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## State Legislative Response to the Housing Crisis

Richard E. Streeter,\* David G. Davies,\*\*  
and Arthur V. N. Brooks\*\*\*

**G**REAT PUBLIC ATTENTION has recently been focused on the crisis in housing facing all major urban areas in this country. This article has been prepared to bring close attention to one segment of the hoped for solution—legislative action needed on the state level.

In March, 1967, the PATH (Plan of Action for Tomorrow's Housing) Citizens Advisory Committee completed a six-month study and reported on the housing crisis in Greater Cleveland.<sup>1</sup> This report typifies the situation in many cities today. The PATH Report outlined the crisis in terms of the quality, supply, and availability of housing as follows:<sup>2</sup>

### *Quality*

—There were nearly 60,000 substandard dwelling units in Cuyahoga County (*i.e.*, the Cleveland area).<sup>3</sup> About seven-eighths of these (approximately 18% of all dwelling units in Cleveland) were in the City of Cleveland.

—More than 200,000 residents of Cuyahoga County lived in substandard housing.

—One out of four families in the City of Cleveland lived in a rat-infested dwelling.

### *Supply*

—Between 1950 and 1967, only about 30,000 new dwelling units were constructed within Cleveland.

—Between 1949 and 1967, less than 2,000 non-public housing units were provided in Greater Cleveland for low and moderate income families under federally-assisted programs.

—More than 25,000 families in the City of Cleveland were eligible for public housing, but only 7,478 public housing units were available and only 2,500 additional units were planned.

—The urban renewal program in Cleveland had destroyed more housing than it had produced.

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<sup>1</sup> The PATH Report, Plan of Action for Tomorrow's Housing in Greater Cleveland (March, 1967).

<sup>2</sup> *Ibid.* at 7 and 12-16.

<sup>3</sup> *Id.* The classification "substandard" includes housing units defined by the Census as "deteriorating" (needing repair in excess of ordinary maintenance), "dilapidated" (dangerous to the health, safety and well being of the occupants), and "sound, but lacking adequate plumbing facilities."

### *Availability*

—Greater Cleveland was found to be one of the most racially segregated communities in the nation in housing.

—Of the Negroes in Cuyahoga County, 95% lived in Cleveland; 85% of the Negroes in Cleveland lived in census tracts with at least a 70% Negro population, and 50% lived in census tracts with a 95% or greater Negro population.

While startling, these statistics merely confirm a housing crisis in the State of Ohio and across the nation. In February, 1969, the Ohio Legislative Service Commission reported that of Ohio's three million housing units in 1960, more than 14%, or nearly one-half million, were substandard; that Ohio will need 70,000 new housing units annually by 1970, 75,000 annually by 1975, and 86,700 units yearly by 1980; and that residential segregation pervades all of Ohio's major cities and excludes most of Ohio's Negro citizens from better housing.<sup>4</sup>

Nationally, the President's Committee on Urban Housing found that in 1960 there were some 15 million substandard housing units in the nation; that by 1978 about 7.8 million American families—about one in every ten—will be unable to afford standard housing; that to meet its housing needs, this nation should produce 26 million units by 1978, at least six million of which must be subsidized; and that, in each income category, the percentage of nonwhite households occupying substandard housing was more than twice the percentage of white households occupying substandard housing.<sup>5</sup>

The national housing goal of six million federally-assisted housing units for low and moderate income families by 1978 is not just that of the President's Commission; Section 1402 of the Housing and Urban Development Act of 1968<sup>6</sup> sets the same sights. Indeed, since the Housing Act of 1949, the more broadly expressed housing policy of the nation has been "a decent home and suitable living environment for every American family."<sup>7</sup> While these stated goals are those of the nation as a whole, until recently, the only significant housing efforts have been those under Federal laws. The principal Federal housing tools have been the major subsidy programs administered by the Department of Housing and Urban Development. Subsidies for rehabilitation are provided to improve the quality of housing. Public housing, rent supplement, homeownership, rental housing, and below interest rate programs increase the supply of housing. And the open housing provisions of the Housing and

<sup>4</sup> Substandard Housing, Staff Research Report No. 97 of the Ohio Legislative Service Commission and Report of the Committee to Study Substandard Housing at 1 and 10-11 (February, 1969).

<sup>5</sup> A Decent Home, The Report of the President's Committee on Urban Housing, at 7 and 43-47 (December, 1968).

<sup>6</sup> 42 U.S.C.A. § 1441(A).

<sup>7</sup> *Ibid.* § 1441(A)2.

Urban Development Act of 1968 assist in increasing the availability of housing.

State governments can complement Federal programs directed at the quality of housing through state building and housing codes, or laws regulating the relationship between landlords and tenants, or tax abatement, for example. States can supplement Federal housing programs concerned with the supply of housing by providing housing assistance to low income families, to housing sponsors, or to city governments. And, despite the existence of a broad Federal open housing law, there is room for strengthening state open housing laws.

A few states have responded significantly to housing needs. The State of Ohio, however, has not. The table on the following page published by the Ohio Legislative Service Commission before Ohio's General Assembly adopted some housing legislation in 1969, reflects Ohio's role in housing programs.<sup>8</sup>

State action should be a part of the national program to meet the housing need. As stated by the national Urban Coalition, "[t]he states have abilities and legal authority unavailable to the other levels of government. If these resources are withheld from national programs, the federal government, the cities and the private sector will be seriously hampered in carrying out their roles. If the states apply their authority and abilities creatively, they can enhance the effectiveness of the other partners in programs aimed at providing a decent environment for the residents of our communities."<sup>9</sup>

The PATH Report found these principles especially applicable to the State of Ohio, concluding:<sup>10</sup>

"The foregoing Plan [the Report] includes many goals, and many recommendations for reaching those goals. Many of the recommendations involve changes in the law of the State of Ohio. The weight of these makes it clear that the State of Ohio should participate actively with its cities and the federal government in attempting to solve urban housing problems. If Ohio is to accept this responsibility, a complete State legislative program must be developed encompassing the many problems of housing."

The housing "ills" of this state and this nation, then, are so pervasive as to require massive doses of "medicine" at all levels of government—"medicine" which, to the extent feasible, can be administered by private individuals and organizations, as well as governmental units. We have seen the symptoms; what does the doctor prescribe?

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<sup>8</sup> *Substandard Housing, op. cit. supra* n. 4 at 36.

<sup>9</sup> Housing Staff of the National Urban Coalition, *Agenda for Positive Action: State Programs in Housing & Community Development*, at v. (Nov. 1, 1968).

<sup>10</sup> The PATH Report, *op. cit. supra* n. 1 at 56.

HOUSING PROGRAMS EMPLOYED OR AUTHORIZED BY SELECTED STATES

	Ohio	California	Connecticut	Hawaii	Illinois	Maryland	Massachusetts	Michigan	New Jersey	New York	Pennsylvania	Rhode Island
Regulation of the landlord-tenant relationship												
Rent withholding			X		X	X	X	X	X	X	X	X
Rent control			X		X		X	X	X	X	X	X
Receivership and rehabilitation by local government					X		X	X	X	X	X	X
Repair by tenant		X			X		X	X	X	X	X	X
Protection against eviction and/or reprisal		X			X		X	X	X	X	X	X
Mutual contract interpretations rights		X			X		X	X	X	X	X	X
Housing courts					X							
State codes and licensing	X											
Building code (includes model codes)	X	X	X				X	X	X	X		
Housing code (includes model codes)												
Licensing of rental properties												
Assistance to low- and moderate-income families												
Rental assistance (rent subsidies only)									X	X		
Loans and subsidies for purchasers and owners									X	X	X	
Homemaking assistance			X				X					
Assistance to local governments												
Assistance for public housing			X		X		X		X	X	X	X
Assistance for urban renewal			X		X		X		X	X	X	X
Relocation payments and standards		X	X			X	X	X	X	X	X	X
Code of enforcement assistance		X	X				X	X	X	X	X	X
Assistance to housing sponsors		X	X		X		X	X	X	X	X	X
Tax incentives			X			X	X	X	X	X	X	X

\* Ohio provides a certain advisory and technical assistance through its Urban Affairs Department. Sources: Statutes, official reports, and other descriptions. This list may not include all programs of the states listed.

## The Response in Albany, Harrisburg and Lansing

No one state has had a monopoly of housing ills. However, the northeastern industrial states, including Ohio, have had at least their share. Likewise, these states have been the source of much of the legislation seeking new ways to attack the problem—though the innovators have rarely included Ohio since the state pioneered in the public housing movement more than 35 years ago.<sup>11</sup>

While the housing problem is generally regarded as being one of primary concern for cities,<sup>12</sup> its solution requires cooperation between city and state governments; while city governments can set goals and deal with immediate needs, successful solution of the housing dilemma requires two things often beyond the power of the cities: new legal remedies—and money.

Of the three major avenues for solving the crisis in housing,<sup>13</sup> the issues of quality and supply now present the greatest challenges, since Federal civil rights legislation<sup>14</sup> has in large measure limited the field of maneuver available to state legislatures in attacking explicit racial segregation to questions of style and procedure.<sup>15</sup>

Within the two remaining categories of quality and supply, what have Ohio's largest neighbors, New York, Pennsylvania and Michigan, done?

The answers may be summed up in a single theme: They have encouraged and even provided initiative for action.

<sup>11</sup> See Ohio Rev. Code §§ 3735.27-37.

<sup>12</sup> Rural slums exist in substantial numbers and are a great problem in themselves, but tend to have a less contagious effect than their urban counterparts because of their relative isolation and the greater dependence of urban land values upon the attitudes of residents living in an immediate neighborhood.

<sup>13</sup> Ohio Rev. Code § 3735.26 contains the following legislative finding:

It is hereby declared that it is necessary in the public interest to make provision for housing families of low income and to provide for the elimination of congested and unsanitary housing conditions which exist in certain areas of this state and which are a menace to the health, safety, morals, welfare, and reasonable comfort of the citizens of this state. The providing of such housing for families of low incomes and the correction of these conditions in such areas being otherwise impossible, it is essential that provisions be made for the investment of private funds at low interest rates, the acquisition at fair prices of adequate parcels of land, the construction of new housing facilities under public supervision in accord with proper standards of sanitation and safety and at a cost which will permit monthly rentals which wage earners can afford to pay, and for the gradual demolition of existing unsanitary and unsafe housing. . . .

See generally, sources collected in, Sax and Heistand, *Slumlordism as a Tort*, 65 Mich. L. Rev. 869, 874 at n. 20 (1967). See text, *supra* n. 2.

<sup>14</sup> 1968 Fair Housing Act, 42 U.S.C.A. § 3601-31; see also *Jones v. Mayer*, 392 U.S. 409 (1968).

<sup>15</sup> Thus, in the 1968 legislative session of its 108th General Assembly, Ohio modified the fair housing provisions of its 1961 Civil Rights Act, Ch. 4112, Ohio Rev. Code, creating the optional pattern of state enforcement allowed under the Federal Act, 42 U.S.C.A. § 3610(C). See text, *infra*, at n. 169-70.

### *I. Insuring the Quality of the Existing Supply of Housing Through Tenant Initiative*

The amount of capital necessary to clear the existing supply of poor housing described above and to rebuild decent housing in its place is staggering. Until that capital is available, preservation of existing housing in reasonably decent condition remains an absolute necessity.

Since the turn of the century, the basic legislation designed to maintain the quality of housing has been the Municipal Housing Code.<sup>16</sup> Cleveland's is typical of modern codes, setting standards of safety, habitability, and cleanliness.<sup>17</sup> Methods of enforcement include fines or imprisonment for violations,<sup>18</sup> limiting the right of owners to rent through certificate of occupancy regulations,<sup>19</sup> orders to vacate premises,<sup>20</sup> and, finally, demolition of buildings in such poor condition that they are nuisances.<sup>21</sup>

This type of ordinance has succeeded barely, if at all. Its underlying assumption appears to have been that substandard housing is a venture from which "slumlords" draw a substantial profit, so that all an ordinance need do is create sanctions to force a rechanneling of money from the slumlord's profit into repair of his buildings. Whatever the ambitions of the present generation of owners of substandard housing, few have found the profit—and harsh economic facts have joined with administrative enforcement difficulties to make traditional sanctions ineffective in bringing about code enforcement,<sup>22</sup> or even counter-productive in driving out needed capital.

New York, Pennsylvania, and Michigan have attempted to restore the effectiveness of housing codes. Their primary methods have been, first, the creation of more effective remedies for tenants, generally called "tenants' rights legislation," and, second, creation of a financial and fiscal incentive for repairs and rehabilitation.

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<sup>16</sup> Gribetz & Grad, *Housing Code Enforcement: Sanctions & Remedies*, 66 Colum. L. Rev. 1254, 1259-69 (1966).

<sup>17</sup> Cleveland, Ohio, Municipal Code, §§ 6.0501-6.0903 (1968 Supp.).

<sup>18</sup> *Ibid.* § 6.1311.

<sup>19</sup> *Id.* §§ 6.1101-1107.

<sup>20</sup> *Id.* §§ 6.1306-1307. This was the earliest sanction in the 1900's and is ineffective without a relatively high vacancy ratio.

<sup>21</sup> *Id.* § 6.1305(c).

<sup>22</sup> See, generally, Marco and Mancino, *Enforcement of Housing Codes*, 18 Clev.-Mar. L. Rev. 368 (1968), based on the authors' experience as members of the Cleveland Law Department; Gribetz & Grad, *supra*, n. 16 at 1267-68, based on authors' first-hand experience in New York City; Comment, *Enforcement of Housing Codes*, 78 Harv. L. Rev. 801 (1965), reflecting interviews with enforcement officials in New York, Baltimore, Boston, Chicago, New Haven, Philadelphia, Pittsburgh, Providence, and Washington; Comay, *City of Pittsburgh Housing Court*, 30 U. of Pitt. L. Rev. 459 (1968), written by a Pittsburgh Housing Court judge.

(A) Making the tenant a direct participant in code enforcement:  
Tenants' rights legislation.

Traditionally, it is familiar law that a housing lease commits the tenant to pay rent, for which he gets his housing, just about as it is. Summary procedures insure that if the rent stops, the tenant leaves—quickly.<sup>23</sup> On the other hand, while in theory the tenant may have civil remedies for breaches of undertakings in the lease, which is almost always written by the landlord, his main remedy for enforcement of the housing code has been administrative and criminal. The tenant is not put on a footing of civil equality with his landlord, but instead must look to a paternalistic and often overburdened city government to protect his interests.<sup>24</sup>

In response, Michigan has taken the relatively simple first step of *leasehold covenant legislation* to allow the tenant to use civil remedies to enforce minimum standards; it has imposed on the landlord in leases of less than one year a covenant "that the premises are fit for the use intended by the parties" and an undertaking "to keep the premises in reasonable repair during the term . . . and to comply with the applicable health and safety laws of the state and of the local unit of government. . . ." <sup>25</sup> These terms are backed by a right of action for damages for breach of leasehold covenants.<sup>26</sup>

Even where the tenant does no more than rely on agency code enforcement, the landlord has a trump card under common law: While the tenant may get the landlord cited for a housing violation, the landlord can retaliate by evicting the tenant under the terms of a typical month-to-month tenancy. Therefore, Pennsylvania and Michigan have passed *retaliatory eviction laws*.<sup>27</sup> These laws allow the tenant, even after expiration of his term, to defend against an eviction proceeding by establishing the retaliatory nature of the lease termination giving rise to that proceeding.<sup>28</sup>

A tenant's successful defense against retaliatory eviction under such a law merely keeps the tenant in his substandard housing; he still must rely on a city agency to invoke effective sanctions to encourage the landlord to bring his housing into compliance with the code. All three states

<sup>23</sup> See, for example, the Ohio Forcible Entry and Detainer Statute, Ohio Rev. Code §§ 1923.01-24; Pa. Stat. Ann., Tit. 68, §§ 250.501-506 (1964).

<sup>24</sup> Gribetz & Grad, *supra* n. 16 at 1261-62.

<sup>25</sup> Mich. Comp. Laws Ann. § 554.139 (1969 Supp.).

<sup>26</sup> *Id.*, § 125.536 (1969 Supp.).

<sup>27</sup> Pa. Stat. Ann., Tit. 35, § 1700-1 (1967 Supp.); Mich. Comp. Laws Ann., § 600.5646(4) (1969 Supp.).

<sup>28</sup> The Michigan statute, *supra* n. 27, is typical in amending the chapter governing eviction proceedings by excepting termination of a tenancy intended as a penalty for attempting to enforce contractual rights or complaining of violation of health or safety codes, or "intended as retribution for any other lawful act arising out of the tenancy."



under consideration have recognized this problem and enacted additional legislation to deal with it.

The tenant's basic offensive weapon in these circumstances under the laws of all three states is *rent withholding*.<sup>29</sup> Under this remedy, when code violations for which a landlord has been cited by the responsible agency are of a sufficient degree<sup>30</sup> and remain uncorrected for a substantial period of time, the tenant may, in Michigan or Pennsylvania, pay rent into escrow instead of to the landlord pending their correction.<sup>31</sup> In New York, the tenant may pay no rent at all until he deposits back rent into court when raising a "rent impairing code violation" as a defense to an action for rent.<sup>32</sup>

The New York statute does not provide for any use of the money, treating its withholding solely as a sanction. Michigan and Pennsylvania, however, allow the escrow agent to release money to the landlord "to defray the cost of correcting the violations" in Michigan,<sup>33</sup> or "for making such dwelling fit for human habitation" in Pennsylvania.<sup>34</sup> Alternatively, in Michigan the court may authorize the tenant to make repairs himself and deduct their expense from his rent.<sup>35</sup> New York and Michigan set no time limit for the rent withholding period, apparently presuming that economic pressure will bring repairs about reasonably quickly. Pennsylvania limits the time that the escrow may operate without correction to six months, after which the tenant gets back the rent payments that he has deposited and, presumably, is evicted.<sup>36</sup>

New York gives tenants in New York City two additional methods of the same general nature for directly attacking code violations. The first is a right to *stay of proceedings* in an eviction action where there is an uncorrected code violation that constitutes "constructive eviction."<sup>37</sup> Like the rent withholding remedy, the stay order is conditional on a payment of back rent into court. The second, *rent strike legislation*, allows one-third of the tenants in a multiple dwelling to petition for sum-

<sup>29</sup> N.Y. Multiple Dwelling Law § 302-a (1968 Supp.) and Multiple Residence Law § 305-a (1968 Supp.); Mich. Comp. Laws Ann. § 125.530 (1969 Supp.); Pa. Stat. Ann., Tit. 35 § 1700-1 (1969 Supp.).

<sup>30</sup> Pennsylvania: Dwelling "unfit for human habitation," Pa. Stat. Ann., Tit. 35, § 1700-1; Michigan: "a condition that would constitute a hazard to health or safety," thus preventing an issuance of certificate of occupancy, Mich. Comp. Laws Ann., Sec. 125.529(2) (1969 Supp.); New York: An administratively pre-determined "rent impairing violation," N.Y. Multiple Dwelling Law § 302-a(1) (1968 Supp.), Multiple Residence Law § 305-a(2) (1968 Supp.).

<sup>31</sup> Mich. Comp. Laws Ann. § 125.130(3) (1969 Supp.); Pa. Stat. Ann., Tit. 35, § 1700-1 (1969 Supp.).

<sup>32</sup> N.Y. Mult. Dwelling Law 302-a(3) (1968 Supp.); Mult. Residence Law §302-a(3) (1968 Supp.).

<sup>33</sup> Mich. Comp. Laws Ann. § 125.130(4) (1969 Supp.).

<sup>34</sup> Pa. Stat. Ann., Tit. 35, § 1700-1 (1969 Supp.).

<sup>35</sup> Mich. Comp. Laws Ann. § 125.534(5) (1969 Supp.).

<sup>36</sup> National Council v. Roberson, 214 Pa. Super. 9, 248 A. 2d 861 (1969).

<sup>37</sup> N.Y. Real Property Actions and Procedures Code § 755 (1963).

mary proceedings in which the court would have the power to direct that the rents of *all* tenants be paid into court and used for the correction of conditions "dangerous to life, health, or safety."<sup>38</sup> The latter statute is unique in both the leverage it gives a tenant in blocking more than his own rent and in the fact that, unlike the conventional withholding statutes and the receivership statutes described below, it gets the tenant directly into the court without an intervening administrative determination that code violations exist.<sup>39</sup>

The rent withholding statutes have only rudimentary provisions for dealing with funds and using them for repairs. In addition, they are totally ineffective in dealing with code violations where the cost of correction is too great to be financed from current rental income. New York and Michigan have dealt with these problems through *receivership statutes*.<sup>40</sup>

New York has the earlier of these statutes, a comprehensive receivership statute<sup>41</sup> that became effective in 1962 and applies only in cities of more than 500,000 population.<sup>42</sup> Only a municipal department of real estate may initiate receivership proceedings, and appointment is dependent on a finding that a "nuisance exists . . . which constitutes a serious fire hazard or is a serious threat to life, health or safety."<sup>43</sup> The receiver must be the official in charge of the municipal department of real estate.<sup>44</sup> His powers are those of a receiver in a foreclosure action,<sup>45</sup> with the right not only to collect and apply rental income to repairs, but also to draw on a municipal "Multiple Dwelling Section 309 Operating Fund" to pay for repairs that cannot be financed from rental income.<sup>46</sup> Expenditures from this fund gives the city a lien prior to other liens except taxes and assessments.<sup>47</sup> However, except by court order, the re-

<sup>38</sup> *Ibid.* §§ 769-82 (1968 Supp.). A more specialized New York State rent withholding law is the "Spiegel Law," providing for complete rent abatement for welfare clients under certain circumstances, N.Y. Social Welfare Law § 143-b (1968 Supp.).

<sup>39</sup> One attorney active in an extra-legal rent strike has criticized the Michigan tenant rights statutes as blunting the tenant's most effective weapons to achieve landlord action; Glotta, *Tenant's Attorney: Evaluation of Impact*, 2 *Prospectus* 247 (1968).

<sup>40</sup> In Chicago receiverships have developed on general equity principles without specific legislation, *City of Chicago v. Willow Bldg. Corp.*, 36 Ill. App. 2d 72, 183 N.E. 2d 572 (1962); see generally, Comment, *Enforcement of Housing Codes*, *supra* n. 22 at 828. Repairs have been financed on a large scale from private funds; see Blum and Dunham, *Slumlordism as a Tort—A Dissenting View*, 66 *Mich. L. Rev.* 451, 463, n. 21 (1967).

<sup>41</sup> N.Y. Multiple Dwelling Law § 309(5)-(9).

<sup>42</sup> *Ibid.* § 3(1).

<sup>43</sup> *Id.* § 309(5) (a) and (1) (e).

<sup>44</sup> *Id.* § 309(5) (c).

<sup>45</sup> *Id.* § 309(5) (d).

<sup>46</sup> *Id.* § 309(9). The New York City fund is "relatively small." Gribetz & Grad, *supra* n. 16, at 1273.

<sup>47</sup> *Id.* § 309(5) (e).

ceiver cannot make repairs or improvements "except such as may be necessary to remedy or remove the immediate conditions which called for his appointment and to the ordinary operating and maintaining of the property."<sup>48</sup>

Michigan followed suit in 1968 with a receivership statute of more general application, based on statewide certificate of occupancy legislation and administered incident to equitable actions to compel code compliance.<sup>49</sup> A tenant as well as the enforcing agency may begin the action.<sup>50</sup> Unlike New York, Michigan allows any "competent" private person to act as a receiver.<sup>51</sup> Like New York, the receiver may obtain a lien against the property for advances, though the Michigan statute does not establish the priority of a receiver's lien relative to earlier liens,<sup>52</sup> nor does it have any provision for municipal funding of repair costs like that of New York. On the other hand, Michigan allows the receiver greater scope in his expenditure of funds; he is limited only "to repair, renovate and rehabilitate the premises as needed to make the building comply with the provisions of this act."<sup>53</sup>

**(B) The carrot instead of the stick: Financial and fiscal encouragement of voluntary repairs.**

Except as they manipulate lien priorities and provide for special receivership funds, the tenants' rights statutes still rest on the assumption that the landlord is economically able but unwilling to make the repairs or improvements necessary to bring housing into compliance with the housing code, or, in the case of the receivership statutes, that there is an equity in the building sufficient to finance the work. Therefore, they do nothing for the landlord and the tenant locked together in a housing situation whose economics simply do not allow for the cost of repairs, either by the owner or by a receiver. Response to this problem has been very limited.

*Direct loans.*—To meet this type of situation, New York, by a statute effective in 1960, authorized municipalities to make "loans to owners of existing multiple dwellings,"<sup>55</sup> thus passing on to owners the benefits of tax-exempt financing in a manner similar to that more widely used in state-aided financing of new development as discussed below.<sup>56</sup> Such

<sup>48</sup> *Id.* § 309(5) (d) (5).

<sup>49</sup> Mich. Comp. Laws Ann. §§ 125.534-35 (1969 Supp.).

<sup>50</sup> *Ibid.* § 125.534 (2) (1969 Supp.).

<sup>51</sup> *Id.* § 125.535(2) (1969 Supp.).

<sup>52</sup> *Id.* § 125.535(5).

<sup>53</sup> Mich. Comp. Laws Ann. § 125.535(3) (1969 Supp.).

<sup>55</sup> N.Y. Private Housing Finance Law §§ 401-405 (1962 and 1968 Supp.).

<sup>56</sup> Int. Rev. Code of 1954 § 103(C) (4) (a) retains interest on residential housing bonds within the governmental obligation exclusion.

loans under the New York law must not exceed "the cost of installation of proper heating facilities, or elimination of conditions dangerous to human life or detrimental to health, including nuisances [defined under the Multiple Dwelling Law] or to other rehabilitation or improvement."<sup>57</sup> Acceptance of municipal financing by the owner ties him to tenant selection based on an income-to-rent ratio similar to that used in other New York state-aided housing financing<sup>58</sup> and to rent controls based on limited investment return.<sup>59</sup> On the other hand, the statute allows the municipality to grant limited real property tax relief for the enhancement of the value brought about by the repairs<sup>60</sup>—which, because of the rent and investment return controls, would be largely passed on to the tenant.

*Tax abatement* for enhanced value, standing alone and based on the theory that the prospect of increased tax valuation will normally deter investment by owners in repairs and improvements,<sup>61</sup> is not used in the states here under study except in the optional New York statute described in the preceding paragraph. Although the Pennsylvania Constitution contains a provision allowing tax abatement,<sup>62</sup> apparently passed in response to the veto of earlier legislation,<sup>63</sup> the provision has not since been implemented by legislation in Pennsylvania.

## II. *The State's Role in the Creation of New Housing*

The principal development in the field of legislation dealing with the quality problem has been the attempt to make the tenant a direct participant in the legal process. The corresponding development in the field of supply has been the emergence of the state government as a dominant force in the effort to attract investment and management into the production of new housing. Whereas the primary relationship in control of quality is between city and state governments, that in the creation of a new supply is often a three-way relationship in which the Federal government is an active party, with the statutes of all of the states under

<sup>57</sup> N.Y. Private Housing Finance Law § 402 (1968 Supp.). The Section also limits total mortgage indebtedness to 90% of appraisal but allows limited refinancing of prior liens.

<sup>58</sup> *Ibid.* §§ 401, 403 (1963).

<sup>59</sup> *Id.* §§ 404, 405.1 (1963).

<sup>60</sup> *Id.* § 405.2 (1963).

<sup>61</sup> Whether it really works this way—or whether tax relief of the type just enacted in Ohio (see text at n. 151) rewards the owner who allows his property to deteriorate, then has a death-bed repentance and repairs it, as compared to the owner who maintains it constantly—is open to question. See Slayton, *State and Local Incentives and Techniques for Urban Renewal*, 25 *Law & Contemp. Prob.* 793, 799-800 (1960).

<sup>62</sup> Pa. Const. Art 8, Sec. 2(b) (iii) (1969).

<sup>63</sup> See Note, *Pennsylvania Housing Legislation: Proposals for Reform*, 30 *U. of Pitt. L. Rev.* 95, 102 (1968).

consideration containing explicit references to Federal financial assistance<sup>64</sup> and one, in New York, giving the state agency power to act to the exclusion of the local government.<sup>65</sup> The role of state legislation may be characterized as insuring that the state and its local units *at least* get their share of Federal money.

(A) Specialized corporate forms for housing ownership.

The origin of state legislation encouraging development of quality has been the creation of special forms of corporation for housing ownership. The basic forms are the limited dividend housing corporation,<sup>66</sup> for private investment in all of the states under consideration except Michigan, and the Metropolitan Housing Authority,<sup>67</sup> for public. The legislation on these subjects is of long standing and differs only in detail.

The limited dividend housing corporation is a kind of housing utility that, typically, has the indirect benefit of eminent domain laws,<sup>68</sup> but is limited in its income on capital, usually to 6% per year.<sup>69</sup> Like a utility, it is regulated by the state in its land acquisition and financial structure.<sup>70</sup> New York also regulates tenant eligibility based on income,<sup>71</sup> but exempts a limited dividend housing corporation from state corporation taxes<sup>72</sup> and *allows* New York local governments to exempt limited income projects from real estate taxes.<sup>73</sup> Pennsylvania exempts capital

<sup>64</sup> *E.g.*, Ohio Rev. Code § 3735.31(C), empowering a metropolitan housing authority "to borrow money or accept grants or other financial assistance from the federal government . . . [or to] take over or lease or manage any housing project or undertaking constructed or owned by the federal government . . ." and Ohio Rev. Code § 3735.35, describing public housing payments in lieu of taxes "in the maximum amounts consistent with obtaining federal assistance under the 'United States Housing Act of 1937' . . ."

<sup>65</sup> See text at *infra* n. 113.

<sup>66</sup> Pa. Stat. Ann., Tit. 15 §§ 2801-22 (1967); N.Y. Private Housing Finance Law §§ 70-87 (1962); Ohio Rev. Code §§ 3735.12-26. These statutes were apparently enacted in response to the availability of R.F.C. funds under the Emergency Relief and Rehabilitation Act of 1932, Ch. 520, 47 Stat. 709. In Michigan, Urban Redevelopment Companies have characteristics similar to limited dividend housing corporations but are of later (1941) origin and have broader purposes, Mich. Comp. Laws §§ 125.901-.922 (1969 Supp.).

<sup>67</sup> Pa. Stat. Ann., Tit. 35 §§ 1544-90 (1968); Mich. Comp. Laws Ann. §§ 125.651-.690 (1958); N.Y. Public Housing Law (1968 Supp.); Ohio Rev. Code §§ 3735.27-39.

<sup>68</sup> See, for example, Ohio Rev. Code § 3735.11; Pa. Stat. Ann., Tit. 15, § 2317 (1967); N.Y. Private Housing Finance Law § 500 (1968 Supp.).

<sup>69</sup> See, for example, Ohio Rev. Code §§ 3735.14-19; Pa. Stat. Ann., Tit. 15, §§ 2806, 2810 (1967); N.Y. Private Housing Finance Law § 82. The New York statute allows for an optional higher rate of return. Michigan, by a 1968 amendment, raised the maximum dividend of an urban redevelopment corporation to 10% per year, Mich. Comp. Laws Ann. § 125.903 (1969 Supp.).

<sup>70</sup> See, for example, Ohio Rev. Code §§ 3735.02-.11.

<sup>71</sup> N.Y. Private Housing Finance Law § 35-a (1968 Supp.).

<sup>72</sup> *Ibid.* § 93(1) (1962).

<sup>73</sup> *Id.* § 93(4) (1968 Supp.). A Michigan urban redevelopment corporation has an optional exemption on enhancement of value, Mich. Comp. Laws § 125.912 (1958).

stock from state taxation.<sup>74</sup> While the typical act declares a private housing corporation to be "an instrumentality of the state,"<sup>75</sup> income from its debentures is not treated as exempt from Federal taxation.<sup>76</sup> The projects of a limited dividend housing corporation are also normally subject to local planning and zoning control.<sup>77</sup>

New York adds a variety of alternative corporate forms having generally similar aims: limited profit companies,<sup>78</sup> redevelopment companies,<sup>79</sup> urban redevelopment corporations,<sup>80</sup> mortgage facilities corporations,<sup>81</sup> and housing development fund companies.<sup>82</sup> The success of these forms has varied from nil in the case of the urban redevelopment corporation to high in the case of limited profit housing corporations, primarily because of the availability of state-aided financing for the latter.<sup>83</sup> Michigan, in recent legislation, has substituted non-profit housing corporations and consumer housing cooperatives as its principal corporate forms to receive state-aided financing.<sup>84</sup> Pennsylvania also has special provisions for cooperative housing corporations.<sup>85</sup>

The publicly-owned equivalent of the limited dividend housing corporation, the metropolitan housing authority, also commonly has the power of eminent domain.<sup>86</sup> Rent and tenant selection are closely regulated.<sup>87</sup> Projects are generally exempt from real estate taxes.<sup>88</sup> They are specifically subject to local zoning laws.<sup>89</sup>

<sup>74</sup> Pa. Stat. Ann., Tit. 15 § 2807 (1967).

<sup>75</sup> Ohio Rev. Code § 3735.26; N.Y. Private Housing Finance Law § 93(2) (1968 Supp.).

<sup>76</sup> I.T. 3411, 1940-2 CB 103.

<sup>77</sup> See, for example, Ohio Rev. Code § 3735.02(D); N.Y. Private Housing Finance Law § 83(5) (1962).

<sup>78</sup> N.Y. Private Housing Finance Law §§ 10-37.

<sup>79</sup> *Ibid.* §§ 100-125.

<sup>80</sup> *Id.* §§ 220-221. Michigan has a similar corporate form; see *supra* n. 66.

<sup>81</sup> N.Y. Private Housing Finance Law §§ 330-333; § 12(2) (1968 Supp.).

<sup>82</sup> *Ibid.* §§ 570-82 (1968 Supp.).

<sup>83</sup> Morris, *The Development of New Middle-Income Housing in New York*, 10 N.Y.L.F. 492, 496-98 (1964).

<sup>84</sup> Mich. Comp. Laws Ann. §§ 125.1461-65, §§ 125.1471-75 (1969 Supp.).

<sup>85</sup> See, Pa. Stat. Ann., Tit. 35, §§ 1680.305a-.305b (1967). The definition refers to comparable provisions of federal statutes, *Id.*, § 1680.301(4) (b).

<sup>86</sup> See Ohio Rev. Code §§ 3735.32; Pa. Stat. Ann., Tit. 35 § 1555 (1964); N.Y. Public Housing Law § 120 (1968 Supp.); Mich. Comp. Laws Ann. § 125.660.

<sup>87</sup> See Ohio Rev. Code §§ 3725.41-.43; N.Y. Public Housing Law § 154 (1955) and § 156 (1968 Supp.); Mich. Comp. Laws Ann. §§ 125.684-.694 (1969 Supp.).

<sup>88</sup> See Ohio Rev. Code § 3735.34; Mich. Comp. Laws Ann. § 125.677; Pa. Stat. Ann., Tit. 35 § 1590.11 (1964); N.Y. Public Housing Law § 52(3) (1955). All three states, as well as Ohio, Ohio Rev. Code § 3735.35, provide for limited payments in lieu of taxes to local governments.

<sup>89</sup> See Ohio Rev. Code § 3735.44; N.Y. Public Housing Law § 155 (1955); Pa. Stat. Ann., Tit. 35 § 1556 (1964).

Without special financial assistance, few investors have taken advantage of the limited dividend corporate form or its cousins.<sup>90</sup> While public housing has been more widely produced, the results have often been dreary.<sup>91</sup>

The principal response in the three states under consideration has been the creation of central state agencies having substantial funds for the encouragement of housing developments, both through the existing forms of ownership and through new forms. Two, New York and Michigan, have also experimented with rent subsidies and all three with various types of house ownership programs.

**(B) Pennsylvania: Pioneering a program of subsidy and below-market interest financing.**

In including improved housing among the goals of its urban renewal program established under the 1949 Housing and Redevelopment Assistance Law,<sup>92</sup> Pennsylvania became the pioneer of state assistance for the creation and improvement of supply.<sup>93</sup> This law directed the State Department of Commerce to undertake a program of capital grants to public housing and urban redevelopment authorities and to limited dividend housing companies.<sup>94</sup> Grants are limited to 35% of project costs,<sup>95</sup> with the sponsor subject to regulation of tenant selection and rent levels in relation both to market and income.<sup>96</sup> Thus, at the outset, Pennsylvania undertook development subsidies of somewhat more than "seed money" magnitude, leaving the developer to provide the balance of his capital from other sources.

In 1959, the state entered the field of active mortgage financing of housing through the Pennsylvania Housing Agency,<sup>97</sup> funded through bond sales with deficits made up by state appropriations.<sup>98</sup> "Eligible

<sup>90</sup> See 1956 committee report cited by the Editor, McKinney, N.Y. Private Housing Finance Law § 93 (1962).

<sup>91</sup> See Ledbetter, Public Housing—A Social Experiment Seeks Acceptance, 32 Law & Contemp. Prob. 490, 495-511 (1967). Except for comparative purposes, the field of public housing is generally outside the scope of this article.

<sup>92</sup> Pa. Stat. Ann., Tit. 35 §§ 1661-76 (1964).

<sup>93</sup> "Pennsylvania has had the most active and the most generous urban redevelopment assistance program. . . . As of April 30, 1960, this state had entered into contracts with cities amounting to nearly \$13,000,000 in state grants for urban redevelopment and it spent one-and-a-quarter million in grants to assist local housing projects. The result has been to stimulate Pennsylvania localities to undertake redevelopment programs and to encourage many small localities to participate in the program." Slayton, State and Local Incentives and Techniques for Urban Renewal, 25 Law & Contemp. Prob. 793, 803 (1960).

<sup>94</sup> Pa. Stat. Ann., Tit. 35 § 1664 (1969 Supp.). Under a reorganization act, administrative responsibility was transferred to a newly-created Department of Community Affairs.

<sup>95</sup> Pa. Stat. Ann., Tit. 35, § 1667 (1964).

<sup>96</sup> *Ibid.* § 1666 (1964).

<sup>97</sup> *Id.* §§ 1680.101-.603 (1964 and 1969 Supp.).

<sup>98</sup> *Id.* § 1680.603 (1964).

mortgagors” are both individual owner-occupants and cooperative ownership housing corporations, subject in each instance to asset restrictions and to income restrictions based on statistical data.<sup>99</sup> The agency may lend funds to these mortgagors directly or insure and purchase private loans to eligible mortgagors.<sup>100</sup> Mortgage loans are made at below-market interest rates based on the income of individual mortgagors or that of the members of the borrowing cooperatives.<sup>101</sup>

Pennsylvania, in summary, has established a program built around grants for corporate construction and state-aided mortgages for individual and cooperative construction and ownership. Except for these financial incentives, initiative and control remain primarily local. No indirect local subsidies through tax relief are attempted.

(C) New York: Evolution of a centralized state agency.

In New York, the response to the failure of housing supply also took place in two steps, but with an outcome of a powerful, central agency.

The first step was provision by law in 1955 for state and municipal mortgage loans, either for a high percentage of the cost or in the form of “seed money” for other financing for the construction of housing.<sup>102</sup> This provision was coupled with creation of the limited-profit housing company form, and the combination of this form and the financing took on the generic name of the law: “Mitchell-Lama.” Initial funding was \$50 million dollars approved by New York voters in 1956.<sup>103</sup>

In 1960, the state furthered the aims of this first step by creating the New York State Housing Financing Agency, a corporate governmental agency empowered to sell bonds and lend money on housing mortgages.<sup>104</sup> A provision that would have allowed direct state subsidies to the agency for further reduction of tenants’ costs in housing was defeated by referendum.<sup>105</sup> However, a 1964 amendment gave the agency power to make state-appropriated rent assistance payments on behalf of low income tenants.<sup>106</sup> Likewise, subsequent amendments have given the agency power to waive equity requirements in making loans to tenant-owned

<sup>99</sup> *Id.* § 1680.301 (1969 Supp.).

<sup>100</sup> *Id.* § 1680.303 (1964).

<sup>101</sup> *Id.* §§ 1680.304-.311 (1964).

<sup>102</sup> N.Y. Private Housing Financing Law §§ 22-23 (1968 Supp.). The principal borrowers are tenant-owned mutual companies [N.Y. Private Housing Finance Law § 12(2) (a) (1968 Supp.)] and builders able to take an equity position on construction profits, Morris, *supra*, n. 83 at 504.

<sup>103</sup> See note by Editor, following McKinney, N.Y. Private Housing Law § 10 (1962).

<sup>104</sup> N.Y. Private Housing Finance Law § 43 (1962). The borrower thus obtains the benefit of state bond interest rates (see *supra* n. 56) but does not receive a direct subsidy as apparently envisaged by the Pennsylvania below-market interest rate loan.

<sup>105</sup> N.Y. Private Housing Finance Law § 57 (1962); see Annotation in McKinney’s 1968 Supplement.

<sup>106</sup> N.Y. Private Housing Finance Law § 44a (1968 Supp.). The initial appropriation was \$1,000,000. See Morris, *supra* n. 83 at 512.



mutual companies (The H.O.P.E. Program),<sup>107</sup> thereby providing a limited publicly-financed home ownership program, though still only through corporate forms.

This series of enactments brought better financial opportunities to the builders and tenants of low and medium cost housing but left New York, like Pennsylvania, as a relatively inactive partner in the inception of projects. The initiative remained with local governments, companies, and cooperatives to deal with a general problem on a local basis.

This situation brought about the second step, the creation in 1968 of the Urban Development Corporation.<sup>108</sup> This is a state agency with broad powers of initiating housing construction as well as industrial programs, financed through bonds authorized up to one billion dollars.<sup>109</sup> In contrast to the largely supervisory role of state agencies under earlier legislation, the Urban Development Corporation may acquire property by eminent domain,<sup>110</sup> construct residential projects, and convey them to "subsidiary" limited profit housing companies or housing authorities,<sup>111</sup> such a project then being known as a "State Urban Development Project."<sup>112</sup> The corporation can override local planning and zoning controls,<sup>113</sup> thus giving it the power to break the ring of local governments that tends to perpetuate ghetto conditions.<sup>114</sup> Limited real property tax relief for housing other than public housing, optional with municipalities under earlier legislation described above, is mandatory for urban development corporation projects.<sup>115</sup>

**(D) Michigan: Enhanced access to federal programs and individual ownership.**

The most recent major legislation in the three states is that of Michigan in 1966, as substantially amended in 1968, which established its "State Housing Development Authority."<sup>116</sup> The authority is empowered

<sup>107</sup> N.Y. Private Housing Finance Law §§ 12(2) and 19 (1968 Supp.). See Morris, *supra* n. 83 at 511.

<sup>108</sup> N.Y. Unconsol. Laws § 6254 (1968 Supp.).

<sup>109</sup> *Ibid.* §§ 6267-68 (1968 Supp.).

<sup>110</sup> *Id.* § 6263 (1968 Supp.).

<sup>111</sup> *Id.* § 6265 (1968 Supp.).

<sup>112</sup> N.Y. Private Housing Finance Laws §§ 2, 22a (1968 Supp.).

<sup>113</sup> N.Y. Unconsol. Laws § 6266 (1968 Supp.), entitled "Cooperation with Municipalities." See also N.Y. Private Housing Finance Law §§ 1(c), 26-b, 576-b (1968 Supp.).

<sup>114</sup> See Grinstead, *Overcoming Barriers to Scattered-Site Low-Cost Housing*, 2 *Prospectus* 327 (1969). A recent Massachusetts statute "Providing for the construction of low or moderate income housing in cities and towns in which local restrictions hamper such construction" establishes centralized review of zoning decisions prohibiting or making uneconomical the development of low and moderate income housing by public or a limited dividend or non-profit organizations, requiring approval where the proposal is "consistent with [regional] local needs" except in cities and towns already having a substantial supply of such housing. 1969 Mass. Acts, Chapter 774, approved August 23, 1969.

<sup>115</sup> N.Y. Unconsol. Laws § 6272 (1968 Supp.); N.Y. Private Housing Laws §§ 33, 93, 577 (1968 Supp.); N.Y. Real Property Tax Law § 422 (1968 Supp.).

<sup>116</sup> Mich. Comp. Laws Ann. §§ 125.1401-1474 (1969 Supp.).

to sell bonds to finance its activities up to fifty million dollars.<sup>117</sup> In general concept, it is much like the Pennsylvania Housing Agency and the New York State Housing Finance Agency—but more specifically adapted to use of federal programs for major financing, with a novel program for individual home ownership.

Although the Michigan agency has the power to participate actively in project design and planning and can own land,<sup>118</sup> its primary purpose appears to be to encourage, not to initiate, construction and rehabilitation activities.<sup>119</sup> The basic corporate units for initiation are “non profit housing corporations” and “consumer housing cooperatives” designed to house low and moderate income persons.<sup>120</sup> However, once such a corporate unit is formed, the state agency has broad powers to lend it “seed money” without interest for the development costs of the project that can be anticipated to qualify for a federally-aided or state-aided mortgage.<sup>121</sup> The federally-aided mortgages for which such seed money loans are available are defined in terms of specific federal statutes.<sup>122</sup>

Under the 1968 amendments, state-aided mortgages are authorized up to 100% of project costs and a term of 50 years,<sup>123</sup> more liberal than the 95% maximum allowed for New York state-aided mortgages. While this difference is one of degree rather than principle in the administration of state-aided mortgages, Michigan adds a major innovation in the administration of its mortgages: It allows the splitting of housing units from blanket state mortgages for sale to low-income purchasers, subject to a substituted individual mortgage,<sup>124</sup> thus giving state financial support to the transformation of the user of the program from a renter to an owner—though there is no provision for individual ownership of other than a unit split from a state-aided blanket mortgage, in contrast to the Pennsylvania ownership provision.<sup>125</sup> Provisions allowing the owner of such a split-off housing unit to contribute to the purchase price through his own labor add “sweat equity” to the owner’s interest in his newly-

<sup>117</sup> *Ibid.* § 125.1432(3) (1969 Supp.).

<sup>118</sup> *Id.* § 125.1423(t) (1969 Supp.).

<sup>119</sup> *Id.* § 125.1422 (1969 Supp.).

<sup>120</sup> *Id.* §§ 125.1461-1465, 1471-1475 (1969 Supp.). “Low- and moderate-income persons” are defined in terms of the current housing market, with income standards administratively established, Mich. Comp. Laws Ann. § 125.1411(g).

<sup>121</sup> *Id.* § 125.1424 (1969 Supp.). The costs include the cost of real estate options, organizational expenses, and survey and research costs, Mich. Comp. Laws Ann. § 125.1411(b) (1969 Supp.).

<sup>122</sup> Mich. Comp. Laws Ann. § 125.1411(c) (1969 Supp.).

<sup>123</sup> *Ibid.* § 125.1444 (1969 Supp.)

<sup>124</sup> *Id.* § 1444(2) (d) (1969 Supp.)

<sup>125</sup> See *supra*, n. 99.

purchased housing unit.<sup>126</sup> In addition, the agency is authorized to enter into a limited rent supplement program.<sup>127</sup>

Finally, Michigan grants projects financed with federally-aided or state-aided mortgages real property tax relief, substituting a "service charge in lieu of taxes."<sup>128</sup> It will be recalled that New York makes tax relief optional with the local government except in the case of urban development corporations; Michigan, however, turns this rule around by granting local governments the option to reimpose the taxation action that the statute removed—or to establish a service charge between the minimum described in the statute and the maximum tax that could be collected.<sup>129</sup>

In these ways, New York, Pennsylvania, and Michigan have sought new methods of encouraging initiative. They have encouraged the tenant to become an active partner of local governments in maintaining quality through the code enforcement process by giving him stronger standing in civil actions against the landlord. They have created a variety of methods for funding privately-owned housing and even individually-owned housing, generally in cooperation with local governments, but in the case of New York, potentially *in spite* of the attitudes of local governments.

Thus they have given Ohio the benefit of twenty years of experiment and experience to adapt and improve their programs to its own needs.

### **The Response in Columbus: The First Look at Substandard Housing**

The voices from Ohio's turbulent urban communities have not often been heard in Columbus. Until 1969, a poorly funded Department of Urban Affairs stood as the only evidence of the State's concern about urban conditions. As the 108th General Assembly convened, the question of substandard housing was understandably regarded as a brand new issue for legislative deliberation.

The parameters of possible state action to alleviate the problems of substandard housing have been defined, not only by previous legislative action in other urban states, but by an abundance of public and private reports detailing Ohio's needs and recommending numerous alternative approaches.<sup>130</sup>

<sup>126</sup> Mich. Comp. Laws Ann. § 125.1444(2) (e)-(f) (1969 Supp.).

<sup>127</sup> *Ibid.* §§ 125.1451-.1456 (1968).

<sup>128</sup> *Id.* § 125.1415a (1969 Supp.).

<sup>129</sup> *Id.* § 125.1415a(2) (1969 Supp.).

<sup>130</sup> See reports cited *supra*, n.'s 1, 4, 5, 9, New Concepts for Ohio Homes, Report on Housing and Redevelopment Activities, Ohio Department of Urban Affairs (December 18, 1958); Programs Effecting (sic) The Urban Poor, Ohio Legislative Service Commission, Information Bulletin No. 1969-2, June, 1969.

The path from printed reports of documented needs to legislative action is, of course, strewn with political obstacles. The prospects for new housing legislation were, therefore, enhanced by Governor Rhodes' announcement, in November of 1968, that the state would raise \$500,000,000 for low and moderate income housing through the issuance of revenue bonds, and would press for receivership legislation and "modernization" of the state building code.<sup>131</sup>

The later recommendations of the Joint Legislative Committees to Study Substandard Housing, Insurance and Urban affairs<sup>132</sup> represented a further refinement of administration and leadership thinking as to the range of politically possible action.

Despite these commitments, the prospects for bold new housing legislation during the 108th General Assembly were regarded by at least one political commentator as "stormy and uncertain."<sup>133</sup>

When the first session recessed, action had been taken in at least one house on eleven housing-related bills, including proposals relating to fair housing, tax incentives, additional code enforcement procedures, land contract reform, availability of property insurance (Ohio F.A.I.R. Plan), relocation assistance, building code revision, and, most significantly, new programs for state assistance in the financing of low and moderate income housing.<sup>134</sup>

<sup>131</sup> The Cleveland Plain Dealer, November 13, 1968, p. 1, col. 1; The Cleveland Press, November 28, 1968, p. 1, col. 5.

<sup>132</sup> Substandard Housing, *supra*, n. 4 at 67-69; Report of the Committee to Study the Role of the State in Urban Affairs (February 27, 1969); Report of the Committee to Study the Insurance Laws.

<sup>133</sup> The Cleveland Plain Dealer, January 5, 1969, p. 1, col. 1.

<sup>134</sup> The following bills were enacted into law:

*Am. S. B. 407* (Purchase of dwellings condemned for highway construction by non-profit sponsors without competitive bidding);

*Sub. H. B. 465* (Provides procedures and required state funding for Ohio F.A.I.R. (Fair Access to Insurance Requirements) Plan), effective July 31, 1969;

*Sub. S. B. 156* (Reforms Ohio land contract law), effective November 25, 1969;

*Am. H. B. 475* (Enlarges relocation assistance program) effective August 5, 1969;

*Sub. H. B. 709* (minimum state building code standards), effective November 25, 1969;

*Sub. H. B. 814* (performance standards for industrialized housing), effective November 25, 1969;

*H. B. 156* (injunctive relief for local health authorities), effective October 2, 1969;

*Am. H. B. 451* (preference for appeals in housing code cases), effective November 19, 1969;

*Sub. H. B. 754* (tax relief in designated "rehabilitation areas"), effective December 2, 1969;

*Am. H. B. 432* (Fair Housing), effective November 12, 1969.

The following bill was passed by the Senate and will be held over in the House for consideration:

*Am. S. B. 386* (State Housing Development Agency; tax exemptions, "seed money" grants, and interest subsidies).

Other Housing Bills held over for further consideration include *H. B. 717* (Tenant remedies), *H. B.'s 727, 697* (Receivership), *SJR 8* (Homestead Exemption for Aged) and *SJR 25* (Constitutional Amendment supporting issuance of revenue bonds for housing).

While these results were not impressive in relation to the dimensions of the problem and the pattern of action in other urban states, some constructive first steps were taken.

### I. Quality of Existing Housing

As mentioned above, municipal housing codes are a local community's traditional response to substandard housing.<sup>135</sup> Unfortunately, for a variety of now familiar reasons,<sup>136</sup> municipal housing code enforcement has not brought about the restoration of deteriorating urban neighborhoods.<sup>137</sup> The detailed standards of housing maintenance established by these codes offer little practical hope to the urban tenant living in a crowded slum dwelling.

Since nearly three-fourths of the substandard units in urban areas are tenant occupied,<sup>138</sup> supplementary tenant-initiated code enforcement procedures are an important supplement to municipal code enforcement efforts. In addition, wherever the mechanism of local enforcement depends on state authorized remedies and procedures, the strengthening and modernization of the basic enabling statutes and the enactment of supplemental procedures is important. Real estate tax incentives are also available to the state as a method of encouraging renovation of existing housing.<sup>139</sup>

#### A. Code Enforcement

The legislature moved hesitantly with respect to three problems associated with municipal housing code enforcement.<sup>140</sup> Other proposals relating to the creation of housing divisions in certain municipal courts to hear all housing-related cases,<sup>141</sup> the establishment of priority for

<sup>135</sup> The Legislative Service Commission reported that approximately 50% of the 122 Ohio cities responding to its housing questionnaire reported having enacted housing codes. This is only about half as many Ohio communities as have adopted building codes for one-, two- and three-family dwellings. See, *Substandard Housing*, *supra*, n. 4 at 20-28.

<sup>136</sup> See, *e.g.*, *Substandard Housing*, *supra*, n. 4 at 29-32; Gribetz and Grad, *supra* n. 16; Comment, *Enforcement of Municipal Housing Codes*, *supra* n. 40; Comay, *City of Pittsburgh Housing Court*, *supra*, n. 22; Preference Liens for the Costs of Repairing Slum Property, 1967, Wash. U. L. Q. 141 (1967).

<sup>137</sup> See, *e.g.*, Marco and Mancino, *Housing Code Enforcement*, *supra*, n. 22. The authors point to the fact that in a recent 12 month period after the inspection of 43,890 dwelling units, 43,743 dwelling units remained in noncompliance at the end of the year.

<sup>138</sup> See *Substandard Housing*, *supra*, n. 4, at 2.

<sup>139</sup> See, *Agenda*, *supra*, n. 9.

<sup>140</sup> (1) The alleviation of appellate delay in housing code cases caused by overcrowded common pleas dockets (Am. H. B. 451); (2) the clarification of authority for entry upon private property by housing inspectors under search warrants (Am. H. B. 353); (3) the protection of tenants who have filed complaints with governmental authority from eviction or other retaliation (Am. H. B. 724). Of these, only H. B. 451 will become law. Each of the others must be reintroduced.

<sup>141</sup> S. B. 220.

demolition liens,<sup>142</sup> and the simplification of procedures for citing housing code violators,<sup>143</sup> were left to languish in committee as were two bills which provided that properties existing in serious violation of a housing code could be placed in a court supervised receivership until restored to code standards.<sup>144</sup>

A number of bills introduced but not acted upon were aimed at augmenting municipal code enforcement by granting direct remedies to the occupants of substandard or hazardous buildings.

The broadest approach was that taken by H.B. 165. This bill was designed to impose statutory covenants with respect to housing maintenance upon each rental obligation, to provide a remedy of rent withholding and to limit evictions to situations of "just cause."

A proposal less disruptive of traditional landlord-tenant law, and highly imaginative in concept was introduced as H.B. 717 by members of the Legislative Committee to Study Substandard Housing. This bill would authorize: (1) direct enforcement of municipal housing codes by means of tenant-initiated injunctive proceedings (brought in certain urban municipal courts), (2) counterclaims by tenants alleging hazardous conditions in any eviction proceeding as a result of which, although the tenant might be evicted, an order could be issued prohibiting the rental of the unit until code compliance had been achieved; and (3) the deposit of rent by the tenant with certain urban municipal courts until hazardous conditions are corrected.<sup>145</sup>

The feeling of powerlessness is central to the urban condition. Inner-city tenants, and especially those with large families, are not in a position to bargain with the landlord about housing maintenance, term, or rental. There are always others who will accept inferior housing. Municipal enforcement has not been effective. Proposals such as H.B. 717 bear close examination by the legislature. In association with the enactment of incentives for renovation and repair, state action in this area could produce meaningful changes.

#### B. Tax Incentives.

While Ohio's real property taxes are surprisingly low (both in relation to income and on a per capita basis) among the fifty states,<sup>146</sup> nevertheless the promise of reassessment and adjustment in tax bills as

<sup>142</sup> H. B. 698.

<sup>143</sup> H. B. 695.

<sup>144</sup> H. B. 697, H. B. 727.

<sup>145</sup> H. B. 717.

<sup>146</sup> Tax Foundation, Inc., a New York research and education organization, reported that state and local taxes in Ohio in 1967 amounted to \$249.00 for each Ohio resident, or \$82.00 for each \$1,000.00 of personal income. According to the same source, Ohio ranked 39th in per capita tax load. The national average on the percentage of income basis was \$106.00 per thousand, *The Cleveland Plain Dealer*, February 8, 1969, p. 2. *Newsweek* magazine reported that Ohio's 1968 State and local taxes in relation to income were the lowest in the country, 73 *Newsweek*, 65, 66, February 24, 1969.

a result of property improvement stands as a considerable deterrent. This is particularly true in inner-city areas where economic rents are low and inflexible. Most importantly, state subsidies, including tax relief, can make the difference between a federally-assisted housing development which is economically feasible and one which is not.

Three contrasting views were reflected in the tax incentive proposals under consideration: (1) tax "exclusion" equal to the cost of a new "structure" erected or "remodeling" done in designated "rehabilitation areas" for specific periods of five and ten years; (2) tax exemption equal to the reasonable value of labor and materials used to make improvements to substandard properties (in designated "urban redevelopment areas") for such period (up to 20 years) as is necessary to recover such value in taxes abated or, in the case of new construction, tax exemption for such period (up to 20 years) as is necessary to recover in taxes abated, the cost of site clearance, construction of "site improvements" (utilities, grading, etc.) and the reasonable value of improvements removed from the site; and (3) complete tax exemption for all housing rehabilitation and construction (wherever located) which is financed by mortgages assisted by federal or state agencies, for the life of such mortgages, with payments in lieu of taxes to be made to the county auditor.<sup>147</sup>

A bill incorporating the first of these (fixed term "exclusion") passed both houses and will have become law, without the Governor's signature, on December 2, 1969.<sup>148</sup> The bill also contains several highly innovative features including community (private) housing inspections and statutory lease covenants (1) obligating condominium transfers in certain cases and (2) authorizing evictions or revocation of the tax relief at the instance of a "Community Housing Committee" when the property has not been kept in good condition. In refusing to sign the bill, the Governor raised doubts as to its constitutionality.<sup>149</sup> Other doubts have been raised as to the effect of limited term tax exemption or exclusion in attracting sound new investment to deteriorated neighborhoods and the policy of shifting the burden of re-assessment to the condominium purchaser. The innovative features of community involvement may, as a result, become disappointingly ineffective.<sup>150</sup>

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<sup>147</sup> A fourth approach is suggested by the Council of State Governments. This is a tax-rebate, tax-credit device which is offered in relation to family income. See, Property Tax Relief for Low Income Families on file at the offices of the Clev. State L. Rev.

<sup>148</sup> Sub. H. B. 754.

<sup>149</sup> The Cleveland Press, August 29, 1969; at D-1, cols. 1-4. The Governor referred to Article XII, Section 2 of the Ohio Constitution which requires that land and improvements be taxed at a uniform rule according to value. See, e.g., Kroger Co. v. Schneider, 9 Ohio St. 2d 80, 223 N.E. 2d 606 (1967).

<sup>150</sup> The Council on State Governments has recently prepared a legislative proposal for establishing Neighborhood Sub-Units of Government. The Sub-Units would have  
(Continued on next page)

The second approach (fixed amount tax exemption) is that recommended by the Ohio Department of Urban Affairs. It has been criticized as providing too little incentive and because the tax abatement would be limited to designated "urban redevelopment areas."<sup>151</sup>

The third alternative (complete tax exemptions in association with governmental housing programs) is similar to legislation enacted in Michigan in 1968. A bill containing this provision and additional state subsidies for low and moderate income housing attracted wide bipartisan sponsorship and support late in the session.<sup>152</sup> Delay in the Senate Rules Committee precluded action on the proposal in the House until the January 1969 session. Combining, as it does, tax incentives with other forms of subsidy administered by a state housing development authority, this bill would represent a substantial step toward facilitating the construction and rehabilitation of housing for Ohio's low and moderate income families.

## II. Supply of New Housing

Ohio's present and projected housing needs, especially for low and moderate income families, require an active state program directed toward increasing the supply of adequate housing. Among the possible elements of such a program are (1) providing a source of low interest mortgage loans; (2) providing rotating funds to assist non-profit sponsors in implementing projects assisted by the federal housing programs; (3) authorizing additional subsidies (of interest, taxes or rent) where necessary, to facilitate such projects under adverse market conditions; (4) assuring that investments in inner-city properties are not jeopardized by environmental or other limitations affecting the availability of insurance; (5) minimizing disruption in housing as a result of state or Federal highway improvements; (6) adoption of more uniform building code standards and adopting performance standards to encourage technological improvements in the housing industry.<sup>153</sup>

Proposals touching on each of these matters were presented during the opening session of the 108th General Assembly. Six bills in this area

(Continued from preceding page)

limited self-government powers especially in regard to neighborhood improvement. This more comprehensive approach should be carefully considered. "Neighborhood Sub-Units of Government" on file in the office of the Clev. State L. Rev.

<sup>151</sup> Columbus Department of Urban Redevelopment, Review of Proposed State Housing Bill, at 14-15.

<sup>152</sup> S. B. 386.

<sup>153</sup> Two other suggestions made by the Legislative Committee to Study Substandard Housing are of interest here: (1) The establishment of municipal rotary funds for the purchase of property for ultimate redevelopment; and (2) the creation of an "Indemnity Fund" for State reinsurance of private mortgage insurance. While both should be explored, it is doubtful that the Indemnity Fund approach can be made to work effectively in the low and moderate income housing field. The Wisconsin experience should help to evaluate the feasibility of the latter program. Wisc. Stat. 210.20.



were passed by at least one house and five of these bills will be law when the next session convenes in January, 1970.

#### A. Financing low and moderate income housing

The proposal of the Ohio Department of Urban Affairs formed the basis for the Governor's program of non-tax supported revenue bond financing coupled with limited tax abatement. This proposal, given considerable attention when first announced, was not introduced in the form of legislation due to doubts as to the constitutionality of the bond financing scheme.<sup>154</sup> A joint resolution proposing an amendment to the constitution to authorize such financing has been postponed.<sup>155</sup>

The most comprehensive proposed legislation in this area called for creation of a state housing development agency to administer a program of tax exemptions, "seed money" grants to housing sponsors and direct interest subsidies for development and home ownership.<sup>156</sup> With strong bipartisan support, this legislation passed the Senate and will be considered by the House in January. While this proposal does not provide for bond financing and low interest loans, it may readily be amended for that purpose should the requisite constitutional amendment be adopted. Its passage and adequate funding should have the effect of attracting more federal housing funds to Ohio for this important task.

#### B. Relocation

A liberalized program of relocation grants to persons displaced by federal and state highway projects was passed at the strong urging of the Legislative Study Committee on Substandard Housing.<sup>157</sup> On a smaller scale, legislation was passed which makes houses condemned for highway construction available to non-profit housing sponsors for housing low and moderate income families.<sup>158</sup> This new legislation should be of material assistance to urban areas threatened by the disruptive effects of freeway construction.

#### C. Building code standards

The thrust of legislative effort in this area is toward eliminating the "considerable diversity" among local building codes which complicates

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<sup>154</sup> Governor Rhodes in his "State of the State" message on February 5, 1969, said: Extensive research has been conducted by the Department of Urban Affairs in preparation of a housing bill, but there is still the question of the constitutional validity of financing low and middle income housing through the issuance of non-tax supported revenue bonds.

The Governor proposed the adoption of a constitutional amendment authorizing such financing.

<sup>155</sup> S. J. R. 25.

<sup>156</sup> S. B. 386.

<sup>157</sup> H. B. 475.

<sup>158</sup> S. B. 407.

the efficient provision of housing units.<sup>159</sup> Two bills were passed in this important area. Amended substitute House Bill 709 provides for the adoption by the Board of Building Standards of uniform minimum standards and requirements for construction and construction materials, including such standards and requirements for "industrialized units."<sup>160</sup> The bill provides for state testing and evaluation, after which, if approved, such materials or industrialized units may be used anywhere in Ohio. However, by virtue of Amended Substitute House Bill 814, also enacted, the uniformity written into chapter 3781 of the Revised Code by House Bill 709 is severely restricted. Except with respect to "industrialized units or structures," the state code only has the effect of "model provisions" having no force and effect of law with respect to one, two, and three family dwellings. Thus, the legislature has taken two steps forward and one backward in the area of code uniformity. The legislation, as passed, may have a salutary effect on Ohio building standards relating to industrialized units and assist developers in cooperating with new federal efforts, such as "Operation Breakthrough."<sup>161</sup> It seems likely that more effort toward uniformity will be made in this area when the legislature reconvenes.

#### D. Insurance

By virtue of the Urban Property Protection and Reinsurance Act of 1968,<sup>162</sup> carriers adopting a state approved plan (called a F.A.I.R. Plan) can qualify for Federal reinsurance of riot losses. The Ohio F.A.I.R. Plan was adopted by the carriers in October of 1968. States were required by the Federal legislation to adopt statutory procedures relating to the F.A.I.R. Plan and to create a state fund for reimbursement by August 1, 1969. Competing for legislative approval were the contrasting bills proposed by the insurance industry<sup>163</sup> and by the joint legislative Study Committee on Insurance.<sup>164</sup> In the compromise bill adopted,<sup>165</sup> public participation on the governing board of the F.A.I.R. Plan is authorized as is the appointment of an advisory council to review the operation of

<sup>159</sup> See *Substandard Housing*, *supra*, n. 4 at 25-28.

<sup>160</sup> "Industrialized Units" are defined as follows:

"Industrialized Unit" means an assembly of materials or products comprising all or part of a total structure which when constructed is self-sufficient or substantially self-sufficient, and when installed constitutes the structure or part of a structure, except for preparations for its placement.

Ohio Rev. Code, § 3781.10 (effective November 25, 1969).

<sup>161</sup> "Operation Breakthrough" is Secretary Romney's description of the Department of Housing and Urban Development's plan to double the rate of national housing construction.

<sup>162</sup> Pub. L. 90-448, Title XI, Aug. 1, 1968, 82 Stat. 555.

<sup>163</sup> H. B. 755.

<sup>164</sup> H. B. 465.

<sup>165</sup> Am. Sub. H. B. 465.

the plan. A fund created by the issuance of bonds is established to finance the federal reimbursement. The public participation features and a provision requiring binder coverage were incorporated over strong objections from the insurance industry. The Ohio F.A.I.R. Plan under the new statute, should be of assistance in supporting new investment in Ohio's urban areas.

### *III. Housing Availability*

Patterns of racial segregation in housing contribute to over-concentration and the maintenance of slum conditions. The Ohio Fair Housing Law, enacted in 1965, has provided an administrative remedy for persons discriminated against in the sale or leasing of "commercial housing" only.<sup>166</sup> The administrative remedy was found to be ineffective to protect the housing opportunity from transfer during the administrative proceeding. Deficient coverage and the inadequacy of the administrative remedy threatened to nullify the objectives of the act.

The Legislative Committee on Sub-Standard Housing recommended that the act be broadened to cover all Ohio housing and proposed that injunctive relief be made available to the Ohio Civil Rights Commission.<sup>167</sup>

While at least one bill incorporated these and other features in a single bill,<sup>168</sup> the Legislative Committee introduced a bill which would simply broaden the coverage of the act and add additional prohibitions. Through the efforts of House members on the floor, this bill was amended to provide for private relief in state courts along the lines of the Federal Fair Housing Act.<sup>169</sup> The new legislation will become effective November 12, 1969.

The Ohio law now extends coverage beyond the new federal Fair Housing Law and accords private relief in state courts as an alternative to private litigation in Federal courts.<sup>170</sup>

### **Priority for Action**

Ohio's housing problem has been documented for the legislature. Now the state must establish its priorities for assisting governmental and private efforts in the housing field. During the first session of the 108th General Assembly some constructive first steps were taken. The paramount need, however, is financial. Senate Bill 386, which is still pending, provides a flexible vehicle for directing state aid to housing sponsors in

<sup>166</sup> Ohio Rev. Code, § 4112.02(H) (1).

<sup>167</sup> Report of the Committee to Study Substandard Housing reprinted in Substandard Housing, *supra*, n. 4 at 67-8, items 4, 5.

<sup>168</sup> H. B. 815.

<sup>169</sup> Pub. L. 90; 42 U.S.C.A. § 3610.

<sup>170</sup> See, Jones v. Mayer, *supra*, n. 14, Bush v. Kaim, 297 F. Supp. 151 (N.D. Ohio, 1969).

order to “bridge the gap” between existing Federal programs of subsidy and the realities of the market place.

Code enforcement legislation is also badly needed. A high priority should be established for legislation directed toward supplementing existing code enforcement procedures and remedies. H.B. 717, 724, and Receivership proposals such as H.B. 727, should get first attention.

The studies are in, the problem is defined and the time has arrived for effective legislative action in Columbus.