might be considered for citizen input into the process in addition to the contributions of elected representatives of the voting public. Such mechanism would commonly take the form of a board advisory to the chief executive or to the head of the personnel management department. So as not to dilute the authority of public officials, the advisory board's composition should be professional and its function consultative and tangential to decision-making.

If utilized, a board to advise the Governor should be appointed in a non-partisan manner so as to be as free as possible of potential political influence. A nominating panel consisting of representatives of civic groups, educational institutions and/or employee organizations might screen applicants for the Governor's appointment of members. When the chief personnel management executive is appointed by the Governor, the Task Force feels that an advisory board should be advisory not to the chief executive, but rather to the head of the personnel department and established at his or her option.

Section V Appeals; Hearings; Due Process

Mechanisms in which both employers and employees can place mutual trust should be in place through which all employees have a method for resolution of grievances.

Appointment of a professional hearings officer by a citizens advisory board appointed by the Governor is one option. In a collective bargaining state a special labor/management committee appointed for that purpose might make the recommendation. If a hearings officer is used, the Task Force suggests that the decisions of the hearings officer be binding. Decisions advisory to the agency head lack credibility and support. The hearings officer decision which can be accepted or rejected by an agency head may be satisfactory in jurisdictions which use a commission or board form of organization where those bodies can order compliance if necessary. Those jurisdictions which have an appointed director/administrator may wish to consider for non-represented employees a process parallel to grievance procedures in labor contracts or in meet and confer arrangements.

Section VI Agreements Between Governments

A positive statement encouraging intergovernmental cooperation should be outlined in public policy statements in the law. Many opportunities exist for governments to share space, costs and personnel. Interstate agreements and arrangements with the federal government and with political sub-divisions of the state hold possibilities for improving service and make possible cost-effective results.

Provisions for lateral entry of qualified employees between jurisdictions at all levels of government where standards are comparable should be included in law to reduce duplicative examining processes in public jurisdictions and to encourage mobility of employees and exchanges of services and ideas. Policy and principles governing intergovernmental cooperation should be included in law with the standards and conditions being left to rule-making by the central personnel management department.

Section VII Political Activities

Political activity of public employees has been a problem for many governments. The trend has been toward enlarging the scope of partisan activities permitted to government employees in recognition of the fact that denying all political participation of government employees would isolate a growing number of the better informed citizenry from the political process.

The political activity provisions of a number of jurisdictions seem to need revision for the 1980's. A realistic set of both rights and prohibitions, as follows, might be included in law.

Employees in service of the jurisdiction may:

- 1. Express opinions on political subjects and candidates.**
- 2. Take an active part in political activities and political campaigns, but not on paid state time or state premises.**
- 3. Become a candidate for public office in a nonpartisan election or for a political party office provided that no conflict of interest exists.**
- 4. Make financial contributions to political parties or organizations, solicit and collect voluntary political contributions so long as they do not coerce, command or advise another state employee to make such contributions and so long as such solicitations are not conducted during hours of state employment.**

Employees must be given a leave of absence or resign (depending on the jurisdiction and other appropriate state or federal laws) upon:

- 1. Assuming an elected federal or state public office.**
- 2. Assuming any elected public office other than those listed in number one above if, in the opinion of the personnel director/administrator, holding of such office presents a conflict of interest.**
- 3. Becoming a candidate, or during the course of such candidacy, for any elected nonpartisan or partisan public office if, in the opinion of the director/administrator, such candidacy presents a conflict of interest.**

Employees are prohibited from:

- 1. Directly or indirectly, soliciting or receiving funds for political purposes during hours of employment.**
- 2. Using their authority or influence to compel any employee in the career service to:**
 - a. Apply for membership in or become a member of any political organization.**
 - b. Pay or promise to pay any assessment, subscription or contribution for political purposes.**
 - c. Take part in any political activity.**
- 3. Using their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.**

All employees of a state jurisdiction paid with federal funds must meet the conditions of federal law as well as those of the state with respect to political activity. Penalties for violation of political activity provisions should be established in law.

Section VIII Labor Management

The critical issue of collective bargaining for public employees has emerged in the last forty years, since the passage of most of the merit system legislation in the country.

It is recommended that each jurisdiction formulate in statute a process for governing employee relations for organized employees. The ground rules for collective bargaining must be clearly specified in statute. The absence of clear statutory provisions can lead to fragmented management and distorted employment practices of all kinds. If collective bargaining becomes state policy, serious consideration should be given to the establishment of broad based occupational units for collective bargaining purposes, an accepted pattern in industry and in those states that have comprehensive, seasoned collective bargaining systems. If common job families are grouped into bargaining units on a statewide basis, compensation and employment conditions for like work can be assured. In the alternative, i.e., where collective bargaining is conducted by agency units, employees in the same class may be paid differently and may receive different benefits which is contrary to the principles of equality and equity.

Without recommending alternatives the Task Force feels that each state should declare its labor relations policy in a statutory statement similar to one of these possibilities:

1. *State employees shall have the right to organize, join and participate, or refuse to participate, in any employee organization freely and without fear of penalty or reprisal, for the purpose of collective negotiation (or meeting and conferring) through representatives of their own choosing for the purposes of collective bargaining on terms and conditions of employment.*
2. *State employees shall be governed in their employment by the policies, procedures and practices duly set out in law and rules of this jurisdiction and shall have the right to join employee organizations which may or may not be consulted by management for purposes of decision-making on wages, hours or other conditions of employment.*

Section IX Prohibition of Unlawful Acts

To assure scrupulously fair administration, provisions prohibiting unlawful acts by any persons who in any way willfully violate the merit system or its policy should be part of the law. Such provisions should include, but not be limited to, the statements approximating the following:

No person shall:

1. **Make any false oral or written statement, mark, rating or report concerning any examination, certification or appointment made under provisions of this law or in any manner commit or attempt to commit any fraud preventing the impartial execution of this law and policies.**
2. **Directly or indirectly, give, render, pay, offer, solicit, or accept any money, service or other valuable consideration for any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the career service.**
3. **Defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this law, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to appointment, advancement or retention in the classified service.**

These kinds of unlawful acts are usually prohibited in civil service laws.

Section X Penalties

Persons who intentionally violate merit system principles and standards should be subject to appropriate penalties established in law. Provisions similar to the following should appear in the law of each state:

1. **Any person who willfully violates any provision of this law or of the policies of this jurisdiction shall be guilty of a misdemeanor, punishable by applicable laws of this state.**
2. **Any person who is convicted of a misdemeanor under this law, shall, for the period of three years (or another appropriate time period), be ineligible for appointment to or employment in a position in the state service, and if he or she is an officer or employee of the state, shall forfeit the office or position.**
3. **Any officer or employee in the classified service found guilty of violating political activity provisions of this law is automatically separated from the service.**

Section XI Current Employee Status

Each jurisdiction should establish its conditions for the retention of incumbents of positions in the service at the time of the law's passage. Some proof of qualifications and competence is usually required for continuance in the position. On the other hand, a jurisdiction may choose not to provide for continuance of incumbents who then must compete

successfully with others to retain their positions. Qualifying examinations, if required of a great number of employees, can burden a jurisdiction by delaying the establishment of a functioning personnel management system. The provisions listed are illustrative only.

Employees holding positions on the effective date of this act which are in the career service under these provisions shall be continued in their respective positions under the following conditions (which may vary according to the needs of the jurisdiction).

Incumbents of career positions employed by the state for one year or more shall be continued without further examination with permanent status until separated as provided by law.

Incumbents of career positions employed for six months or more but less than one year shall be continued with probationary status as prescribed by rule of the director/administrator.

Incumbents with less than six months service shall participate in a non-competitive examination based on the duties of their positions. Those with passing scores shall serve a probationary period as prescribed by rules of the director/administrator.

Those employees who fail to qualify under these conditions will be separated from their positions within thirty (30) days following the establishment of an eligible list.

Section XII Separability

Provisions of a personnel management law, or any law, should be capable of standing alone, i.e., if one provision is declared invalid by the courts or through some error in legislative procedure, the entire law need not be invalidated.

The law should state the separability of its provisions:

The sections of this law are mutually exclusive and should the application of one or more of its provisions be invalidated with respect to any person(s) or circumstances, such invalidation shall apply only to such person(s) or circumstances, and not otherwise affect the administration of this act.

With the passage of a new civil service or personnel management law, all provisions cannot be executed simultaneously. Orderly progress toward establishing a new system must be assumed. A logical order of administrative acts would require first, the promulgation of rules and second, the establishment of classification and pay plans before examining and other activities could reasonably take place.

Section XIII Effective Date

This law is effective upon passage (or on some particular date, possibly at the beginning of a fiscal year or at some future date to allow sufficient lead time to plan for efficient implementation of the law).