

ment will guarantee the eventual dissolution of urban opportunity as we know it in 20th century American cities.

I. STATE AND LOCAL FINANCING OF HOUSING

State and local government activities in the area of housing finance have expanded in recent years. This growth corresponds to two factors. First, federal programs enacted in the late 1960's and 1970's, such as the model cities program¹ and the Community Development Block Grant program,² emphasized increased local control and initiative. Second, the suspension of federal community development grants in 1973 necessitated greater state and local involvement in financing community development.³ The Reagan Administration's federal budget reduction policy will force state and local governments to continue utilizing innovative financing mechanisms.

One mechanism, which forty-six states now employ, is the housing finance agency (HFA).⁴ HFAs provide financing for low- and moderate-income multi-family and single family developments.⁵ They also provide loans to lenders and engage in secondary mortgage

1. 42 U.S.C. §§ 3301-3374 (1976). Model cities represented a highly focused grant approach. The program directed a coordinated physical, economic, and human development effort toward specifically targeted urban neighborhoods. See PRESIDENT'S TASK FORCE ON MODEL CITIES, MODEL CITIES: A STEP TOWARD THE NEW FEDERALISM (1970).

2. 42 U.S.C. §§ 5301-5317 (1976). Under the Block Grant program, a community files an application with the Department of Housing and Urban Development (HUD) which includes a three-year plan and program for community development. The locality must also file a housing assistance plan and give assurance and certifications that it will comply with federal requirements. The federal role is limited to review and monitoring of the local regulation. See Fishman, *Title I of the Housing and Community Development Act of 1974: New Federal and Local Dynamics in Community Development*, 7 URB. LAW. 189 (1975).

3. President Nixon announced the suspension of funds in his Budget Message to Congress for 1973. He criticized "outmoded and narrowly focused community development programs which have not produced benefits that justify their costs to the taxpayer." 9 WEEKLY COMP. OF PRES. DOC. 86, 97 (Jan. 29, 1973). Funds for urban renewal and housing assistance were impounded for eighteen months prior to enactment of the Housing and Community Development Act in August, 1974.

4. See HOUS. & DEV. REP. (BNA) § 50:001 for a complete listing of housing finance agencies, their enabling legislation, programs, and statistical information. [1980] 8 HOUS. & DEV. REP. (BNA) 117.

5. See notes 22-26 and accompanying text *infra*.

purchases.⁶ HFAs have had a significant impact on the housing industry. Between 1968 and 1974, for example, the direct lending programs financed more than 200,000 housing units.⁷ The mortgage purchase and loans-to-lenders programs indirectly financed over 60,000 housing units⁸ during the same period.

States have experimented with two other financing mechanisms: tax abatement⁹ and tax increment financing (TIF).¹⁰ Most housing experts agree that property taxes act as a disincentive to housing rehabilitation and new construction.¹¹ Rehabilitation of existing structures and construction of new units generally raise property values. The appreciated value increases the property tax assessment. This discourages property owners from making improvements and makes it unprofitable for landlords to rehabilitate units without raising rents. Tax abatements and TIF lessen the impact property taxes have on housing and urban development activities.¹²

In this era of federal budget reductions, state and local financing schemes may determine the future of urban renewal. This section will examine the HFA, tax abatement, and TIF programs, and analyze their effectiveness. The legal issues involved in the implementation of these programs will also be discussed.

6. See notes 33-38 and accompanying text *infra*.

7. HOUSING FOR ALL UNDER THE LAW, REPORT OF THE AMERICAN BAR ASSOCIATION ADVISORY COMMITTEE ON HOUSING AND URBAN GROWTH 494 (1978) [hereinafter cited as HOUSING FOR ALL].

8. *Id.*

9. See notes 51-66 and accompanying text *infra*.

10. See notes 67-80 and accompanying text *infra*.

11. D. NETZER, ECONOMICS OF THE PROPERTY TAX (1974) [hereinafter cited as NETZER]; Alpert, *Property Tax Abatement: An Incentive For Low Income Housing*, 11 HARV. J. LEGIS. 1 (1973) [hereinafter cited as Alpert]; Curry and Gensch, *Feasibility of Rent and Tax Incentives for Renovation in Older Residential Neighborhoods*, 21 MANAGEMENT SCI. 883 (1975). Cf. ARTHUR D. LITTLE, INC., A STUDY OF PROPERTY TAXES AND URBAN BLIGHT, REPORT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT 6 (1973) (property taxes neither a major source of blight nor a major disincentive to upgrading, but inequality of tax levels among neighborhoods of the same city may contribute significantly to blight).

12. Local governments raise forty percent of their general revenue from property taxes. Approximately fifty percent of local government property tax revenue comes from housing. The ad valorem tax takes from urban landlords as much as 21 cents of every rental dollar. Alpert, *supra* note 11, at 1, 2.

A. *Housing Finance Agencies*

State HFAs are generally independent state entities.¹³ As instrumentalities of the state, they must satisfy the threshold constitutional requirement that public funds be expended only for valid public purposes.¹⁴ As independent corporations, however, HFAs may issue tax-exempt revenue bonds¹⁵ without affecting the credit of the state or violating state constitutional debt limitations.¹⁶

13. For an in-depth analysis of the structure and operation of HFAs, see N. BATNUN, *STATE HOUSING FINANCE AGENCIES AND PUBLIC PURPOSE HOUSING* (1975); P. MORRIS, *STATE HOUSING FINANCE AGENCIES* (1974) [hereinafter cited as MORRIS]; HOUS. & DEV. REP., *supra* note 4, at § 50:001.

14. Most state constitutions restrict public fund expenditures to valid public purposes. Although the concept of public purpose may change with the needs of the state and courts may defer to legislative discretion, courts have maintained certain general principles in testing the expenditure of public funds for a public purpose. See MORRIS, *supra* note 13, at 29-30. If the activity benefits the community as a whole, it is directly related to governmental functions, and does not have as its primary objective benefit of a private interest; it serves a public purpose. *City of Pipestone v. Madsen*, 287 Minn. 357, 178 N.W.2d 594 (1970).

Most courts have found that financing low- and moderate-income housing serves a public purpose. *Massachusetts Hous. Finance Agency v. New England Merchants Nat'l Bank*, 356 Mass. 202, 212, 249 N.E.2d 599, 606 (1969) (mixing families of varied economic means may eliminate slum conditions and result in a valid public purpose); *In re Advisory Opinion on Constitutionality of Act. No. 346*, 380 Mich. 554, 573, 158 N.W.2d 416, 424-25 (1968) (it is proper public purpose for state to concern itself with housing of its inhabitants); *Minnesota Hous. Finance Agency v. Hatfield*, 297 Minn. 155, 172, 210 N.W.2d 298, 308 (1973) (financial assistance provided by state housing finance agency for low- and moderate-income tenants permissible under Minnesota Constitution); *New Jersey Mortgage Finance Agency v. McCrane*, 56 N.J. 414, 420-22, 267 A.2d 24, 27-28 (1970) (enactment of mortgage finance agency to alleviate severe shortage of housing and decline in "housing starts" satisfies constitutional requirement of fostering a valid public purpose); *Johnson v. Pennsylvania Hous. Finance Agency*, 453 Pa. 329, 337, 309 A.2d 528, 533 (1973) (purpose of providing housing to individuals of low- and moderate-income is one of a "public nature"); *Vermont Home Mortgage Credit Agency v. Montpelier Nat'l Bank*, 128 Vt. 272, 278, 262 A.2d 445, 449 (1970) (legislation creating agency and empowering it to acquire mortgage loans on dwelling properties within state and to authorize issuance of bonds or notes served proper governmental purpose).

15. Section 103 of the Internal Revenue Code exempts housing bonds from the general rule taxing interest on industrial development bonds. Under this exception, state and local governments may issue tax-exempt bonds for rental or owner-occupied housing. The exemption applies regardless of whether rental units are leased to low-, moderate-, or high-income individuals. See notes 36-38 and accompanying text *infra*.

16. *Massachusetts Hous. Finance Agency v. New England Merchants Nat'l Bank*, 356 Mass. 202, 216, 249 N.E.2d 599, 608 (1969) (borrowing by HFA does not involve pledge of Commonwealth's credit); *Advisory Opinion on Constitutionality of Act No. 346*, 380 Mich. 554, 565, 158 N.W.2d 416, 421 (1968) (act creating state housing devel-

The types of security given for HFA bonds include pledge of project mortgages and revenues, reserve funds, federal subsidies, and the moral obligation of the state.¹⁷ The bonds are self-liquidating and generally have received high investment ratings and favorable yields.¹⁸ The 1973 moratorium on federally subsidized housing programs¹⁹ and the default of New York's Urban Development Corporation (UDC), however, adversely affected the marketability of all moral obligation bonds.²⁰ Consequently, HFAs are looking toward other forms of bond security.²¹

HFAs use the revenues generated by the sale of bonds primarily to make direct construction loans and permanent mortgage loans to qualified multi-family residential developers.²² State statutes often limit eligible borrowers to public, non-profit, and limited dividend entities.²³ The tax exempt features, below market interest rates, and favorable loan-to-value ratios and mortgage terms, provide savings to

opment authority with power to borrow and loan money, but not to obligate state to repay money borrowed, is not an unconstitutional grant of state's credit); *Minnesota Hous. Finance Agency v. Hatfield*, 297, Minn. 155, 163, 210 N.W.2d 298, 303 (1973) (notes and bonds issued by state housing finance agency did not constitute state debt); *New Jersey Mortgage Finance Agency v. McCrane*, 56 N.J. 414, 423, 267 A.2d 24, 28-29 (1970) (mortgage finance agency empowered to raise funds from private investors through sale of tax-exempt bonds does not violate prohibition against lending state's credit); *Johnson v. Pennsylvania Hous. Finance Agency*, 453 Pa. 329, 342, 309 A.2d 528, 535 (1973) (housing finance agency's revenue bonds do not fall within the scope of the constitutional prohibition against debt).

17. The "moral obligation" is the expression of the legislature's intent to appropriate funds from the state's general revenue to pay deficits in the HFA's debt service reserve fund. The obligation is non-binding since one legislature cannot legally bind a subsequent legislature. Courts have held such an appropriation is valid because it serves a public purpose. See cases cited note 14 *supra*. Furthermore, since the appropriation is permissive, it would not constitute state debt in violation of state constitutional debt restrictions. See cases cited note 16 *supra*. See generally Salsich, *Housing Finance Agencies: Instruments of State Housing Policy or Confused Hybrids?* 21 ST. LOUIS U. L. J. 595 (1978).

18. HOUSING FOR ALL, *supra* note 7, at 497.

19. See note 3 *supra*.

20. Since UDC's default in March 1975, HFAs have been forced to pay a higher interest differential to float their bonds. Salisch, *supra* note 17, at 602 n.47.

21. See notes 39-45 and accompanying text *infra*. See generally Hance and Duvall, *Coinurance: The Key to the Future of State Housing Finance Agencies?* 8 URB. LAW. 720 (1976).

22. HOUSING FOR ALL, *supra* note 7, at 497.

23. *Id.*

developers.²⁴ Consumers receive benefits from these savings, most notably in the form of rent reductions.²⁵

Although the private sector constructs, owns, and manages HFA-financed housing, the agencies retain the power to limit developers' rents, profits, and disposition of the property. The agencies also supervise the site selection and design review processes.²⁶

In addition to financing programs through tax-exempt bonds, state HFAs depend on federal subsidies to meet low- and moderate-income housing needs.²⁷ The Section 8 leased housing program provides the bulk of these subsidies.²⁸ This program provides subsidies to low- and moderate-income households in newly constructed, substantially rehabilitated, or existing housing. Participating families pay five to twenty-five percent of their adjusted gross income for rent,²⁹ with federal subsidies making up the difference between the household's contribution and the fair market rent.³⁰ The subsidies are adjusted to reflect increases in operation and maintenance costs.³¹ State HFAs may serve as conduits for the allocation of payments.³²

Although direct loans to multi-family developers continue to predominate HFA activities, the proportion of indirect loans for the purchase of single-family homes has increased sharply.³³ A number

24. MORRIS, *supra* note 13, at 7.

25. HOUSING FOR ALL, *supra* note 7, at 497.

26. *Id.* at 497-98.

27. Families or individuals earning \$9-11,000 a year are considered to be in the low- to moderate-income range. HOUSING FOR ALL, *supra* note 7, at 498.

28. 42 U.S.C. §§ 1437-1437f (1976). Section 8 is the major housing assistance program of the Housing and Community Development Act of 1974. *See* note 2 and accompanying text *supra*.

29. 42 U.S.C. § 1437a(1) (1976). Incomes are adjusted according to family size and unusual medical or other large expenses. Eligible lower-income families are those with adjusted incomes not in excess of 80% of the median for the area in which the project is located. *Id.* § 1437f(f)(1). To insure that very low-income families will receive assistance, the act requires that at least 30% of the families receiving assistance nationwide have adjusted incomes not in excess of 50% of the area median income. *Id.* § 1437f(c)(7), (f)(2).

30. *Id.* § 1437f(c)(3).

31. *Id.* § 1437.

32. *Id.* § 1437c(a).

33. G. PETERSON, TAX EXEMPT FINANCING OF HOUSING INVESTMENT 28 (1979) [hereinafter cited as PETERSON]. In 1978, 62% of total HFA borrowing was for single family programs. In the first four months of 1979, this share climbed to 84%. Peterson believes this shift in emphasis reflects the political popularity of reducing the costs of homeownership during periods of rapid inflation. *See id.* at 29-31 for tables com-

of state housing agencies have instituted indirect financing through two types of programs: loans-to-lenders and mortgage purchase.³⁴ Unlike the direct loan programs, these arrangements primarily benefit moderate- and upper-income homebuyers rather than low-income purchasers. Mortgages are made available to geographical areas or household groups that would have difficulty obtaining mortgage loans in the private market.³⁵ Additionally, homebuyers are assisted by lowered mortgage interest rates and reduced down payment requirements.

As with the direct loan programs, HFAs finance indirect loan programs by issuing tax-exempt bonds. A controversy has arisen over whether the federal government should restrict the tax exemption to low- and moderate-income multi-family housing.³⁶ Critics of indirect loan programs argue that tax-exempt bonds cause a loss of federal revenue and provide an inefficient method of promoting housing development.³⁷ Legislation has been introduced in Congress to prohibit tax-exempt bond financing for single-family mortgages and for multi-family housing projects in which low- and moderate-income families occupy less than twenty percent of the units.³⁸

paring HFA multi-family and single-family production trends on a state-by-state basis.

34. HOUS. & DEV. REP., *supra* note 4, at 50:0013. In 1970, the New Jersey Mortgage Agency and the State of New York Mortgage Agency established prototypes of these two programs. Virtually all of the state agencies established since then have one or both of these indirect lending authorities. *Id.*

35. Under the mortgage purchase program, an HFA purchases first mortgages on residential housing from lending institutions. This activity frees funds in the local mortgage market, thus enabling banks to make new residential mortgages. HOUSING FOR ALL, *supra* note 7, at 504. Under the loans-to-lenders program, the HFA makes loans to private mortgage lenders who are required in turn to make new residential mortgage loans. *Id.* Several loans-to-lenders programs provide incentives for lending in designated high risk inner-city neighborhoods. These incentives usually take the form of higher permissible interest charges. See PETERSON, *supra* note 33, at 150 for a discussion of urban lending programs.

36. See Bagwell, Evans and Nielsen, *The Municipal Bond Market: An Analysis and Suggested Reform*, 16 HARV. J. LEGIS. 211 (1979); Cooper, *Tax-Exempt Bonds Aid Local Housing Development Strategies*, 36 J. HOUS. 573 (1979); Levantino & Donoghue, *Local Bonds for Housing Present New Opportunities but Pose Financial Threats*, 36 J. HOUS. 306 (1979).

37. H.R. REP. NO. 96-678, 96th Cong., 1st Sess. 22 (1979).

38. H.R. 5741, 96th Cong., 1st Sess. (1979). For a concise explanation of the Internal Revenue Code's tax exemptions and a discussion of the bill's merits, see H.R. REP. NO. 96-678, 96th Cong., 1st Sess. 22 (1979).

Mortgage insurance represents a method of housing finance likely to come into increased use by states.³⁹ Most HFAs require security for their loans. HUD-FHA, VA, or private mortgage insurance companies usually provide this insurance.⁴⁰ Several states have created their own insurance programs,⁴¹ usually funded by the state's general funds or through issuance of general obligation bonds.⁴² HFAs are then able to finance high-risk ventures, such as housing in slum neighborhoods, mortgages for older homes, or risky credit purchases.

Section 244 of the National Housing Act authorizes a co-insurance program whereby HFAs share the risk of default with HUD.⁴³ The program's objective is to improve an HFA's attractiveness in the bond market while retaining enough risk to assure prudent underwriting practices.⁴⁴ Despite the advantages of co-insurance, states are reluctant to participate in the Section 244 program because of HUD's excessive regulations which limit the HFA's flexibility.⁴⁵

In addition to the direct and indirect housing finance programs, a number of state HFAs have expanded into other housing related areas. At least fourteen state agencies are authorized to acquire, develop, and improve land to be used for low- and moderate-income housing.⁴⁶ Other states have established their own subsidy programs to supplement federal financial assistance.⁴⁷ Most HFAs provide de-

39. See note 21 and accompanying text *supra*.

40. HOUS. & DEV. REP., *supra* note 4, at 50:0014A.

41. *Id.* Alaska, Connecticut, Vermont, and Maryland are the most notable. The Maryland Fund, financed by a \$7 million general obligation bond, provides twenty to twenty-five percent insurance coverage on any mortgage. All state citizens unable to meet the down-payment requirements needed to obtain loans or uninsured mortgages are eligible for the program. *Id.*

42. *Id.* General obligation bonds, unlike moral obligation bonds, are backed by the full faith and credit and general tax revenues of the governmental unit. See Griffith, *Moral Obligation Bonds: Illusion or Security?* 8 URB. LAW 54, 57 (1976).

43. 12 U.S.C. § 1715z-9 (1976).

44. Hance and Duvall, *supra* note 21, at 732. The article provides a detailed explanation of coinsurance.

45. HOUSING FOR ALL, *supra* note 7, at 514. The Missouri Housing Development Commission (MHDC) became the first state agency to receive approval from HUD under this program. The agreement provides that on a portfolio of ten or more loans, the HFA assumes the first 3% in losses of the entire portfolio. Any subsequent loss is split eighty percent to twenty percent, with HUD absorbing the larger share. Salsich, *New Government Programs for Residential Real Estate Financing*, 13 REAL PROP., PROB. & TR. J. 1055 (1978).

46. HOUS. & DEV. REP., *supra* note 4, at 50:0014A.

47. *Id.* at 50:0015.

tailed analyses of the state housing situation and help local communities prepare the housing assistance plans required by the Housing and Community Development Act of 1974.⁴⁸ State HFAs are also seeking greater involvement in rehabilitation, rural housing, and housing for special client groups such as the elderly and the handicapped.⁴⁹ The success of HFAs demonstrates that states are capable of implementing federal programs as well as developing their own housing finance programs. The future of HFAs depends upon their access to capital markets and their ability to secure subsidy funds. Reliance on these funding methods, however, may prove risky during inflationary periods. Mortgage insurance will mitigate the risk by stabilizing HFA bond markets and reducing market fluctuations. HFAs must, however, rely on their own resources and innovative financing techniques in order to remain a viable force in the housing field.⁵⁰

B. *Property Tax Abatements*

Local communities are often financially dependent on property taxes.⁵¹ As a result, they tend to favor the development of high-yield commercial and industrial facilities over low-yield residential structures.⁵² In an attempt to remedy this situation and encourage the private sector to construct low- and moderate-income housing, some states and municipalities abate the taxes that would otherwise be imposed upon these structures.⁵³

Tax abatement programs generally follow one of two approaches. Under the first approach, rehabilitated property is exempt from taxation for a specified number of years. In lieu of taxes, the municipality

48. *Id.*

49. *Id.* at 50:0016-17.

50. The ABA Advisory Commission on Housing and Urban Growth suggests that in addition to underwriting their bonds with mortgage insurance, HFAs should establish escrow accounts and experiment with new forms of real estate and municipal finance such as variable rate mortgages, variable terms on bonds and mortgages, and frequent sales of smaller issues with shorter maturity schedules. HOUSING FOR ALL, *supra* note 7, at 515.

51. *See* note 11 *supra*.

52. *See* NETZER, *supra* note 11, at 74.

53. For a compilation of state laws offering exemptions to nonpublic bodies for construction or renovation of residential property, *see* INTERNATIONAL ASS'N OF ASSESSING OFFICES, URBAN PROPERTY TAX INCENTIVES: STATE LAWS (Research and Information Series, Aug. 1978).

collects a service charge.⁵⁴ This charge reflects pre-existing taxes and is collected as a proportion of the gross rent. Under the second approach, assessment remains at the rate charged before rehabilitation or new construction. Upward reassessment reflecting the new capital investment is deferred for the number of years specified by the statute.⁵⁵

Most tax abatement programs are geared towards profit-oriented landowners such as private redevelopment companies.⁵⁶ Redevelopment company statutes require the company to formulate a comprehensive plan for commercial or residential redevelopment in a blighted area. The company contracts with a state or local housing authority and is subject to initial approval and continuing supervision by the authority. The tax exemption provisions are part of a total governmental assistance program which may include land cost write-downs and use of the state's condemnation power for acquiring sites.⁵⁷

Without other government assistance, the tax abatement subsidy is often too small to offset rehabilitation expenses. Landlords will increase rents, which in effect forces the exclusion of low-income tenants.⁵⁸ In order to avoid this dilemma, some states indirectly reimburse landowners for their investments by increasing the amount of subsidy to include abatement of existing taxes.⁵⁹ Most redevelopment company statutes also encourage lower rents by limiting the company's annual dividend to between five and ten percent of the

54. See, e.g., MASS. GEN. LAWS ANN. Ch. 121A, § 10 (1969); OHIO REV. CODE ANN. § 1728.11 (1978).

55. See generally N.Y. PRIV. HOUS. FIN. LAWS § 93 (West 1976); PA. STAT. ANN. Tit. 72, § 4711-16 (Supp. 1980). The duration of deferral varies from state to state. The minimum is five years. OHIO REV. CODE ANN. § 3735.67 (1978). The maximum is fifty years. N.Y. PRIV. HOUS. FIN. LAW § 93(5) (West 1976).

56. The eight states with tax exemptions for redevelopment companies are: Hawaii, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, and Ohio. Alpert, *supra* note 11, at 13 n.34. Six states provide tax exemptions for non-government assisted rehabilitation: Connecticut, Indiana, New York, Ohio, Pennsylvania, and Vermont. *Id.* at 22 n.69.

57. Alpert, *supra* note 11, at 13.

58. *Id.* at 6. "Unless a landlord can expect an actual increase in rent to offset his rehabilitation expenditures, he will not rehabilitate. Tax abatement is only an incentive insofar as it supplements a rent increase." *Id.*

59. N.Y. REAL PROP. TAX LAW § 489(2) (1980). In New York, existing property taxes can be abated for an equivalent of 8.33% of the cost of rehabilitation for up to twelve years. Alpert, *supra* note 11, at 26.

investment.⁶⁰ Critics argue that the statutes should specifically require low-income housing because many companies do not pay dividends. Instead, the companies simply accumulate profits which they distribute upon dissolution.⁶¹

State constitutional uniformity clauses restricting differential assessments place limits upon tax abatement programs.⁶² Nearly half of the states allow only constitutionally mandated property tax exemptions.⁶³ States which do allow additional tax exemptions often require that the exemption bear a rational relation to a permissible governmental purpose.⁶⁴ This test allows local governments to exercise broad discretion in implementing tax abatement programs.

Local government dependence on the property tax as a major source of revenue discourages the use of tax abatement programs.⁶⁵ Communities are unlikely to experiment with programs that potentially may reduce their tax revenue. It is arguable, however, that the benefits accruing from a tax abatement program, such as new construction and increased employment, could well exceed the costs of foregone tax revenues.⁶⁶

C. Tax Increment Financing

A variation on tax abatements is tax increment financing (TIF).⁶⁷

60. Alpert, *supra* note 11, at 15.

61. *Id.* Alpert suggests that the statutes should require prospective tenants of the tax-subsidized property to prove that they have lived within the designated deteriorated areas for the past year or that their incomes do not exceed a specified limit. *Id.* at 28.

62. State uniformity clauses are the equivalent of federal or state equal protection clauses. D. MANDELKER AND D. NETSCH, *STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM* 262 (1977).

63. The states forbidding property tax exemptions except for purposes enumerated in their constitutions are: Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, and West Virginia. See *HOUSING FOR ALL*, *supra* note 7, at 530 n.175.

64. See *HOUSING FOR ALL*, *supra* note 7, at 529 N. 171.

65. See *id.* at 528. In 1971, the property tax comprised 84.6% of all local tax revenues and 39.9% of all local general revenues. *Id.*

66. STERNLIEB, ROISTACHER, & HUGHES, *TAX SUBSIDIES AND HOUSING INVESTMENT: A FISCAL COST-BENEFIT ANALYSIS* 6 (1976).

67. See COUNCIL OF STATE GOVERNMENTS, *TAX INCREMENT FINANCING OF COMMUNITY DEVELOPMENT CSG RESEARCH BRIEF* (1977) [hereinafter cited as CSG]; Davidson, *Tax Increment Financing as a Tool for Community Redevelopment*,

Thirteen states presently authorize some form of tax increment financing.⁶⁸ TIF's basic premise is that redevelopment activity creates higher property values in the developed area, thereby increasing municipal property tax revenues from that area.⁶⁹ The city allocates any increase in property taxes attributable to redevelopment to finance public improvements such as access roads and sewers.⁷⁰ The pre-development tax revenue base continues to go into the local government's general fund.⁷¹ In most cases, tax allocation bonds finance the immediate public redevelopment cost, with the projected tax "increment" pledged to repay the bondholders.⁷²

The TIF system does not provide any increase in tax revenues until the municipality retires the allocation bonds. In the interim, however, the new development produces service demands. Taxpayers outside the project area indirectly subsidize any increased service needs.⁷³ Courts hold that these taxpayers are not denied equal protection or uniformity of taxation.⁷⁴ Any advantages to those within

56 U. DET. J. URB. L. 405 (1979) [hereinafter cited as Davidson]; Hegg, *Tax-Increment Financing of Urban Renewal—Redevelopment Incentive without Federal Assistance*, 2 REAL EST. L.J. 575 (1973) [hereinafter cited as Hegg]; Mitchell, *Tax Increment Financing for Redevelopment*, 34 J. HOUS. 226 (1977).

68. See CAL. HEALTH & SAFETY CODE § 33676 (West 1973 and Supp. 1979); COLO. REV. STAT. § 31-25-107(9) (Supp. 1975); CONN. GEN. STAT. § 12-65(c) to 12-65(f) (Supp. 1979); FLA. STAT. ANN. § 163.387 (West Supp. 1979); IOWA CODE ANN. § 403.19 (1980); MINN. STAT. § 462-585 (1974); MONT. CODE Tit. VII, ch. 15, pt. 42 (reserved) (1978); NEV. REV. STAT. § 279.676 (1974); N.D. CENT. CODE § 40-58-20 (Supp. 1978); OR. REV. STAT. § 457.440 (1977); UTAH CODE ANN. § 11-19-29 (Supp. 1979); WIS. STAT. ANN. § 66.46 (West Supp. 1980); WYO. STAT. § 15-10-121 (1977).

Cities in California and Minnesota have been particularly active in taking advantage of their state enabling acts by authorizing major TIF community projects. For a discussion of TIF in California, see Trimble, *Tax Increment Financing for Redevelopment: California Experience is Good*, 31 J. HOUS. 458 (1974). For a discussion of the Minnesota experience, see Hegg, *supra* note 67, at 578.

69. CSG, *supra* note 67, at 1; Davidson, *supra* note 67, at 410.

70. CSG, *supra* note 67, at 1; Davidson, *supra* note 67, at 411.

71. Davidson, *supra* note 67, at 410.

72. CSG, *supra* note 67, at 1. TIF bond issuances may range from 10 to 25 years, depending upon project costs, size of the increment, and statutory limits. *Id.*

73. HOUSING FOR ALL, *supra* note 7, at 527.

74. *People ex rel. City of Canton v. Crouch*, 79 Ill.2d 356, 403 N.E.2d 242 (1980) (Real Property Tax Increment Allocation Redevelopment Act does not offend due process or equal protection clause); *Richards v. City of Muscatine*, 237 N.W.2d 48 (Iowa 1975) (partial tax exemption for urban renewal developers does not violate constitutional requirement of uniform operation of the laws); *Kansas ex rel. Schneider v. City of Topeka*, 227 Kan. 115, 605 P.2d 556 (1980) (urban redevelopment act

the project area are incidental to the primary public purpose of eliminating blight.⁷⁵ Courts view redevelopment programs as benefiting the entire community rather than particular developers or residents.⁷⁶ As long as the project has a rational basis, courts will defer to the legislative judgment.⁷⁷

Critics of TIF argue that the system encourages commercial and industrial expansion but not low- and moderate-income housing developments, which are less likely to create an increment. Opponents further contend that TIF results in projects in areas not needing redevelopment. To insure that areas needing urban redevelopment receive the benefits of TIF, most statutes authorize it only when private initiatives are unlikely to alleviate blight in the designated renewal area.⁷⁸ Municipalities also use statutory physical and financial limits on TIF projects.⁷⁹ Pairing housing units with economic redevelopment, such as office and commercial buildings, may facilitate the provision of low- and moderate-income housing.⁸⁰

Tax increment financing is an effective technique for financing urban renewal without federal assistance. The principal advantage of this method is the ability to provide substantial capital for development projects without the loss of tax revenue. Upon a project's completion and retirement of the bonds, increased tax revenues become available to the city. The system is susceptible of abuse, however,

did not violate uniformity clause); *City of Sparks v. Best*, 605 P.2d 638 (Nev. 1980) (community redevelopment law does not violate fourteenth amendment to federal constitution or applicable article of Nevada Constitution).

75. *Richards v. City of Muscatine*, 237 N.W.2d 48, 58 (Iowa 1975) (urban renewal serves valid public purpose and relates to general welfare); *Short v. City of Minneapolis* 269 N.W.2d 331, 338-39 (Minn. 1978) (city's decision to construct parking facility in order to induce developer to build trade mart complex in development district served valid public purpose).

76. See *Richards v. City of Muscatine*, 237 N.W.2d 48, 59-60 (Iowa 1975).

77. See *Berman v. Parker*, 348 U.S. 26, 35-36 (1954) (Court deferred to local legislative judgment in defining scope and details of redevelopment activity).

TIF has also withstood other constitutional challenges. See Davidson, *supra* note 67, at 434, 436 and 438 for discussion on the constitutional issues of due process, delegation of legislative authority, and borrowing and debt limitations as they relate to TIF.

78. See CAL. HEALTH & SAFETY CODE § 33037(b) (West 1973); MINN. STAT. ANN. § 462.415(2) (West 1980).

79. MINN. STAT. ANN. § 472A.01-.13 (West 1974); WIS. STAT. ANN. § 66.46(4) (West 1980).

80. See MORRIS, *supra* note 13, at 112.

when agencies designate nonblighted areas of the city for redevelopment in order to capture tax increments. TIF can therefore best benefit needy persons and neighborhoods by controlling discretion in project and district selection.

D. *Summary*

Ready access to national bond markets and the authority to levy property taxes enables states to stimulate housing markets. HFAs, property tax abatements, and TIF will play greater roles in housing finance as budget cuts lessen federal involvement. These state and local housing programs, however, must utilize financially innovative techniques in order to withstand fluctuations in the economy.

Used properly, these programs can provide an important stimulus to urban renewal. The public purpose of community revitalization, as well as the property interests of private developers, must always be taken into account. Greater cooperation between the public and private sectors is needed if these programs are to reach their maximum potential.

II. PROVIDING FINANCIAL INCENTIVES FOR INDUSTRY TO REMAIN AT ITS URBAN LOCATION

Attracting business and industry to urban areas and providing them with the incentive to remain has become increasingly difficult. Numerous programs have been enacted at the federal, state, and local levels in an attempt to remedy this situation.⁸¹ This section will examine developments in the field of corporate construction financing and analyze proposed labor law restrictions which attempt to alleviate the problems causing industrial relocation.

A. *Pollution Control Facilities and the Use of Industrial Development Bonds*

Environmental regulations which require an industry to construct pollution control facilities place prohibitive financial demands upon

81. See generally Goldberg, *Tax Increment Financing Redevelopment Alternative for American Cities*, 2 HOUS. & DEV. REP. (BNA) 221; Hegg, *Tax Increment Financing of Urban Renewal-Development Incentive Without Federal Assistance*, 2 REAL EST. L. J. 575 (1973).