

tion against pension loss.<sup>143</sup>

The Williams "priorities" bill (S. 1609) relies on the courts to enforce the law,<sup>144</sup> while the Riegle-Ford "protection" bill (S. 1608) empowers the Secretary of Labor to hold hearings<sup>145</sup> and impose penalties for noncompliance.<sup>146</sup> The Riegle-Ford Bill would also require large employers to give up to two years notice of a plant closing to employees and the local community.<sup>147</sup> In contrast, the Williams measure requires a one year notice period regardless of the company's size.<sup>148</sup>

These bills, while constituting efforts at helping to cover the social costs of plant closings, also serve as incentives to prevent businesses from leaving their communities. The costs in terms of benefits conferred on employees and notice requirements to the community add to the total costs of the company becoming a "runaway plant."

Whether a bill of either sort is enacted is not the important point. Emphasis and note should be given to the fact that Congress has finally recognized the existence of the "runaway plant" problem. These pieces of legislation are indicative of efforts to remedy its consequences.

### III. THE CONSTITUTIONAL DEVELOPMENT OF RENT CONTROL AND THE GOOD CAUSE EVICTION REQUIREMENT

Although Americans in general enjoy comparatively high quality housing, many low- and moderate-income tenants have difficulty finding decent, safe, and affordable dwellings. The problem is intensified by the current rebuilding of inner cities, where large numbers of poor and elderly residents are congregated. When rehabilitation of buildings and neighborhoods attracts higher-income persons, the former residents are often financially unable to compete for the restored shelter. Reductions in federal housing assistance will further exacerbate the housing shortage. The budget cuts will force state and

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143. *Id.* § 12; S. 1609, 96th Cong., 1st Sess. § 8 (1979).

144. S. 1609, 96th Cong., 1st Sess. § 13 (1979).

145. S. 1608, 96th Cong., 1st Sess. § 31 (1979).

146. *Id.*

147. *Id.* § 4(b)(3)(A)(i).

148. S. 1609, 96th Cong., 1st Sess. § 4 (1979).

local governments to assume primary responsibility in safeguarding the availability of decent housing for tenants.

Two tools available to states and municipalities for protecting low- and moderate-income tenants are rent control and good cause eviction regulations. This article will discuss the development of rent control and its constitutional basis, and the establishment of state-wide good cause eviction standards.

### A. Rent Control

Initial rent controls sporadically appeared in the United States as a means of dealing with the housing shortage following World War I.<sup>149</sup> Similar controls were enacted on a nationwide basis during World War II.<sup>150</sup> Although New York City is the only American municipality that consistently regulated rents in the ensuing years,<sup>151</sup> the seventies marked widespread reemergence of such controls.<sup>152</sup> Statistics reveal that by the mid-seventies, approximately one-eighth of all rental units within the United States were subject to price guidelines.<sup>153</sup>

Under a rent control system, rents are generally frozen or rolled back to levels existing at a previous date.<sup>154</sup> Municipalities prescribe

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149. See, e.g., Ball Rent Act of 1919, ch. 80, 41 Stat. 298; Law of April 1, 1920, chs. 130-139, 1920 N.Y. Laws.

150. See Emergency Price Control Act of 1942, ch. 26, 56 Stat. 23. These controls remained intact for a period of time following the war. See Housing and Rent Act of 1947, ch. 163, 61 Stat. 193, 200; Housing and Rent Act of 1948, ch. 161, 62 Stat. 93.

151. See J. BRENNER & H. FRANKLIN, RENT CONTROL IN NORTH AMERICA AND FOUR EUROPEAN COUNTRIES 46 (1977) [hereinafter cited as BRENNER & FRANKLIN].

152. *Id.* Rent control ordinances have been enacted in various cities throughout Alaska, California, Connecticut, Florida, Maryland, Massachusetts, New Jersey, and New York. See D. BRYANT & H. MCGEE, GENTRIFICATION AND THE LAW: COMBATING URBAN DISPLACEMENT, 6-3-6-12 (1980) [hereinafter cited as BRYANT & MCGEE].

153. BRENNER & FRANKLIN, *supra* note 151, at 46.

154. E.g., New York City Rent Stabilization Law, N.Y. CONSOL. LAWS § YY51-6.01 (McKinney Supp. 1980), provides:

b. The initial regulated rent for housing accommodations subject to this law on the local effective date of the emergency tenant protection act of nineteen seventy-four or which become subject to this law thereafter, pursuant to such act, shall be:

(1) For housing accommodations which were regulated pursuant to this law or the city rent and rehabilitation law prior to July first nineteen hundred seventy-one, and which became vacant on or after such date and prior to the local effective date of the emergency tenant protection act of nineteen seventy-four, the

standards for future adjustments, with the ordinances generally recognizing a landlord's right to a fair return on investment.<sup>155</sup> The various forms that rent control ordinances take may determine how effective an adopted measure will be in combating the effects of gentrification.<sup>156</sup> Provisions that allow for decontrol of vacant units and a broad range of other exemptions will hinder the effectiveness of the ordinance,<sup>157</sup> while stringent regulations governing eviction, demolition, and conversion will strengthen it.<sup>158</sup>

Traditionally, state enabling legislation<sup>159</sup> grants a municipality

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rent reserved in the last effective lease or other rental agreement; provided that such initial rent may be adjusted on application of the tenant pursuant to subdivision b of section YY51-6.0.2 of this law.

(2) For housing accommodations which were regulated pursuant to the city rent and rehabilitation law on the local effective date of the emergency tenant protection act of nineteen seventy-four, and thereafter become vacant, the rent agreed to by the landlord and the tenant and reserved in a lease or provided for in a rental agreement; provided that such initial rent may be adjusted on application of the tenant pursuant to subdivision b of section YY51-6.0.2 of this law.

(3) For housing accommodations other than those described in paragraphs (1) and (2) of this section, the rent reserved in the last effective lease or other rental agreement.

(4) For any plot or parcel of land which had been regulated pursuant to the city rent and rehabilitation law prior to July first, nineteen hundred seventy-one and which,

(i) became vacant on or after July first, nineteen hundred seventy-one and prior to July first, nineteen hundred seventy-four, the rent reserved in a lease or other rental agreement in effect on June thirtieth, nineteen hundred seventy-four plus increases authorized by the rent guidelines board under this law for leases or other rental agreements commencing thereafter or,

(ii) became vacant on or after July first, nineteen hundred seventy-four, the rent agreed to by the landlord and the tenant and reserved in a lease or other rental agreement plus increases authorized by the rent guidelines board under this law for leases or other rental agreements commencing thereafter.

155. *Id.* § YY51-6.01. Due process mandates that a landlord must be able to obtain a fair return on his investment. The question of what constitutes a fair return has been heavily litigated in recent years. For an excellent discussion of the various approaches adopted by the courts, see Note, *Rent Control and Landlords' Property Rights: The Reasonable Return Doctrine Revived*, 33 RUTGERS L. REV. 165 (1980).

156. See generally BRYANT & MCGEE, *supra* note 152.

157. Vacancy decontrol provisions allow landlords to substantially increase rents when a dwelling becomes vacant. Landlords are thus given the incentive to force tenants to move by either evicting them or making continued occupancy undesirable. *Id.* at 6-3—6-12.

158. A primary goal of rent control is to prevent displacement of low- and moderate-income tenants. Stringent regulations governing eviction demolition and conversion further this goal. *Id.*

159. A municipality's authority to regulate rents stems from either a home rule

authority to regulate rent if a housing emergency exists.<sup>160</sup> This requirement is a remnant of the substantive due process doctrine that required an emergency to support the validity of economic regulations.<sup>161</sup> In 1934, the Supreme Court repudiated substantive due process. Reviewing a New York State statute regulating the price of milk, the Court, in *Nebbia v. New York*,<sup>162</sup> held that economic regulations constitute a valid exercise of the police power whenever the public interest necessitates it.<sup>163</sup> Under *Nebbia*, if the regulations have a "reasonable relation to a proper legislative purpose . . . a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adopted to its purposes."<sup>164</sup>

Despite the holding in *Nebbia*, courts consistently applied substantive due process to test the validity of rent control until the mid-seventies.<sup>165</sup> In the first case to abandon the doctrine, the Maryland Court of Appeals, in *Westchester West No. 2 Limited Partnership v.*

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charter or state enabling legislation. For a comprehensive discussion of home rule charters and legislative enabling acts, see D. MANDELKER & D. NETSCH, *STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM*, 143-25 (1977).

160. A typical emergency declaration states that an emergency exists due to a deterioration of the existing housing stock, insufficient new housing construction, inflation, and a shortage of safe and affordable housing for low- and moderate-income tenants. See, e.g., New York City Rent Stabilization Law, N.Y. UNCONSOL. LAWS §§ YY51-1.0-0.1 (McKinney Supp. 1980).

While most courts defer to the declaration of an emergency, some have deemed it unwarranted and invalidated the legislation. See *Chastleton Corp. v. Sinclair*, 264 U.S. 543 (1924) (Supreme Court remanded case challenging extension of Ball Rent Act of Aug. 24, 1921, ch. 91, 42 Stat. 200, to determine existence of an emergency); *Warren v. City of Philadelphia*, 387 Pa. 362, 127 A.2d 703 (1955) (court struck down Philadelphia ordinance because it found no emergency). See generally Baar & Keating, *The Last Stand of Economic Substantive Due Process—The Housing Emergency Requirement for Rent Control*, 7 URB. LAW. 447 (1975).

161. See E. BARRETT, *CONSTITUTIONAL LAW* 648-696 (1977).

162. 291 U.S. 502 (1934).

163. *Id.* at 538.

164. *Id.* at 537.

165. Prior to 1975, all state courts applied the emergency requirements to test the constitutionality of rent controls. See, e.g., *Russell v. Treasurer & Receiver Gen.*, 331 Mass. 501, 120 N.E.2d 388 (1954) (Massachusetts legislation sustained on grounds that Korean War caused housing emergency); *Jamouneau v. Horner*, 16 N.J. 500, 109 A.2d 640 (1954) (New Jersey rent control legislation sustained on emergency grounds); *Amsterdam-Manhattan, Inc. v. City Rent & Rehabilitation Admin.*, 15 N.Y.2d 1014, 207 N.E.2d 616, 260 N.Y.S.2d 23 (1965) (New York City ordinance sustained on emergency grounds).

*Montgomery County*,<sup>166</sup> held that the proper constitutional test was whether the regulation of rents bore a substantial relation to the public health, safety, and welfare.<sup>167</sup> Recognizing such a relationship, the court sustained the ordinance at issue as a proper means of effectuating police power objectives.<sup>168</sup>

Soon thereafter, the New Jersey Supreme Court, in *Hutton Park Gardens v. West Orange Town Council*,<sup>169</sup> also rejected the emergency requirement. The court reasoned that although an emergency situation may demonstrate the reasonableness of the challenged regulations, it is not necessary to sustain their constitutionality.<sup>170</sup> The next year, California joined New Jersey and Maryland in abandoning the emergency requirement for rent control. In *Birkenfield v. City of Berkeley*,<sup>171</sup> the California Supreme Court held that the regulation of rents constitutes a valid police power measure if it relates to a legitimate governmental purpose.<sup>172</sup>

The *Birkenfield* court, however, struck down the Berkeley ordinance as an unconstitutional taking of property.<sup>173</sup> In doing so, it enunciated a constitutional standard for rent control different from that applied to other economic regulations. Under this standard, a rent control ordinance must provide the landlord with both procedural due process and a reasonable return on investment.<sup>174</sup> The judiciary will review the procedural mechanisms of the system to assure

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166. 276 Md. 448, 348 A.2d 856 (1975).

167. *Id.* at 464, 348 A.2d at 865. The court held that the Maryland Constitution mandates the same standard of review. *Id.* at 465, 348 A.2d at 866.

168. *Id.* at 464, 348 A.2d at 865.

169. 68 N.J. 543, 350 A.2d 1 (1975).

170. *Id.* at 561-62, 350 A.2d at 10-11. The opinion finds no valid basis for distinguishing rent control from other types of economic regulations. *Id.* at 556, 560, 350 A.2d at 7, 10.

171. 17 Cal.3d 129, 550 P.2d 1001, 130 Cal. Rptr. 465 (1976).

172. *Id.* at 158, 550 P.2d at 1022, 130 Cal. Rptr. at 486.

173. *Id.* at 169, 550 P.2d at 1030, 130 Cal. Rptr. at 494. The Berkeley ordinance was established by a home rule charter amendment. It provided for a system of review and apartment-by-apartment adjustments of rents after a full hearing by a control board. The court found this system to be confiscatory because the board could not consider each adjustment within a reasonable period of time. *Id.* The court held that the Berkeley program "drastically and unnecessarily restricts the rent control board's power to adjust rents, thereby making inevitable the imposition of unreasonably low rent ceilings." *Id.* at 169, 550 P.2d at 1029-30, 130 Cal. Rptr. at 493-94.

174. *Id.* at 169, 550 P.2d at 1029-30, 130 Cal. Rptr. at 493-94. See generally Note, *supra* note 155.

landlords' prompt and adequate adjustments.<sup>175</sup>

Other jurisdictions will benefit by following the approach taken by the Maryland, New Jersey, and California courts. Elimination of the emergency requirement is necessary if rent control is to provide a viable solution to the problem of finding decent, safe, and affordable housing for low- and moderate-income tenants. Recognition of the validity of rent control as emergency legislation provides only a short-term solution to an ongoing problem.<sup>176</sup> Municipalities must be able to enact comprehensive housing legislation in nonemergency times as well. A landlord's interest can be adequately protected by applying the standard set forth in *Birkenfield*.

### B. *Good Cause Eviction*

Eviction controls are essential to any rent control system. Without them, tenants who protest illegal rent increases may be subject to retaliatory evictions.<sup>177</sup> Additionally, if a vacancy decontrol provision exists, there is always the possibility that the landlord will evict his tenants in order to obtain higher rents.<sup>178</sup> Stringent eviction controls eliminate arbitrary evictions and allow tenants to feel secure in their dwellings.

Rent control ordinances generally provide good cause eviction protection.<sup>179</sup> The standards set forth in these eviction clauses are very similar to the eviction controls governing federally subsidized housing.<sup>180</sup> Not only do these controls restrict the landlord's power to

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175. See notes 173-74 *supra*.

176. To have a positive effect upon the overall urban housing situation, rent controls must have a long term impact. As they have been applied, rent control ordinances can only provide temporary relief to housing shortages. By no means can they provide a long term solution because there is always the possibility that a reviewing court will find the emergency basis unwarranted and invalidate the legislation. See note 160 and accompanying text *supra*.

177. See Schoshinski, *Remedies of the Indigent Tenant: Proposal for Change*, 54 GEO. L. J. 519, 541 (1966); Note, *Landlord and Tenant—Burden of Proof Required to Establish Defense of Retaliatory Eviction*, 1971 WIS. L. REV. 939, 940.

178. See note 157 and accompanying text *supra*.

179. These eviction clauses primarily serve as a control mechanism to enforce the rent control ordinance. Generally, the provisions list the circumstances under which a tenant may be evicted. See notes 181 & 184-193 and accompanying text *infra*.

180. One of the most important attributes of federally assisted housing programs is the good cause eviction requirement placed upon landlords. The Department of Housing and Urban Development (HUD) implemented regulations requiring good cause eviction in public housing in 1975. 24 C.F.R. § 866.4(l) (1980). In 1976 HUD

evict; they affirmatively list the circumstances under which a landlord may do so.<sup>181</sup>

In 1974, the New Jersey legislature enacted a good cause eviction statute that applies eviction controls on a statewide basis.<sup>182</sup> Enactment of this statute can be seen as an outgrowth of rent control legislation. It reflects legislative recognition of eviction controls as a means of both providing security of tenure for tenants and alleviating some of the anxiety caused by the low- and moderate-income housing crunch.<sup>183</sup>

The New Jersey legislation encompasses "any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes."<sup>184</sup> Hotels, motels, and guest houses are exempt from the good cause eviction requirement.<sup>185</sup> Good cause to evict includes non-payment of rent,<sup>186</sup> disorderly conduct adversely affecting the peace and quiet of the neighbors,<sup>187</sup> willful or grossly negligent conduct causing damage to the premises,<sup>188</sup> breach of covenants, agreements, rules or regulations accepted in writing or contained within the lease,<sup>189</sup> and illegal occupancy.<sup>190</sup>

A landlord may also evict if the premises have been cited for substantial housing code violations adversely affecting the health and safety of tenants and it is economically unfeasible to correct the violations or unfeasible to do so without removal of the tenants.<sup>191</sup> Provisions are made for evictions pursuant to condominium or

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extended this requirement to privately-owned, federally subsidized housing and rent supplement programs. *Id.* § 880.607 (1980). These regulations provide procedural protections for tenants facing eviction by listing the circumstances and procedures that first must be followed.

181. *See, e.g.*, New York City Rent and Rehabilitation Law, N.Y. UNCONSOL. LAWS § t51-60 (McKinney 1974 and Supp. 1980).

182. N. J. STAT. ANN. § 2A:18-61.1 (Supp. 1980). *See generally* Note, *New Rights for New Jersey Tenants—"Good Cause" Eviction and "Reasonable" Rents*, 6 RUTGERS CAMDEN L. J. 565 (1975).

183. *See* note 195 and accompanying text *infra*.

184. N. J. STAT. ANN. § 2A:18-61.1 (Supp. 1980).

185. *Id.*

186. *Id.* § 2A:18-61.1(a), (f), (j).

187. *Id.* § 2A:18-61.1(b).

188. *Id.* § 2A:18-61.1(c).

189. *Id.* § 2A:18-61.1(d), (e).

190. *Id.* § 2A:18-61.1(g)(3).

191. *Id.* § 2A:18-61.1(g)(1), (2).

cooperative conversions or permanent removal of the rental unit from residential use.<sup>192</sup> Additionally, eviction is permitted in governmentally-owned units that are to be permanently removed from the rental market pursuant to a redevelopment or land clearance plan.<sup>193</sup>

As previously noted, the good cause eviction requirement first appeared at the local level as a means of enforcing rental regulations.<sup>194</sup> It is a control mechanism whereby tenants are able to protest illegal rent increases without fear of retaliatory eviction. In a rental market with an insufficient amount of low- and moderate-income units, displaced tenants are unlikely to find decent, safe, and sanitary housing at a reasonable price. Thus, if rent control is to be a viable solution to the low- and moderate-income housing crunch, eviction controls are essential.

The good cause eviction requirement also serves several other purposes. Its existence in New Jersey on a statewide basis reflects legislative recognition of a tenant's right to residential security, the potential the good cause requirement possesses for itself providing a viable solution to the low- and moderate-income housing crisis. Furthermore, it acknowledges the trauma that often results from relocation.<sup>195</sup> Tenants who are forced to move often suffer mental distress and losses of time and money. By preventing arbitrary evictions, the good cause requirement minimizes relocation and thus alleviates this problem.

### C. Conclusion

Recognition of the validity of rent control as a reasonable exercise of the state's police power is a necessary step in the search for a viable solution to the worsening low- and moderate-income housing situation.<sup>196</sup> As applied in the seventies, however, rent control is both inequitable and inefficient because only a small portion of the rental market is subject to the controls. Landlords whose units are not regulated are able to reap the benefits of present market conditions by raising rents and evicting low- and moderate-income tenants in order to replace them with higher paying ones. The burden of solving the

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192. *Id.* § 2A:18-61.1(1)(1), (2).

193. *Id.* § 2A:18-61.1(g)(4).

194. See notes 177-81 and accompanying text *supra*.

195. For an excellent discussion of the problems facing dislocated tenants, see Hartman, *Relocation: Illusory Promises and No Relief*, 57 VA. L. REV. 745 (1971).

196. See note 160 and accompanying text *supra*.

housing shortage is thereby placed upon a select group of landlords.<sup>197</sup>

As we enter a new decade, we are faced with the dilemma of resolving this inequitable situation while providing affordable, decent, safe, and sanitary housing for low- and moderate-income tenants. Both the interest of the landlord in his right to income from his property and the equally important right of the tenant to security in his home must be recognized. Expansion of rent and good cause eviction controls<sup>198</sup> on a statewide basis is a viable solution provided that a landlord's right to a fair return on his investment is assured. Development of a long-term solution to the housing dilemma must also include expansion in the areas of public housing and relocation subsidies.

#### IV. PUBLIC HOUSING: THE EXPERIMENTAL HOUSING ALLOWANCE PROGRAM

Passage of the Federal Housing Act of 1937<sup>199</sup> committed this country to the goal of providing decent, safe, and sanitary dwellings for low-income families.<sup>200</sup> Throughout the years, Congress has considered and enacted various housing programs that have sought to improve the quality and increase the supply of low- and moderate-income housing.<sup>201</sup> A major component of the federal housing effort

197. For an informative discussion of the pros and cons of rent control, see BRENNER & FRANKLIN, *supra* note 151.

198. California and Florida have enacted good cause eviction statutes that protect tenants of mobile home parks. *See* CAL. CIVIL CODE §§ 798.55-.86 (Deering Supp. 1981); FLA. STAT. ANN. § 83.759 (West Supp. 1980).

199. Act of Sept. 1, 1937, ch. 896, 50 Stat. 88.

200. The national policy of the federal government as applied to public housing is to promote:

the general welfare of the Nation by employing its funds and credit . . . to assist the several states and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary [sic] housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation.

*Id.* § 1.

201. *See* Housing and Rent Act of 1949, ch. 41, 63 Stat. 18; Housing Act of 1950, ch. 94, 64 Stat. 48; Housing Act of 1954, ch. 649, 68 Stat. 590; Housing Act of 1961; Pub. L. No. 87-70, 75 Stat. 149; Housing and Urban Development Act of 1964, Pub. L. No. 88-560, 78 Stat. 769; Housing and Urban Development Act of 1965, Pub. L. No. 89-117 79 Stat. 451. *See also* Catz, *Historical and Political Background of Federal*