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PUBLIC AID TO HOUSING AND LAND REDEVELOPMENT*

ITS DEVELOPMENT AND PRESENT LEGAL STATUS

By STEFAN A. RIESENFELD** and WARREN EASTLUND***

GOVERNMENT intervention in the field of housing on all three levels, local, state and federal, has become an extremely complex subject with many aspects and ramifications. In its broadest terms, housing is a subject of public concern for two main reasons: On the one hand the availability of decent living quarters for all members of the community is essential for the conservation of the human resources of the nation; on the other hand the maintenance of a high construction level is indispensable for a full employment economy. Thus the prevention of, or intervention in, any failure of the private enterprise system to keep up with the required minimum standards of living will necessitate governmental action. Which form the latter will take depends on many factors. The growth of the housing legislation has been mushroomlike and any resemblance to an overall policy is only the product of the most recent developments.

I. THE GROWTH OF A NATIONAL HOUSING POLICY

A. *The earliest phase of housing legislation: the era of repressive legislation*

The earliest housing legislation in the United States as in England was of the repressive type.¹ It was directed against unsafe, unsanitary and otherwise substandard dwellings, particularly tenement houses which formed slum areas and endangered not only the health and safety of the tenants and neighborhood but were also a breeding place of vice and crime.

The pioneer in this type of legislation was the state of New

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1. For a discussion of the early phases of American housing legislation see Callcott, *Principles of Social Legislation* 106 (1932); Keyserling, *Legal Aspects of Public Housing* in *Legal Problems in the Housing Field* 30 (Nat. Resources Comm. Housing Monograph Series 2, 1939); Wood, *The Development of Legislation* in Schnapper, *Public Housing in America* 71 (1939); Wood, *Recent Trends in American Housing* 10 (1931); Wood, *The Housing of the Unskilled Wage Earner* (1919).

York.² The earliest building laws of that state were directed towards the prevention of fires³ and against unsafe buildings.⁴ The health aspect of housing arose particularly in respect to the tenement house situation and reached the legislative stage in 1856. In that year a select committee of the legislature was appointed to investigate the tenement houses and to report "what legislation, if any, is requisite and necessary, in order to remedy the evils and offer full protection to the lives and health of the occupants of such buildings." The committee rendered a preliminary report in 1856 and a further report in the subsequent year⁵ which discussed the appalling facts unearthed by the investigation and recommended legislative action. The civil war prevented any such steps and nothing was done until a further private investigation into the Sanitary Condition of the City undertaken by the Council of Hygiene and Public Health of the Citizen's Association of New York.⁶ The result of these efforts was the passage in 1867 of an Act for the regulation of tenement and lodging houses in the cities of New York and Brooklyn⁷ which underwent a number of amendments prior to the turn of the century.⁸ During the last years of the nineteenth century the nation became slum conscious even outside New York. Books like Jacob Riis' *How The Other Half Lives*, which appeared first in 1890, were instrumental in arousing the public. New York appointed a series of successive commissions for the investigation of the tenement house situation⁹ which resulted in the passage of the amendatory laws mentioned; other states¹⁰ and

2. In addition to the references in the text see Veiller, *Tenement House Reform in New York City 1834-1900* in 1 De Forest and Veiller, *The Tenement House Problem* 69 (1903); Veiller, *A History of Tenement House Legislation in New York 1852-1900* in 2 *id.* at 201; 1 Ford, *Slums and Housing* 72 ff., 122 ff. (1936).

3. N. Y. Laws 1849, c. 84, 195 (New York City); N. Y. Laws 1852, c. 355 (Brooklyn).

4. N. Y. Laws 1856, c. 188 (New York City).

5. Report on Tenement Houses, 5 Ass. Doc. No. 199 (1856); Report of Select Committee to Examine Tenement Houses, 3 Ass. Doc. No. 205 (1857).

6. Their report was published under the title listed in the text in 1865.

7. N. Y. Laws 1867, c. 908.

8. N. Y. Laws 1879, c. 504; N. Y. Laws 1882, c. 410 tit. 7 (consolidation); N. Y. Laws 1887, c. 84, 288; N. Y. Laws 1892, c. 275; N. Y. Laws 1895, c. 567.

9. For the statutory authorizations see N. Y. Laws 1884, c. 448; N. Y. Laws 1894, c. 479. The report of the Tenement House Committee of 1894, called the Gilder Commission after its chairman, was published in 1895. It made a number of specific recommendations, especially for an effective abatement procedure, which became the law by virtue of the statute of 1895, see note 8 *supra*. The accomplishments of the Gilder Commission were extolled in Riis, *The Battle With The Slum* (1902) *passim*.

10. Mass. Acts and Resolves 1891, c. 115 ordered the Bureau of Statistics of Labor to make an investigation into the tenement house situation.

even Congress¹¹ followed that example and ordered investigations.

The beginning of the new century brought a continuation of the trend. New York appointed a new investigatory commission,¹² the Tenement House Commission of 1900, which recommended the enactment of a new Tenement House Law and the creation of a special Tenement House Department in the City of New York.¹³ Both recommendations were executed.¹⁴ The new law which was largely the product of the efforts of Lawrence Veiller,¹⁵ the secretary of the committee, became the model for similar local or state-wide tenement house regulations in other states.¹⁶ Later Veiller expanded his efforts into a Model Housing Law (applicable to all dwelling houses)¹⁷ which likewise was widely adopted by states or cities.¹⁸

Probably as important as the awakening of a public interest in the elimination of the slums and the passage of remedial legislation, was the experimentation with model tenements during the turn of the century. It was the result of the efforts of some civic minded pioneers in the field. The form which these enterprises took¹⁹ was that of the limited dividend company, *i.e.*, a corporation which limits, by charter, its dividends to a fixed maximum. This plan of "philanthropy and five per cent" was praised highly by Jacob Riis as the most promising solution of the housing problem of his day.²⁰ It is, however, significant that he felt compelled to comment, "It may yet be necessary for the municipality to enter

11. 27 Stat. 399, J. R. No. 22 (1892). Pursuant thereto the Commissioner of Labor made and submitted a special report entitled *The Slums of Baltimore, Chicago, New York and Philadelphia*, H. R. Exec. Doc. No. 257, 53rd Cong., 2d Sess. (1894), which reached the startling conclusion that the slum dwellers were mostly foreign born but "did not earn less than the people generally and at large" and were not subjected to greater sickness. This investigation was followed up by another special report of the Commissioner of Labor entitled the *Housing of the Working People*, studying the situation in different countries, H. R. Exec. Doc. No. 354, 53rd Cong., 3rd Sess. (1895).

12. N. Y. Laws 1900, c. 279.

13. The report is reprinted in 1 De Forest and Veiller, *op. cit. supra* note 2, at 1-69.

14. N. Y. Laws 1901, c. 334 (applicable to cities of the first class); N. Y. Laws 1901, c. 466, amending the city charter by adding c. XIX A.

15. He subsequently published the fruits of his experience under the title, *Model Tenement House Law* (1910).

16. For references, see Wood, *Housing of the Unskilled Wage Earner* 80, 89 (1919); Wood, *Recent Trends in American Housing* 10 (1931).

17. Veiller, *A Model Housing Law* (1914, rev. ed. 1920).

18. Wood, *Housing of the Unskilled Wage Earner* 80, 89 (1919); Wood, *Recent Trends in American Housing* 114 (1931).

19. See Wood, *The Housing of the Unskilled Wage Earner* 91 (1919).

20. Riis, *Battle With The Slums* 128 ff. (1902); Riis, *How The Other Half Lives* 282 (1903).

the field as a competing landlord on the five per cent basis."²¹

B. *The beginnings of legislation for city planning and governmental aid to housing*

The first two decades of the twentieth century brought about the first legal recognition of city planning and governmental aid to housing. Encouraged by European efforts, particularly the British experience under the Housing of the Working Class Act of 1890²² and the passage of the Housing and Town Planning Act of 1909,²³ a strong movement sprang up in the United States for the improvement of housing, zoning and city planning.²⁴ The National Conference on City Planning and the Problems of Congestion and the National Housing Association, formed in 1909 and 1910 respectively, were the pioneer organizations, which through annual conferences, pamphlets and periodicals sought to advance knowledge of the field and to promote their cause.²⁵ The interrelation between housing and city planning was recognized from the beginning.²⁶ The city planners formed a more permanent, smaller body than the annual conference in the American City Planning Institute, founded in 1917.²⁷ The professional literature in the field grew rapidly.²⁸

The necessity of city planning found its first legislative recognition in Massachusetts where an act of 1913 made the establishment of local planning boards mandatory for cities and towns of more

21. Riis, *The Battle With The Slum* 149 (1902).

22. 53 & 54 Vict. c. 70.

23. 9 Edw. 7, c. 44.

24. For a description of the early history of city planning see particularly James, *Land Planning in the United States for the City, State and Nation* 44 ff. (1926); Cf. also Wood, *Housing of the Unskilled Wage Earner*, 215, 230 (1919); Callcott, *op. cit. supra* note 1, at 130; Wood, *Recent Trends in American Housing* 122, 135 (1931).

25. The National Conference on City Planning and the Problems of Congestion published for a brief period a quarterly called the *City Plan* (1915-1917) and its annual proceedings, commencing with the 2d conference (1910); the proceedings of the 1st conference are published as Sen. Doc. No. 422, 61st Cong., 2d Sess. (1909). The National Housing Association published individual pamphlets and a quarterly entitled *Housing Betterment* (1912-1935) and sponsored annual National Conferences on Housing, the proceedings of which were published under the title *Housing Problems in America* (1911-1934).

26. See Olmsted, *City Planning and Housing*, 1 *Housing Problems in America* 29 (1911).

27. The American City Planning Institute published jointly with the National Conference on City Planning a quarterly originally called *City Planning* (1925-1934) and later *Planners' Journal* (1935). In 1939 the name of the institute itself was changed to American Institute of Planners.

28. The classical works are Robinson, *City Planning* (1916); Lewis, *The Planning of the Modern City* (1916); Nolen, *City Planning* (1929).

than 10,000 inhabitants.²⁹ Other states authorized the appointment of city planning boards soon thereafter.³⁰ Zoning, a special aspect of city planning, made even more rapid progress and many states passed the required enabling legislation.³¹

The federal government, through the Department of Commerce under Secretary Hoover, demonstrated an active interest in zoning and city planning. A special Division of Building and Housing was established in 1921 in the Bureau of Standards which, with the help of an Advisory Committee on City Planning and Zoning, published a Zoning Primer, a City Planning Primer, as well as a Standard State Zoning Enabling Act and a Standard City Planning Enabling Act³² which were widely adopted.³³ The Supreme Court sanctioned zoning in 1926,³⁴ and the law relating to zoning and city planning became an accepted branch of American law.³⁵ Soon the efforts of the planners expanded beyond the city limits, and regional planning and later state planning grew likewise to be important and legally recognized fields.³⁶

29. Mass. Acts and Resolves 1913, c. 494.

30. See for instance, Cal. Laws 1915, c. 428; N. J. Acts 1913, c. 72; N. Y. Laws 1913, c. 699; Pa. Laws 1913, Act. No. 226; Ohio Laws 1915, 455.

31. Los Angeles (1915) and New York (1916) were the first American cities to adopt comprehensive zoning, see Williams, *The Law of City Planning and Zoning* 265 (1922); Callcott, *op. cit. supra* note 1, at 141. According to a note on *Zoning and Platting*, 1 *City Planning* 17 (1925), about 320 municipalities had adopted zoning ordinances by 1924 and 33 states had zoning enabling acts. In 1931 there were 981 zoned communities in the United States, having an aggregate population of 46 million, constituting two-thirds of the urban population, Wood, *Recent Trends in American Housing* 129 (1931).

32. The Zoning Primer was first published in 1922, Dep't of Commerce B. H. 3; the Standard State Zoning Enabling Act was issued in 1923, Dep't of Commerce B. H. 5; The City Planning Primer and the Standard City Planning Enabling Act were issued in 1928 as Dep't of Commerce B. H. 10 and B. H. 11 respectively.

33. See Wood, *Recent Trends in American Housing* 129 (1931).

34. *Village of Euclid v. Ambler Realty Company*, 272 U. S. 365 (1926). The brief by Mr. Bettman, one of the pioneers in the field of the law of planning, for the National Conference on City Planning, The Ohio State Conference on City Planning, The National Housing Association and the Massachusetts Federation of Town Planning Boards as *amici curiae* gave an admirable presentation of the various ramifications of the question, and was apparently heavily relied upon in the majority opinion.

35. See Williams, *op. cit. supra* note 31; Bassett, *Zoning* (1940); Bassett, *The Master Plan* (1938); Bassett, *Zoning in Nolen, City Planning* 404 (1929); Bettman, *City Planning Legislation in id.* at 431; James, *op. cit. supra* note 24, at 273.

36. James, *op. cit. supra* note 24 at 249; Dep't of Commerce, B. H. 10, *A City Planning Primer* 14 (1928); Nolen, *City Planning* 472 (1929); Wood, *Recent Trends in American Housing* 141 (1931); Bassett, Williams, Bettman and Whitten, *Model Laws For Planning Cities, Counties and States*, 48, 53, 70, 93 (Harv. City Planning Studies VII 1935). State planning legislation gained its major impetus from the fact that it was urged by Mr. Ickes as Administrator of P.W.A. under the National Industrial Recovery Act.

While restrictive legislation against substandard dwellings as well as zoning and city planning are in many respects conducive to the betterment of the community housing standards it gradually became apparent that the economic conditions developing in the twentieth century required direct intervention of the government in aid of the construction of low cost or low rent housing. The beginning can again be found in Massachusetts, where the Homestead Commission (established in 1911³⁷) succeeded in 1917 in obtaining an appropriation of \$50,000 for the construction and sale of houses for the low income groups and actually erected a small number of homes.³⁸ The United States itself was next to enter the field of public aid to housing, a step which was necessitated by the need of housing for war workers. Congress entrusted the task to two government corporations. On the one hand it empowered the United States Shipping Board Emergency Fleet Corporation to provide housing for shipyards' workers either by direct construction or by loans to building companies.³⁹ On the other hand it authorized the formation of the United States Housing Corporation for the purpose of providing, by various means, for the necessary housing of war workers.⁴⁰ While the first named corporation operated through loans to private companies, the United States Housing Corporation adopted a plan of government construction and operation of housing.⁴¹ California entered the field of legislative aid to housing with the passage of the Veterans' Farm and Home Purchase Act of 1921⁴² which provided for the pur-

For the modern status of city, rural, regional, state and national planning in general see the copious and excellent materials and references in McDougal and Haber, *Property, Wealth, Land: Allocation, Planning and Development*, Part III, especially chapters VI, VII, IX, and XI (1948).

37. Mass. Acts & Resolves 1911, c. 607.

38. Mass. Acts & Resolves 1917, c. 310. The result was the erection of a dozen houses in the outskirts of Lowell, see Wood, *Modern Trends in American Housing* 239 (1931); Schaffter, *State Housing Agencies* 27 (1942).

39. 40 Stat. c. 19 (1918). Through loans to realty companies, projects in 24 localities were developed, including 9,000 houses, 1,100 apartments, 19 dormitories and 8 hotels, see *Federal Housing Programs, Chronology and Description. Committee on Banking and Currency, Committee print* 3, 80th Con., 2d Sess. (1948).

40. 40 Stat. c. 74, 92 (1918).

41. See U. S. Dep't of Labor, 1 Report of the United States Housing Corporation 23 (1920). The corporation completed about 6,000 homes in 26 states and several dormitories, *id.* 43. A number of projects had to be abandoned as a result of the armistice. The liquidation of the corporation was completed in 1947, with a final net deficit to the government of \$28,681,330 or 37.3% of the total investment, see Housing and Home Finance Agency, 1st Ann. Rep., II-1 (1947). For an early appraisal see Olmsted, *Lessons from Housing Developments of the U. S. Housing Corporation*, 8 Month. Lab. Rev. 1253 (1919).

42. Cal. Stats. 1921, 815.

chase of homes by the state, for veterans, to be sold to them on an installment plan. The project proved highly successful and has found the enthusiastic approval of the writers on housing.⁴³ Another act of the same year which provided for a study of state assistance to laborers in the acquisition and construction of homes did not lead to any tangible results.⁴⁴

New York was actually the first state to institute public aid to housing as a permanent government program.⁴⁵ Its enactment was due to the persistent efforts of Governor Alfred E. Smith. Immediately after the close of World War I the governor appointed a Reconstruction Commission for the study of the post war problems, including housing. The legislature likewise appointed a joint committee to investigate housing.⁴⁶ The report by the majority of this commission recommended a permanent constructive housing program by means of a constitutional authorization of the use of state credit in aid of private low cost and low rent housing construction and the establishment of appropriate state and local agencies for the execution of such plan.⁴⁷ Although the governor endorsed this report the legislature failed to take action in this direction until 1926. Up to that date temporary measures were adopted, such as exemptions from local taxation⁴⁸ and for a limited period authorizations to Life Insurance Companies to build and lease apartments at limited rents.⁴⁹

The State Housing Law of 1926⁵⁰ was based on the theory that in certain localities decent low rent housing facilities could not be supplied "through the ordinary operation of private enterprise"⁵¹ and that therefore the investment of private capital in such projects should be attracted by subsidization in the form of tax exemptions.⁵² The Act provided for two types of companies for the execution of the statutory scheme, namely *public* limited dividend

43. Schaffter, *op. cit. supra* note 38, at 180 ff.; Wood, *Recent Trends in American Housing* 253 ff. (1931).

44. Cal. Stats. 1921, 143; cf. Schaffter, *op. cit. supra* note 38, at 105; Wood, *Recent Trends in American Housing* 250 (1931).

45. For further details see 1 Ford, *op. cit. supra* note 2, at 234; 2 *id.*, at 639; Schaffter, *op. cit. supra* note 38, at 238; Wood, *Recent Trends in American Housing* 202, 259 (1931).

46. The so called Lockwood Committee, see Wood, *Recent Trends in American Housing* 86 ff. (1931); Schaffter, *op. cit. supra* note 38, at 239, 242.

47. Message From the Governor transmitting the Report of the Reconstruction Commission on the Housing Situation, N. Y. Leg. Doc. No. 78 (1920).

48. N. Y. Laws 1920, c. 949.

49. N. Y. Laws 1922, c. 658.

50. N. Y. Laws 1926, c. 823.

51. N. Y. Laws 1926, c. 823, § 13.

52. N. Y. Laws 1926, c. 823, §§ 39, 51.

housing companies and *private* limited dividend housing companies. The chief difference between the two forms consisted of restrictions placed upon the public companies, in regard to the acquisition and the disposal of real property, and the grant to them of a limited right of eminent domain. The Act established a new State Board of Housing (which superseded a bureau of housing and regional planning organized in 1923)⁵³ for the purpose of approving low rent housing projects to be undertaken under the Act, the control of the rentals and the supervision of the management of the projects by the companies. The execution of the Act was fairly successful and produced the completion and operation of 8 projects between 1926 and 1932.⁵⁴

The beginning of the third decade of the twentieth century, which marked the advent of the great depression, brought renewed federal action. President Hoover, disturbed by the lack of synthesis in the increasing number of studies and proposals dealing with the various aspects of housing, called for a Conference on Home Building and Home Ownership which was held in Washington in 1931. The whole subject of housing was divided for study among thirty-one committees whose reports were ultimately published.⁵⁵ Two of the conclusions reached by the President were the following: (a) "Financing the home owner is the most backward phase of the situation and calls for new methods of extending credit on the part of banks and investment institutions operating in this field."⁵⁶ (b) "Slums have no excuse for being and should be eliminated by wise concerted effort." These conclusions were put into practical operation through (a) the passage of the Federal Home Loan Bank Act of 1932⁵⁷ for the purpose of facilitating the financing of home construction and (b) the Emergency Relief and Construction Act of 1932⁵⁸ which authorized the newly created⁵⁹ Reconstruction Finance Corporation, among other projects, to make loans "to corporations formed wholly for the purpose of providing for families of low income or for reconstruction of slum

53. N. Y. Laws 1923, c. 694. About its activities see Schaffter, *op. cit. supra* note 38, at 246-251.

54. For the list see Report of the State Board of Housing, N. Y. Leg. Doc. No. 112, 87 (1933), reprinted in 2 Ford, *op. cit. supra* note 2, at 697.

55. Publications of the President's Conference on Home Building and Home Ownership, Final Reports of Committees, 11 vols. (1932, 1933). See also 1 Ford, *op. cit. supra* note 2, at 211, 631.

56. See Forward by Herbert Hoover to Report of the State Board of Housing, see note 54 *supra*.

57. 47 Stat. c. 522 (1932).

58. 47 Stat. c. 520 (1932).

59. Reconstruction Finance Corporation Act, 47 Stat. c. 8 (1932).

areas . . ."⁶⁰ Although a number of states passed legislation during 1933, more or less modelled after the New York law,⁶¹ to qualify for housing loans from the RFC very few projects were actually thus financed.⁶²

C. *Housing and the New Deal*

The incoming Roosevelt administration intensified government intervention in the field of housing in its various aspects. On the one hand the federal government took further steps to facilitate the financing or refinancing of the construction or repair of homes. Thus the Home Owners' Loan Act of 1933⁶³ and the organization of the Home Owners' Loan Corporation thereunder⁶⁴ had the purpose of forestalling foreclosures and other by-products of the depression by refinancing home mortgages and providing loans for necessary repairs out of public funds. The Federal Housing Act⁶⁵ which was passed the subsequent year was designed to assist in the availability of private loans for home construction, modernization or repair at low cost through government insurance of such lenders. It should be noted, however, that special provision was made in the Act for mortgages issued by limited dividend corporations or public authorities in conjunction with low rent housing projects.⁶⁶ To carry out its provisions the Act authorized the creation of a Federal Housing Administration which is now part of the Housing and Home Finance Agency.⁶⁷

On the other hand the federal government also again entered the field of public housing and developed a variety of programs. In the field of rural housing two agencies rendered at first somewhat competing services. The F.E.R.A., established under the Federal

60. 47 Stat. c. 520, § 201 (a) (2) (1932).

61. See Schoenfeld, *State Housing Legislation at the End of 1936*, 44 Month. Lab. Rev. 386 (1937). Ark., Cal., Del., Fla., Ill., Kan., Mass., N. C., N. J., N. Y., S. C., Tex., and Va. Ohio had passed a similar act in 1932.

62. The most important one was Knickerbocker Village, New York City, see 2 Ford, *op. cit. supra* note 2, at 632; another one was Wilroads, Gardens in Kansas, see Schaffter, *op. cit. supra* note 38, at 570.

63. 12 U. S. C. § 1461 (1946).

64. The HOLC terminated its activities in 1936, as provided by the Act. It is now in the process of liquidation, see Housing and Home Finance Agency, 2d Ann. Rep. 128 (1948). The report points out that the operation of the corporation which involved \$3,500,000,000 was completely successful and prevented a loss to their owners of more than a million homes.

65. 12 U. S. C. A. § 1701 ff. (1945).

66. 48 Stat. c. 847, § 207 (1934), as amended, 52 Stat. 16 (1938), 12 U. S. C. § 1713 (1946).

67. By the end of 1948 the total amount of insurance written under the Act amounted to more than 14½ billion dollars, Housing and Home Finance Agency, 2d Ann. Rep. 179 (1948).

Emergency Relief Act of 1933,⁶⁸ developed a program of rural rehabilitation which included a number of resettlement projects.⁶⁹ Other rural resettlement projects were undertaken by the Division of Subsistence Homesteads in the Department of the Interior under the subsistence homesteads provision of the National Industrial Recovery Act of 1933.⁷⁰ In 1935 the projects of both agencies were transferred to the newly established Resettlement Administration in the Department of Agriculture⁷¹ which in 1937 changed the name to Farm Security Administration.⁷² The Resettlement Administration initiated a number of other rural settlement projects⁷³ and a few suburban settlements, the famous three Greenbelt Towns, Greenbelt, Maryland, Greenhills, Ohio and Greendale, Wisconsin⁷⁴ (amounting to a total of about 15,000 units). All these projects were designed to ultimately pass into private hands. While most of them actually have been transferred to individuals or non-profit associations the remaining few, chiefly the three towns, are at present managed by the Public Housing Administration in the Housing and Home Finance Agency.⁷⁵

Urban public housing programs were at first in the charge of the Housing Division of the Federal Emergency Administration of Public Works established by the National Industrial Recovery Act.⁷⁶ This Act provided for the organization of a comprehensive public works program including "construction, reconstruction, alteration or repair under public regulation or control of low cost

68. 48 Stat. c. 30 (1933).

69. About these projects see U. S. Dep't of Agriculture, *Toward Farm Security* 53 (1941); Hopkins, *Spending to Save* 144 (1936); Rep. Administrator of the Resettlement Administration, 1937, 14 (1937); Winston, *Subsistence Homestead Projects*, 3 J. Housing 223 (1946).

70. 48 Stat. c. 90, § 208 (1933).

71. The Resettlement Administration was established pursuant to the Emergency Relief Appropriation Act of 1935, 49 Stat. c. 48 by Exec. Order No. 7027, the land program of the FERA was transferred to it by Exec. Order No. 7028, the subsistence homestead activities by Exec. Order No. 7041, see 4 Roosevelt Papers 143, 155, 180 (1935).

72. Dep't of Agriculture Mem. 732, 2 Fed. Reg. 2104 (1937).

73. According to the Report of the Administrator of the Resettlement Administration, 1937, 14 (1937) there were, on June 30th, 1937, 38 completed and 84 actively commenced resettlement projects. Of the completed ones 12 had already changed into private hands. In 1940, 164 projects were managed by the Farm Security Administration and 19 had passed into private hands, Report of the Administrator of the Farm Security Administration, 1940, 13, 15 (1940).

74. The Greenbelt Towns have been the object of numerous special studies from various angles; see, for instance, Fulmer, *Greenbelt* (1941); Form, *Status Stratification in a Planned Community*, 10 Am. Soc. Rev. 605 (1945), Marshall, *Greendale: A Study of a Resettlement Community* (unpublished thesis for degree of Doctor of Philosophy, U. of Wis. 1943).

75. Housing & Home Finance Agency, 2d Ann. Rep. 330 (1948).

76. 48 Stat. c. 90, tit. II (1933).

housing and slum clearance projects."⁷⁷ The difficulties which this part of the program had to face were tremendous⁷⁸ and Mr. Ickes' policies and achievements in that respect have been subjected to severe criticism⁷⁹ and ultimate congressional censure.

Although the NIRA, in contrast to the Emergency Relief and Construction Act of 1932, did not restrict the federal intervention to the financing of projects initiated by limited dividend companies, the Housing Division initially decided to proceed in the same manner. This policy was based on the notion that this form of operation was the quickest way to create employment, one of the chief goals of the entire program, inasmuch as no local public housing authorities existed at that time.⁸⁰ Seven limited dividend projects were thus approved and commenced.⁸¹ Soon, however, it became clear that private capital was not able to undertake a large scale low rent housing and slum clearance program on a self-liquidating basis as insisted upon by the Division.⁸² As a result the limited dividend program was abandoned early in 1934 and a program of direct federal construction initiated. Fifty-one (by some other count fifty-two) projects of that type were commenced.⁸³ Meanwhile, partly upon the insistence and with the aid of the Administrator, a number of states passed legislation providing for, or authorizing the establishment of public housing authorities for the purpose of cooperating in and ultimately acquiring the projects.⁸⁴ But actually the Division confined the authorities to the much resented role of "intelligently interested by-standers"⁸⁵ and

77. *Id.* § 202(d).

78. For a good discussion by various contributors of the many problems involved at that time see *Low Cost Housing and Slum Clearance*, 1 *Law & Contemp. Prob.* 135 (1934); see also *A Housing Program For The United States*, Rep. prepared for the Nat. Ass'n of Housing Officials, Pub. Admin. Serv. No. 48 (1935); Keyserling, *op. cit. supra* note 1, at 31.

79. See, for instance, Abrams, *The Future of Housing* 249 (1946), or the milder comments in 2 Ford, *op. cit. supra* note 2, at 644.

80. See Urban Housing, *The Story of the P.W.A. Housing Division 1933-1936*, Fed. Em. Admin. of Pub. Works Housing Bull. No. 2, 28 (1936).

81. *Id.* 79, see also 2 Ford, *op. cit. supra* note 2, at 708.

82. For details see Wood, *Slums and Blighted Areas in the United States*, Fed. Em. Admin. of Pub. Works Housing Bull. No. 1, 103 (1936); *Urban Housing*, *supra* note 80, at 29.

83. For a list see *Urban Housing*, *supra* note 80, at 82 ff., or 2 Ford, *op. cit. supra* note 2, at 718.

84. The first public housing authority was organized in 1933 in Cleveland, pursuant to Ohio Laws 1933, Part II, 56, in conjunction with the National Conference on Slum Clearance. For the states having passed housing authorities legislation prior to 1937 see *Housing Officials' Yearbook 1936*, 222; *id.* 1937, 154; Schoenfeld, *supra* note 61, at 390.

85. Gray, *The Housing Division's Third Year*, *Housing Officials' Yearbook 1937*, 1, 3.

assumed complete control over the approval and management of the projects, including tenant selection.⁸⁶ Only late in 1936 the Administrator determined that funds should be granted to legally constituted housing authorities on a loan and grant basis.⁸⁷ At that time legislation was pending in Congress to put the low rent housing and slum clearance program on a more permanent and decentralized basis. It was ultimately enacted as the United States Housing Act of 1937.⁸⁸

The National Housing Act was designed to initiate a permanent federal program of public aid for low rent housing to that third of the nation which President Roosevelt had so dramatically described in his Second Inaugural Address as ill-housed, ill-clad and ill-nourished.⁸⁹ It constituted fundamentally the realization of the Housing Program for the United States that the National Association of Housing Officials had advocated in 1935.⁹⁰ The statute established a definite policy of decentralization and put an end to the theory of federal demonstration projects followed by the P.W.A. Its purposes can be gathered from the official designation as "an act to provide financial assistance to the States and political subdivisions thereof for the elimination of unsafe and unsanitary housing conditions, for the eradication of slums, for the provision of decent, safe and sanitary dwellings for families of low income and for the reduction of unemployment and the stimulation of business activity. . . ."

The Act which immediately produced a widespread discussion of public housing⁹¹ entrusted the administration of the program to a wholly government owned corporation in the Department of Interior, called United States Housing Authority.⁹² In the course of time the agency has changed its name and organizational status⁹³

86. Standards for tenant selection were later incorporated into the George-Healey Act of 1936, 49 Stat. c. 860, § 4(b). The Fed. Em. Admin. of Pub. Works Housing Div. Management Bd. issued a compendious "Manual of Tenant Selection Procedure."

87. Gray, *op. cit. supra* note 85, at 1, 2.

88. 50 Stat. c. 896 (1937); 42 U. S. C. 1401 (1946).

89. 81 Cong. Rec. 317 (1937).

90. A Housing Program For The United States, Rep. prepared for the Nat. Ass'n Housing Officials, Pub. Admin. Serv. No. 48 (1935).

91. See the collection of materials and references in Schnapper, *op. cit. supra* note 1; Ebenstein, *The Law of Public Housing* (1940).

92. 42 U. S. C. §§ 1403, 1417 (1946).

93. In 1939 the USHA was transferred from the Department of Interior to the newly established Federal Works Agency, Reorg. Plan No. 1 of 1939, Part 3, 4 Fed. Reg. 2729 (1939). In 1942 it was transferred into the newly established National Housing Agency and its name changed to Federal Public Housing Authority, Exec. Order 9070, 3 Code Fed. Regs. 1095 (Cum. Supp. 1943).

and is now the Public Housing Administration in the Housing and Home Finance Agency.⁹⁴ The program is confined to the rendition of financial assistance to public housing agencies (whether state, municipal, or regional) engaged in the development and administration of low rent housing or slum clearance.⁹⁵ The Act specifies in great detail in what form, for what purpose, under what conditions and to what extent such federal aid shall be available. The two principal forms of assistance contemplated are (a) loans up to 90 per cent of the development or acquisition cost of the project;⁹⁶ (b) annual contributions to assist in achieving and maintaining the low rent character of the project, with the limitation that the amount of such contribution does not exceed the going Federal rate of interest at the time such contract is made plus 1 per cent upon the development or acquisition cost of the low rent housing or slum clearance project involved.⁹⁷ These annual contributions which have the purpose of permitting the letting of the housing units at a reduced "social" rent rather than an "economic" rent⁹⁸ are conditioned upon two important statutory requisites. In the first place the state, city, county or other political subdivision must contribute to the project yearly an amount of at least 20% of the federal subsidy in the form of cash, tax remissions or tax exemptions.⁹⁹ In the second place the new construction must be accomplished by the elimination of an equal number of substandard units.¹⁰⁰ The statute provides for an alternative type of subsidy in form of cash grants which, however, has found little, if any, practical application.¹⁰¹ To carry out the loan portion of the program the USHA was authorized, by amendment of 1938, to issue obligations not to exceed \$800,000,000.¹⁰² The total amount of annual contributions which the authority may undertake by contract with

94. Reorg. Plan No. 3 of 1947, 3 Code Fed. Regs. 184 (Cum. Supp. 1947).

95. 42 U. S. C. §§ 1402(11), 1409, 1410 (1946).

96. 42 U. S. C. § 1409 (1946).

97. 42 U. S. C. § 1410 (1946). Since the going Federal rate of interest is at present about 2½%, the limit upon the annual contributions is thus 3½% of the costs of the project; cf. U. S. Dep't of Interior, Ann. Rep. U. S. Housing Auth. 7 (1938) for the initial situation.

98. See Ann. Rep. U. S. Housing Auth. 17 (1939). In 1948 this federal subsidy to the rent of the public housing tenants amounted to \$2.79 a month for each dwelling unit, Housing and Home Finance Agency, 2d Ann. Rep. 298 (1948).

99. 42 U. S. C. § 1410(a) (1946).

100. *Ibid.*

101. 42 U. S. C. § 1411 (1946). About the defects of this form of subsidy see Abrams, *The Future of Housing* 260, 330 (1946).

102. 52 Stat. c. 554, tit. VI (1938).

the public housing agencies was at the same time fixed at a maximum of \$28,000,000 per year.¹⁰³

The administration of the slum clearance low-rent housing program by the United States Housing Authority showed conspicuous success until the defense and war needs of the nation temporarily stopped its completion. The report of the agency issued for the fiscal year 1941, covering the last pre-war period, demonstrates the extent of the progress made.¹⁰⁴ To understand the subsequent development of the program it should be noted that a defense amendment to the Housing Act of 1940¹⁰⁵ authorized the diversion of the authority's still available low rent housing funds for defense housing, but required the reconversion of the developments built thereunder to low rent projects at the end of the emergency. Accordingly, most of the developments undertaken or completed after the entry into the war¹⁰⁶ were used for war housing, but have meanwhile been returned to the low rent program.¹⁰⁷ Of the projects which had to be classified as deferred because of the war, only a few could be reactivated after the war because of the rising building costs.¹⁰⁸ At the end of 1948 the total

103. This amount was fixed because it corresponds to 3½% of \$800,000,000.

104. According to the report of the United States Housing Authority for the fiscal year ended June 30th, 1941 contained in Federal Works Agency, 2d Ann. Rep., 1941, 118 ff., 328 ff. there existed on that date 633 urban or rural housing authorities in 38 states having enabling legislation, the District of Columbia, Hawaii and Puerto Rico; *id.* 330. The authority reported in detail about 399 developments comprising 132,650 dwelling units (including 20 defense housing developments of 6344 dwellings) which on June 30th, 1941 were either completed or under construction, *id.* 348, 396. It is noteworthy that four of these developments belonged to the agency's newly planned program of 32 rural housing projects, *id.* 164, 394. In addition the authority reported that on that date a total of 587 developments (including 32 rural projects and an unidentified number of defense projects) were under actual loan contract, *id.* 119, 335. The maximum annual contributions for these developments amounted to \$24,885,483, the loan contract amounts to \$728,700,400. *Id.* 335. The authority reported further that because of the drop in the going federal rate of interest to 2% and the resulting reduction in the maximum annual contribution allowable per project an expansion of the number of projects became possible. *Id.* 161. Actually much less than the maximum allowable annual contributions were paid, so that the gross federal contribution to the monthly rent per unit actually came to \$9.94 per unit, *id.* 163.

105. 54 Stat. c. 440, tit. II (1940).

106. The war priorities permitted a completion of 334 of the original Housing Act developments with 105,534 units as low rent units. 14,370 units were completed as war housing but later returned to low rent activities. 199 developments with 51,250 units were undertaken and completed under the defense amendment. See National Housing Agency, 3rd Ann. Rep., 1944, 187; 4th Ann. Rep., 1945, 220; Housing and Home Finance Agency, 1st Ann. Rep. IV-8 (1947).

107. Housing and Home Finance Agency, 2d Ann. Rep. 297 (1948). See text to note 161 *infra*.

108. *Id.* 299.

program undertaken under the Housing Act consisted of 387 active projects under the original acts consisting of 120,953 dwelling units, 199 active projects under the defense amendment comprising 51,250 units and 153 deferred projects of 20,921 units.¹⁰⁹ The contracts undertaken for this program exhausted the maximum annual contributions authorized by the statute¹¹⁰ although because of rising wages only a much reduced annual contribution is actually needed.¹¹¹ The loan fund, on the other hand, while temporarily committed, is far from being permanently depleted, because private capital has readily invested in the long term bonds of the local authorities.¹¹² The equivalent elimination of slum dwellings which reached 87% at the end of 1945 was relaxed during the post-war housing shortage.¹¹³

D. *The era of program expansion and integration*

The present development which culminated in the passage of the Housing Act of 1949¹¹⁴ can probably be designated as one of program expansion and integration. Perhaps its most important feature is its emphasis on urban redevelopment and the proper correlation of the housing and redevelopment programs.

City planning and housing had developed side by side and a lack of integration or correlation was from time to time dramatically deplored.¹¹⁵ The most obvious interrelation of the two fields appears in the problem of the redevelopment of blighted areas. Slum clearance and housing had originally been practically synonymous, in fact too much so, according to some experts.¹¹⁶ Numerous investigations concerning the extent and effects of blighted areas in the United States were instituted¹¹⁷ and the manifestations and

109. *Id.* 297, 329.

110. *Id.* 340.

111. *Id.* 298. The monthly rent contribution per unit of the federal government dropped to \$2.79.

112. *Id.* 340.

113. National Housing Agency, 4th Ann. Rep., 1945, 222.

114. 42 U. S. C. § 1441 (Supp. 1950).

115. See, e.g., Bутtenheim, *Where City Planning and Housing Meet, Planning Problems of Town, City, and Region*, Nat. Conf. on City Planning 114 (1929); Auger, *City Planning and Housing—May They Meet Again* in *American Planning and Civic Annual* 223 (1940).

116. See the remarks to that effect by Blucher, *Rehabilitation of the Blighted District, The Share of the Planner and the Lawyer* in *American Planning and Civic Annual* 274 (1935), and by Bettman, *Urban Redevelopment Legislation*, in *American Planning and Civic Annual* 51, 54 (1944); Herring, *Letter to Editors*, 4 *J. Housing* 217 (1947).

117. See Wood, *Slums and Blighted Areas in the United States*, Fed. Em. Adm. of Pub. Works Housing Div. Bull. No. 1 (1936). An important source of information was the Real Property Inventory of the Department of Commerce (mimeo. 1934).

reasons for their decay as well as the possible remedies and means of prevention became subjects of an interminable array of studies.¹¹⁸ The rehabilitation of blighted areas or urban redevelopment, as it has been called more recently, became a science of its own and the object of many proposed and sometimes executed programs and schemes.¹¹⁹

The federal government actively began to take steps in regard to slum clearance and urban redevelopment in 1933. The National Industrial Recovery Act of that year entrusted the Federal Emergency Administration of Public Works with slum clearance projects. But the initial connection between low-rent housing and slum clearance had to be severed because of legal difficulties in the land assembly for housing developments.¹²⁰ The

118. The literature on the subject has grown rapidly to tremendous proportions. Of the older studies we mention Bauer, *Modern Housing*, especially 33 ff., 243 ff. (1934); the joint symposia on *Must American Cities Decay? The Planning Process as a Remedy and Rehabilitation of the Blighted District—A Cooperative Enterprise* in *American Planning and Civic Annual* 213, 241, 274 (1935); Ford, *op. cit. supra* note 2; Walker (and collaborators), *Urban Blight and Slums* (1938); Cornick, *Problems Created by the Premature Subdivision of Urban Lands in Selected Metropolitan Districts in the State of New York*, Rep. to N. Y. Planning Council, N. Y. Div. of State Planning (1938); Buttenheim, *Land Policies*, in *National Resources Committee, Urban Planning and Land Policies*, II Supp. Rep. Urbanism Comm. 213 ff., especially 274 ff. (1939).

119. The more recent phase of the literature started with the Fed. Housing Admin., *Handbook on Urban Redevelopment for Cities in the United States* (1941). For further studies and discussion, see Greer and Hansen, *Urban Redevelopment and Housing*, Nat. Planning Ass'n Pamphlet No. 10 (1941); Greer, *City Planning and Rebuilding*, 18 *J. Land & Pub. Util. Econ.* 284 (1942); Holden, *Urban Redevelopment Corporations—A Legislative Victory in New York* in *American Planning and Civic Annual* 257 (1941); Holden, *Urban Redevelopment Corporations*, 18 *J. Land & Pub. Util. Econ.* 413 (1942); Reports of the Committee on Urban Redevelopment of the American Society of Planning Officials, *Nat. Conf. on Planning* 166 (1942); *id.* *Planning* 93 (1943); Comment, *Urban Redevelopment*, 54 *Yale L. J.* 116 (1943); Hansen, *Four Methods of Financing Urban Redevelopment Costs*, *Proc. Nat. Conf. of Postwar Housing* 36 (*Nat. Comm. on Housing* 1944); *Housing for the United States after the War*, *Nat. Ass'n Housing Officials* 37 ff. (1944); Bettman, *Urban Redevelopment Legislation* in *American Planning and Civic Annual* 51 (1944); *Nat. Housing Agency, Land Assembly For Urban Redevelopment*, *Nat. Housing Bull.* No. 3 (1945); Mott and Wehrly, *State Legislation for Urban Redevelopment* in *American Planning and Civic Annual* 94 (1946); Wood, *Realities of Urban Redevelopment*, 3 *J. Housing* 12 (1946); Justement, *New Cities for Old* (1946); Abrams, *The Future of Housing* 378 (1946); Weil and Scigliano, *Urban Redevelopment*, 9 *U. of Pitt. L. Rev.* 74 (1947); Edgcomb, Jensen and Moullette, *Urban Redevelopment is Under Way* in *Planning* 152, 158, 162 (1947); Brown, *Urban Redevelopment*, 29 *B. U. L. Rev.* 318 (1949); Bollens and McCarty, *Urban Redevelopment Laws and Action*, *U. of Calif., Bur. Pub. Admin.* (1949); Woodbury and Gutheim, *Rethinking Urban Redevelopment*, *Pub. Admin. Serv., Urban Redevelopment Series* 1 (1949).

120. See *Urban Housing*, *supra* note 80, at 31. The decision causing the trouble was *U. S. v. Certain Lands in the City of Louisville*, 78 F. 2d 684 (6th Cir. 1935), *petition for certiorari dismissed on motion by petitioner* (for reasons of legal strategy), 294 U. S. 735 (1935).

National Housing Act of 1934 charged the Administrator with the broad task of conducting studies for the guidance of housing development and the creation of a sound mortgage market¹²¹ which resulted in the production of a Handbook on Urban Redevelopment in 1941.¹²² Slum clearance and low-rent public housing were joined in the United States Housing Act of 1937 by the equivalent elimination clause.¹²³ Yet, while this tie produced the first large scale actual demolition of slum dwelling in the United States it nevertheless resulted in some inopportune limitations on both programs. It became increasingly clear that the existing housing legislation was not sufficient and that urban redevelopment needed a much broader and more comprehensive attack. Post defense planning found in it a fruitful topic.¹²⁴

New York was the pioneer state to take positive action toward a broader public housing and land redevelopment program. The new constitution of 1938 included a specific authorization of legislation for low-rent housing or for the clearance, replanning, reconstruction and rehabilitation of substandard areas and extended the municipal powers of eminent domain for that purpose.¹²⁵ Under this article a new public housing law was passed in 1939, which redefined the organization and powers of municipal housing authorities and housing companies (the former limited dividend companies).¹²⁶ In addition appropriations for loans and subsidies were made and New York thus became the first state to provide for state aid to low-rent housing.¹²⁷ Two years later New York scored another legislative "first" with the passage of an Urban Redevelopment Corporation Law.¹²⁸ This statute divorced clearance and re-

121. 48 Stat. c. 847, § 209 (1934); 12 U. S. C. § 1715 (1946).

122. *Op. cit. supra* note 119.

123. See notes 99, 113 *supra*.

124. See note 119 *supra*.

125. N. Y. Const. Art. XVIII (1938). The amendment authorized the creation of a loan fund not exceeding \$300,000,000 and annual subsidies not to exceed an aggregate of \$5,000,000 per year without submission to the people. For details see Schaffter, *op. cit. supra* note 38, at 296. The new constitution required special legislation for the creation of additional housing authorities, N. Y. Const. Art. X, § 5.

126. N. Y. Pub. Housing Law, Art. III, IX.

127. N. Y. Laws 1939, c. 806, 807 (1939). Other appropriations followed. As of today the State of New York alone has authorized an aggregate loan fund of \$735,000,000 and annual subsidies of an aggregate amount of \$25,000,000 per year, which approximates the total of the original federal program. 6 J. Housing 425 (1949); Hillman, *Public Housing, Planning and Conservation*, 24 N. Y. U. L. Q. Rev. 1057 (1949). Under this program there are at present 14 projects with 11,617 units substantially completed and 17 projects with 12,643 units under construction, N. Y. Commissioner of Housing, Ann. Rep. 68 (1949).

128. N. Y. Unconsolidated Laws, tit. 11, c. 1.

development of blighted areas from low-rent housing. It declared them by themselves to be a public purpose and provided for the organization by private capital of tax exempt quasi-public redevelopment corporations, to carry out such projects. It contained, however, so many limitations, that the expectations set in it were not fulfilled and no capital was attracted to take action under it. As a result the legislature passed another Redevelopment Companies Law,¹²⁹ which eased the restrictions existing under the former law, but required that a development project under this act had to be designed and used primarily for housing purposes.¹³⁰ Insurance companies were expressly authorized to participate.¹³¹

Other states followed the example. Not only did a number of them appropriate loans and subsidies or assume guarantees of loans to provide housing for the low-income or even lower middle-income families, (sometimes with a restriction to or preference of veterans)¹³² but the great majority also adopted redevelopment legislation of various types. Illinois and Michigan passed redevelopment acts providing for the organization of redevelopment corporations with special powers and privileges in the same year as New York.¹³³ While, however, the Michigan Act followed closely the model of the eastern sister state,¹³⁴ the Illinois statute adopted a scheme of its own.¹³⁵

129. *Id.* c. 2. About the differences between the two acts and their legislative history see Holden, *Postwar Urban Redevelopment* in *American Planning and Civic Annual* 180, 185 (1943).

130. N. Y. Unconsolidated Laws § 3414.

131. *Id.* 3425.

132. Conn. Pub. Acts 1947, No. 405, now Conn. Gen. Stat. c. 52, § 121a (1949); Ill.: State Grant Act 1945, § 3; Ill. Laws 1945, 946, 949; State Grant Act 1947, as amended, Ill. Rev. Stat. c. 67½ § 53 ff. (1949); cf. *Cremer v. Peoria State Housing Authority*, 399 Ill. 579, 78 N. E. 2d 276 (1948); Mass. Acts and Resolves 1946, c. 372; Mass. Acts and Resolves 1948, c. 200, (authorizing guarantees not exceeding 200 millions and 25 annual contributions not exceeding 5 millions per year); cf. Robinson, *Massachusetts Has Funds, Powers to Build 30,000 Homes*, 5 J. Housing 210 (1948); N. H. Laws 1947, c. 286, Part III; N. J. Stat. Ann. § 55: 14G-23 (Cum. Supp. 1949); cf. Erdman, *New Jersey's \$41,000,000 Veterans Housing Program*, 4 J. Housing 139 (1947); Pa. Stat. Ann. tit. 35, § 1661-65 (Purdon's 1949) (authorizing capital grants in the aggregate of \$15,000,000 as aid to low-rent housing and slum redevelopment); Wis. Laws 1949, c. 627; cf. Note, 6 J. Housing 259 (1949); see Spencer, *State and Local Housing Programs After World War II*, 69 Month. Lab. Rev. 499 (1949). See also H. and J. Robinson, *A New Era in Public Housing*, 1949 Wis. L. Rev. 695.

133. Illinois Neighborhood Redevelopment Corporation Law, Ill. Rev. Stat. c. 32, § 550 (1949); Mich. Comp. Laws §§ 125, 901 ff. (1948).

134. For the differences between the Michigan and New York Act see Holden, *Postwar Urban Redevelopment* in *American Planning and Civic Annual* 188 (1943). For its history see Emery, *Analysis of a Typical Urban Redevelopment Proposal* in *Planning* 133, 134 (1943).

135. The Illinois Act contains no restrictions as to rents and dividends

A number of other states likewise adopted legislation intending to promote redevelopment of blighted areas by according varying "inducements" to special privately financed redevelopment corporations.¹³⁶ Gradually another school of thought gained increasing currency. The experts in the field of planning became extremely skeptical whether large scale redevelopment could ever be accomplished without the adoption of a scheme by which the loss inherent in the land assembly for redevelopment purposes would be more directly and extensively absorbed by the local community, if necessary, with the aid of the state or the nation.¹³⁷ As a consequence other types of statutes were adopted which entrusted the responsibility for land assembly and clearance either to the local housing authorities¹³⁸ or left it to the municipality or local authorities specially created for that purpose.¹³⁹

and accords the redevelopment corporation the power of eminent domain only after acquisition of 60 per cent of the land in the redevelopment area and offers no tax exemption.

136. Ky. Rev. Stat. 99.010 ff. (1948) (passed 1942); Ind. Acts 1943, c. 307; Kan. Laws 1943, c. 118; Mo. Laws 1943, 751, Mo. Rev. Stat. § 7875.18 ff. (Cum. Supp. 1943); Wis. Laws 1943, c. 333; N. J. Laws 1944, c. 169, N. J. Stat. Ann. 55:14D-1ff. (Cum. Supp. 1949); Mass. Acts and Resolves 1945, c. 654, Mass. Ann. Laws c. 121A (Cum. Supp. 1948); Minn. Laws 1945, c. 493, 2 Minn. Stat. § 462.41 ff. (1945), repealed, Minn. Laws 1947, c. 487, § 61; Va. Laws 1946, c. 190, Va. Code § 15-914 ff. (1949); La. Acts 1948, No. 393, La. Gen. Stat. Ann. § 6280.30 ff. (Cum. Supp. 1949).

137. For illustrations of this school of thought see Greer and Hansen, *Urban Redevelopments and Housing*, Nat. Planning Ass'n Pamphlet No. 10 (1941); Bettman, Statement to the Subcommittee on Housing and Urban Redevelopment, Committee on Postwar Planning, reprinted in Bettman, *City and Regional Planning Papers*, (13 Harv. City Planning Studies) 99, 102; Blucher, *Urban Redevelopment in American Planning and Civic Annual* 1943, 157, 162, 165; Comment, *Urban Redevelopment*, 54 Yale L. J. 116, 129 (1944). A similar view was taken by the federal agencies in the housing field, see Fed. Housing Admin., *op. cit. supra* note 119, at 68 ff., 101 ff.; Nat. Housing Agency, Land Assembly for Urban Redevelopment, Nat. Housing Bull. No. 3, 4 ff. (1945). The American Society of Planning Officials which drafted a model state act advocated a flexible view: land assembly by the public and subsequent transfer to either a privately financed development corporation or public housing authority for development, see Nat. Conf. on Planning 166, 177 (1942); Planning 93, 99, 102 (1943); Bettman, *Urban Redevelopment Legislation in American Planning and Civic Annual* 51, 56 (1944).

138. Ala. Acts 1949, No. 491; Ark. Stat. Ann. § 19-3056 ff. (1947); Conn. Gen. Stat. § 979 ff. (1949); Fla. Laws 1945, c. 23077; Ga. Laws 1946, No. 616; Ill. Rev. Stat. c. 67½, §§ 2, 8, 9, 17g (1949); La. Gen. Stat. Ann. § 6280.11 (Cum. Supp. 1949); Mass. Ann. Laws c. 121, § 26 JJ, ff. (Cum. Supp. 1948); Minn. Laws 1947, c. 487; N. H. Laws 1947, c. 210; N. J. Ann. Stat. § 55:14 A 31 ff. (Cum. Supp. 1949); Ore. Laws 1949, c. 562; S. C. Acts 1946, No. 531; Tenn. Code Ann. § 3647.52 ff. (Michie Supp. 1948); Va. Code § 36-48 ff. (1949). In New York and Wisconsin the local housing authorities may be designated as redevelopment agencies by municipal ordinance, N. Y. Gen. Munic. Law § 72 K, cf. Note, 6 J. Housing 325 (1949); Wis. Laws 1949, c. 379.

139. Cal. Gen. Laws act 1500 (Cum. Supp. 1949); Colo. Stat. Ann. c. 82, § 62 ff. (Cum. Supp. 1947); Conn. Gen. Stat. § 979 ff. (1949); D. C. Code § 5-701 ff. (Supp. 1949); Ill. Rev. Stat. c. 67½, § 63 ff. (1949); Ind.

The federal government, of course, did not fail to take an active interest in the perfection and consolidation of a national housing program. The National Resources Planning Board,¹⁴⁰ the Temporary National Economic Committee,¹⁴¹ and the federal housing agencies¹⁴² called for further federal action (including urban redevelopment) and the development of a national housing policy.¹⁴³ Legislative response to the "felt need" came from the Subcommittee on Housing and Urban Redevelopment of the Special Committee on Post-War Economic Policy and Planning, established by the Senate in 1944. After extensive hearings¹⁴⁴ the Subcommittee issued in 1945 a detailed report which outlined a national housing policy and recommended government sponsored housing research, assistance to private enterprise, extension of federal public aid to low-rent housing, federal aid to urban redevelopment and the establishment of a permanent national housing agency.¹⁴⁵ In agreement with these recommendations a comprehensive housing bill, known as the Wagner-Ellender-Taft bill was introduced in the Senate in November, 1945.¹⁴⁶

In spite of the favorable action by the Senate,¹⁴⁷ the appropriate

Ann. Stat. §§ 48-8501, 48-8511 (Burns Supp. 1949); Md. Laws 1949, c. 217; Mich. Comp. Laws § 125.71 (1948); Minn. Laws 1947, c. 487; Minn. Laws 1943, c. 544 (applicable only to St. Paul); Mo. Laws 1945, S. B. 1858.16; N. J. Stat. Ann. §§ 40:55C-1 ff., 55:14E-1 ff., 40:55-21.10 (Cum. Supp. 1949); N. Y. Gen. Munic. Law § 72K; Pa. Stat. Ann. tit. 35, c. 18A (Purdon's 1949); R. I. Pub. Laws 1946, § 1802; Wis. Stat. § 66.43 (1947).

140. See particularly the following studies published by the National Resources Planning Board: *Housing the Continuing Problem* (1940); Ascher, *Better Cities* 12, 20 (1942); *Post-War Plan and Program* 31 (1943).

141. See Stone and Denton, *Toward More Housing*. (TNEC Monograph No. 8, 1941).

142. See for instance the *Handbook on Urban Redevelopment for Cities in the United States* prepared by the FHA under sec. 209 of the National Housing Act, see note 137 *supra*.

143. See Eliot (Director Nat. Resources Planning Bd.), *A National Housing Policy in Planning* 128 (1943).

144. *Hearings before Subcommittee on Housing and Urban Redevelopment of The Special Committee on Post-War Economic Policy and Planning*, Parts 4, 6-15, U. S. Sen. 79th Cong., 1st Sess. (1944, 1945), pursuant to S. Res. 102, 78th Cong., and S. Res. 33, 79th Cong.

145. *Report to the Special Committee on Postwar Economic Policy and Planning by the Subcommittee on Housing and Urban Redevelopment*, 79th Cong., 1st Sess. (1945); see also the summary of these recommendations by Senator Taft in 91 Cong. Rec. 8248 (1945).

146. S. 1592, 79th Cong., 1st Sess. (1945). For summaries see *New Housing Bill in Senate*, 2 J. Housing 127, 180 (1945); Bassoff, *The General Housing Act of 1946; Wagner-Ellender-Taft Bill*, S. 1592, 6 Law. Guild Rev. 543 (1946).

147. The Committee on Banking and Currency of the Senate held detailed hearings, *Hearings before Committee on Banking and Currency* on S. 1592, 2 parts, 79th Cong., 1st Sess. (1946), and reported favorably, Sen. Rep. No. 1131, 79th Cong., 2d Sess. (1946). The Senate passed the bill, 92 Cong. Rec. 3701 (1946).

house committee failed to conclude its hearings before the adjournment of the 79th Congress.¹⁴⁸ A corresponding bi-parisan bill introduced in the Eightieth Congress¹⁴⁹ suffered a similar fate,¹⁵⁰ although a Joint Committee on Housing had again established the need for such legislation on the basis of most extensive hearings held in 33 cities.¹⁵¹ Only limited housing legislation was passed during a special session.¹⁵² Because of the nationwide demand for improvement of the housing situation¹⁵³ the Eighty-first Congress was again confronted with the introduction of comprehensive housing bills upon which extensive hearings were held.¹⁵⁴ Although the Senate acted favorably on a revised housing bill introduced upon recommendation of its appropriate committee,¹⁵⁵ it failed to accept a substitute amendment by the House.¹⁵⁶ The disagreement was resolved through the appointment of a committee of conference¹⁵⁷

148. See the account to that effect in the *Report from the Committee on Banking and Currency on H. R. 4009*, H. R. Rep. No. 590, 81st Cong., 1st Sess. (1949).

149. S. 866, 80th Cong., 1st Sess. (1947).

150. The Senate Committee on Banking and Currency held hearings, see *Hearings Before Committee on Banking and Currency on S. 287, 866, 701, 801, 802, 803, 804, 80th Cong., 1st Sess. (1947)*, and reported favorably in Sen. Rep. No. 140, part 1, 80th Cong., 1st Sess. (1947), and again in Sen. Rep. No. 140, part 2, 80th Cong., 2d Sess. (1948); The Senate passed the measure on April 22d, 1948, 94 Cong. Rec. 4738 (1948), see also Sen. Rep. No. 1773, 80th Cong., 2d Sess. (1948). The House held hearings in 1948, see *Hearings Before Committee on Banking and Currency on S. 866, 80th Cong., 2d Sess. (1948)*, and reported favorably a clean bill, H. R. 6888, H. R. Rep. No. 2340, 80th Cong., 2d Sess. (1948). This bill was tabled by the Committee on Rules, *Report from the Committee on Banking and Currency*, H. R. Rep. No. 590, 81st Cong., 1st Sess. 7 (1949).

151. See, Study and Investigation of Housing, *Hearings Before the Joint Committee on Housing, Parts 1-5*, 80th Cong., 1st Sess. (1948); *Subcommittee reports on Housing in America*, H. R. Doc. No. 629, 80th Cong., 2d Sess. (1948); *High Cost of Housing*, (Joint Committee Print) 80th Cong., 1st Sess. (1948); *Slum Clearance*, (Joint Committee Print) 80th Cong., 2d Sess. (1948); *Final Majority Report of the Joint Committee on Housing*, H. R. Rep. No. 1564, 80th Cong., 2d Sess. (1948).

152. 62 Stat. c. 832 (1948).

153. See particularly, for a summary of selected estimates of long-term housing requirements, *The Housing Situation—The Factual Background*, Housing and Home Finance Agency, Table 26 (1949).

154. See *Hearings before Committee on Banking and Currency on H. R. 4009*, 81st Cong., 1st Sess. (1949); *Hearings before Subcommittee of Committee on Banking and Currency on S. 138, 685, 686, 709, 712, 724, 757*, 81st Cong., 1st Sess. (1949).

155. *Report from the Committee on Banking and Currency to accompany S. 1070*, Sen. Rep. No. 84, parts 1 and 2, 81st Cong., 1st Sess. (1949); passed by Senate, 95 Cong. Rec. 4992 (1949).

156. The house bill H. R. 4009 was reported favorably by the Committee on Banking and Currency, H. R. Rep. No. 590, 81st Cong., 1st Sess. (1949), adopted by the House, 95 Cong. Rec. 8843 (1949) and substituted for the Senate bill S. 1070, 95 Cong. Rec. 8852 (1949)

157. 95 Cong. Rec. 8910, 8967 (1949).

which adopted substantially the House bill.¹⁵⁸ In this form the bill became the Housing Act of 1949.¹⁵⁹

The law concerns itself with the declaration of a national housing policy and the regulation of four major fields of federal activity:

- 1) extension of federal aid to low-rent public housing.
- 2) establishment of federal aid to slum clearance and community development and redevelopment.
- 3) provision of federal assistance to farm housing.
- 4) federal sponsorship of housing research.

The declaration of the national housing policy, while not constituting an active program, was the legislative response to a long recognized need.¹⁶⁰

In setting forth this policy, Congress declared: that the general welfare of the nation and the health and living standards of its people require housing production and community development to remedy the housing shortage, elimination of substandard housing through slum clearance, and the realization of a decent home and suitable living environment for every American family; and that such production is necessary to enable the housing industry to make its full contribution to the national economy.

The means by which this policy shall be achieved are: encouraging private enterprise to serve as large a part of the total need as it can; utilizing governmental assistance where possible to enable private enterprise to serve more of the total need; encouraging local public bodies to participate in and foster the planning and development of communities and homes; governmental assistance to facilitate slum clearance and urban redevelopment as well as to provide urban and rural non-farm housing where necessary; and governmental assistance in providing decent farm dwellings.

The agency charged with the administration of the Act is directed to encourage; (a) the production of housing of sound standards at a minimum cost without sacrificing quality, (b) an increase

158. *Conference Report*, H. R. Rep. No. 975, 81st Cong., 1st Sess. (1949).

159. Pub. L. No. 171, 81st Cong., 1st Sess. (1949).

160. See *Report to the Special Committee on Postwar Economic Policy and Planning*, *supra* note 145; *Report from the Committee on Banking and Currency*, Sen. Rep. No. 1131, 79th Cong., 2d Sess. 20 (1946); *Id.* Sen. Rep. No. 140, part 1, 80th Cong., 1st Sess. 5 (1947); *Majority Report of the Joint Committee on Housing*, H. R. Rep. No. 1564, 80th Cong., 2d Sess. 19 (1948); *Report from the Committee on Banking and Currency*, Sen. Rep. No. 84, part 1, 81st Cong., 1st Sess. 8 (1949); *Report from Committee on Banking and Currency*, H. R. Rep. No. 570, 81st Cong., 1st Sess. 11 (1949).

of efficiency in residential construction, (c) the development of well-planned communities, and (d) the stabilization of the housing industry at a high volume of residential construction.

The new Housing Act of 1950¹⁶¹ further executed the national housing policy, principally by liberalizing and expanding the mortgage insurance program under the National Housing Act (including now cooperative housing insurance) and by providing for the disposal to local housing authorities of federally owned war and veterans' housing projects.

II. PUBLIC AID TO HOUSING

A. *Public aid under the federal Housing Act of 1949*

As pointed out in the previous section the principal legal basis for federal subsidy to housing is at present contained in title III of the Housing Act of 1949 which bears the caption Low-Rent Public Housing.¹⁶² Technically this title operates as an amendment to the United States Housing Act of 1937.¹⁶³ The program under it is therefore basically a continuation of the prior one which, as mentioned before, had provided 191,700 low-rent dwelling units operated by local or regional authorities in 268 localities.¹⁶⁴

The new program is still confined to low-rent housing. It authorizes federal aid for the construction of a maximum of 810,000 dwelling units, to be completed during a period of six years, ending with and including 1954. The rate of construction, as envisaged by the Act, is set at 135,000 units per year.¹⁶⁵ Provision is made for adjustments fluctuating between 50,000 units per annum as the lower limit and 200,000 units per annum as the upper limit, if the president so determines upon advice from the Council of Economic Advisers established under the Employment Act of 1946.¹⁶⁶

The form of federal aid consists, as before, primarily of loans and annual contributions. The loans authorized for the new construction program are limited to an aggregate amount of \$1,500,000,000 for a period not to exceed 40 years.¹⁶⁷ Annual contributions, likewise not to exceed 40 years, may be granted within a final annual maximum of \$308,000,000.¹⁶⁸

161. 18 U. S. L. Week 51 (Gen. April 18, 1950).

162. Pub. L. No. 171, 81st Cong., 1st Sess., tit. III (1949).

163. 42 U. S. C. § 1401 ff. (1946).

164. See note 109 *supra*; Housing and Home Finance Agency, A Handbook of Information on Provisions of the Housing Act of 1949, 8 (1949).

165. 42 U. S. C. § 1410(e) (Supp. 1950).

166. See 15 U. S. C. § 1023 (1946).

167. 42 U. S. C. §§ 1409, 1420 (Supp. 1950).

168. 42 U. S. C. §§ 1410(c), (e) (Supp. 1950).

The new Act has changed a number of details which were suggested by the previous experience or the post-war conditions. The new program restricts public aid to rural housing under title III to rural non-farm areas.¹⁶⁹ It permits on the other hand that "construction activity in connection with a low-rent housing project may be confined to the reconstruction, remodeling or repair of existing buildings."¹⁷⁰ The "equivalent elimination" requirement which had produced various practical difficulties (and which had been deleted by the Senate bill and the House amendment) is retained (as a result of the conference) but in modified form. It no longer applies to housing projects constructed on the cleared slum site or in rural areas, but it has now become also a requirement for loans and not only for annual contributions.¹⁷¹

The new Act strengthens the statutory safeguards to assure that the projects are limited to low-income families in need of adequate housing. It continues the basic 5:1 ratio between the income of eligible tenant families and the rentals charged, but it liberalizes the rules applicable to larger families by providing for certain exemptions in the computation of the controlling income.¹⁷² The new Act in addition requires as a condition for the federal subsidies, that the local authorities set the upper rentals for admission to proposed projects at least 20 per cent beneath the lowest rents at which private enterprise unaided by public subsidy is providing comparable housing,¹⁷³ and places on them the contractual obligation to set and maintain approved income limits for the admission and continued occupancy of families in the projects.¹⁷⁴ The new law finally establishes certain preferences for tenant eligibility¹⁷⁵ and prohibits discrimination against welfare clients.¹⁷⁶

The amendment of 1949 modifies in some important respects the provisions relating to the financing of the low cost housing

169. 42 U. S. C. § 1401 (Supp. 1950). Government aid to farm housing is entrusted to the Dep't of Agriculture, Housing Act of 1949, tit. IV, 42 U. S. C. § 1471 ff. (Supp. 1950).

170. 42 U. S. C. § 1402(5) (Supp. 1950).

171. 42 U. S. C. § 1410(a) (Supp. 1950). The new provision codifies the former practice by which the local authorities entered into agreements with the municipalities for the elimination of substandard buildings, the so called "elimination contracts." For the legislative history of the new clause see *Conference Report*, H. R. Rep. No. 975, 81st Cong., 1st Sess. 37 (1949); Keyserling, *op. cit. supra* note 1, at 39.

172. 42 U. S. C. § 1402(1) (Supp. 1950).

173. 42 U. S. C. § 1415(7) (b) (Supp. 1950).

174. 42 U. S. C. § 1415(8) (Supp. 1950).

175. 42 U. S. C. §§ 1410(g) (veterans' preferences), 1415(8) (c) (II) (Supp. 1950).

176. 42 U. S. C. § 1415(8) (c) (I) (Supp. 1950).

projects. In the first place it endeavors to increase the attraction of private capital to the financing of the public housing projects. It supplements, therefore, the section that provides for the pledging of the payments under the annual contribution contracts as security for loans¹⁷⁷ by the statutory assurance¹⁷⁸ of the continuation of such payments in case the Federal agency assumes title to, or possession of, the project. In the second place the new Act increases the maximum amount of the annual contributions to 2 per cent above the applicable federal rate of interest for the development or acquisition costs.¹⁷⁹

Finally, the new Act now requires an outright exemption from all real and personal property taxes levied by state, city, county or other political subdivision, as a condition for federal annual contributions,¹⁸⁰ subject to a permissive stipulation by the local authorities for payments in lieu of taxes in an annual amount not in excess of 10 per cent of the annual shelter rents.¹⁸¹ To avoid embarrassment a proviso authorizes the contractual substitution of cash payments in the amount of 20 per cent of the federal contributions in lieu of the tax exemption and payment in lieu of taxes, if the exemption meets constitutional or other barriers.

The constitutionality of the new phase of the program will present few, if any, problems. It is thoroughly settled that the combined slum-clearance and low-rent housing program constitutes a public purpose and a public use to warrant the exercise of the power of eminent domain and the use of the taxing power for its execution.¹⁸² While the Supreme Court of the United States disposed

177. 42 U. S. C. § 1410(f) (Supp. 1950).

178. 42 U. S. C. § 1421(a) (Supp. 1950).

179. 42 U. S. C. § 1410(c) (Supp. 1950). The applicable going federal rate of interest is fixed at not less than 2½%, 42 U. S. C. § 1402(10) (Supp. 1950). The development costs are limited by a ceiling of \$1,750 per room, subject to an increase of \$750 per room in areas where the projects could otherwise not be carried out without a sacrifice of sound standards of construction and design, 42 U. S. C. § 1415(5) (Supp. 1950).

180. 42 U. S. C. § 1410(h) (Supp. 1950).

181. Shelter rent is defined as the portion of contract rent exclusive of the charge or estimated charges for utilities furnished by the project. 24 Code Fed. Regs. § 320.1(b) (1949).

182. Public use and public purpose are not always used as interchangeable terms. The "public use"-test is commonly employed in respect to eminent domain while the public purpose-test circumscribes the taxing and spending power. See McAllister, *Public Purpose in Taxation*, 18 Calif. L. Rev. 137, 241 (1930); Nichols, *The Meaning of Public Use in the Law of Eminent Domain*, 20 B. U. L. Rev. 615 (1940). For a discussion of the terms public use and public purpose with reference to housing legislation see Note, 26 Minn. L. Rev. 81, 84, 95 (1942); Ebenstein, *op. cit. supra* note 91, at 68, 95. Professors McDougal and Mueller have commented: "When dealing with public undertakings, where all property is to be publicly owned and possibilities of private profit are excluded, there would, . . . , seem to be

of the issue of the constitutionality of the federal Act with one apodictic sentence,¹⁸³ the state Supreme Courts have discussed the matter at greater length,¹⁸⁴ and in some instances felt compelled to stress the slum clearance aspect over the housing side.¹⁸⁵ But since the new federal program through the modified equivalent elimination clause still retains the combination of the two programs in the urban areas, no new litigation need be anticipated in these

no rational basis for making a distinction between tests for eminent domain and taxing and spending." *Public Purpose in Public Housing: An Anachronism Reburied*, 52 Yale L. J. 42 (1942).

183. *Cleveland v. United States*, 323 U. S. 329, 333 (1944).

184. The constitutionality of the state acts against general challenges has been affirmed in all but a few states. The earliest cases were *Matter of N. Y. City Housing Authority v. Muller*, 270 N. Y. 333, 1 N. E. 2d 153 (1936); *Spahn v. Stewart*, 268 Ky. 97, 103 S. W. 2d 651 (1937); *Wells v. Housing Authority of the City of Wilmington*, 213 N. C. 744, 197 S. E. 693 (1938). The controlling basic decisions in the other states are *Brammer v. Housing Authority of Birmingham Dist.*, 239 Ala. 280, 195 So. 256 (1940); *Humphrey v. City of Phoenix*, 55 Ariz. 374, 102 P. 2d 82 (1940); *Hogue v. Housing Authority of North Little Rock*, 201 Ark. 263, 144 S. W. 2d 49 (1940); *The Housing Authority of the County of L. A. v. Dockweiler*, 14 Cal. 2d 437, 94 P. 2d 794 (1939); *People ex rel. Stokes v. Newton*, 106 Colo. 61, 101 P. 2d 21 (1940); *Marvin v. Housing Authority of Jacksonville*, 133 Fla. 590, 183 So. 145 (1938); *Williamson v. Housing Authority et. of Augusta*, 186 Ga. 673, 199 S. E. 43 (1938); *Krause v. Peoria Housing Authority*, 370 Ill. 356, 19 N. E. 2d 193 (1939); *Edwards v. Housing Authority of City of Muncie*, 215 Ind. 330, 19 N. E. 2d 741 (1939); *State ex rel. Porterie v. Housing Authority of New Orleans*, 190 La. 710, 182 So. 725 (1938); *Matthaei v. Housing Authority of Baltimore City*, 177 Md. 506, 9 A. 2d 835 (1939); *Allydon Realty Corporation v. Holyoke Housing Authority*, 304 Mass. 288, 23 N. E. 2d 665 (1939); *In re Brewster Street Housing Site*, 291 Mich. 313, 289 N. W. 493 (1939); *Laret Investment Co. v. Dickmann*, 345 Mo. 449, 134 S. W. 2d 65 (1939); *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. 2d 656 (1939); *Lennox v. Housing Authority of City of Omaha*, 137 Neb. 582, 290 N. W. 451 (1941); *Romano v. Housing Authority, Newark*, 123 N. J. L. 428, 10 A. 2d 181 (Sup. Ct. 1939), *aff'd*, 124 N. J. L. 452, 12 A. 2d 384 (1940); *State ex rel. Ellis v. Sherrill*, 136 Ohio St. 328, 25 N. E. 2d 844 (1940); *Dornan v. Philadelphia Housing Authority*, 331 Pa. 209, 200 Atl. 834 (1938); *McNulty v. Owens*, 188 S. C. 377, 199 S. E. 425 (1938); *Knoxville Housing Authority v. City of Knoxville*, 174 Tenn. 76, 123 S. W. 2d 1085 (1939); *The Housing Authority of the City of Dallas v. Higginbotham*, 135 Tex. 158, 143 S. W. 2d 79 (1940); *Mumpower v. Housing Authority of the City of Bristol*, 176 Va. 426, 11 S. E. 2d 732 (1940); *Chapman v. The Huntington, W. Va., Housing Authority*, 121 W. Va. 319, 3 S. E. 2d 502 (1939).

185. See particularly *State ex rel. Grubstein v. Cambell*, 146 Fla. 532, 535, 1 So. 2d 483, 484 (1941); *Allydonn Realty Corp. v. Holyoke Housing Authority*, 304 Mass. 288, 295, 23 N. E. 2d 665, 668 (1939); *In re Edward J. Jeffries Homes Housing Project*, 306 Mich. 638, 646, 11 S. W. 2d 272, 274 (1943); *Dornan v. Philadelphia Housing Authority*, 331 Pa. 209, 223, 200 Atl. 834, 841 (1938); *Mumpower v. Housing Authority of the City of Bristol*, 176 Va. 426, 449, 11 S. E. 2d 732, 741 (1940); *Chapman v. The Huntington, W. Va. Housing Authority*, 121 W. Va. 319, 342, 3 S. E. 2d 502, 513 (1939). But conversely the highest courts of Texas and Maryland have declared that low-rent housing in itself is a legitimate governmental function, *Matthaei v. Housing Authority of Baltimore*, 177 Md. 506, 9 A. 2d 835 (1939); *The Housing Authority of the City of Dallas v. Higginbotham*, 135 Tex. 158, 175, 143 S. W. 2d 79, 89 (1940).

jurisdictions except, perhaps, in regard to the rural housing projects.¹⁸⁶ Of course, it appears generally recognized that the new housing need not be located on the slum area and that even owners of property outside of blighted areas are subject to the power of eminent domain.¹⁸⁷ The courts have also generally been inclined to uphold the state statutes against other objections based on various limitations contained in the state constitutions.¹⁸⁸ Thus the housing acts have been held not to violate the differently phrased prohibitions against lending state credit for private activities, of municipal debt limitations, of home rule clauses or of the rule against delegation of legislative powers.¹⁸⁹ The greatest constitutional difficulties apparently were caused by the tax exemptions contained in the state acts and the courts have been ingenious in giving the local authorities the requisite status as a "municipal

186. Public low-rent housing projects in rural areas were held to be constitutional under the former law in *Kerr v. East Central Arkansas Regional Housing Authority*, 208 Ark. 625, 187 S. W. 2d 189 (1945); *Garrett v. Northwest Florida Regional Housing Authority*, 152 Fla. 551, 12 So. 2d 448 (1943); *Emerson v. Southwest Georgia Regional Housing Authority*, 196 Ga. 675, 27 S. E. 2d 334 (1943) (dictum only); *Stegall v. Southwest Georgia Regional Housing Authority*, 197 Ga. 571, 30 S. E. 2d 196 (1944); *Culbreth v. Southwest Georgia Regional Housing Authority*, 199 Ga. 183, 33 S. E. 2d 684 (1945); *Mallard v. Eastern Carolina Regional Housing Authority*, 221 N. C. 334, 20 S. E. 2d 281 (1942); *Benjamin v. Housing Authority of Darlington County*, 198 S. C. 79, 15 S. E. 2d 737 (1941) (the court stated "that the program of the Housing Authority of Darlington County as outlined herein is for a public purpose both because it will eliminate unsanitary dwelling units and because it will provide sanitary homes and living conditions for farm families of low income.")

187. *Keyes v. United States*, 119 F. 2d 444 (D.C. Cir. 1941); *Hogue v. The Housing Authority of North Little Rock*, 201 Ark. 263, 144 S. W. 2d 49 (1940); *Riggin v. Dockweiler*, 15 Cal. 2d 651, 104 P. 2d 367 (1940); *State ex rel. Grubstein v. Cambell*, 146 Fla. 532, 1 So. 2d 483 (1941); *Matthaei v. Housing Authority of Baltimore City*, 177 Md. 506, 9 A. 2d 835 (1939) (state statute did not require equal elimination); *Allydonn Realty Corporation v. Holyoke Housing Authority*, 304 Mass. 288, 23 N. E. 2d 665 (1939); *Ryan v. Housing Authority of Newark*, 125 N. J. L. 336, 15 A. 2d 647 (Sup. Ct. 1940), *aff'd*, 126 N. J. L. 60, 17 A. 2d 812 (1941); *The Housing Authority of the City of Dallas v. Higginbotham*, 135 Tex. 158, 176, 143 S. W. 2d 79, 89 (1940); *Chapman v. The Huntington, W. Va. Housing Authority*, 121 W. Va. 319, 342, 3 S. E. 2d 502, 513 (1939); see also *Webster v. City of Frankfort Housing Comm.*, 293 Ky. 114, 168 S. W. 2d 344 (1943).

188. In addition to the cases in note 184 *supra*, see *Lott v. City of Orlando*, 142 Fla. 338, 196 So. 313 (1939); *Higbee v. Housing Authority of Jacksonville*, 143 Fla. 560, 197 So. 479 (1940); *State ex rel. Harper v. McDavid*, 145 Fla. 605, 200 So. 100 (1941); *State v. Cambell*, 146 Fla. 532, 1 So. 2d 483 (1941); *Springfield Housing Authority v. Overaker*, 390 Ill. 403, 61 N. E. 2d 373 (1945); *Webster v. City of Frankfort Housing Comm.*, 293 Ky. 114, 168 S. W. 2d 344 (1943); *Bader Realty & Investment Co. v. St. Louis Housing Authority*, 217 S. W. 2d 489 (Mo. 1949).

189. See Note, 26 Minn. L. Rev. 81 (1941).

corporation,"¹⁹⁰ as "a mere municipal agency or instrumentality"¹⁹¹ or public charity¹⁹² so as to qualify under the pertinent constitutional restrictions. Only the Supreme Court of Ohio has insisted in finding fault with the tax exemption on that score.¹⁹³

Of course, the initiation, construction and operation of the low-rent public housing projects has created a host of legal questions apart from that of the constitutionality of the underlying legal framework.

The state laws uniformly require appropriate action by the municipality as a prerequisite for the actual organization of a local housing authority. In some statutes the pertinent provision calls for a formal finding by the local governing body that there exists a need for the functioning of a local housing authority,¹⁹⁴

190. See, *e.g.*, *Laret Investment Comp. v. Dickman*, 345 Mo. 449, 134 S. W. 2d 65 (1939); *Wells v. Housing Authority of the City of Wilmington*, 213 N. C. 744, 197 S. E. 693 (1938). But it has been held that a housing authority is not a "municipal corporation" for the purpose of a constitutional limitation upon the issuance of bonds, see, *e.g.*, *State ex rel. Porterie v. Housing Authority of New Orleans*, 190 La. 710, 182 So. 725 (1938).

191. *Knoxville Housing Authority v. City of Knoxville*, 174 Tenn. 76, 123 S. W. 2d 1085 (1939). *Contra: State ex rel. Burbridge v. St. John*, 143 Fla. 544, 197 So. 131 (1940); *cf. People ex rel. Stokes v. Newton*, 106 Colo. 61, 101 P. 2d 21 (1940) (holding that the Denver Housing Authority was an independent quasi-municipal corporation, not an agency of the City or County of Denver, and therefore not created in violation of the home-rule clause of the state constitution).

192. See *Springfield Housing Authority v. Overaker*, 390 Ill. 403, 61 N. E. 2d 373 (1945); *Bader Realty & Investment Co. v. St. Louis Housing Authority*, 217 S. W. 2d 489 (Mo. 1949) and authorities cited.

193. *Columbus Metropolitan Housing Authority v. Thatcher*, 140 Ohio St. 38, 42 N. E. 2d 437 (1942); *Dayton Metropolitan Housing Authority v. Evatt*, 143 Ohio St. 10, 53 N. E. 2d 896 (1944) (emphasizing the absence of the slum-clearance provisions in the Ohio statute); *Youngstown Metropolitan Housing Authority v. Evatt*, 143 Ohio St. 268, 55 N. E. 2d 122 (1944); *First Central Trust Co. v. Evatt*, 145 Ohio St. 160, 60 N. E. 2d 926 (1945). For the effect of these decisions, which are criticized in McDougal and Mueller, *Public Purpose in Public Housing: An Anachronism Reburied*, 52 Yale L. J. 42 (1942); see *McGwinn v. Board of Education of Cleveland City School*, 78 Ohio App. 405, 69 N. E. 2d 381 (1946). In 1949 Ohio passed another act declaring the property of housing authorities to be used exclusively for a public purpose and exempt from all taxation, Ohio Code Ann. § 1078-36 (Baldwin's Supp. 1949). In Florida the Supreme Court tended at first to take a view similar to that of the Supreme Court of Ohio in *State ex rel. Burbridge v. St. John*, 143 Fla. 544, 197 So. 131 (1940), but it subsequently explained its holding away in a supplemental opinion, 143 Fla. 876, 197 So. 549 (1940) and held that it would not interfere with the legislative judgment declaring the function of the housing authorities a municipal purpose so as to justify the exemption, *State ex rel. Harper v. McDavid*, 145 Fla. 605, 200 So. 100 (1941); *State ex rel. Grubstein v. Cambell*, 146 Fla. 532, 1 So. 2d 483 (1941).

194. See, *e.g.*, Cal. Gen. Laws act 3483, § 4 (1944); La. Gen. Stat. Ann. § 6280.4 (Cum. Supp. 1949); Minn. Laws 1947, c. 487, § 4; N. C. Gen. Stat. § 157-4 (1944); S. C. Code Ann. § 5271-34 (1942).

specifying, in a few acts, even the necessity for a formal hearing.¹⁹⁵ In the acts that establish these special procedures there is, however, usually a clause added which declares that in any suit or proceeding involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been validly established upon proof of the adoption of a resolution by the governing body containing the required findings and declaration.¹⁹⁶ The courts have repeatedly held that findings of the city authorities as to the existence of substandard areas and the necessity for the activation of a housing authority are not reviewable¹⁹⁷ and have been adverse to any challenge of the validity of the establishment of the housing authority based upon formal grounds.¹⁹⁸ It has been held, however, that the organizing ordinance or resolution is subject to the statutory repeal procedures by submission to a vote.¹⁹⁹

The courts have likewise been unwilling to interfere with the discretion vested in the local housing authorities as to the necessity²⁰⁰ or the proper site²⁰¹ of a particular project. This holds true, also, where the challenge of the necessity for or proper location of the project was based on the racial policy to be pursued.²⁰² Since it is beyond doubt that the XIVth amendment of the federal Con-

195. See, *e.g.*, Minn. Laws 1947, c. 487, § 4; N. C. Gen. Stat. § 157-4 (1944).

196. See the statutory provisions note 194 *supra*.

197. *Cox v. Kinston*, 217 N. C. 391, 8 S. E. 2d 252 (1940); *Woodworth v. Gallman*, 195 S. C. 157, 10 S. E. 2d 316 (1940); *Chapman v. Huntington*, W. Va. Housing Authority, 121 W. Va. 319, 3 S. E. 2d 502 (1939).

198. *Knoxville Housing Authority v. City of Knoxville*, 174 Tenn. 76, 123 S. W. 2d 1085 (1939); see *Barber v. Housing Authority of Rome*, 189 Ga. 155, 5 S. E. 2d 425 (1939) (relying on validating act).

199. *Bachmann v. Goodwin*, 121 W. Va. 303, 3 S. E. 2d 532 (1939) (reserving the question of the effect of such repeal).

200. *Stockus v. Boston Housing Authority*, 304 Mass. 507, 24 N. E. 2d 333 (1939); *In re Jeffries Homes Housing Project*, 306 Mich. 638, 11 N. W. 2d 272 (1943); *Lennox v. Housing Authority of City of Omaha*, 137 Neb. 582, 290 N. W. 451 (1940); *Ryan v. Housing Authority of Newark*, 125 N. J. L. 336, 15 A. 2d 647 (1940), *aff'd*, 126 N. J. L. 60, 17 A. 2d 812 (1941); *Housing Authority of City of Dallas v. Higginbotham*, 135 Tex. 158, 173, 143 S. W. 2d 79, 88 (1940). *But cf. Matthaevi v. Housing Authority of Baltimore City*, 177 Md. 506, 9 A. 2d 835 (1939).

201. *Riggin v. Dockweiler*, 15 Cal. 2d 651, 104 P. 2d 367 (1940) (construction of project for Mexicans outside of slum area); *Housing Authority of City of Oakland v. Forbes*, 51 Cal. App. 2d 1, 124 P. 2d 194 (1st Dist. 1942); *State v. Housing Authority of New Orleans*, 190 La. 710, 755, 182 So. 725, 739 (1938); *Woodworth v. Gallman*, 195 S. C. 157, 10 S. E. 2d 316 (1940).

202. *Brammer v. Housing Authority of Birmingham District*, 239 Ala. 280, 195 So. 256 (1940) (injunction against location of negro housing project in certain city area); *Denare v. Housing Authority of Fort Smith*, 203 Ark. 1050, 159 S. W. 2d 764 (1942) (condemnation of negro property for white housing project); see *Riggin v. Dockweiler*, *supra* note 201.

stitution is applicable to public housing projects it is extremely questionable whether such policy of segregation, subject to the provision of equal facilities, or of pro-rating available accommodations in accord with the existing racial neighborhood pattern is still compatible with the present understanding of the anti-discrimination clause.²⁰³ Up to now attacks based on constitutional grounds have failed under the circumstances of the particular case, not only if made by landowners²⁰⁴ but also by prospective tenants.²⁰⁵

The successful completion and operation of an urban project requires the conclusion of two sets of agreements by the local housing authorities, one with the federal government represented by the Public Housing Administration, and the other with the local municipality. The basic contract between the Local Authority and the Public Housing Authority is the Contract for Financial Assistance, which is usually a consolidated agreement for loan and annual contributions.²⁰⁶ This contract is composed of two parts, of which the first contains the basic provisions governing the relations between the individual parties while the second incorporates the general covenants and conditions which are either prescribed by the act itself²⁰⁷ or upon which the federal agency insists pursuant to the authorization granted to it by the statute.²⁰⁸

203. About the problem of segregation in public housing projects, see Comment, *Race Discrimination in Housing*, 57 Yale L. J. 426, 436 (1948); Abrams, *The Segregation Threat in Housing*, Commentary, Feb. 1949, p. 123. While anti-discrimination clauses have been announced for the housing regulations of the Federal Housing Administration, the Veterans' Administration, and the redevelopment program of the Housing and Home Finance Agency, no reference has been made to low-rent housing, see Comment, 6 J. Housing 421 (1949). For the housing needs of the colored population see Housing and Home Finance Agency, *Housing of Nonwhite Population* (1948).

204. See note 202 *supra*.

205. *Favors v. Randall*, 40 F. Supp. 743 (E.D. Pa. 1941); see *Seawell v. MacWithey*, 2 N. J. 563, 67 A. 2d 309 (1949) (leaving the constitutional question undecided). In *People ex rel. Hudson v. Ingraham, C. C. Cook County*, 1948 (summary reported in 6 J. Housing 221, 1949) the prospective tenant obtained a declaratory judgment in his favor, but on the basis of state law.

206. The United States Housing authority issued in 1940 two forms, the Agreement, Comprising Part One of Consolidated Contract for Loan and Annual Contributions (USHA 701) and the Terms, Covenants and Conditions, Comprising Part Two of Consolidated Contract for Loan and Annual Contributions (USHA 700). The latter was revised in 1947 and issued as General Covenants and Conditions, Comprising Part Two of Amended Contract for Financial Assistance (PHA-500B).

207. See especially 42 U. S. C. §§ 1409, 1410, 1415 (1946). It has been held that a violation of the federal provisions controlling the granting of federal aid, cannot be invoked in a taxpayers' suit, *Barber v. Housing Authority of Rome*, 189 Ga. 155, 5 S. E. 2d 425 (1939); *Matthaei v. Housing Authority of Baltimore City*, 177 Md. 506, 9 A. 2d 835 (1940).

208. 42 U. S. C. § 1415(4) (1946).

The control which the federal government exercises over the financing and the management of the projects is very far reaching, and includes approval of the selection of the site.²⁰⁹ To give an indication of the number of conditions imposed it might be helpful to mention that the last federal form for the General Covenants and Conditions to be inserted in the Contract for Financial Assistance²¹⁰ is a booklet of 77 closely printed pages. The basic agreements with the local municipality are the so-called "Equivalent Elimination Contract Provisions" and the "Cooperation Contract Provisions," the conclusion of which are demanded by the federal authorities.²¹¹

The equivalent elimination contract obligates the municipality to eliminate, by abatement proceedings, eminent domain or otherwise, the requisite number of substandard dwellings.²¹² The cooperation agreement binds the municipalities to suitable rezoning, vacation of streets, alleys, etc., and the rendition of services, subject to the authorized payments in lieu of taxes.²¹³ Of course, the necessity of these contracts reserves to the municipality a certain voice in the character of the proposed project.²¹⁴ A number of states have enacted special housing cooperation acts specifically authorizing these types of undertakings. The courts have uniformly upheld them against constitutional objections of various kinds, particularly such as asserting an unlawful abdication of governmental powers or a violation of specific limitations on the incurrence of debts.²¹⁵ Even in the absence of such cooperation laws the courts have refused to invalidate such contracts as ultra vires and likewise upheld them against constitutional objections.²¹⁶ Where mu-

209. See FPHA Requirements For Urban Low-Rent Housing and Slum Clearance, § 211 (1945); General Covenants and Conditions, Comprising Part 2 of Amended Contract for Financial Assistance, Art. I, § 102 (1947). For the difficulties which may ensue to the local commissioners, see *Jackvony v. Berard*, 66 R. I. 290, 18 A. 2d 889 (1941).

210. See note 206 *supra*.

211. For the statutory basis of these requirements see text to notes 171, 180 *supra*. The Contract for Financial Assistance with the Public Housing Administration must stipulate for the conclusion of these agreements.

212. Cf. text to note 171 *supra*.

213. Cf. text to note 181 *supra*.

214. See the comments in *Douthitt v. City of Covington*, 284 Ky. 382, 144 S. W. 2d 1025 (1940).

215. *Housing Authority of Los Angeles v. Dockweiler*, 14 Cal. 2d 437, 94 P. 2d 794 (1939); *Williamson v. Housing Authority of Augusta*, 186 Ga. 673, 199 S. E. 43 (1938); *Hogg v. City of Rome*, 189 Ga. 298, 6 S. E. 2d 48 (1939); *Krause v. Peoria Housing Authority*, 370 Ill. 356, 19 N. E. 2d 193 (1939); *Edwards v. Housing Authority of City of Muncie*, 215 Ind. 330, 19 N. E. 2d 741 (1939); *Rutherford v. City of Great Falls*, 107 Mont. 512, 86 P. 2d 656 (1939); *Dornan v. Philadelphia Housing Authority*, 331 Pa. 209, 200 Atl. 834 (1938).

216. *Humphrey v. City of Phoenix*, 55 Ariz. 374, 102 P. 2d 82 (1940); *Hogue v. Housing Authority of North Little Rock*, 201 Ark. 263, 144

nicipalities have attempted to disclaim their obligations the writ of mandamus has been granted to the local authorities²¹⁷ and the courts have also been helpful to remove other obstacles whether substantive²¹⁸ or formal.²¹⁹

If necessary, the acquisition of the proper project site by the local authority is perfected by eminent domain proceedings. The necessity of the project or the choice or size of the site will not be reviewed by the courts,²²⁰ except under exceptional circumstances and within narrow limits.²²¹ In particular the owners cannot prevent the taking by proving that their property, though located in a slum area, is not substandard itself.²²² The proceedings are often controlled by special statutory provisions applicable in the particular jurisdiction.²²³ Perhaps the most difficult issues arise in

S. W. 2d 49 (1940); *Lott v. City of Orlando*, 142 Fla. 338, 196 So. 313 (1939) (the terms of the agreements are set out in the dissent); *Jones v. City of Paduca*, 283 Ky. 628, 142 S. W. 2d 365 (1940) (cooperation agreement); *Douthitt v. City of Covington*, 284 Ky. 382, 144 S. W. 2d 1025 (1940) (elimination agreement valid since costs may be covered by the housing authority from available funds); *State v. Housing Authority of New Orleans*, 190 La. 710, 182 So. 725 (1938); *McNulty v. Owens*, 188 S. C. 377, 199 S. E. 425 (1938); *Mumpower v. Housing Authority of Bristol*, 176 Va. 426, 11 S. E. 2d 732 (1940) (invalidating portions of the cooperation contract); *Chapman v. City of Huntington*, W. Va. Housing Authority, 121 W. Va. 319, 3 S. E. 2d 502 (1939) (elimination agreement valid without submission to voters).

217. *State ex rel. Helena Housing Authority v. City Council of Helena*, 108 Mont. 347, 90 P. 2d 514 (1939); *State ex rel. Great Falls Housing Authority v. City of Great Falls*, 110 Mont. 318, 100 P. 2d 915 (1940); see *State ex rel. Elles v. Sherill*, 136 Ohio St. 328, 25 N. E. 2d 844 (1940). See Note, *Enforceability of Contracts Between Local Housing Authorities and City Councils*, 50 Yale L. J. 525 (1941); *Robinson and Altman, Equivalent Elimination Agreements in Public Housing Projects*, 22 B. U. L. Rev. 375 (1942). For a discussion of the procedure to be followed in the execution of these obligations, see *Simsarian, Slum Clearance Administrative Procedure*, 10 Geo. Wash. L. Rev. 144 (1941).

218. *Con Realty Co. v. Ellenstein*, 125 N. J. L. 196, 14 A. 2d 544 (Sup. Ct. 1940) (attack by owner of lot not abutting on vacated portion of street).

219. *Kleiber v. City & County of San Francisco*, 18 Cal. 2d 718, 117 P. 2d 657 (1941) (mere resolution rather than formal ordinance suffices for authorization of cooperation contract).

220. See notes 200, 201 *supra*; *In re Brewster St. Housing Site*, 291 Mich. 313, 289 N. W. 493 (1939).

221. See *Housing Authority of City of Oakland v. Superior Court of Alameda County*, 18 Cal. 2d 336, 115 P. 2d 468 (1941) (involving right to possession of fringe lot claimed to be unnecessary for site, pending appeal).

222. *In re Jeffries Homes Housing Project*, 306 Mich. 638, 11 N. W. 2d 272 (1943).

223. *Housing Authority of Oakland v. Forbes*, 51 Cal. App. 2d 1, 124 P. 2d 194 (1st Dist. 1942); *St. Claire Housing Authority v. Quirin*, 379 Ill. 52, 39 N. E. 2d 363 (1942) (limits of *voir dire*); *In re Parkside Housing Project*, 290 Mich. 582, 287 N. W. 571 (1939); *In re Brewster Street Housing Site*, 291 Mich. 313, 289 N. W. 493 (1939); *Ryan v. Housing Authority of Newark*, 125 N. J. L. 336, 15 A. 2d 647 (1940), *aff'd*, 126 N. J. L. 60, 17 A. 2d 812 (1941).

connection with the proper valuation of slum premises,²²⁴ a topic which has been the object of much discussion.²²⁵

The participation of private capital in the long term financing of public housing projects is accomplished by the issuance of bonds, which must comply with the numerous specifications set forth in the General Covenants and Conditions of the Contract for Financial Assistance.²²⁶ The bonds are usually secured by a pledge of the annual contributions. A number of state acts authorize the encumbrance of the projects themselves as security for the bonds²²⁷ and the courts have held that such encumbrance does not destroy the public use of the property or the validity of the tax exemption.²²⁸

Although the constitutionality of the exemption from state and local taxation has been upheld in all but one jurisdiction, the scope of this immunity has created some occasional doubts.²²⁹ The new federal Act which flatly requires exemption from all real and personal property taxes levied or imposed by the State, city, county or other political subdivision²³⁰ might somewhat improve the situation in this respect.

224. Cf. *In re Jeffries Homes Housing Project*, 306 Mich. 638, 11 N. W. 2d 272 (1943); *In re Housing Authority of Newark*, 126 N. J. L. 60, 17 A. 2d 812 (1941).

225. See Note, *Condemnation of Slum Land—Illegal Use as a Factor Reducing Valuation*, 14 U. of Chi. L. Rev. 232 (1947); *Urban Redevelopment—Legal Precedents Exist for Reducing Valuation of Slum Properties*, 4 J. Housing 128 (1947).

226. See note 206 *supra*. For an example of the text of such bonds see *Marvin v. Housing Authority of Jacksonville*, 133 Fla. 590, 609, 183 So. 145, 152 (1938).

227. See text to note 177 *supra*.

228. *Housing Authority of the County of Los Angeles v. Dockweiler*, 14 Cal. 2d 437, 94 P. 2d 794 (1939); *Mumpower v. Housing Authority of City of Bristol*, 176 Va. 426, 11 S. E. 2d 732 (1940); see *State v. Housing Authority of New Orleans*, 190 La. 710, 742, 182 So. 725, 735 (1938); *Edwards v. Housing Authority of City of Muncie*, 215 Ind. 330, 19 N. E. 2d 741 (1939). In *State ex rel. Burbridge v. St. John*, 143 Fla. 544, 551, 197 So. 131, 134 (1940) the court intimated the opposite view, but the decision was later explained away, 143 Fla. 876, 197 So. 549 (1940). About the question of the legality of mortgages and other encumbrances on public property see also *Foley, Low-Rent Housing and State Financing*, 85 U. Pa. L. Rev. 239, 255 ff. (1937).

229. See *In re Opinion of the Justices*, 235 Ala. 485, 179 So. 535 (1938) (tax immunity extends to ad valorem taxes but not to improvement assessments or excises); *Housing Authority of the County of Los Angeles v. Dockweiler*, 14 Cal. 2d 437, 94 P. 2d 794 (1939) (immunity extends to excise taxes); *Moffat Tunnel Imp. Dist. v. Housing Authority of Denver*, 109 Colo. 357, 125 P. 2d 138 (1942) (condemnation frees lots from future assessment liens); *Pittman v. Housing Authority of Baltimore City*, 180 Md. 457, 25 A. 2d 466 (1942) (immunity does not extend to recording tax); *Dornan v. Philadelphia Housing Authority*, 331 Pa. 209, 200 Atl. 834 (1938) (no valid imposition of school taxes).

230. 42 U. S. C. § 1410(h) (Supp. 1950).

The public character of the housing projects has created a number of doubts regarding the proper rules controlling the legal relations of the housing authorities with third persons and the tenants. Thus the rights of materialmen under construction bonds,²³¹ the applicability of an arbitration act governing state agencies²³² or a special public utility rate fixed for "public buildings"²³³ has called for judicial determination. The scope of the tort liability to tenants has produced somewhat conflicting results.²³⁴ It has been held that in general the termination of tenancies and the eviction proceedings follow the ordinary rules.²³⁵ This includes the power of the authorities to enforce the rules as to "excess income"²³⁶ and alter the rents even though such change will cause the ineligibility for continued occupancy of certain tenants.²³⁷

The status of the housing authorities has also had some influence on the applicable rules governing the appointment, duration of office, removal or salary limits of the commissioners, or status of employees although the matter is mostly regulated by special provisions.²³⁸

231. *Johnson-Foster Co. v. D'Amore Construction Co.* 314 Mass. 416, 50 N. E. 2d 89, 148 A. L. R. 353 (1945).

232. *Philadelphia Housing Authority v. Turner Construction Co.*, 334 Pa. 512, 23 A. 2d 426 (1942).

233. *Staten Island Edison Corp. v. New York City Housing Authority*, 269 App. Div. 996, 58 N. Y. S. 2d 427 (2d Dep't 1945).

234. *Housing Authority of Birmingham Dist. v. Morris*, 244 Ala. 557, 14 So. 2d 527 (1943) (lessor cannot contract against liability for negligence flowing from the restrictive character of the lease). *Contra Manius v. Housing Authority of Pittsburgh*, 350 Pa. 512, 39 A. 2d 614 (1944). *Manney et al. v. Housing Authority of Richmond*, 79 Cal. App. 2d 453, 180 P. 2d 69 (1st Dist. 1947) (liability for fire hazard); *Muses v. Housing Authority of San Francisco*, 83 Cal. App. 2d 489, 189 P. 2d 305 (1st Dist. 1948) (liability for wrongful eviction); *Ryan v. Boston Housing Authority*, 322 Mass. 299, 77 N. E. 2d 399 (1948) (no liability for ordinary negligence in making voluntary repairs); *Nichols v. Nashville Housing Authority*, 187 Tenn. 683, 216 S. W. 2d 694 (1949) (applying ordinary tort principles).

235. *Walton v. City of Phoenix*, 69 Ariz. 26, 208 P. 2d 309 (1949). But the local housing authorities are apparently not subject to rent control acts, 42 U. S. C. § 1413a (Supp. 1950), cf. *New York City Housing Authority v. Benefeld*, 191 Misc. 212, 77 N. Y. S. 2d 650 (Munic. Ct. City of N. Y. 1948); *Columbus Metropolitan Housing Authority v. Stires*, 84 Ohio App. 331, 84 N. E. 2d 296 (1949).

236. *Wolfe v. United States Housing Authority*, 36 F. Supp. 580 (W.D. N.Y. 1940).

237. *Brand v. Chicago Housing Authority*, 120 F. 2d 786 (7th Cir. 1941); *Jarrett v. Norfolk Redevelopment & Housing Authority*, 169 F. 2d 409 (4th Cir. 1948).

238. *City of Louisville v. German*, 286 Ky. 477, 150 S. W. 2d 931 (1940) (salary limits); *Rosenblum v. Noble*, 182 Misc. 451, 44 N. Y. S. 2d 253 (Sup. Ct. 1943) (duration of term of office); *Schlobohm v. Munic. Housing Authority of Yonkers*, 297 N. Y. 911, 79 N. E. 2d 742 (1948) (power of appointment); *Ciulla v. State of New York*, 191 Misc. 528, 77 N. Y. S. 2d 545 (Ct. Cl. 1948) (status of employee); *Commonwealth ex rel. Reinhard v. Randale*, 356 Pa. 302, 51 A. 2d 751 (1947) (removal); *Jackvony*

B. *Public Aid under special state programs*

While the principal legal basis for public aid to housing is the joint low-rent housing and slum clearance program established by the United States Housing Act of 1937 and the Housing Act of 1949 there exist some supplementary state programs which deserve separate attention.

As was mentioned in the first part of this study, the first widespread legislation in aid of low and moderate rent housing took the form of limited dividend housing laws.²³⁹ The pattern originated in New York where the limited dividend idea had some precedents on a voluntary unsubsidized basis.²⁴⁰ Although a number of states adopted this type of statute because of the expectation of federal aid authorized in the Emergency Relief and Construction Act of 1932 and the National Industrial Recovery Act,²⁴¹ actually the program resulted in practical accomplishments only in New York.²⁴² The New York law, in its present form, grants the housing companies and their bonds and debentures exemption from state taxes²⁴³ and authorizes the municipalities to grant, for a period of 50 years, certain exemptions from local exactions to projects erected prior to a certain date;²⁴⁴ in addition housing companies have the right of eminent domain to execute approved projects.²⁴⁵ The companies are subject to a fairly far reaching control by the State Commissioner of Housing.²⁴⁶ The constitutionality of the Act was upheld by the Court of Appeals without opinion in 1935.²⁴⁷ The administra-

v. Berard, 66 R. I. 290, 18 A. 2d 889 (1941) (removal); *White v. Bolner*, 223 S. W. 2d 686 (Tex. Civ. App. 1949) (removal).

239. See text to notes 52-54, 61, 62 *supra*.

240. See text to notes 19, 20 *supra*.

241. See text to notes 60, 62, 80 *supra*.

242. At present 10 limited dividend Housing Companies operate 5,895 dwelling units under the control of the New York State Division of Housing, see N. Y. Commissioner of Housing, Ann. Rep. 92 (1949).

243. N. Y. Public Housing Law §§ 190(1), (2).

244. N. Y. Public Housing Law §§ 190(3), (4), (5). The provisions relating to the local tax exemption which were first enacted in N. Y. Laws 1926, c. 823, § 39, have been amended several times and the tax status of the various housing companies projects may therefore not be uniform. New projects may be exempt only to the extent of the increase in assessed valuation due to the project.

245. N. Y. Public Housing Law § 129.

246. N. Y. Public Housing Law §§ 179, 180, 181, 182, 183, 184.

247. *Roche v. Sexton*, 268 N. Y. 594, 198 N. E. 420 (1935) (tax exemption of Knickerbocker Village Inc.); see *Mars Realty Corporation v. Sexton*, 141 Misc. 622, 253 N. Y. Supp. 15 (Sup. Ct. 1931); *People ex rel. Academy Housing Corp. v. Miller*, 163 Misc. 500, 296 N. Y. Supp. 2 (Sup. Ct. 1937); *Amalgamated Housing Corporation v. Kelly*, 193 Misc. 961, 82 N. Y. S. 2d 577 (Sup. Ct. 1948) (property of limited dividend housing companies is devoted to public use so as to support grant of right of eminent domain).

tion of the law has produced a certain amount of litigation concerning the scope of the tax-exemption,²⁴⁸ the powers of the housing commissioner over the rents,²⁴⁹ the reviewability of his approval of a proposed site²⁵⁰ and the status of the limited dividend corporations in regard to expropriation of their property by eminent domain.²⁵¹ Whether these cases will have any practical interest outside New York is difficult to surmise.

The planning for the post-defense and the post-war period produced another series of housing laws²⁵² supplementary to the federal-state-local program of 1937 which meanwhile had been exhausted. While some of these measures concerned only emergency temporary housing for veterans,²⁵³ a number of states provided for permanent constructions with preference to veterans. The existing public housing authorities were utilized for the administration of these laws which were patterned after the federal act, the state assuming financial responsibilities similar to those of the federal government. The statutes of this type have been upheld by the courts, although they omitted the compulsory connection with slum clearance,²⁵⁴ and in some instances extended aid to the upper brackets of the low income group²⁵⁵ or to middle income

248. *People v. Brooklyn Garden Apartments*, 283 N. Y. 373, 28 N. E. 2d 877 (1940).

249. *Weinfeld v. Knickerbocker Village Inc.*, 261 App. Div. 383, 25 N. Y. S. 2d 759 (1st Dep't), *aff'd*, 286 N. Y. 590, 35 N. E. 2d 934 (1941) (housing commissioner has no power to direct renewal of lease in projects erected prior to 1939); *Knickerbocker Village v. Birnbaum*, 191 Misc. 874, 78 N. Y. S. 2d 825 (Munic. Ct. N. Y. City 1947) (commissioner may not fix excess income regulation for housing companies projects erected prior to 1939).

250. *Matter of Mt. Hope Development Corporation v. James*, 258 N. Y. 510, 180 N. E. 252 (1932) (certiorari does not lie).

251. *Stuyvesant Housing Corporation v. Stuyvesant Town Corporation*, 183 Misc. 662, 51 N. Y. S. 2d 19 (Sup. Ct. 1944) (Redevelopment Company may condemn property of housing company).

252. See note 132 *supra*; H. and J. Robinson, *State Spending for Veterans' Housing*, 1949 Wis. L. Rev. 10; H. and J. Robinson, *State Aid for Housing*, 1949 Wis. L. Rev. 426; H. and J. Robinson, *A New Era in Public Housing*, 1949 Wis. L. Rev. 695.

253. See, e.g., *Franco v. City of New Haven*, 133 Conn. 544, 52 A. 2d 866 (1947); *Griffith v. City of Los Angeles*, 78 Cal. App. 2d 796, 178 P. 2d 793 (2d Dist. 1947); *Opinion of Justices*, 320 Mass. 773, 67 N. E. 2d 588 (1946).

254. *Davidson v. City of Elmira*, 180 Misc. 1052, 44 N. Y. S. 2d 302 (Sup. Ct.), *aff'd*, 267 App. Div. 797, 46 N. Y. S. 2d 655 (3rd Dep't 1943); *Borek v. Golder*, 190 Misc. 366, 74 N. Y. S. 2d 675 (Sup. Ct. 1947); *Opinion of the Justices*, 94 N. H. 515, 53 A. 2d 194 (1947); *Opinion of the Justices*, 322 Mass. 745, 78 N. E. 2d 197 (1948); *cf. Opinion of Justices*, 321 Mass. 766, 73 N. E. 2d 886 (1947). Only the court of Wisconsin required a constitutional amendment for state aid to veterans' housing, *State ex rel. Martin v. Giessel*, 252 Wis. 363, 31 N. W. 2d 626 (1947); it was adopted in 1949.

255. *Neufeld v. O'Dwyer*, 192 Misc. 538, 79 N. Y. S. 2d 53 (Sup. Ct. 1948).

groups.²⁵⁶ In New York, the City of New York alone has financed entirely some projects constructed and operated by the local housing authorities.²⁵⁷ A special tax imposed for that purpose was upheld.²⁵⁸ Similarly in Rhode Island the City of Providence is authorized to finance housing in aid of veterans,²⁵⁹ without limitation to low-rent projects.²⁶⁰ The status of these projects is, of course, similar to those financed with federal aid.²⁶¹

III. PUBLIC AID TO LAND REDEVELOPMENT

Title I of the Housing Act of 1949 which bears the caption Slum Clearance and Community Development and Redevelopment and provides federal aid for the purposes mentioned is the response to a long felt need.²⁶² The growth of slums and blighted areas had long been a pathological feature of American urban life and remedial action became increasingly urgent.

The social and economic losses of blighted areas to the municipal community are extreme. Costs in terms of expenses for police protection, law enforcement and public health services are soaring;²⁶³ on the other side such areas decrease constantly in

256. *Cremer v. Peoria Housing Authority*, 399 Ill. 579, 78 N. E. 2d 276 (1948) ("[B]ecause of the acute nature of the housing shortage, the need for adequate and decent housing has expanded to include a large portion of the middle income group, persons who can afford to pay moderate rentals"); cf. *Opinion of Justices*, 321 Mass. 766, 73 N. E. 2d 886 (1947).

257. For details about these three projects see N. Y. Comm. of Housing, Ann. Rep. 53, 73, 94 (1949).

258. The city may contract for periodic subsidies under N. Y. Public Housing Law § 94 and impose an excise tax on occupancy and other special taxes for the purpose of obtaining the necessary funds, § 110, upheld and construed in *Wilmerding v. La Guardia*, 176 Misc. 449, 26 N. Y. S. 2d 105 (Sup. Ct. 1941).

259. R. I. Acts and Resolves 1946, c. 1750, declared to be constitutional in *Opinion of Governor*, 63 A. 2d 724 (R.I. 1949).

260. A moderate rental project has been constructed, 5 J. Housing 212 (1948).

261. Cf. *In the Matter of City of New York* (Gov. A. E. Smith Houses), 194 Misc. 121, 85 N. Y. S. 2d 639 (Sup. Ct. 1948) (Business Rent Law not applicable to buildings acquired by housing authority).

262. See text to notes 119 and 160 *supra*.

263. The concrete figures are difficult to estimate. The Boston City Planning Board has published an interesting example. In proposing the reconditioning (as contrasted with reconstruction) of a sample area in a deteriorated rooming house district of 200,083 sq. ft. and an assessed value of \$592,240 it calculated the present cost to the municipality as \$146,189 and estimated the costs after execution of the proposal at \$127,153 or a saving of \$19,036 = 13%; Boston City Planning Board, *Rehabilitation in Boston*, III A Progress Report on Reconditioning 61 (1946). For another cost study (pertaining to Philadelphia) see Weintraub, *Urban Redevelopment, Blighted Area Costs, Revenues Measured*, 5 J. Housing 67 (1948). For an attempt to appraise the social benefits of public housing see Rumney and Shuman, *Social Dividends from Public Housing*, 81 Survey 223 (1945).

assessed values for tax purposes and are characterized by chronic tax delinquency.²⁶⁴ The rehabilitation of blighted areas has been a goal of housing and planning experts for a long time. The slum clearance provisions of the Emergency Relief and Construction Act of 1932, the National Industrial Recovery Act, and the United States Housing Act of 1937 were the first legislative recognition of this need.²⁶⁵ But the programs under these statutes provided for redevelopment of slum areas with the construction of new housing only to a very limited extent. One of the reasons was perhaps unfortunate over-identification. In the first place the blighted condition might not only affect dwellings but also business property and vacant lots.²⁶⁶ It is essentially a *neighborhood* condition. In the second place the fact that a blighted area was predominantly a tenement section does not necessarily imply that it is a proper site for new low-rent housing construction. It is recognized by experts that the selection of an area for rehabilitation and the proper methods of removing the blighted condition (including the choice of the best future use) without the imminence of blight recurrence requires very complex considerations, based on an over-all prognostication of the municipal development and a comprehensive city plan.²⁶⁷

It became recognized at an early date that successful redevelopment requires unified action on a large scale involving a considerable capital outlay.²⁶⁸ There also existed agreement on the proposition that land assembly for rehabilitation purposes could not rely on a purely contractual method of acquisition but had to

264. For an excellent discussion of the factors producing, and remedies preventing or relieving, chronic tax delinquency, particularly with reference to Cook County, see Hunt, *Chronic Tax Delinquency in Chicago and Cook County*, 44 Ill. L. Rev. 341 (1949) and Hunt, *Legislative Remedy for Cook County's "Chronic Delinquents"*, 44 Ill. L. Rev. 806 (1950).

265. See text to notes 60, 77, 95 *supra*.

266. The blight of vacant lots may be due to a variety of factors, particularly their surroundings, and manifests itself usually in a liability for tax arrears far above the value, see note 264 *supra*.

267. See, *e.g.*, Fed. Housing Admin. *op. cit. supra* note 119, at 34; Boston City Planning Board, *op. cit. supra* note 263, at 64; Bettman, *Urban Redevelopment Legislation in American Planning and Civic Annual* 51, 54 (1944); Ducey, Wetmore, Isaacs and Moulette, *Criteria of Selection of Initial Redevelopment Areas in Planning* 43 (1948); Woodbury and Gutheim, *supra* note 119, at 1, 11, 12.

268. See, *e.g.*, Robbins, *Problems in Land Assembly in Walker, Urban Blight and Slums* 172 (Harvard City Planning Studies XII 1938); Robbins, *Common Problems in Rehabilitation Procedures in id.* at 191; Fed. Housing Admin., *op. cit. supra* note 119, at 68; Bettman, *Federal and State Urban Redevelopment Bills in American Planning and Civic Annual* 166, 168 (1943); Boston City Planning Board, *op. cit. supra* note 263, at 46.

be buttressed by the right of eminent domain.²⁶⁹ The further details became a matter of controversy²⁷⁰ and experimentation. The first attempt at a practical solution was legislation providing for the organization of privately financed redevelopment corporations which were either endowed with a right of eminent domain or made the statutory beneficiaries of the exercise of such right by the municipalities and, in turn, subject to certain public control of the future use of the property so acquired.²⁷¹ This type of statute, hailed as a promising avenue to achieve the desired results,²⁷² was upheld by the courts regardless of the varying particulars.²⁷³

The first redevelopment actually undertaken and completed under these acts was Stuyvesant Town, which was constructed in Manhattan by the Metropolitan Life Insurance Company as one of its many post-war housing projects.²⁷⁴ Stuyvesant Town, like Helena in Goethe's *Faust*, is "much admired and much reviled." It has been praised as a demonstration that private enterprise can undertake successful redevelopments if aided by proper legislation. It has been deprecated as an example of "prefabricated blight"²⁷⁵ because of structural unsoundness, improper location, intensification of congestion, tailor-made legislation²⁷⁶ permitting an announced policy of racial discrimination,²⁷⁷ lack of provision for dis-

269. See, e.g., Robbins, *Problems in Land Assembly* in Walker, *op. cit. supra* note 268, at 177; Bettman, *Federal and State Urban Redevelopment Bills* in American Planning and Civic Annual 56 (1943); National Housing Agency, *Land Assembly for Urban Redevelopment* 9 (1945).

270. See the literature note 119 *supra*.

271. See text to notes 128-136 *supra*.

272. See, e.g., Holden, *Urban Redevelopment Corporations—A Legislative Victory in New York* in American Planning and Civic Annual 257 (1941); Bettman, *Federal and State Urban Redevelopment Bills* in American Planning and Civic Annual 166, 168 (1943); Report of Committee on Urban Redevelopment of Am. Soc. of Planning Officials in *Planning* 166 (1942), 93 (1943).

273. *Redfern v. Jersey City*, 137 N. J. L. 356, 59 A. 2d 641 (Ct. Err. & App. 1948) (housing redevelopment project of the Prudential Insurance Company under statute which retains general proprietorship in project in municipality); *Matter of Murray v. LaGuardia*, 291 N. Y. 320, 52 N. E. 2d 884 (1943) (involving statute which vests title in redevelopment company).

274. See Gove, *The Housing Plans of the Metropolitan Life Insurance Company* in Report of the Urban Planning Conferences at Evergreen House 166 (1944).

275. See, especially, the vitriolic criticism of Mumford, *Prefabricated Blight*, *New Yorker*, Oct. 1948, p. 49.

276. About the history of the New York Redevelopment Companies Law passed for the purpose of satisfying the demands of the Metropolitan Life Insurance Company, see the account by Gove, *op. cit. supra* note 274, at 172.

277. The policy of racial discrimination was so vehemently denounced by many quarters that New York City passed an ordinance in 1944 prohibiting tax exemptions to housing companies, redevelopment companies, redevelopment corporations and insurance companies practicing discrimination

placed low income population²⁷⁸ and exorbitant open and hidden public subsidies.²⁷⁹

It has been correctly pointed out that the Metropolitan project actually enjoys three forms of public aid, viz. the subsidy of eminent domain, the subsidy of tax exemption on the improvements, and perhaps the most valuable subsidy of far too intensive land use which (apart from other social objections) diminishes the use value of all other land in the community.²⁸⁰ The justification of the two latter types has been seriously questioned. It became clear, particularly on the basis of careful studies in regard to specific redevelopment projects, that some public subsidy other than assistance through the right of eminent domain was necessary to attract private capital to redevelopment projects,²⁸¹ with the exception perhaps of particular situations, as, for instance, the mere reconditioning of a rooming house district.²⁸² The principal reason for this requirement is the fact that the costs of land assembly exceed normally the use value of the tract thus assembled.²⁸³ While many suggestions have been made to develop special valuation principles for large scale land assembly and to

in housing, City of New York Administrative Code § J41-1.2 (Cum. Supp. 1948). The indicated policy prompted finally the litigation of Dorsey v. Stuyvesant Town in which the New York courts on three levels refused to interfere with the policy of defendant on the ground that its action was not state action within the meaning of the XIV amendment of the federal constitution, 190 Misc. 187, 74 N. Y. 2d 220 (Sup. Ct. 1947), 274 App. Div. 992, 85 N. Y. S. 2d 313 (1948), 299 N. Y. 512, 87 N. E. 2d 541 (1949); for comments at the various stages of the litigation see Comment, *Race Discrimination in Housing*, 57 Yale L. J. 426, 439 (1948); 15 U. of Chi. L. Rev. 745 (1948); 34 Minn. L. Rev. 334 (1950).

278. Actually Metropolitan Life Insurance Co. undertook the relocation of the displaced 3,000 families, see *Urban Redevelopment, What to do about displaced site families*, 4 J. Housing 35 (1947).

279. The total subsidy derived from the statutory tax exemption "freezing" the assessed value of the land is estimated at \$50,000,000, see Blum and Bursler, *Tax Subsidies For Rental Housing*, 15 U. of Chi. L. Rev. 255, 269 (1947).

280. Blucher, *Urban Redevelopment* in American Planning and Civic Annual 157, 163 (1943). See also Mumford, *The Gentle Art of Overcrowding*, The New Yorker, May 20, 1950, 73.

281. See, e.g., Emery, *op. cit. supra* note 134, at 133, 145 (referring to Detroit); National Housing Agency, Land Assembly for Urban Redevelopment 12 (1945) (summary of other studies); Blucher, *Urban Redevelopment* in American Planning and Civic Annual 162 (1943).

282. See, e.g., Boston City Planning Board, *op. cit. supra* note 263.

283. With reference to the cost of land assembly as crux of the problem see National Housing Agency, Land Assembly for Urban Redevelopment 10 (1945); Robbins, *Problems in Land Assembly* in Walker, *op. cit. supra* note 268, at 172, 184; Robbins, *Common Problems in Rehabilitation Procedures* in *id.* at 191, 194; Greer and Hansen, *Urban Redevelopment and Housing*, Nat. Planning Ass'n, Pamphlet No. 10, 6 (1941); Hoyde, *Fiscal and Administrative Problems* in Report of the Urban Planning Conferences at Evergreen House 200, 210 (1944); Emery, *op. cit. supra* note 134, at 145.

limit the amounts of awards in condemnation proceedings,²⁸⁴ the rigors of the due process clause seem inexorably to necessitate the absorption by the public of a considerable loss produced by the difference between acquisition cost and use value.²⁸⁵

Reduction of the land cost problem by resort to high-rent multi-story buildings and intensification of use²⁸⁶ is neither always possible nor sound, since it actually places a portion of the costs of redevelopment, socially and economically, upon the tenants of the project and economically also upon the other property owners.²⁸⁷ Subsidy in form of tax exemption upon the improvement likewise is not free from serious objections. While it has frequently been argued that the municipality loses nothing since it saves expenses and retains its former tax base it has recently been made very plausible, that this theory is an over-simplification and unrealistic abstraction, which overlooks the fact that in the long run the costs of redevelopment are shifted to particular classes, particularly other property owners.²⁸⁸ At any rate a considerable body of expert opinion has been built up to the effect that in view of the present allocation of tax resources the federal government should share in the costs of redevelopment.²⁸⁹

To overcome some of the objectionable features of redevelopment by privately capitalized corporations, many jurisdictions adopted alternative types of redevelopment legislation which entrusted either the whole execution of the redevelopment plan or, at least, the execution of its initial phases, to the municipalities themselves, to special municipal redevelopment agencies or to the existing housing authorities.²⁹⁰ But again the financing by the issuance of bonds did not obviate the necessity for direct public subsidies,

284. See particularly Robbins, *supra* note 283, at 184, 194; Note, *Condemnation of Slum Land—Illegal Use as a Factor Reducing Valuation*, 14 U. of Chi. L. Rev. 232 (1947); Beatty, *Urban Redevelopment—What is the Value of Vacant Land in Blighted Areas*, 4 J. Housing 8 (1947).

285. See Robbins, *supra* note 283, at 184, 194.

286. For tables showing the increase of return and therefore reduction of the cost differential see Colean and Davis, *Cost Measurement in Urban Redevelopment* 37 (1945); see also *id.* at 12.

287. See Blucher, *Urban Redevelopment in American Planning and Civic Annual* 157, 163 (1943); Mumford, *op. cit. supra* note 280, at 73.

288. See, for instance, Blum and Bursler, *supra* note 279, at 276.

289. Leaders in the movement, Greer and Hansen, *Urban Redevelopment and Housing*, Nat. Planning Ass'n, Pamphlet No. 10, 6 (1941).

290. See text to notes 138, 139 *supra*; for the constitutionality of such statutes, see *Zurn v. City of Chicago*, 389 Ill. 114, 59 N. E. 2d 18 (1945); *The People v. City of Chicago*, 394 Ill. 472, 68 N. E. 2d 761 (1946); *The People v. City of Chicago*, 399 Ill. 551, 78 N. E. 2d 285 (1948); *Belovsky v. Redevelopment Authority of Philadelphia*, 357 Pa. 329, 54 A. 2d 277 (1947). *But see* Opinion to the Governor, 69 A. 2d 531 (R.I. 1949).

either in form of tax exemptions or of proceeds from special redevelopment taxes imposed on other properties.²⁹¹

Generally speaking, the prospects for large scale redevelopment either by redevelopment corporations or by public redevelopment agencies without federal subsidy seemed to be slim²⁹² and the redevelopment title of the Housing Act of 1949 came as a response to a demand of long standing.

The statute provides financial assistance in the form of loans²⁹³ and capital grants²⁹⁴ for projects which comply with the fairly elaborate conditions of the Act. Probably the most important of these qualifications is the requirement that the project must be predominantly residential either before or after its redevelopment.²⁹⁵ Hence all redevelopment areas which are initially non-residential must become predominantly residential after completion of the project, while blighted (presently) residential areas may be converted to any suitable use. It should be noted in this connection that the Act distinguishes between "predominantly open land" which is blighted because of obsolete platting, diversity of ownership, deterioration of structure or other factors, and "open land."²⁹⁶ Projects on the latter are eligible only for loans of limited duration, while redevelopment of the former may be aided by long term loans and capital grants.²⁹⁷

The total amount of outstanding loans is limited by a ceiling of \$1,000,000,000 to be reached in five steps, allocating \$25,000,000 during the first year, \$225,000,000 during the following year and \$250,000,000 during each of the three succeeding years, subject to acceleration upon determination by the President on the advice from the Council of Economic Advisers.²⁹⁸ Capital grants are appropriated to a maximum of \$500,000,000 to be allocated at the rate of \$100,000,000 per year, unless the President orders an acceleration under similar conditions.²⁹⁹ An award of a capital grant for an individual project can only be made for the purpose

291. This method has been followed in Indianapolis under the mandate of Ind. Stat. Ann. § 48-8522 (Burn's Supp. 1949). For criticism of the adequacy of this approach see "*Indianapolis Plan*" Gets Wide Attention, 3 J. Housing 115 (1946); National Housing Agency, Land Assembly for Urban Redevelopment 22 (1945).

292. See Brown, *supra* note 119, at 334, 367; Bollens and McCarty, *supra* note 119, at 15.

293. 42 U. S. C. § 1452 (Supp. 1950).

294. *Id.* § 1453.

295. *Id.* § 1460(c).

296. *Ibid.*

297. *Id.* §§ 1452(b), 1453(a).

298. *Id.* § 1452(e).

299. *Id.* § 1453(b).

of financing the "net project cost"³⁰⁰ *i.e.*, the difference between the acquisition and other development costs and the capital proceeds received from the disposal of the project either by sale or lease.³⁰¹ The available capital grant for any project is further limited by the requirements that the aggregate of all capital grants allocated to one local agency must not exceed $\frac{2}{3}$ of the aggregate of all net project costs of all projects of such agency³⁰² and that at least the remaining $\frac{1}{3}$ is made up by local grants-in-aid³⁰³ consisting of cash grants, donation of land other than alleys and streets, etc., site improvement and the provision of parks, playgrounds and public buildings or facilities.³⁰⁴

Financial aid is restricted to *public* redevelopment agencies, whether state, municipal or quasi-municipal³⁰⁵ and requires the conclusion of contracts which impose a number of conditions, especially³⁰⁶ (a) approval of the project by the local governing body including a finding as to the necessity for public aid in addition to the participation by private enterprise and the conformity of the redevelopment plan with an existing general master plan; (b) provision for the prompt initiation and preservation of the contemplated use; (c) provision of suitable temporary and permanent housing for the displaced families and (d) provision for public hearing prior to the land acquisition.

Whether the administration of this statute will help to substantially accomplish a long overdue task, the costs of which were estimated to exceed \$11,500,000,000 in terms of the 1940 cost level,³⁰⁷ can not even be guessed.

300. *Id.* § 1454.

301. *Id.* § 1460(f).

302. *Id.* § 1453(a).

303. *Id.* § 1454.

304. *Id.* § 1460(d).

305. *Id.* §§ 1455, 1460(h).

306. *Id.* § 1455.

307. See National Housing Agency, Land Assembly for Urban Redevelopment 29 (1945).