Enterprise Zones: The Redevelopment Sweepstakes Begins

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Whatever form the enterprise zones ultimately take, it is clear that they cannot be just a little *bit enterprising. A half-hearted program with lots of strings and red tape attached will not attract business investors.*

James O'Toole[1]

I. Introduction

THE ENTERPRISE ZONES ARE COMING. The enterprise zones are coming.

The enterprise zone is a locally nominated, federally designated and economically deteriorated urban area into which commercial activity is to be attracted (and jobs thereby created) by means of a partial roll-back of federal and local taxes and elimination of local regulations. Recently enacted into law in Britain,[2] the enterprise zone is the subject of several federal bills[3] (most prominently, one by the Reagan Administration)[4] and state legislation.[5]

1. Professor of Management, University of Southern California, and author of *Making America Work*, from a Los Angeles Times Service column printed in The Honolulu Advertiser, Feb. 16, 1981, at A–10.

2. Local Government, Planning and Land Act, 1980, ch. 65, Schedule 32, § 179 (1980).

3. At least nine. *See* GENERAL ACCOUNTING OFFICE, REPORT TO THE CONGRESS OF THE UNITED STATES: REVITALIZING DISTRESSED AREAS THROUGH ENTERPRISE ZONES: MANY UNCERTAINTIES EXIST BY THE COMPTROLLER GENERAL, at 43, app. I (July 15, 1982).

4. S. 2298, The Enterprise Zone Tax Act of 1982, 97th Cong., 2d Sess., 128 CONG. REC. S2945–52 (1982) (introduced March 23, 1982) [hereinafter cited as S. 2298].

5. Connecticut, Ohio, Virginia and several bills, both pending and defeated, in Illinois, California, Hawaii, Kentucky, Indiana and Pennsylvania. Indeed, one analyst claims to have seen 82 such bills. Statement of Edgar E. Vash, Legislative

Rarely has the federal government had the dubious benefit of so much advice on a modest piece of proposed legislation that fails to provide a single direct dollar of federal aid. For a bill (or series of bills) that has yet to come up for a vote before either the House or the Senate, the attention lavished upon this legislation is a trifle overwhelming. There have been publications,[6] papers,[7] conferences[8] and hearings[9] galore for the past two years. State and local governments have been "positioning" themselves for the past two years in an attempt to be ready for the day when enterprise zones will be a federal reality. Not since the ill-fated National Land Use Policy Act[10] in the early 1970s has a bill stirred up so much preparatory activity.

It is tempting to note at the outset that this undue notice may in part result from the dearth of federal urban initiatives these days.[11] While the enterprise zone concept is not much, it is just about the

Analyst, American Legislative Exchange Council, Washington, D.C., in *Enterprise Zones: The Concept, Part II: Hearings Before the Subcommittee on Monetary and Fiscal Policy of the Joint Economic Comm.*, 97th Cong., 1st Sess., 43–45 (1982).

6. S. BUTLER, ENTERPRISE ZONES: GREENLINING THE INNER CITIES (1981); S. BUTLER, ENTERPRISE ZONES: PIONEERING IN THE INNER CITY (1980); G. STERNLIEB & D. LISTOKIN, NEW TOOLS FOR ECONOMIC DEVELOPMENT: THE ENTERPRISE ZONE, DEVELOPMENT BANK AND RFC (1981); Taylor, *The Politics of Enterprise Zones*, 59 PUB. AD. 421 (1981); Lloyd, *Enterprise Zones: The American Experience*, EST. GAZETTE, Feb. 27, 1982, at 745–6; Myers, *Urban Enterprise Zones: UDAG Revisited?*, HISTORIC PRESERVATION, Nov.–Dec. 1981, at 12; *Enterprise Zones: Tool of Urban Revitalization*, 4 TRANSATLANTIC PERSP. 2 (1981); Stanfield, *The Administration May Be Overselling Its Plans for Urban Enterprise Zones*, NAT'L J., Jan. 23, 1982, at 153; G. Longhini, Enterprise Zones, 81–5 (PAS Memo, May 1981); *Urban Enterprise Zones: Answer to Inner City Blues?*, REAL EST. TODAY 18 (August 1982).

7. D. Callies, Enterprise Zones: British Experience Applicable to U.S. Proposals (paper presented at the National Conference of the American Planning Association, Dallas, Texas, May 12, 1982); Callies, Enterprise Zones: The Redevelopment Sweepstakes, (paper presented at the International Urban Enterprise Seminar, Swansea, Wales, Sept. 17, 1982).

8. *E.g.*, Enterprise Zone Workshop (ABA Section of Urban, State & Local Government Law, May 4, 1982, Washington, D.C.); Gearing up for Enterprise Zones (Georgetown University Law Center, June 14, 1982, Washington, D.C.).

9. *E.g., Hearings on H.R. 3824 (Kemp-Garcia Bill) Before the Subcommittee on Economic Stabilization of the House Committee on Banking, Finance and Urban Affairs*, 97th Cong., 1st Sess. (1981); *Hearings on the Enterprise Zones: The Concept, Before the Subcommittee on Monetary and Fiscal Policy of the Joint Economic Committee*, 97th Cong., 2d Sess. (Oct. 23, 1981, and January 1982).

10. *E.g.*, H.R. 10294, 93rd Cong., 2d Sess. (1974); H.R. 4332, 92nd Cong., 1st Sess. (1971); *see* F. BOSSELMAN & D. CALLIES, THE QUIET REVOLUTION IN LAND USE CONTROLS (1972).

11. For the administration's urban policy, see U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, THE PRESIDENT'S NATIONAL URBAN POLICY REPORT (August, 1982).

only game in town. Although complicated in its present form, some of its most critical incentives are too modest by half to excite the commercial ventures it is designed to attract.

What follows is a brief history of the enterprise zone concept, a description of the Administration bill creating the zones, as compared with its immediate predecessor (the Kemp-Garcia Bill), a summary of local and state legislative counterparts, a comparison to the British legislation and experience upon which the U.S. program is roughly modeled, and some critical comment upon the goals and likely success of the U.S. program as it appears to be emerging from Congress.

II. The Enterprise Zone: A Brief Historical Perspective

A tax- and regulation-free commercial zone is not a novel concept. Variations of such "free-trade" zones exist in many parts of the world, especially in Asia, where some form of such zones has been created in Hong Kong, Singapore and Korea.[12] Indeed, it was Hong Kong's example that gave birth to the enterprise zone in Britain, from whence we took it.

The British enterprise zone is a product of the fertile mind of Peter Hall, one of Britain's most thoughtful and prolific[13] urban planners, and until recently, an avid development regulation advocate. Asked to provide solutions to the decline of larger, older cities at a 1977 Royal Town Planning Institute Conference,[14] Hall proposed the creation of freeports in small selected areas of cities which would be open to "all kinds of initiative, with minimal governmental interference or control."[15] Hall later broached the subject to Geoffrey Howe (later Chancellor of the Exchequer in Britain's present Conservative government), and in 1978 Howe espoused the concept in a speech on the problem of blighted neighborhoods in London's depressed Docklands area.[16] Coining the phrase "enterprise zones," he suggested the designation of

12. Hall, *Enterprise Zones: British Origins, American Adaptations*, 7 BUILT ENV'T 5, 5–6 (1981).

13. *E.g.*, P. HALL, THE CONTAINMENT OF URBAN ENGLAND; P. HALL, ENGLAND 2000.

14. Hall, *supra* note 12, at 5.

15. *Id.* at 6.

16. June 20, 1978, before the Bow Group (an intellectual society associated with the Conservative Party) in the Isle of Dogs.

areas in economically deteriorated areas in which taxation should be reduced and regulation cut—everything possible to maximize economic freedom.[17] The concept became a major plank in the Conservative Party's national platform. However, a much scaled-down version,[18] virtually disowned by Hall, was finally codified in the Local Government Planning and Land Act of 1980.[19]

Meanwhile, the same concept was brought to the attention of the United States by the Heritage Foundation in a report of both the Hall and Howe proposals in 1979.[20] Shortly thereafter, a series of bills embodying the concept emerged in several state legislatures,[21] and by 1980 the Urban Jobs and Enterprise Zone Act,[22] sponsored by Congressman Jack Kemp and Robert Garcia, was introduced into Congress. In March of 1982, the Administration introduced its own bill, the Enterprise Zone Tax Act of 1982.[23] It is to these bills, the principal proposed enterprise zone legislation at the national level, to which we now turn before returning to the state and local initiatives developed in response to this proposed federal program.

III. The Enterprise Zone Tax Act of 1982[24]

The Administration's enterprise zone program is largely modeled on the forerunning Kemp-Garcia Bill, now the Urban Jobs and Enterprise Zone Act of 1981.[25] Presumably, parts of each bill will make up whatever legislation finally emerges. Each bill provides

17. S. BUTLER, ENTERPRISE ZONES: GREENLINING THE INNER CITIES, *supra* note 6, at 2.

18. Butler, *'Supply Side' in the Inner City: Enterprise Zones in America*, 7 BUILT ENV'T 42 (1981).

19. Local Government, Planning and Land Act, *supra* note 2.

20. S. BUTLER, ENTERPRISE ZONES: A SOLUTION TO URBAN CRISIS? (The Heritage Found., 1979).

21. S. BUTLER, ENTERPRISE ZONES: GREENLINING THE INNER CITIES, *supra* note 6.

22. Kemp originally introduced the enterprise zone concept in H.R. 7240 which was subsequently revised and introduced one month later as H.R. 7563, 96th Cong., 2d Sess. (1980).

23. S. 2298, 97th Cong., 2d Sess., 128 CONG. REC. S2945 (1982).

24. S. 2298 § 1(b) (1982).

25. H.R. 3824, 97th Cong., 1st Sess., introduced in identical form in Senate as S. 1310, 127 CONG. REC. S5837–41 (1981) [hereinafter cited as H.R. 3824]. E. S. Savas, Assistant Secretary for Policy and Research at HUD, reports that Kemp-Garcia has wholly given way to the Administration proposal, but at this writing there is no firm indication of what will emerge from the legislative process. Conference with E. S. Savas, in Swansea, Wales (Sept. 17, 1982).

criteria for zone designation, federal incentives for business to relocate there, and expected state or local counterpart incentives and commitments. What follows is a comparison of the bills in these categories.

A. *Designation of the Enterprise Zone: A Contest to See Who Can Give Up the Most?*

1. DEFINITION AND PROCEDURE

Both bills define an enterprise zone as an area within the United States or its possessions which has been nominated or designated as a zone by the local or state government and has been approved as a zone by the Secretary of Housing and Urban Development.[26] However, the bills take a different (and potentially insignificant) approach to the designation itself. The Administration bill requires both the state and local government to *nominate* an area for zone designation, after which the Secretary of the Department of Housing and Urban Development (hereinafter referred to as "Secretary") decides whether to select that area as an enterprise zone.[27] The Kemp-Garcia Bill requires the local or state government to *designate* an area as an enterprise zone, then seek approval from the Secretary for that designation.[28] Moreover, while the Administration bill allows *either* the state or local government to *nominate* an area, *both* must confirm that nomination. Finally, the state and local government together must make commitments to a course of action for the area nominated, as set out below.[29]

The Kemp-Garcia Bill, on the other hand, places greater emphasis on local government involvement in zone designation and implementation. The state government *need* not be involved in either.[30]

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26. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(1)(B); H.R. 3824 § 101(a) (amending I.R.C. § 7871(a)(1)(A)).

27. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(1).

28. H.R. 3824 § 101(a) (amending I.R.C. § 7871(a)(1)).

29. The Administration bill also provides for nomination of an area on an Indian reservation. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(3)).

30. The state government need not be involved in either designation, or program implementation, although the state can elect to be involved by designating an area on behalf and *with the consent* of the local government. H.R. 3824 § 101(a) (amending I.R.C. § 7871(a)(1)(C)). The bill also provides the chief executive officer of the state or possession in which the proposed zone is located the option of filing an objection with the Secretary within 21 days from the date of the local government's application for designation. H.R. 3824 § 101(a) (amending I.R.C. § 7871(a)(3)).

Both bills require that:

a) The Secretary consult with officials of other departments prior to designation of an area.[31]
b) The application for zone designation be submitted in such manner and form and contain such information as the Secretary prescribes by regulation.[32]
c) The information given in the application be reasonably accurate.[33]
d) The area nominated or designated not include an area already approved as an enterprise zone.[34]
e) The governments making the nomination or designation have the legal authority to make "commitments" to the program.[35]

The Administration bill further requires certain regulations to be published by the Secretary after consulting with the secretaries and administrators mentioned above. They are:

a) the procedures for nomination,
b) the parameters relating to the size and population characteristics of an enterprise zone,
c) other standards which a nominated area must meet to be designated as an enterprise zone, and
d) the manner in which nominated areas will be compared

31. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(1)(B)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(a)(1)(A)). Both bills require the Secretary to consult with the Secretaries of Commerce, Labor and the Treasury and the Administrator of the Small Business Administration. In addition, the Administration bill requires consultation with Secretary of Agriculture, the Director of the Office of Management and Budget, and, in the case of an enterprise zone on an Indian reservation, the Secretary of the Interior.

32. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(1)(D)(ii)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(a)(2)(A)).

33. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(1)(D)(iii); H.R. 3824 § 101(a) (amending I.R.C. § 7871(c)(4)).

34. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(1)(D)(iv)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(a)(2)(B)). The Administration bill does not allow areas nominated as an enterprise zone to be part of another nominated zone. The Kemp-Garcia Bill seems to allow this overlapping of areas not already approved as zones.

35. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(1)(D)(i)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(a)(1)(B)). The Administration bill requires the nominating government to have statutory authority not only to make commitments to the program, but to nominate the area for zone designation. The Kemp-Garcia Bill does not require the government to have statutory authority to designate a zone. The drafters of the Kemp-Garcia Bill may have omitted the language in the Administration bill assuming only the government with statutory authority would designate a zone.

based on the criteria (local and state commitments) and the other factors (priorities for designation) specified.[36]

2. TIME LIMITATIONS ON DESIGNATION

The Administration bill allows the Secretary to designate enterprise zones from the effective date of the regulations (not later than January 1, 1983) until thirty-six calendar months from that date.[37] The Kemp-Garcia Bill allows a longer period of time: from the date of enactment until December 31, 1996.[38]

The Administration bill allows the Secretary to designate no more than twenty-five zones within a twelve month period from the date of enactment.[39] Up to seventy-five zones could be designated over the three year period contemplated by the bill. The Kemp-Garcia Bill authorizes the Secretary to designate a minimum of ten and a maximum of twenty-five zones during each of the three calendar years following the calendar year in which the date of enactment occurs.[40] A minimum of thirty and a maximum of seventy-five zones could be designated during the initial three years.

Under the Administration bill, an enterprise zone would exist from the date of designation until the earlier of:

a) December 31 of the twenty-fourth year after the designation date,
b) date designated by the approving state and local government as in their nomination application, or
c) date of revocation.[41]

Thus, if the bill were enacted by 1983, an enterprise zone could exist until 2007.

The Kemp-Garcia Bill provides for enterprise zones to last from the date of designation until December 31, 2001, unless the designation is revoked.[42] Both bills authorize the Secretary to revoke a designation after consulting with the officials described earlier, if the state and local governments have failed to comply substantially with their "commitments" to the program.[43]

36. S. 2298 §101(a) (amending I.R.C. § 7871(a)(2)(A)). The Kemp-Garcia Bill does not have a comparable provision.
37. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(2)(B)).
38. H.R. 3824 § 101(a) (amending I.R.C. § 7871(e)(1)).
39. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(2)(C)).
40. H.R. 3824 § 101(a) (amending I.R.C. § 7871(e)(2)).
41. S. 2298 § 101(a) (amending I.R.C. § 7871(b)(1)).
42. H.R. 3824 § 101(a) (amending I.R.C. § 7871(b)(1)).
43. S. 2298 § 101(a) (amending I.R.C. § 7871(b)(2)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(b)(2)).

3. AREA AND "CHARACTER" CRITERIA: OF SIZE, LOCATION AND ECONOMIC DECLINE

Both bills require certain area and character requirements as follows:

a) The area must be within the jurisdiction of the nominating or designating government.[44]

b) The area must have a population of at least 4,000 if any portion of that area is located within a standard metropolitan statistical area (SMSA) with a population of 50,000 or greater, or a population of at least 2,500 if not in a SMSA, or is entirely within an Indian reservation.[45]

c) The area must be located wholly within an area which meets the requirements for federal assistance under section 119 of the Housing and Community Development Act of 1974.[46] This refers to the criteria for eligibility for Urban Development Action Grants (UDAG). The Administration bill includes the words "as in effect on the date of enactment." The Kemp-Garcia bill does not. Presumably, under the Administration bill the minimum standards for UDAG on the date of the Administration bill's enactment probably will be the standard used to determine eligibility for zone designation. This approach follows for greater certainty since the minimum standards for UDAG often change yearly.

d) The boundary of the area must be continuous.[47] The Kemp-Garcia Bill requires, if feasible, that the area include proximately located vacant or underutilized lands or buildings which are conveniently accessible to residents of the area.

e) The area must be one of pervasive poverty, unemployment and general distress. The bills differ in their criteria to determine poverty, unemployment and distress, although they both require a finding of at least *one* of the following:[48]

44. S. 2298 § 101(a) (amending I.R.C. § 7871(c)(1)(A)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(c)(1)(A)).

45. S. 2298 § 101(a) (amending I.R.C. § 7871(c)(1)(C)); H.R. 3824 §101(a) (amending I.R.C. § 7871(c)(1)(C)). This requirement allows rural areas to be designated as enterprise zones. It has also been criticized as excluding certain depopulated inner city areas. Soloman, *Enterprise Zones, Tax Incentives and the Revitalization of Inner Cities: A Study of Supply Side Policy-Making*, 3 DET. C.L. REV. 797, 823 (1981).

46. S. 2298 § 101(a) (amending I.R.C. § 7871(c)(2)(B)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(c)(2)(B)).

47. S. 2298 § 101(a) (amending I.R.C. § 7871(c)(1)(B)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(c)(1)(B)).

48. S. 2298 § 101(a) (amending I.R.C. § 7871(c)(3)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(c)(3)).

i) *Unemployment.*[49] The Administration bill requires the area to have an annual average unemployment rate of at least one and one-half times the national average for that period based on the most recently available data from the Bureau of Labor Statistics. The Kemp-Garcia Bill requires the average rate of unemployment for the area for the most recent eighteen-month period for which data is available to be at least one and one-half times the national average rate of unemployment for that eighteen-month period.

ii) *Poverty.*[50] The Administration bill requires the area to have a poverty rate of 20 percent or more for each census tract, minor civil division or census county division as determined by the most recently available census data. The Kemp-Garcia Bill requires the area to be a low-income poverty area as determined by the Bureau of the Census during its most recent census.

iii) *Pocket of Poverty.*[51] Both bills require the area to have at least 70 percent of the households living in the area to have incomes below 80 percent of the median income of households of the local government as determined in the same manner as in UDAG "pocket of poverty" eligibility criteria.

iv) *Population Decrease.*[52] The Administration bill requires a population decrease of at least 20 percent between 1970 and 1980 as derived from census data for the area. The Kemp-Garcia Bill requires only a population decrease of 10 percent between 1970 and 1980, but the government requesting approval for zone designation must show to the satisfaction of the Secretary that: (a) chronic abandonment or demolition of commercial or residential

49. S. 2298 § 101(a) (amending I.R.C. § 7871(c)(3)(A)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(c)(3)(A)).

50. S. 2298 § 101(a) (amending I.R.C. § 7871(c)(3)(B)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(c)(3)(B)). The methods for determining unemployment and poverty have been criticized as not reflecting the true characteristics of an area because accurate statistics are often not available for smaller cities and census data from the early 1980s should not be relied on to make decisions in the late 1980s. Soloman, *supra* note 45, at 825. The 1980 census also provides only a snapshot view of an area and does not show the evolving patterns of unemployment, poverty and distress for that area. *Id.*

51. S. 2298 § 101(a) (amending I.R.C. § 7871(c)(3)(C)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(c)(3)(C)).

52. S. 2298 § 101(a) (amending I.R.C. § 7871(c)(3)(D)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(c)(3)(D)).

structures exists in the area, *or* (b) substantial tax arrearages of commercial or residential structures exist in the area. The Kemp-Garcia Bill seems to provide a more accurate method to determine whether an area is underutilized since in poor areas outmigration may not be feasible, yet conditions may be deteriorating and an enterprise zone designation may be needed.

4. PRIORITIES FOR SELECTION

Both bills outline factors to which the Secretary will give preference in the selection process. Both bills also regard the quality of local or state contributions in the course of action as important. In the selection process, the Kemp-Garcia Bill emphasizes the poverty, unemployment and general distress of the area, while the Administration bill emphasizes effective guarantees for local contributions and minimization of tax losses.[53] The Kemp-Garcia Bill states that the Secretary shall give preferences to:

a) areas with the highest levels of poverty, unemployment and general distress. (The Administration bill will give preference to areas with high levels of economic distress and with long-term unemployed residents who would be able to receive jobs in the zone.);
b) areas with respect to which the government seeking or approving the designation has made (or will make) the greatest effort to examine and remove impediments to job creation, taking into account the resources available to such governments to make such efforts;
c) areas which have the widest support from the government seeking designation, the community, residents, local businesses and private organizations, especially in meeting the local commitments described in the course of action. (This preference is similar to one listed in the Administration bill.);
d) areas with respect to which the government of the state or possession in which the area is located has made commitments similar to the local commitments described in the course of action. (As discussed, unlike the Administration bill, the Kemp-Garcia Bill does not require the state government to make any commitments to a course of action if the state is not seeking the zone designation.)[54]

53. S. 2298 § 101(a) (amending I.R.C. § 7871(e)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(f)).
54. H.R. 3824 § 101(a) (amending I.R.C. § 7871(f)).

In addition, the Administration bill will give preference to state and local governments which can provide guarantees that they will fulfill their commitments to the program and to areas where the zone would be likely to succeed, thus minimizing tax losses to the federal government. The Administration bill offers the Secretary greater flexibility in selecting an area due to the Secretary's role in promulgating regulations regarding priorities for selection.[55] This is probably desirable because an area with the highest level of distress and initial local support may not be an area which would benefit most from zone designation.

5. DEFINITIONS AND OTHER PROVISIONS

Both bills provide that if more than one government seeks to nominate or designate an area as an enterprise zone, any reference to, or requirement of this section would apply to all such governments.[56] Unlike the Kemp-Garcia Bill, the Administration bill defines "state"[57] and "local government."[58]

Both bills have a subchapter entitled "Interactions with Other Federal Programs," which states that any reduction of taxes under any required program of local commitment under section 7871(d) of the Internal Revenue Code of 1954 will be disregarded in determining the eligibility of a state or local government for, or the amount or extent of, any assistance or benefits under any law of the United States.[59]

The Kemp-Garcia Bill and the Administration bill require that the Secretary: (1) coordinate all programs under his juridiction which are carried on within an enterprise zone; (2) expedite to the greatest extent possible the consideration of application for programs described above by consolidation of forms or otherwise; and (3) provide, whenever possible, for the consolidation of periodic reports required under programs referred to above into one sum-

55. S. 2298 § 101(a) (amending I.R.C. § 7871(a)(2)(A)(iv)).

56. S. 2298 § 101(a) (amending I.R.C. § 7871(f)(1)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(g)(2)).

57. The Administration bill states that the term "state" shall include the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and the possessions of the United States. S. 2298 § 101(a) (amending I.R.C. § 7871(f)(2).

58. The term "local government" includes the city, town, township, parish, village or other form of municipal government when the nominated zone is within an incorporated area, and the county government when the nominated zone is within an unincorporated area. S. 2298 § 101(a) (amending I.R.C. § 7871(f)(3)). Arguably no unincorporated area can be included because to be UDAG eligible, the area must fit into the definition of a municipality.

59. S. 2298 § 102(a); H.R. 3824 § 102(b).

mary report submitted at such intervals as may be designated by the Secretary.[60] The Kemp-Garcia Bill lists more specifically the coordination of all federal housing, community and economic development, banking, financial assistance and employment training programs which are carried on within an enterprise zone.

The Administration bill further provides that an enterprise zone does not constitute a federal or federally assisted program or project as those terms are used in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.[61] Therefore, no person displaced from real property located in a designated enterprise zone would have any rights or be entitled to any benefits pursuant to that act as a result of the zone designation.[62] The Kemp-Garcia Bill has no such provision, but based on prior cases, the Uniform Relocation Act probably has no application where a person is displaced as the result of designation.[63]

B. *State/Local "Commitment"*

Nothing in the enterprise zone package will affect state and local governments so much as the "commitments" which the two bills will require as factors to be weighed in deciding who shall win the designation sweepstakes. Persuaded early on that the federal government probably lacks authority to *directly* require a host of tax and land use regulatory relief,[64] the bills both contain relatively mild and general requirements, as described below. However, the

60. S. 2298 § 303; H.R. 3824 § 102.

61. 42 U.S.C. § 4601 (1976).

62. S. 2298 § 102(b).

63. Moorer v. HUD, 561 F.2d 175 (8th Cir. 1977); Parlane Sportswear Co. v. Weinberger, 513 F.2d 835 (1st Cir. 1975). In *Moorer*, the court held that where property for a housing rehabilitation program was acquired through private negotiations and not through powers of eminent domain, persons displaced by the project were not eligible for Uniform Relocation Act (URA) assistance. In *Parlane*, a university was awarded a HEW grant to establish a cancer center. The tenant displaced by the project was found to be ineligible for URA assistance because the displacement was the result of acquisition by a private entity assisted with federal funds. *See also* Austin v. Andrus, 638 F.2d 113 (9th Cir. 1981) (URA is not applicable in the absence of a written order to vacate by a federal agency or state agency receiving federal financial assistance). Thus, a fortiori, persons displaced by enterprise zoning would not be eligible for URA assistance.

64. Dubious, even after National League of Cities v. Usery, 426 U.S. 833 (1976), which slowed the federal regulatory express. See, for example, Texas Landowners Rights Assoc. v. Harris, 453 F. Supp. 1025 (D.D.C. 1978), for the proposition that federal agencies can require virtually anything they want as conditions to federal grants on the theory that states and local governments always have the option of declining the proferred funds.

Administration has spelled out in considerable detail what it will consider in judging the sweepstakes (and therefore require of its applicants) in a detailed explanatory paper issued by the Department of Housing and Urban Development[65] which reads very much like an outline for the regulations to follow enactment. It is an analysis of this statement which forms the bulk of this critical section on state and local commitment.

1. THE BILLS SUMMARIZED

The course of action described by both bills may be implemented by governmental and nongovernmental entities, may be funded from proceeds of any federal program and may include, but is not limited to, the following:

a) a reduction of tax rates or fees;
b) an increase in the level or efficiency of local services (the Administration bill emphasized experimentation with providing such services by nongovernmental entities);
c) a streamlining or simplification of governmental regulations (the Administration bill refers to reducing, removing, simplifying or streamlining governmental requirements while the Kemp-Garcia Bill more specifically calls for simplification and streamlining of governmental requirements on employers and employees); and/or
d) a commitment from private entities in the area to provide jobs and job training for and technical, financial or other assistance to employees and residents of the area (the Administration bill emphasizes involvement of the neighborhood associations and community groups in providing such assistance. That bill also includes employers as beneficiaries of the assistance provided by private entities).[66]

Both bills also require state and local governments to make commitments to a course of action designed to reduce the various burdens borne by employees and employers in the area. The Administration bill specifically requires both the state and local governments to make such commitments.[67] The Kemp-Garcia Bill requires only the government seeking designation to make the

65. The Administration's Enterprise Zone Proposal (March 1982) (mimeographed paper released with S. 2298 by the Department of Housing and Urban Development) [hereinafter cited as Proposal].

66. S. 2298 § 101(a) (amending I.R.C. § 7871(d)(2)); H.R. 3824 § 101(a) (amending I.R.C. § 7871(d)(2)).

67. S. 2298 § 101(a) (amending I.R.C. § 7871(d)(1)).

commitments to the course of action.[68] Thus, in some instances under the Kemp-Garcia proposal, the state government may not be involved.

2. THE ADMINISTRATION CONCEPT OF STATE AND LOCAL "CONTRIBUTIONS"

The importance which the Administration attaches to the state or local commitment to regulatory and fiscal "streamlining" and relief cannot be overestimated:

> The contributions to each zone by the state and local governments will probably make the difference in whether a zone succeeds or fails. There is a great deal the state and local governments can do, consistent with the Enterprise Zone philosophy, to enhance the likely success of the zones. Enterprise Zones do not represent merely a Federal initiative, but an effort by all levels of government to remove from the zones their nonessential impediments to economic activity.
>
> Businessmen in particular have emphasized the value of the possible contributions to the zones at the state and local levels. Tax relief at these levels has been even more heavily emphasized. Businessmen have even suggested that state and local regulatory relief is far more important than Federal regulatory relief. The business community has also sought relief from inadequate, monopolized, local public services.[69]

Local and state regulatory schemes come in for particularly harsh criticism in the HUD paper:

> As noted earlier, businessmen have emphasized the value of state and local regulatory relief to be contributed to the zones. Moreover, such regulatory relief will cost the state and local governments nothing. Such relief should, therefore, be a central element of any state and local incentive package. There is an almost endless array of state and local regulations which could be relaxed or eliminated within Enterprise Zones. A few are discussed below.[70]

Particularly singled out are traditional local regulations on the use of land:

> *Zoning Laws.* One web of entangling regulations which stifle economic activity stems from zoning laws. By restricting the uses

68. H.R. 3824 § 101(a) (amending I.R.C. § 7871(d)(1)).
69. Proposal, *supra* note 65, at 16.
70. *Id.* at 17.

to which property can be put, these laws often prevent businesses and other property owners from devoting their property to its most productive use. Many potential entrepreneurs may be prevented from going into business altogether because of restrictions on property they own or on other available property. The result is not only reduced property values, but inefficiency and misallocation of resources.

Moreover, within an Enterprise Zone, where substantial new but unknown economic activity is expected, the area should be opened up to a broad range of potential activities. Prejudging these activities by restrictive zoning regulations might forestall the potential boom altogether.

Building Codes. Yet another web of local regulations stem from building codes. These regulations, though well-intended, often impose heavy, unnecessary costs on businesses and developers, thwarting economic activity. The regulations in many cases are poorly suited to the particular circumstances of businesses or developers, who could achieve the same result through a cheaper, alternative method. The codes are also often outdated, requiring the use of outmoded and unnecessarily costly methods. Featherbedding requirements are also often included in the codes, again unnecessarily increasing costs. Purging the codes of these drawbacks would be a beneficial contribution to Enterprise Zones. Another alternative is to impose liability on builders for defects in their buildings and require them to have insurance. Since the insurance company would have to pay for any defects, it would not issue insurance for unsafe buildings. Yet competition would force it to maintain the flexibility to adapt to the conditions of each builder and avoid the imposition of unnecessary costs.[71]

Central planning authorities come in for similar criticism:

Urban communities are often under the jurisdiction of state and local boards, commissions, authorities or other entities which have the power to issue various economic development plans or planning regulations. These regulations restrict the range of economic activites which can occur in these areas and foreclose business opportunities. They run counter to the effort to create an open-market environment, which underlies the Enterprise Zone program. Removing the Enterprise Zone area from the

71. *Id.* at 17, 19.

jurisdiction of these entities would be a valuable state and local contribution to the program.[72]

Other regulatory regimes which HUD would like lifted include occupational licensure laws,[73] usury laws,[74] and price controls.[75] Yet to cut through the regulatory maze, HUD appears to propose yet another local agency—the general deregulatory authority:

> To reach many of the other state and local regulations which could be relaxed within Enterprise Zones, a general deregulatory authority could be created analogous to the federal deregulatory authority. Each state and local regulatory body could be given discretionary authority to relax or eliminate its regulations within Enterprise Zones, to be exercised in accordance with legislatively mandated standards. These standards would instruct each body to weigh the need for job creation and economic revitalization within the zone areas against other impor-

72. *Id.* at 18.

73. Occupational Licensure Laws. These laws prohibit individuals from engaging in certain occupations unless they have a license from the government. These occupations include not only highly technical professions, such as law and medicine, but also a broad spectrum of other endeavors.

While such restrictions on technical and critical services may seem justified, these restrictions are often extended unnecessarily into other areas merely to restrict competition. Reducing the supply of providers in this way increases costs to consumers and unfairly raises the returns to established individuals in the field. It restricts the supply of jobs and reduces employment opportunities. These laws are particularly harsh on the poor and unemployed, who are thereby prevented from entering many established occupations. In an enterprise zone, which is supposed to represent an area of unfettered opportunity, such laws should be revised or abolished where they impose unnecessary burdens on certain occupations. *Id.* at 19.

74. Usury Laws. A similar restriction is the state and local limit on the interest which can be charged on loans. To the extent that such controls hold interest below market rates, they cause a shortage of credit by increasing the demand and reducing the supply. This shortage, however, may be felt only by the riskiest borrowers who would be charged the highest rates. An interest ceiling that kept the maximum rates below those that would otherwise be charged to these borrowers would in effect foreclose them from the credit market altogether. This can only make such borrowers worse off since they simply lose the opportunity to decide whether they want to borrow at the available rates.

Many of the riskiest borrowers may be small entrepreneurs. The effect of interest rate controls, then, is to prevent these entrepreneurs from obtaining the necessary capital to start their businesses. The elimination of usury laws within enterprise zones would increase the supply of capital to such zones and better enable entrepreneurs to obtain start-up capital. *Id.*

75. Price Controls. All forms of price controls have sharply negative effects on economic activity and efficiency. Such controls inevitably cause shortages by increasing demand while reducing supply. Controls on the price of the product or service of a potential new business will surely tend to discourage that business from ever starting in the first place. These controls should, therefore, also be primary targets for relaxation within the zones. *Id.*

tant public policy considerations, and relax or eliminate its regulations within the zones when appropriate. Regulations relating to such areas as public health, safety and civil rights should be exempted for this authority.

This would allow state and local governments to expand the regulatory relief within the zones over time, avoiding the need to catalogue every potential regulation to be affected from the beginning. It would also allow these governments to experiment with different combinations of regulatory relief within different zones, and to change these combinations over time.[76]

It is particularly troubling to see HUD espousing such a simplistic view of regulatory reform generally, and land use controls in particular. The statement that the relaxation of such regulations "costs nothing" is patently absurd. The implementation of land use plans through zoning clearly governs the form and intensity of development.[77] In commercial and industrial zones, what is built directly determines what level of service—roads, water, sewer, etc.—will need to be provided, and while some of these costs can and are passed on to the private developer, much continues to be borne by local government.[78] In an era when the federal government seems determined to cast state and local governments back upon their own resources,[79] not only in the provision of services to the poor but in the provision of such formerly primarily federally funded infrastructure and public service improvements as wastewater treatment plants, highways and rapid transit systems, it is duplicitous to pretend there will be no costs to the relaxation of land use controls as suggested by HUD.

The "no-cost" factor is particularly disappointing since HUD immediately calls for vastly improved *local* services as one of its sine qua nons for the enterprise zone competition:

Improved Local Services. One of the most important deterrents to economic activity in distressed urban areas is inadequate or overly expensive municipal services. The inadequacy of these services may increase the cost of doing business in these areas, as businesses must do without or pay extra for supplemental services. Increased costs may also result from unnecessarily high taxes to pay for inefficient services. Inadequacy of these services

76. *Id.* at 20.
77. *See* Mandelker, *The Role of the Comprehensive Plan in Land Use Regulation*, 74 MICH. L. REV. 899 (1975).
78. THE PRESIDENT'S NATIONAL URBAN POLICY REPORT, *supra* note 11.
79. *Id.*

may further reduce the returns to businesses in the area by reducing their appeal to consumers. The inadequacy of some services, such as crime protection, may make it simply impossible to do business in a potential Enterprise Zone area at all. In such cases, it is essential that some action be taken to remedy the problem if an Enterprise Zone is to be approved for the area.

Inadequate community services could be improved by the more traditional means of increasing the resources devoted to their provision. Increasing police patrols, providing additional funding for infrastructure maintenance, purchasing modern equipment, etc. could help to ameliorate the problem. The devotion of such increased resources to Enterprise Zones would be a favorable factor in the federal designation competition.[80]

Of course, it is the local governments that are expected to pay for such services but primarily by means of contracting out to private firms, *to avoid municipal monopolies*:[81]

But even greater improvements are likely to result from shifting reliance for the provision of these services to private sector firms and institutions, where feasible. One means of doing so is for local governments to contract with private firms to provide services formerly provided by municipal agencies. The contracts could be granted on a competitive basis to the private firm or institution which offered the best price and quality of service. A contract could cover the entire Enterprise Zone area, or only certain neighborhoods within the zone. The contracts could come up for renewal periodically so that the chosen contractor would be subject to continuing competitive pressures. This means of providing services is known as "contracting out," or "privatization."

A major advantage of this approach is that government monopoly is replaced by market competition. Consequently, incentives will operate to keep costs down and quality up. A government monopoly need not worry about costs or quality. If its customers think costs are too high or quality insufficient, they still must continue to pay through taxes and cannot take their business elsewhere. A private firm competing for contracts, by contrast, must keep costs as low as possible and quality as high as possible to attract the needed customers to stay in business. Such firms must innovate and maintain efficient practices. As a result,

80. Proposal, *supra* note 65, at 20.
81. *Id.*

through private contracting incentives are utilized to achieve better overall service.

Moreover, private firms can often achieve economies of specialization and scale not available to local governments. *Competition also lessens the opportunity for corruption which often pervades entrenched government monopolies.*[82]

To solve the problem of delivery where the private sector cannot provide the services—for a fee, of course—HUD continues its touching faith in, and reliance upon, "the neighborhood organization" (or, citizen participation redux):

Another means of utilizing alternative, private-sector providers is through associations or organizations of neighborhood residents, businesses or merchants. These associations could contract directly with private firms for the provision of services to their neighborhood areas, or they could provide such services themselves through self-help efforts. Once the provision of a service had been satisfactorily arranged through these means, the community could then cease serving the neighborhood area.

* * *

Local associations of residents are particularly well-suited to perform many municipal services on a self-help basis. Examples include day-care centers, care for the elderly, welfare services and crime-watch patrols. Because local residents have a more intimate knowledge of their neighbors' needs, circumstances and abilities, these self-help efforts are particularly likely to be effective. Whether provided on a self-help or contracting out basis, however, utilizing alternative, private-sector, service providers through neighborhood associations should otherwise generally result in the same benefits as direct contracting out by the municipality as discussed above.[83]

To do so, HUD suggests yet another round of neighborhood organizations[84] (having apparently failed to learn a lesson from previous housing programs concerning excess citizen participation):

Another possible element of the contributions by state and local governments to the zones is for these governments to encourage

82. *Id.* (emphasis added). HUD and the United States Supreme Court appear to be of one mind on such dangers. *See* Community Communications Co., Inc. v. City of Boulder, _____U.S._____, 102 S. Ct. 835 (1982).

83. Proposal, supra note 65, at 21–2.

84. *Id.* at 23–5 (emphasis added).

participation in the program by neighborhood organizations and other private sector institutions. These would include churches, Community Development Corporations (CDCs), neighborhood associations, civic organizations, fraternal societies, recreational groups, country clubs, business associations, local political party units, unions and individual business firms, among others. There are many important roles in the program these institutions can serve.

One of the most important is to serve as conduits for participation by zone residents in the economic success of the zone areas. Churches and neighborhood organizations can, for example, create talent banks of available employees in the zones. Firms planning to start up in the zones could then inquire at these institutions for potential employees. Business associations or CDCs could provide job referral services, listing available jobs for zone residents seeking work. Business associations or individual firms could be induced to commit to providing a certain number of jobs for zone residents. Several of these community institutions could together establish basic job training programs for those without fundamental skills. Voluntary contributions of time, space and other minor items could make the effort rather inexpensive. . . .

A second role for these organizations is to serve as focal points for volunteer, self-help efforts by the zone residents and others. Neighborhood associations, for example, may establish citizen safety patrols, which would report suspicious or criminal activity to the police. Experience with these efforts indicates that they are often quite successful in reducing crime in a neighborhood area. . .

Still another role for these organizations is to rebuild community social structures and value systems. These organizations can express the local outrage over criminal and drug-related activity. They can apply social pressures to discourage such activity. These institutions can also organize the local social events that build a sense of community.

Finally, of course, these private sector institutions, can serve as the organizations to take over the private provision of public services, where feasible and desirable, as described earlier.[85]

85. *Id. See also* Callies, *Public Participation in the United States*, 52 TOWN PLAN. REV. 286 (1981). This surfeit of citizen participation is not confined to the United States. *See* Garner, *Skeffington Revisited*, 50 TOWN PLAN. REV. 412 (1979) for a thorough review of citizen participation problems in the United Kingdom.

Needless to say, HUD has already fleshed out a vehicle—a citizen group called the Neighborhood Enterprise Association (NEA):

> Neighborhood Enterprise Associations (NEAs), described below, would be ideal institutions for the performance of these functions. State and local governments could pass the legislation necesary to establish these institutions as part of their contributions to the zones. These institutions are described here because they were designed to be compatible with the Enterprise Zone program and could be expected to perform their assigned roles particularly well.
>
> These Associations would be incorporated entities with zone residents as the shareholders. There would be one Association corporation for each neighborhood area. To start such an Association, residents would first define on their own the neighborhood area to which the Association would apply. The incorporating residents would also have to draft a charter and by-laws suitable for doing business in corporate form. The charter would authorize the corporation only to do business within an Enterprise Zone.[86]

On the other hand, the economic renaissance of a formerly deteriorated area eventually *may* provide more revenues to state and local government through *ad valorem*, not property, taxes and sales or use taxes. However, the emphasis must clearly be on "eventually," as HUD has in mind substantial relief here also:

> *State and Local Tax Relief.* A major concern expressed by state and local officials is that the Enterprise Zone program will force them to forgo tax revenues just when they are already facing tight budgets and insufficient revenues. But, as just noted, the program will not mandate any particular state and local tax reduction. Moreover, the fiscal ability of the state or local government to provide tax relief will be considered in the competition for federal approval. It will be recognized, for example, that Houston will be better able to grant tax relief to its zone than, say, Detroit. This principle also implies that state governments will be expected to make greater efforts at tax relief than local governments since the zone will represent a much smaller portion of the state's taxing jurisdiction than of the local government's.[87]

86. Proposal, *supra* note 65, at 25.
87. *Id.* at 16.

HUD also has in mind seeking some permit streamlining and simplification, long a goal of federal programs affecting state and local governments.

> *Permit Requirements.* Entrepreneurs attempting to start new businesses are often faced with a myriad of permit requirements which must be satisfied before the business can begin. In addition to the sheer burden of complying with these requirements, businessmen are often faced with substantial delays because of poor administration of permit issuance. In some cases, denial of a permit will unnecessarily force a business establishment out of existence.
>
> One way of addressing these problems would be to establish a one-stop shopping office for permits for Enterprise Zone businesses. Another alternative is to eliminate most or all of these requirements. An entrepreneur in an Enterprise Zone should not have to get the government's permission to start a business.[88]

Miscellaneous "factors determining which zones will be federally approved" are: size (normally one to two square miles), location (neither in heavy industrial nor residential areas), and private entity commitments.[89]

C. *Federal "Incentives" or, It Won't Cost Uncle Sam an Upfront Dollar*

The federal government, for its part, has no present intention of making any *direct* contribution to the costs of attracting business to an enterprise zone. Neither the Kemp-Garcia nor the Administration bills are entitlement bills. Both provide, instead, for a series of tax credits to qualified businesses which choose to locate in an enterprise zone. While it has been estimated that the costs to the federal government in terms of lost tax revenues could exceed $300 million a year,[90] these are generally speculative estimates and do not represent any firm federal dollar commitment. As discussed below, these tax credit incentives are not very large either in absolute terms or in comparison to the apparently successful British enterprise zone scheme.

The tax incentives are basically split between those for prospective business and employers, and those for employees. What

88. *Id.* at 19. For descriptions of permit simplification efforts, see F. BOSSELMAN, D. FEURER & C. SIEMON, THE PERMIT EXPLOSION (1976).

89. Proposal, *supra* note 65, at 28.

90. GENERAL ACCOUNTING OFFICE, *supra* note 3.

follows is a comparison of those credits, such as they are, in the two bills.

1. BUSINESSES: REDUCTION IN CAPITAL GAIN TAX RATES

Both bills reduce capital gains taxes, presumably to encourage the improvement of property by new businesses in an enterprise zone. The Administration bill allows property owned *prior* to designation to qualify for such treatment; the Kemp-Garcia Bill does not.

The Administration proposal substantially eliminates the capital gains tax on the sale or exchange of qualified property in the zone.[91] Property is defined as:

a) tangible personal property used predominantly in the enterprise zone,
b) real property located in the enterprise zone and used predominantly in the active conduct of enterprise zone business, or
c) any interest in a business that has been a qualified business for at least three years, or for such part of three years as the business has been in existence or the zone has been designated.[92]

Ownership of residential, commercial or industrial real property within a zone for *rent* is treated as the active conduct of trade or business.[93] The elimination of capital gain taxes would not apply to owner-occupied units or idle property held for speculation. A qualified enterprise zone business is one actively engaged in the conduct of business within a zone within the last three years, with substantially all tangible assets in the zone with 80 percent of gross receipts attributable to active conduct of trade or business.[94]

The Kemp-Garcia Bill has a similar provision for the elimination of capital gain taxes on qualified property.[95] Qualified property includes:[96]

a) tangible property located in the enterprise zone which was acquired by the taxpayer after designation of the area as an enterprise zone and was used predominantly by the taxpayer

91. S. 2298 §§ 221, 222.
92. S. 2298 § 221(b) (amending I.R.C. § 1201(b)(3)).
93. S. 2298 § 221(b) (amending I.R.C. § 1201(b)(3)(C)).
94. S. 2298 § 221(b) (amending I.R.C. § 1201(b)(3)(B)). These provisions remain in effect until the designation "expires." S. 2298 § 221(b) (amending I.R.C. § 1201(b)(3)(D)).
95. H.R. 3824 §§ 211, 212.
96. H.R. 3824 § 211 (amending I.R.C. § 1201).

in such enterprise zone in the active conduct of a trade or business,

b) low-income rental property constructed or rehabilitated at a specific cost after zone designation,

c) any real property in the enterprise zone acquired after zone designation that was used by the taxpayer predominantly in the active conduct of business,

d) any interest in a business if the business was a "qualified business."[97]

As in the Administration bill, the capital gain tax exception does not apply after the first sale or exchange of property after zone designation ceases. In addition to provisions for taxpayers other than corporations and the elimination of the minimum taxable income, the Kemp-Garcia Bill has a clause providing that the accelerated depreciation of real property section cannot be applied to qualified property in the enterprise zone.[98]

Unlike the Administration bill, the Kemp-Garcia proposal does not appear to allow capital gain tax exemptions on housing that is not low-income residential rental property. The language of both bills reads in part:

> . . . any real property located in an enterprise zone (Kemp-Garcia only: which was acquired by the taxpayer after designation of an area as an enterprise zone and which was) used by the taxpayer predominantly in the active conduct of a trade or business in an enterprise zone. . . .[99]

The Administration bill specifically allows tax exemptions on residential rental property within the enterprise zone. The Kemp-Garcia Bill is silent on this issue, but provides for capital gain tax exemptions for low-income rental property. Therefore, the Kemp-Garcia Bill presumably does not allow for tax exemptions on other than low-income residential rental housing.

The Administration bill may attract middle- and upper-income families to enterprise zone areas by encouraging residential rental property owners to improve their units and provide for a "better neighborhood." On the other hand, residents may be encouraged to rent their property, move elsewhere, and then sell the property for a profit without improving it when the enterprise zone designation increases property values. There appear to be no require-

97. *See infra* text accompanying notes 103–104, for definitions of "qualified business."

98. H.R. 3824 § 213(b) (amending I.R.C. § 57(a)(2)).

99. S. 2298 § 221 (amending I.R.C. § 1201(b)(3); H.R. 3824 § 211(b) (amending I.R.C. § 1201(b)(1)).

ments regarding the time the property must be rented or the type of improvements that must be made for property to be considered qualified.

The Kemp-Garcia Bill seems to provide some safeguards against such speculation. First, low-income rental housing must be constructed or substantially improved *after* zone designation. This would prevent a windfall for owners of such units who do not make improvements. Second, low-income residents may not be priced out of the market by high rents because the owner can only use the capital gain tax exemption for low-income rental property.[100] However, this may discourage development of middle- and upper-income residential housing in the enterprise zone.

The Kemp-Garcia Bill limits the capital gains tax exemption to qualified businesses with no time limitations. The Administration bill allows only qualified businesses that have been in the enterprise zone for three years to be sold or exchanged without capital gain taxes.[101] This provision is apparently meant to discourage businesses in other areas from moving to the enterprise zone since they could not take advantage of capital gains tax elimination for three years, but new businesses could do so.[102]

The Administration bill defines a qualified business as one:

a) actively engaged in the conduct of trade or business within an enterprise zone,
b) with at least 80 percent of its gross receipts for the taxable year attributable to the active conduct of trade or business within an enterprise zone, and
c) with substantially all of its tangible assets located within an enterprise zone.[103]

The Kemp-Garcia Bill's definition for qualified businesses requires that a business hire at least 40 percent CETA eligible workers to meet one criterion for eligibility for the purpose of several tax benefits.[104] This raises several potential problems. First, this criterion would require the establishment of procedures to determine who are eligible workers. Second, businesses would need to be policed to see that this requirement was being fulfilled. As employees are hired, a new count would be necessary to ascertain if the quota were being met. Both would be antithesis to the

100. H.R. 3824 § 211(b) (amending I.R.C. § 1201(b)(4)).
101. *See supra* text accompanying note 94.
102. 128 CONG. REC. S2954 (1982).
103. *See supra* note 94.
104. H.R. 3824 § 211(b) (amending I.R.C. § 1201(b)(2)).

goal of reducing administrative burdens on businesses. Third, it may attract capital-intensive instead of labor-intensive businesses, since capital-intensive industries could presumably meet this requirement more easily. Fourth, certain businesses, especially those which are family-owned and operated or use high technology, might not be able to meet this requirement without sacrificing business objectives. Fifth, it is unclear whether multinationals with branches in enterprise zones could be eligible since 50 percent of their total business would not be in a zone.

On the other hand, if this criterion were eliminated without other tax incentives for disadvantaged workers, the goal of revitalizing inner cities by means of employing its unemployed residents may not be realized. The Administration bill, through its generous tax credits for the employment of disadvantaged workers, may be a more feasible alternative. Once a person is qualified as disadvantaged, as long as that person is employed, the employer could claim a tax credit. Other tax benefits would then be determined not by the type of employees hired, but by the conduct of business within the enterprise zone. This approach may result in fewer regulations and less policing of business.

2. BUSINESSES: REDUCTION OF GROSS INCOME OF QUALIFIED BUSINESSES OPERATING IN THE ZONE

For a qualified business, as defined earlier, the Kemp-Garcia Bill allows a qualified taxpayer to exclude from its gross income a percentage of its otherwise taxable income received from the firm's active conduct of business within the enterprise zone. The percentage is determined by the following table:[105]

1981–1997	50 percent
1998	40 percent
1999	30 percent
2000	20 percent
2001	10 percent

A taxpayer can exclude a similar percentage for interest earned on any mortgage, loan or other financing (other than refinancing) provided by the taxpayer to any qualified business in connection with the conduct of business within the enterprise zone.[106]

The Kemp-Garcia Bill's tax provision can provide a tremendous tax savings to qualified businesses, especially in conjunction with

105. H.R. 3824 § 221 (amending I.R.C. § 128).
106. *Id.*

other tax credits. The principal limitations would be the ability of the business to meet the requirements for a qualified business and the ability of the business to show a profit. The partial exclusion of interest income earned on loans to qualified businesses is intended to attract loan capital from financial institutions and other informal sources such as a businessman's family and friends.[107] The Administration proposal has no such provision.[108]

3. BUSINESSES: TAX CREDITS FOR INVESTMENT IN TANGIBLE PROPERTY IN THE ENTERPRISE ZONE

The Administration bill provides an incentive for capital investment in enterprise zones.[109] A 3 percent credit for three-year property and a 5 percent credit for five-year property basically increases the otherwise currently available investment credit by 50 percent.[110] The additional investment tax credit is available only if the property is: (a) predominantly used in the zone, (b) purchased after designation as a zone, and (c) not acquired from relatives of related corporations.[111] The property must also be used within the zone for all of its depreciable life.[112] Premature removal from the zone of the property would result in a tax assessment which would recapture a portion of the tax benefits due to the credit.[113]

The Administration bill also provides for an additional 10 percent credit for newly constructed or rehabilitated buildings, including residential rental property in the zone after zone designation. These credits are in addition to the present 10 percent investment tax credit.[114]

The Kemp-Garcia Bill allows the regular 10 percent investment tax credit to be applied to investments in the construction of low-income rental housing in the enterprise zone and in the improvement of certain low-income rental housing.[115]

The Administration bill's investment tax credit should be useful in the development of commercial, industrial and residential structures in the zone area. It should also increase the availability of commercial space to small businesses, most of which rent such

107. Soloman, *supra* note 45, at 797, 804.
108. It only provides that interest earned on Industrial Development Bonds used in the enterprise zone is tax exempt. S. 2298 § 251.
109. S. 2298 § 211.
110. Proposal, *supra* note 65, at 9; 128 CONG. REC. S2945 (1982).
111. 128 CONG. REC. S2945 (1982); S. 2298 § 221(c) (amending I.R.C. § 48).
112. Proposal, *supra* note 65, at 9.
113. *Id.*
114. S. 2298 § 211(b) (amending I.R.C. § 46(a)(2)(A)).
115. H.R. 3824 § 233 (amending I.R.C. § 48(a)).

space. Applying the zone incentives to housing across the board would tend to integrate zone areas racially and socioeconomically and may lead to the creation of businesses to serve the residents in this housing.[116] However, the investment tax credit might not prevent owners from increasing the rent to businesses and residents in the enterprise zones. Owners would thus get a windfall for improving their property and charging increased rents for it in the more commercially viable enterprise zone. Without rent controls, the tax incentives to employees and employers may not offset such increased costs.

Since the investment tax credit in the Administration bill applies only to investments made after zone designation, existing businesses would not receive tax benefits for their past investments. If such businesses remain committed to the zone long enough to reinvest its profits, then it eventually may receive full benefit as a new business.[117]

The Kemp-Garcia Bill provides an investment tax credit only for low-income rental housing. This may result in the perpetuation of predominantly low-income residents in the zone. On the other hand, the Kemp-Garcia Bill may discourage owners from changing such units to medium- and upper-income rental units. Low-income residents would probably not be outpriced from the market by this tax provision.

4. BUSINESSES: CARRYOVER OF NET OPERATING LOSSES AND TAX CREDITS

The Administration bill allows the net operating loss of an enterprise zone business to carry over to each following taxable year that ends before the expiration or revocation of the enterprise zone designation or to fifteen years following the loss, whichever is longer. The credit carryover period for credits for increased enterprise zone employment or for employment of certain disadvantaged individuals in an enterprise zone may be extended to the expiration or revocation of an enterprise zone or to fifteen years, whichever is longer.[118]

The Kemp-Garcia Bill extends the net operating loss carryover period from fifteen years to twenty years for a qualified business. There are no provisions for credit carryover because the credits provided in this bill are refundable.[119]

116. Proposal, *supra* note 65, at 9.
117. *Id.*
118. S. 2298 § 242.
119. H.R. 3824 § 232.

These provisions allow businesses which are not able to show a profit during the early years to deduct those losses in future, profitable years. Also, they provide an added tax incentive for small businesses which may not have outside income from which to deduct their losses, as larger firms usually have.[120]

5. BUSINESSES: TAX CREDITS FOR EMPLOYERS BASED ON WAGES PAID TO QUALIFIED EMPLOYEES

The Administration bill allows a 10 percent nonrefundable credit for *qualified* wages paid to *qualified* zone employees with a maximum credit of $1,500 per worker.[121] To be a qualified *employee*, an individual must perform at least 50 percent of his services within, and at least 90 percent of his services must be directly related to, the employer's trade or business located in the enterprise zone.[122]

Qualified *wages* are based on wages paid in excess of base period wages. For existing businesses, the base period wages are the wages paid during the twelve calendar months ending prior to enterprise zone designation, which would have been qualified wages had such designation been in effect for such a period. Thus, for such businesses, employers could receive tax credits only for the increased wages paid to employees.[123] However, the tax credit would apply to wages paid to additional workers who qualify and represent an increase in the work force.[124] The credit would not apply to a worker hired by an existing firm to replace a former, pre-zone worker at the same wage because of the base period wage formula.[125]

The bill includes rules for businesses that were acquired or disposed of in the enterprise zone.[126] There are also special provisions for electing small businesses, corporations, estates and trusts, mutual savings banks, domestic building and loan associations and cooperative banks without capital stock organized and operated for mutual purpose and without profit, regulated investment companies and real estate investment trusts, and certain farm

120. Proposal, *supra* note 65, at 13.

121. The current $1,500 limit is derived from the formula presented in the proposal which limits the qualified wages to two and one-half times the current Federal Unemployment Tax Act (FUTA) base of $6,000. ($6,000 × 2½ = $15,000 × 10% = $1,500.) S. 2298 § 201(a) (amending I.R.C § 44H(a)–(e)).

122. *Id.* Qualified employees do not include individuals for whom the employer has claimed tax credits under work incentive programs.

123. Example: Current Wage $15,000 – Pre-Enterprise Zone Wage $10,000 = $5,000 × 10% = $500 Tax Credit.

124. *Id.*

125. Proposal, *supra* note 65, at 10.

126. S. 2298 § 201(a) (amending I.R.C. § 44H(h)).

cooperatives.[127] The bill also has special rules for "controlled groups."[128]

This tax credit is scheduled to be eliminated prior to termination of the enterprise zone. Thus, in year 21, the credit will be reduced to 7.5 percent, the following year to 5 percent, then to 2.5 percent in year 23 and zero thereafter.[129] This phaseout period is to allow businesses to adjust to the elimination of the tax credit.

The Administration bill provides for even greater tax incentives for enterprise zone employers hiring *qualified disadvantaged* workers. For the first three years after hiring such a worker, the employer can claim a tax credit equal to 50 percent of the *qualified wages* paid to such workers.[130] Qualified disadvantaged employees are those who: (1) meet the requirements for qualified employees set out above; (2) are hired *after* zone designation; and (3) fall in one of the following categories: (a) vocational rehabilitation referral; (b) economically disadvantaged individual; (c) eligible foster child; (d) Social Security income recipient; (e) general assistance recipient; (f) eligible handicapped individual; or (g) eligible Aid to Families with Dependent Children (AFDC) recipient.[131]

Qualified wages are those paid to qualified disadvantaged workers reduced by any federal fund payments the employer may have received for such workers. There is no ceiling on this nonrefundable tax credit. This tax credit cannot be taken in conjunction with the 10 percent tax credit.[132] However, if the disadvantaged em-

127. S. 2298 § 201(a) (amending I.R.C. § 44H(f)).

128. All employees of all corporations which are members of the same control group of corporations are treated as employed by a single employer. For this subsection, the provisions for a corporation to be part of a controlled group of corporations are relaxed. The credit for each member corporation is based on its proportionate share of qualified wages giving rise to such credit. For partnerships and proprietorships which are under common control, similar rules apply. S. 2298 § 201(a) (amending I.R.C. § 44H(i)).

129. S. 2298 § 201(a) (amending I.R.C. § 44H(g)).

130. Thereafter the tax credit percentage decreases as follows: fourth year—40 percent; fifth year—30 percent; sixth year—20 percent; and seventh year—10 percent. S. 2298 § 201(a) (amending I.R.C. § 44I(a)).

131. Requirements for each category are outlined in the proposal. The designated local agency, a state employment security agency established in accordance with the Federal Employment Service Act, determines whether an individual is disadvantaged based on the proposal's guidelines. S. 2298 § 201(a) (amending I.R.C. § 44I(c)).

132. As noted earlier, certain replacement workers may not be eligible for the 10 percent tax credit. However, this credit can be applied to replacement workers in a work force of constant size. Proposal, *supra* note 65, at 11; S. 2298 § 201 (amending I.R.C. § 441I). If a disadvantaged worker is terminated during the first 270 days, no tax credit can be claimed by the employer unless the termination was due to the employee's voluntary leaving, disability or misconduct, or due to

ployee is a qualified employee as described earlier, after expiration of the disadvantaged employee tax credit, the employer may take advantage of the ten percent tax credit.[133]

The Kemp-Garcia proposal allows the employer a refundable business income tax credit equal to 5 percent of the wages paid to qualified zone employees. Qualified employees are those who are CETA eligible and who perform at least 50 percent of their services within the enterprise zone. CETA eligible persons are defined as those eligible for the following Department of Labor programs: (1) Youth Employment Demonstration Program; (2) Job Corps; (3) Services for Economically Disadvantaged; and (4) Transitional Employment Opportunities for the Economically Disadvantaged.[134]

There is no maximum limit to this refundable credit. Qualified wages do not include any federal fund payments received by the employer, and the employer cannot claim a tax credit for an employee he is already claiming a credit for under work incentive programs.[135] The Kemp-Garcia Bill does not detail the application of this tax provision to controlled groups or other types of business organizations.[136]

The tax credit for employers based on wages paid to qualified employees is designed to encourage employers to hire unskilled workers by offsetting the disincentives of the Social Security payroll tax[137] and to attract labor-intensive businesses.[138] Both bills allow any employer in the enterprise zone to take advantage of this tax credit, but place limitations through their definitions of qualified employees. The bills' requirements of qualifying each employee may increase the employer's statistical reporting. The two bills attempt to relieve some of the employer's responsibility for this by designating certain state agencies to determine what individuals are CETA eligible or disadvantaged.[139] The requirement

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the employer's substantial reduction in business. S. 2298 § 201(a) (amending I.R.C. § 44I(e)(2)).

133. S. 2298 § 201(a) (amending I.R.C. § 44I(h)). The proposal also lists rules regarding the reporting of enterprise zone employer's credits. Similar rules as listed for controlled groups and other business organizations discussed in the earlier section are also provided in this section. S. 2298 § 201(a) (amending I.R.C. §§ 6054, 44I(d)).

134. H.R. 3824 § 201(a) (amending I.R.C. §§ 44F(a)–(d)).

135. H.R. 3824 § 201(a) (amending I.R.C. § 44F(c)(3)).

136. H.R. 3824 § 201(a) (amending I.R.C. § 44F(e)).

137. Soloman, *supra* note 45, at 811.

138. Proposal, *supra* note 65, at 10.

139. *See supra* note 131; H.R. 3824 § 201(a) (amending I.R.C. § 44F(d)(1)).

that a certain percentage of the work must be done within the enterprise zone or for the zone business may force employers to monitor their employees' activities carefully.

The Administration bill differs from the Kemp-Garcia Bill in that: (1) it has two categories for qualified employees with generous tax credits for the hiring of disadvantaged workers, and (2) its tax credits are not refundable. The Administration bill's generous tax credits for disadvantaged workers may encourage zone employers to take the risk in hiring such workers. Further, the initial three-year duration of the 50 percent tax credit and the four-year phaseout period may provide the employers with enough time to undertake a long-term training program addressed to the needs of the most disadvantaged workers. The four-year phaseout period should also allow an employer to receive a payoff for any employee successfully trained and would discourage the termination of disadvantaged employees after the initial three years of employment. The employee's increased skills would arguably offset the decrease in tax credits.[140] However, if employers should fire marginal workers after zone designation and hire disadvantaged workers for the tax credits, there would merely be a shuffling of unemployed workers.

The Administration bill's tax credits are more generous than those in the Kemp-Garcia Bill. The employer can apply the credit to wages paid to *any* zone employee *regardless* of the employee's prior work history.[141] The Kemp-Garcia Bill limits the credit to wages paid to *CETA eligible* zone employees.[142] Although it may be more difficult to qualify as "disadvantaged" under the Administration bill than as "CETA eligible," once an employee is qualified as disadvantaged, the employer has tremendous tax advantages under the Administration bill. Further, the CETA eligibility requirement may prevent small family operations from using the credit in the Kemp-Garcia proposal since such businesses often rely on a smaller population of relatives or friends to fill vacant positions.

On the other hand, the Administration proposal tax credit is not refundable. For a new business not showing a profit, the increased cash flow created by the refundable credit in the Kemp-Garcia proposal, even if only 5 percent of qualified wages, may be of greater value than the generous nonrefundable tax credits in the

140. Proposal, *supra* note 65, at 11.

141. S. 2298 § 201(a) (amending I.R.C. § 44H(d) and referring to tax credits equal to 10 percent of wages paid to qualified employees).

142. H.R. 3824 § 201(a) (amending I.R.C. § 44F(d)).

Administration bill. However, the enterprise zone concept is not intended to encourage inefficient businesses and the refundable credit may keep alive those that should collapse.

The Administration bill's tax credits would probably entice large or more successful businesses to invest in an enterprise zone not only because of the generous credits, but also because the tax credit is not influenced by the amount of business generated by the business *outside* the enterprise zone.[143] The credits would obviously benefit successful businesses that incur tax liabilities but would be of limited value to businesses not showing a profit. Large businesses may also be in a better position to take the risk of hiring a disadvantaged worker. For a small business, the lost revenues from such a risk may outweigh any tax advantages.

6. EMPLOYEES: EARNED INCOME CREDIT FOR EMPLOYEES

The Administration bill allows a *qualified employee* to take a 5 percent nonrefundable income tax credit on any *qualified wages*. A qualified employee must perform at least 50 percent of his services within the enterprise zone and at least 90 percent of his services must be directly related to a trade or business in an enterprise zone. (This criterion is the same for qualified employees discussed in the employer's tax credit section.) Further, the person cannot be an employee of the federal, state or local government. The maximum qualified wage is one and one-half times the current FUTA base of $6,000.[144] Qualified wages do not include any compensation by federal, state or local governments. The tax credit remains in effect until zone designation is revoked or expires.[145]

The Kemp-Garcia Bill allows a *qualified employee* to take a 5 percent refundable tax credit on any *qualified earned* income. To be a qualified employee, the person must perform at least 50 percent of his services within the enterprise zone. Here, the person need *not* be CETA eligible. Qualified earned income is earned income attributable to services which were performed for a *qualified business* in an enterprise zone during the first thirty-six-month period beginning on the date the qualified employee first performed services for *any* qualified business in *any* enterprise zone.[146]

143. Proposal, *supra* note 65, at 10.

144. The maximum credit is $450 ($6,000 × 1½ = $9,000 × 5% = $450).

145. A phaseout schedule beginning the twenty-first year is also included. Certain other tax credits cannot be taken in conjunction with this credit. S. 2298 § 202(a) (amending I.R.C. § 44J).

146. H.R. 3824 § 202(a) (amending I.R.C. § 44G).

The definition of a qualified business is critical in determining whether employees qualify for this tax credit. For a new business (one not in existence prior to zone designation) to be a qualified business it must meet three requirements:

1) The firm must be actively engaged in the conduct of a trade or business in the enterprise zone.
2) At least 50 percent of its gross receipts must be attributable to active business within the enterprise zone.
3) At least 40 percent of its employees hired after it begins active business in an enterprise zone must be CETA eligible and such employees must perform 50 percent of his services in the enterprise zone.[147]

For an *existing* business to be a qualified business, it must meet the above three requirements *and* the average number of its full-time employees must have increased by at least 10 percent from the average number of such employees prior to zone designation.[148]

This tax credit is designed to increase take-home pay to qualified employees who work in the zone, encouraging low-income workers to give up welfare or other assistance and break out of the so-called poverty trap.[149] It is also designed to attract highly skilled workers to find employment in areas which may be initially undesirable places to work.[150] The Administration's proposed $450 nonrefundable income tax credit may accomplish the first objective of enticing the unemployed to work, but may not serve as much of an incentive for skilled workers to find employment in an enterprise zone. Persons with an income of $9,000 would receive the maximum benefit from this proposal, but for those earning $30,000 a year, the tax credit would represent only 1.5 percent of income. Also, the nonrefundable credit would not be as helpful as the refundable credit to low-income persons or persons with dependents because the credit may exceed any tax liabilities.

The Kemp-Garcia Bill provides a generous tax credit, but employees who may benefit from it are limited to those who are employed by qualified businesses.[151] If a business is qualified, then any of its employees performing 50 percent of their services in the enterprise zone could take advantage of the tax credit. The em-

147. H.R. 3824 § 202(a) (amending I.R.C. § 44G(c)(4)).
148. *Id.*
149. Proposal, *supra* note 65, at 11.
150. *Id.*
151. H.R. 3824 § 202(a) (amending I.R.C. § 44G).

ployee need not be CETA qualified. A person making $30,000 a year could receive the maximum credit of $1,500. Low-income workers who are taxed below 5 percent of their income could receive a refund. It would be interesting to determine if skilled workers would be influenced by the tax credit to take employment in an enterprise zone. Certainly the Kemp-Garcia Bill provides a greater incentive to skilled qualified workers.

The Kemp-Garcia Bill's time limitation of three years for the tax credit may have some merit since the credit is designed to entice people to work and not to keep them working.[152] Arguably, after three years of employment a person would have broken out of the trap of poverty. However, a skilled employee with other options may leave after the initial three years. The Kemp-Garcia Bill's linking of the credit to employees of qualified businesses may place employees of such businesses in a precarious position. For example, if a business initially meets the 40 percent CETA eligible requirement and becomes a qualified business, but loses that status because of economic conditions or hiring practices, the employees would lose their tax credit, through no fault of their own.

The Kemp-Garcia Bill's tax credit applies to qualified employees hired *after* the zone is designated and *after* the business meets the eligibility requirements.[153] The Administration bill makes no such distinction between employees hired *before* or *after* zone designation. If the purpose of the tax credit provision is to attract workers to the enterprise zone, there seems to be no reason for pre-zone employees to benefit from the tax credit.

D. *Miscellaneous Provisions*

1. INDUSTRIAL DEVELOPMENT BONDS

The Administration bill provides for the continued availability of Industrial Development Bonds for small businesses in the enterprise zone regardless of whether the availability of such bonds elsewhere is eliminated. These bonds must be approved by the state or local government when issued. The interest paid to the lender on the bond is then exempt from federal income tax.[154] The availability of these bonds is designed to provide the necessary start-up capital for small businesses.[155]

152. *Id.*
153. *Id.*
154. S. 2298 § 251.
155. Proposal, *supra* note 65, at 12.

The Kemp-Garcia Bill has no similar provision but, as discussed earlier, it does have a provision allowing a percentage of interest earned on loans to businesses in an enterprise zone to be exempt from taxes.

2. TAX SIMPLIFICATION

Both proposals state it is the intent of the Congress that the Internal Revenue Service should in every way possible simplify the administration and enforcement of any provision of the Internal Revenue Code of 1954, including the proposed amendments.[156]

3. OPTIONAL CASE METHOD

The Kemp-Garcia Bill allows a taxpayer of a qualified business to elect to compute taxable income under the cash receipt and disbursement method of accounting and without any requirements to use inventories only if the gross receipts for that business for any prior taxable year did not exceed $2 million.[157] The election may be made without the consent of the Secretary for the first taxable year for which the taxpayer is a qualified business. This would relieve small businesses of certain accounting burdens. The Administration bill has no comparable clause.

4. REGULATORY RELIEF

Both proposals deem the following small entities for purposes of the Regulatory Flexibility Act of 1980: Any (1) small business, small organization or small governmental entity; (2) qualified business; (3) area designated by the government as an enterprise zone; and (4) not-for-profit entity operating within the zone.[158]

The Kemp-Garcia Bill defines a qualified business for this section as it does in the previous sections. The Administration bill defines a qualified business as one engaged in the active conduct of business within the enterprise zone and for whom at least 50 percent of its employees are qualified employees. Qualified employees are those who perform at least 50 percent of their services

156. S. 2298 § 261; H.R. 3824 § 241.

157. H.R. 3824 § 231 (amending I.R.C. § 446).

158. S. 2298 § 301; H.R. 3824 § 302 (both amending 5 U.S.C. § 601(6) (Supp. IV 1982). The 1980 Regulatory Flexibility Act requires all federal regulatory agencies to publish analyses of the economic impact on entities under its coverage of any proposed regulations and to discuss alternatives to those regulations. 5 U.S.C.A. §§ 602, 603 (Supp. 1982). The Act also requires all federal regulatory agencies to undertake a periodic review of all their regulations to determine whether they should be changed to minimize their economic impact on the entities under coverage of the Act. 5 U.S.C.A. § 610 (Supp. IV 1982); Proposal, *supra* note 65, at 14.

in the enterprise zone and at least 90 percent of their services are directly related to enterprise zone business.[159]

The Administration bill provides other measures to reduce agency regulations in addition to the 1980 Regulatory Flexibility Act. It provides that all agencies covered by the Administrative Procedures Act[160] will be given discretionary authority to relax or eliminate their regulatory requirements within the enterprise zone except those affecting civil rights, safety and health. This authority would be exercised only upon the request of the state and local governments. An agency could waive or modify any rule that would directly violate a statutory requirement or create a significant risk to the public health, including environmental health or occupational safety.[161]

Regulations impose enormous costs on businesses, discouraging economic activity and growth probably as much as do taxes. Regulatory relief is attractive because there is no direct monetary cost to the government. One result should be a reduction of paperwork burdens on specified entities. Regulatory relief may be particularly important for the stimulation of small businesses within the zone because small firms, unlike large firms, generally cannot easily absorb the costs of regulations by such means as spreading the costs imposed over more units of production or by passing the cost on to the consumers.[162]

5. FOREIGN TRADE ZONE

Both bills encourage the development of Foreign Trade Zones (FTZs) within an enterprise zone. The Administration bill mandates the FTZ Board and the Secretary of Treasury to consider on a priority basis and expedite to the maximum extent possible, the processing of applications for the establishment of FTZs within an enterprise zone. They must further approve such applications to the maximum extent practicable, consistent with their statutory responsibilities.[163]

159. S. 2298 § 301 (amending 5 U.S.C. § 601(6) (Supp. IV 1982).

160. 5 U.S.C. § 551 (1976).

161. The procedures for the modification of waiver of rules are simplified and determination of requests must be made within 90 days by the agencies. In waiving or modifying a regulation, the agencies involved must weigh the factors of job creation, community development or economic revitalization in the enterprise zone against any effect the change may have on the underlying purposes of applicable statutes in that geographic area. S. 2298 § 302 (amending 5 U.S.C § 611 (1976)).

162. Proposal, *supra* note 65, at 14.

163. S. 2298 § 401; H.R. 3824 § 103.

The Kemp-Garcia Bill provides that it is the desire of Congress that whenever possible, FTZs should be established within an enterprise zone. The FTZ Board should expedite the application for FTZ designation, provide technical assistance to the applicants and take into account not only the current economic development within the enterprise zone area, but also future developments to be expected from the incentives offered.[164]

In the FTZ, the imposition of all duties and tariffs is delayed until the imported goods leave the zone for the domestic United States market. If the goods are used to manufacture other goods, the duty is exacted only on the value of the imported goods once the manufactured goods enter the United States market. If the manufactured goods are reexported from the zone, the duty of the imported goods is never levied. Foreign Trade Zones are good locations for warehousing imports or for manufacturing based on imported raw materials.[165] It would seem that because of the unique character of businesses attracted to FTZs, areas neighboring such enterprise zones would not be faced with a mass relocation of businesses from their areas to the FTZ. Further, the FTZs offer the prospect of a core of economic activity around which a local economy may develop.[166]

IV. State and Local Response

A. *Overview of Activity*

While the first United States enterprise initiative appears to have come originally from the states,[167] the explosion of local interest since 1980 was almost certainly caused by the prospect of a new federal program.[168] Indeed, since the Kemp-Garcia Bill was introduced in 1980, enterprise zone bills have been introduced or passed in Ohio, Illinois, Kentucky, Hawaii, California, Indiana, New York, Virginia, Pennsylvania, Massachusetts and Connecticut.[169] Notable local government programs have commenced in Baltimore, Maryland; Pittsburgh, Pennsylvania; Benton Harbor, Michigan; and Elkhart, Indiana.[170] A fair number of these bills

164. H.R. 3824 § 103.
165. Proposal, *supra* note 65, at 13.
166. Soloman, *supra* note 45, at 812.
167. Introduced by Senator Donald Totten of Illinois in 1979. Statement of Edgar E. Vash, *supra* note 5, at 43.
168. *Id.*; Knack, *They're Ready To Go*, 48 PLANNING 11 (1982).
169. *Id.*
170. Knack, *supra* note 168.

are specifically designed to take advantage of federal designation. Thus, for example, the Hawaii bill provides:

> Upon the enactment of legislation by the United States Government to establish federal enterprise zones, it shall be deemed the policy of the State of Hawaii to participate to the fullest extent possible with the federal program, and all affected agencies of the State and its political subdivisions shall cooperate in implementing the provisions of the federal act applicable to the State of Hawaii.[171]

Many of the state bills set up study commissions to determine how and where such zones might be located.[172] Others go somewhat further. Bills in Hawaii and California go considerably further in anticipating the local "competition" requirements addressed in Part II, providing for the suspension of building, zoning and planning regulations in favor of an approved enterprise zone plan.[173]

Comparatively few of these "local responses" have actually been passed into law, however. One that has is Virginia's Urban Enterprise Zone Act,[174] discussed below.

B. *A Local Response: The Virginia Urban Enterprise Zone Act*[175]

In both concept and execution, Virginia's Enterprise Zone Act is remarkably similar to the federal bills. Bottomed on the need "of government help to attract private sector investment,"[176] the Act is designed to "stimulate business and industrial growth" in areas where this would lead to "neighborhood revitalization" through "regulatory flexibility and tax incentives."[177] Any county or city interested in becoming one of the up to six zones contemplated by the Act would first apply to the State Department of Housing and Community Development for designation. The state governor then formally designates the area upon recommendation of the state Secretary of Commerce and Resources.[178]

171. H.B. 2683–82, 1982 Sess., at 29–30.
172. *E.g.*, Hawaii, Pennsylvania, Indiana, Virginia.
173. Statement of Edgar E. Vash, *supra* note 5, at 44; Hawaii's H.B. 2683–82, 1982 Sess., at 12.
174. VA. CODE §§ 59.1–270 – 59.1284 (1982).
175. *Id.* We are grateful to Prof. John C. Brown of Virginia Commonwealth University who sent us a copy of Virginia's new act virtually hot off the press.
176. *Id.* at § 59.1–272.
177. *Id.*
178. *Id.* at § 59.1–274.

1. TAX INCENTIVES

The Act is clearly directed toward providing primarily tax incentives to lure businesses to prospective enterprise zones. Such tax incentives are to be provided at both the state and local levels.

At the state level, such incentives take the form of income, unemployment and sales tax exemptions and credits. A "qualified business"[179] in the zone is entitled to a tax credit against income, franchise, gross receipt or "shares" tax of 80 percent during the first year, 60 percent the second year, 40 percent the third year and 20 percent during the fourth and fifth years of operation.[180] The same credit is also available to qualified businesses for application against unemployment taxes due unemployed employees at firms located in an enterprise zone.[181] Finally, all items purchased for the conduct of a firm's business in an enterprise zone are exempt from the state sales tax.[182]

Locally, cities and counties are authorized to reduce permit and user fees and business, professional and occupational license taxes, provided such reductions conform to the requirements of the Virginia and United States Constitutions.[183]

2. REGULATORY FLEXIBILITY

As most land use regulations are locally administered, the Act opts to provide for local regulatory flexibility at the local level, even though there is no intrinsic reason why the state as the ultimate repository of the police power could not exempt enterprise zone

179. *Id.* at § 59.1–279.

Eligibility.–A. Any business firm may be designated a "qualified business firm" for purposes of this chapter if:

1. It (i) begins the operation of a trade or business within an Urban Enterprise Zone, (ii) during the taxable year has at least 50 percent of the gross receipts of such business firm attributable to the active conduct of such trade or business within the Urban Enterprise Zone, and (iii) 40 percent or more of the employees employed at the business firm's establishment or establishments located within the Urban Enterprise Zone meet the criteria set forth in paragraph (i) of subsection B of § 59.1–274 prior to employment; or

2. It (i) is actively engaged in the conduct of a trade or business in an area immediately prior to such an area being designated as an Urban Enterprise Zone, (ii) meets the requirements of (ii) of paragraph 1 of this section, and (iii) increases the average number of full-time employees employed at the business firm's establishment or establishments located within the Urban Enterprise Zone by at least 10 percent over the preceding year's employment with no less than 40 percent of such increase being employees meeting the criteria of paragraph (i) of subsection B of § 59.1–274 prior to employment.

180. VA. CODE § 59.1–280 (1982).

181. *Id.* at § 59.1–281.

182. *Id.* at § 59.1–282.

183. *Id.* at § 59.1–283.

businesses directly. Local governments are thus empowered to make proposals for regulatory flexibility by means of special zoning districts, ordinance exemption, and permit process reform.[184]

V. The British Enterprise Zones:[185] Do They Work?

The British enterprise zone legislation[186] has now been in place for two years. Applications have been made and approved for zones in fourteen areas,[187] and the Conservative government has decided to designate ten more.[188] Businesses have already moved into many of the zones. It is therefore clearly worth reviewing the British experience before we embark on our own enterprise zone program—provided there are sufficient similarities to make such a comparison worthwhile. What follows is a brief description of that legislation, a comparison to the United States proposals and a survey of enterprise zone experience in England through the fall of 1982.

A. *The Legislation in Brief*

There are essentially two parts to the enterprise zone legislation: (1) the method of designation, and (2) the benefits and relief-of-burden conferred upon "commercial residents" in such zones from the central government and the local government. "The idea is to see how far industrial and commercial activity can be encouraged by the removal of certain statutory or administrative controls."[189]

184. *Id.* at § 59.1–283.

185. For background interviews on British enterprise zones, the authors are indebted to Sir Desmond Heap, past president of the Law Society and former comptroller and solicitor to the city of London; John Delafons, deputy secretary in charge of planning inner cities, new towns, regional policy, London planning, and housing, Department of the Environment, and his immediate predecessor, Sir Wilfred Burns; Nigel Mobbs, chairman, Slough Estates Ltd.; Ian McDonald of Roger Tym & Partners; David Hall, director, Town & Country Planning Association; Michael Gahagan and John Stamboullouian of the Department of the Environment; Roy Adams of BDP; David Massey of the Town Planning Department, University of Liverpool; Greg Lloyd, Department of Land Economy, University of Aberdeen; Victor Moore, Department of Law, University of Reading; and Maurice Howell, Director of Planning, Swansea, Wales.

186. Local Government Planning and Land Act, ch. 65 (1980).

187. In 11 local jurisdictions. *See* chart *infra* and text accompanying note 215.

188. Interview with John Stambollouian, senior planning officer, Department of the Environment, in Swansea, Wales (September 1982).

189. DEP'T OF THE ENVIRONMENT, ENTERPRISE ZONES 3 (November 1980). *See also* V. MOORE & L. CATCHPOLE, THE LOCAL GOVERNMENT PLANNING AND LAND ACT, 1980, at 65, 177–79 (1981).

1. DESIGNATION

In rather typical British fashion, the designation of an enterprise zone is, on paper at least, a model of decorum. The secretary of state for the environment at the national government level first "invites" various local government bodies to "prepare a scheme" for an economically blighted area in their jurisdiction.[190] The "draft scheme" contains the boundaries of the proposed zone, the types of development for which no permits will be required,[191] any health, safety and pollution conditions which will still be applicable and a "limited" number of other potential restrictions.[192] It is first advertised, is the subject of hearings and then is formally adopted (by resolution) by the appropriate local government and sent formally to the secretary of state for the environment.[193]

The secretary of state *may* then[194] formally designate the area to which the scheme applies as an enterprise zone, and the applying local government as the "enterprise zone authority."[195]

2. BENEFITS OF DESIGNATION

Aside from the very real benefits which come from local and national government attention to an economically deteriorated area designated an enterprise zone, there are several formal benefits which come with designation.

190. Local Government, Planning and Land Act, 1980, ch. 65, Schedule 32, § 1.

191. British land use is governed throughout by its famous Town and County Planning Act, ch. 42 (1972), which provides that no development (very broadly defined) may take place without "planning permission." It is the freedom from the need to obtain such planning permission in an enterprise zone which is one of the unique features of the British enterprise zone legislation. *See* Garner & Callies, *Land Use Planning Law in England and Wales and in the United States*, 1 ANGLO-AM. L. REV. 292 (1973).

192. ENTERPRISE ZONES, *supra* note 189, at 5. MOORE & CATCHPOLE, *supra* note 189, at 65, 180.

193. Local Government, Planning and Land Act, *supra* note 190, Schedule 32, § 3.

194. *Id.* at § 5. Actually, the Secretary must wait until six weeks have expired from the date the *locally adopted* scheme is first formally advertised, as required by the aforesaid § 3. There are detailed provisions in § 4 of the Act, Schedule 32, for "aggrieved persons" to challenge the validity of the Act as beyond the powers conferred by, or contrary to, the procedures required by Schedule 32.

195. *Id.* at § 5. The order which can be revoked by Parliament and must be approved by Britain's Treasury, sets out the boundaries and duration of the zone. Actually, besides local governments, an urban development corporation or a new town corporation may so be invited, and several have been. *Id.* at § 1 of schedule 32. In fact, as appears below, several designated enterprise zones have Urban Development Corporations (Isle of Dogs) and New Town Development Corporations (Corby) as their enterprise zone authority.

a) *The Lifting of Most Development Controls.* Under the British system of land planning and development controls, all development[196] requires "planning permission," or the approval of the local authorities, in order to proceed.[197] (A hefty development tax is also levied, as discussed below.) So tight are these controls that a debate arose in one central England area over whether the growing of a hedge to form an arched gateway in a front yard constituted "development" under the appropriate legislation.[198] No such permission is required in an enterprise zone for the large classes of development specified in the approved scheme as "permissible," though it may be subject to "conditions and limitations."[199] However, both limitations on permitted development and conditions on development permission are discouraged by the central government.[200] A common limitation, for example, is the square footage which may be devoted to supermarkets and other commercial retail activities. Such lifting of controls does not apply to health codes, building codes and environmental pollution laws.[201]

b) *Exemption From Development Land (Capital Gains) Tax.* As noted in the preceding subsection, a development tax is generally levied on the increase in value which results from land being put to a more valuable use.[202] Recently, the rate has been around 60 percent on that increase in value.[203] No such development land tax

196. Defined as the carrying out of building, engineering or mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land. Town and County Planning Act, 1971, ch. 78, §§ 290(1) and 22(1).

197. For a thorough treatment of this complex but landmark legislation, see D. HEAP, AN OUTLINE OF PLANNING LAW (7th ed. 1982); J. GARNER, PRACTICAL PLANNING LAW (1981); J. B. CULLINGWORTH, TOWN AND COUNTY PLANNING IN ENGLAND AND WALES (2d ed. 1967); A. E. TELLING, PLANNING LAW AND PROCEDURE (4th ed. 1973). For a brief description see Garner & Callies, *supra* note 191; Callies, *Positive Planning In England: A Survey*, 4 LAND USE CONTROLS Q. 12 (1970).

198. D. Callies, Positive Aspects of English Planning Legislation Since 1944, at 50 (thesis submitted to the University of Nottingham for the degree of Master of Laws, October 1969.)

199. Schedule 32, *supra* note 190, at § 17.

200. Conference with Michael Gahagan, Dept. of the Environment, in London (June 1981).

201. ENTERPRISE ZONES, *supra* note 189, at 5.

202. *See* R. N. D. HAMILTON, A GUIDE TO DEVELOPMENT AND PLANNING, ch. XVIII (1970).

203. ISLE OF DOGS ENTERPRISE ZONE: THE GUIDE 5 (1982) [hereinafter cited as THE GUIDE].

is payable on projects started within ten years of the formal designation of an enterprise zone.[204]

c) *Exemption From Local Property Taxes ("Rates").* Local governments in Britain levy *ad valorem* real property taxes on private real property much the same as we do in the United States. Such taxes are called "rates."[205] In enterprise zones, commercial and industrial (but *not* residential) property will be exempt from such tax.[206] Local government will be reimbursed from this loss in revenue by the central government.

d) *Corporate Income Tax (Capital Allowances) Credits.* An owner qualifies for a "capital allowance" of up to 100 percent of capital expenditures on the construction, extension or improvement of industrial or commercial buildings. This can be offset against corporate or income tax. Again, the allowance applies to expenditures made during the ten-year period for which the zone is designated, although it appears that it will apply *after* that period as well, so long as a contract for capital expenditures is entered into *before* the end of that initial ten-year period.[207]

e) *Expedited Permit Processing.* One purpose of the enterprise zone program was to speed up permitting for land development, and a structure for so doing has been a sine qua non of most accepted schemes. Indeed, local authorities are reported to have set for themselves goals of processing building code and "residential" planning applications as short as fourteen days.[208]

f) *Customs Relief.* Goods may be imported for processing and subsequent export[209] without payment of customs charges by both firms and private warehouses.[210]

g) *Miscellaneous.* Other provisions eliminate a host of industrial administration forms and regulations for businesses locating within the zones.[211]

204. *Id.* at 5–6; ENTERPRISE ZONES, *supra* note 189; V. MOORE & L. CATCHPOLE, *supra* note 189, at 65–180.

205. THE GUIDE, *supra* note 203, at 4.

206. Schedule 32, *supra* note 190, at §§ 27 and 28. THE GUIDE, *supra* note 203, at 4; ENTERPRISE ZONES, *supra* note 189, at 4.

207. THE GUIDE, *supra* note 203, at 5; ENTERPRISE ZONES, *supra* note 189, at 4.

208. THE GUIDE, *supra* note 203, at 6; ENTERPRISE ZONES, *supra* note 189, at 4.

209. Outside the European Export Community, there are already substantial easing of such restrictions within the EEC, of which Britain is a member.

210. THE GUIDE, *supra* note 203, at 6; ENTERPRISE ZONES, *supra* note 189, at 5.

211. *Id.* (*e.g.*, Industrial Training Boards and Industrial Development Certificates).

B. *Enterprise Zones in Practice*

1. THE INITIAL RESPONSE: THE ZONES

The response to the central government's enterprise zone scheme was and is very favorable. Literally dozens of communities wished to be "invited" to apply for designation.[212] In the end, fourteen sites in eleven jurisdictions were so designated in 1981 and 1982,[213] and an additional ten are to be so designated within the next few months from a pool of more than fifty applications.[214] As the chart on pages 276 and 277 indicates, the sites vary widely in terms of size, public versus private land ownership, existing development, and business response through mid-1982.[215]

2. HIGH HOPES FOR LONDON DOCKS: THE ISLE OF DOGS

On April 26, 1982, the last of Britain's first tier of enterprise zones was formally designated.[216] In the heart of London's steadily declining docklands, the Isle of Dogs enterprise zone is the only area that is also the site of an urban development corporation, which serves as the authority for the zone.[217] The Isle of Dogs (possibly so named because royal hounds may have been raised there)[218] is

212. Interview with Michael Gahagan, *supra* note 200.

213. Belfast, Clydebank, Corby, Dudley, Hartlepool, Isle of Dogs [London], Liverpool [Speke], Salford/Trafford [Manchester], Swansea, Tyneside [Newcastle] and Wakefield.

214. Interview with John Stambollouian, senior planning officer, Department of the Environment, September 1982, in Swansea, Wales.

215. Adapted from charts and information contained in *Enterprise Zones*, Financial Times Survey, Sept. 8, 1981; *Enterprise Zones*, Financial Weekly, Sept. 4, 1981; BUILDING DESIGN PARTNERSHIP, ENTERPRISE ZONE WORKSHOP REPORT OF PROCEEDINGS (Nov. 1981) at 9–12; Dept. of the Environment, Enterprise Zones: Progress Review (4 pp., typed, Jan. 25, 1982); *Enterprise Zones and Development Areas,* INVESTORS CHRONICLE, Sept. 3, 1982, at p. XVI; Roger Tym and Partners Data Sheets, New Enterprises in E.Z.'s May 31, 1981–May 31, 1982.

216. Designation Order 1982 (S.I. 1982 No. 462).

217. The purpose of an Urban Development Corporation (UDC) is to "regenerate" an urban development area. Authorized by §§ 135–71 of the Local Government, Planning and Land Act, 1980, ch. 65, UDCs have been established for the Merseyside area of Liverpool—docklands again—as well as for the Isle of Dogs. The UDCs have authority both to acquire (by condemnation, if necessary) and to regulate the use of land within their jurisdictions. In fact, provided that the order issued by the secretary of state for the environment so provides, an UDC can do just about anything a local government can do.

218. J. HILLMAN, ISLE OF DOGS ENTERPRISE ZONE: THE PLACE TO BE, LONDON DOCKLANDS DEVELOPMENT CORPORATION, 1982, at 9.

ZONE	SIZE	LOCATION	PUBLIC/PRIVATE OWNERSHIP MIX	CHARACTER/EXIST. DEVELOP.	PROGRESS SINCE DESIGNATION
Belfast (2)	323 acres 190 acres	Inner City North Foreshore	Mostly private Mostly public (City Council)	19th Century Mill Complex Vacant/open	6 new warehouses began; 8 conversion/redevel. projects "under active discussion."
Clydebank	570 acres	7 mi. west/Glasgow	40% publicly owned	Mostly developed	74 small companies moved in or expanded, of which 45 *new*.
Corby	280 acres	East Midlands, 22 miles from Leicester	All public (New Towns Comm'n)	3 acres on landscaped industrial "estate" (park)	23 companies building factories, "several" more buying land to build including flour mill, starch factory.
Dudley	538 acres	West of Birmingham	All private	Cleared derelict industrial	Projects = 41,000 sq. meters/floor space/ind. units = under construction, 13 complete and 10 occupied.
Hartlepool	265 acres	N.E. Coast, 35 miles south/Newcastle	All private	3 parcels, partially vacant (includ. "redundant" steel works)	Some (800 sq. m.) new construction, 7 previously vacant premises occupied, 23 new firms altogether.

Isle of Dogs (London)	470 acres	London Docklands	All public	⅔ land, ⅓ water, mixed dock & container	16 major projects "in various stages of negotiation."
Liverpool (Speke)	329 acres	Suburb 6 miles S/E of Liverpool	Public/private	2 closed industrial plants (Ford & Dunlop & open space	68 small industrial units complete, Dunlop Factory clearance underway.
Salford/Trafford (Manchester)	790 acres	Manchester, both sides/ship canal	Manchester Ship Canal Co.	Mixture/dock & warehouse units, cleared land & office blocks	40 new industrial/warehouse units—37,000 sq. m.; #/ firms have options on land.
Swansea	735 acres	2 mi. from Swansea center & 40 mi. from Cardiff (West)	All public (City + Land Authority for Wales)	Cleared land (former industry & mining "dumps")	44 firms, 25 from the City since designation.
Tyneside (2)	220 acres	In Newcastle, scattered sites.	Mainly private	Several small sites being cleared.	Vickers (new) under construction.
	900 acres	Gateshead, So. Bank of Tyne River.	Public & private	Former dump + cleared/ develop. land.	24 units complete, 14 projects in negotiation, others under construction.
Wakefield	140 acres	10 mi. S/E/Wakefield	Mainly public (City Council)	Industrial Estate, ready for development	Land sold for projects providing 22 industrial units + 2 warehouses.

located at the bend of the River Thames east of Tower Bridge and the Tower of London and west of Greenwich.[219] Surrounding the 482-acre enterprise zone itself is a "historic community" of about 14,000 people complete with five primary schools, twenty parks, restaurants, a library arts center, sports complex and a new fish market.[220]

a) *The Zone: Boundaries and Permitted Uses.* The Isle of Dogs enterprise zone boundary essentially takes in most of the now-derelict docks and warehouses on the "island" (a peninsula, really), but excludes most retail and housing areas located principally on the banks of the Thames. As a result, the scheme accepted by the secretary of state for the environment contains several subzones, the most restricted of which—the sensitive boundary subzone—is a narrow protective or buffer strip along the perimeter of the enterprise zone. Here alone, the enterprise zone authority reserves the right to approve in advance the siting, height, screening and landscaping of all proposed development.[221] For the rest,[222] permission to develop will be granted for "most forms of development" within the enterprise zone except:

i) certain special industrial use classes of the smelting, burning, distilling, and refining categories;[223]

219. *Id.* at 7.

220. *Id.* at 9–13; THE GUIDE, *supra* note 203, at 30.

221. Isle of Dogs Enterprise Zone Scheme, adopted by the London Docklands Development Corp. on February 2, 1982, at §§ 3.1, 6.1.

222. This does not include the highway safeguarding subzone, where no development is permitted except by agreement with the enterprise zone authority. *Id.* at § 6.2.

223. *Id.* at § 5.1.1. These are listed in the Town and County Planning Act (Use Classes Order) 1972, as follows:

Class V. (Special Industrial Group A)—Use for any work which is registrable under the Alkali &c Works Regulation Act 1906(a), as extended by the Alkali &c Works Orders 1966 and 1971(b) and which is not included in any of Classes VI, VII, VIII or IX of this Schedule.

Class VI. (Special Industrial Group B)—Use for any of the following processes, except a process ancillary to the getting, dressing or treatment of minerals which is carried on in or adjacent to a quarry of mine:—i) smelting, calcining, sintering or reduction or ores, minerals, concentrates or mattes; ii) converting, refining, re-heating, annealing, hardening, melting, carburising, forging or casting of metals or alloys, other than pressure die-casting; iii) recovery of metal from scrap or drosses or ashes; iv) galvanizing; v) pickling or treatment of metal in acid; vi) chromium plating.

Class VII. (Special Industrial Group C)—Use for any of the following processes except a process ancillary to the getting, dressing or treatment of minerals which is carried on in or adjacent to a quarry or mine:—i) burning of bricks or pipes; ii) lime or dolomite burning; iii) production of zinc oxide, cement or alumina; iv) foaming, crushing, screening or heating of minerals or slag;

ii) storage, manufacturing, processing or use of hazardous substances;[224]
iii) disposal or treatment of waste;[225]
iv) scrap yards, coal yards, mining, and slaughterhouses;[226]
v) abattoirs;[227]
vi) airports;[228]
vii) retail sales of food and drink in excess of 50 square meters of gross floor space per shop;[229] and
viii) nuclear installations.[230]

b) *Opportunities for Development.* Within these boundaries and restrictions, the opportunities for development seem plentiful. For example, in the southwest portion of the zone, a former trucking area west of a larger inner dock, the enterprise zone authority has "invited detailed proposals" for, *inter alia*, small business units, factory and warehousing, and high-technology manufacturing. In part of the substantial water area, it is encouraging proposals for leisure water activities such as wind surfing, sailing and fishing.[231]

The zone itself is close to many of London's mainline rail and underground rail systems, and twenty to thirty miles from London's major airports. It is next to a canal system and seaports. It is closer to major road networks. Moreover, there are plans to upgrade bus service, and some consideration is being given to running a fixed-guideway rapid transit link into the area.[232] Finally, there is the matter of infrastructure—what the British call "essential services." While it appears that such services as roads,

v) processing by heat of pulverized fuel ash; vi) production of carbonate of lime and hydrated lime; vii) production of inorganic pigments by calcining, roasting or grinding.
Class VIII. (Special Industrial Group D)—Use for any of the following purposes:—(i) distilling, refining or blending of oils (other than petroleum or petroleum products); (ii) production of employment of cellulose and employment of other pressure sprayed metal finishes (other than the employment of any such finishes in vehicle repair workshops in connection with minor repairs, and the application of plastic powder by the use of fluidised bed and electrostatic spray techniques); (iii) boiling of linseed oil and the running of gum;
224. *Id.* § 5.1.2. *See* Appendix on page 289.
225. *Id.* at § 5.1.4.
226. *Id.* at § 5.1.5.
227. *Id.* at § 5.1.6.
228. *Id.* at § 5.1.7.
229. *Id.* at § 5.2.1.
230. *Id.* at § 5.1.3.
231. J. HILLMAN, *supra* note 218, at 10–12.
232. *Id.* at 14–22.

water, drainage, electricity, telephone and the like, are adequate, the London Docklands Development Commission (LDDC)—the Urban Development Corporation (UDC), which is the enterprise zone authority—plans a substantial amount of new electricity cable, water lines and drainage at the same time new roads are laid. Moreover, the LDDC also is bringing in more gas and has asked British Telecom to install more telex and telephone facilities.[233]

While it is early to see how such a newly designated enterprise zone will progress, the prognosis appears to be good, at least in part due to the heavy proposed investment in infrastructure services and the lifting of planning controls.

3. SWANSEA: TWO YEARS OF PROGRESS

Swansea, by comparison, was more or less "in operation" even before designation.[234] A more "mature" enterprise zone, it has a great deal more development in place, and considerably more open land to offer.

a) *The Zone.* The Swansea Zone is located approximately three miles from the city's center, and contains approximately 175 acres of primarily low-lying agricultural land.[235] Ninety-five percent of the zone is publicly owned.[236] Well before designation in June, 1981,[237] Swansea had already cleared most of the proposed zone and located forty commercial enterprises there, ranging in size from the huge Morganite Electrical Carbon Ltd. works to small enterprises (e.g., engineering firms, tire firms) in a large industrial "estate."[238] Bounded by major highway and rail links and well served by new internal roads, the zone is in an excellent geographic position to attract more.[239]

The development constraints imposed by Swansea in the scheme, which was approved by the secretary of state for the environment, upon the general permission granted to develop light

233. *Id.* at 28–9.

234. By Designation Order 1981 (S.I. 1981 No. 755) on June 11, 1981. Conference with Maurice Howell, Planning Director, in Swansea, Wales (July 1981).

235. CITY OF SWANSEA, LAND AUTHORITY FOR WALES JOINT DEVELOPMENT BRIEF: SWANSEA ENTERPRISE ZONE at §§ 2.1, 3.1, 3.3 (May 1981).

236. Evans, *Trying Time for Local Government*, WESTERN MAIL, July 1, 1981, at 3.

237. *Supra* note 234.

238. Site inspection by author, July 1981; Conference with Maurice Howell, *supra* note 234; List of Firms in the Swansea Enterprise Zone (typewritten, June 6, 1981).

239. *Id.*; SWANSEA ENTERPRISE ZONE, *supra* note 235, Plan No. 4.

and general industrial projects, warehouses, commercial offices, hotels, motels and retail outlets[240] are principally as follows:[241]

i. retail developments may not exceed 45,000 square feet;
ii. building land coverage may not be *less* than 20 percent;
iii. building height may not exceed twenty meters;
iv. environmental restrictions on air pollution, glare and noise levels;
v. preliminary approval of any proposed filling and road modifications, including those to Swansea's road plan;
vi. regular planning permission procedures for the manufacture of hazardous substances, waste disposal, scrap and salvage operations, explosive storage and manufacture, trailer parks, nuclear installations, and special industrial developments of the same kind limited in the Isle of Dogs.[242]

Reflecting a concern of the Department of the Environment in enterprise zones where much of the land is owned by the local government, Swansea has specifically promised not to use "its position as vendor or lessor to require compliance with standards additional to or at variance with those set out in the Planning Scheme so as to have the effect of determining development."[243]

Perhaps the most imaginative device which the Enterprise Zone Authority (the Swansea City Council) has devised is the formation of an Enterprise Zone Committee to drastically accelerate the development approval process.[244] Comprised of but four officials,[245] the Committee is empowered to deal with all matters affecting development and is reportedly ready and able to meet on twenty-four hours' notice.[246]

b) *Progress Since Designation.* Since designation, some fifty-two firms leased space for approximately 275,000 square feet of new buildings valued at over $10 million. This has raised the number of firms in the enterprise zone to just about 100.[247]

Many of the firms which have moved to Swansea since designation are service and distribution businesses. Relocation from other

240. Enterprise Zone Scheme/Lower Swansea Valley, adopted by the Swansea City Council on March 26, 1981, at § C(2).
241. *Id.* at §§ C(2), (3) and (4).
242. *See supra* note 223 and accompanying text for the pertinent Use Classes V–IX of Schedule to the Town and County Planning (Use Classes) Order 1972.
243. Enterprise Zone Scheme, *supra* note 240, at § B.
244. *Id.* at § D–1.
245. *Id.*
246. Evans, *supra* note 236.
247. *Enterprise Zones*, The Times, March 9, 1982, at p. iv.

parts of Swansea accounts for about 45 percent of the firms in the enterprise zone, but it is interesting to note that about half of the thus-vacated premises have been reoccupied. Moreover, there is some evidence that many of the firms so relocating either could not remain where they were, or would have been "adversely affected" should they have remained there. In other words, many of the relocations would have taken place in any event.[248]

VI. Conclusions[249]

With the United States enterprise zone program in the formative stage and several years of British experience to reflect upon, it is an appropriate time to consider how (or whether) enterprise zones should develop. Critical comment on the enterprise zone concept has been decidedly mixed on both sides of the Atlantic.[250] Essentially, the questions raised about its viability fall into four categories:

1) Will the establishment of an enterprise zone attract business? Here one finds controversy over the size and level of tax and regulatory relief needed to attract commercial enterprises to a designated area, and whether even these are enough.
2) With the attraction of business actually serve to revitalize an "economically deteriorated" area?
3) Are the standards for designation defensible? Indeed, do they relate to definable criteria for accomplishing revitalization and redevelopment goals?
4) Will the establishment of enterprise zones result in unfairly

248. DIRECTOR OF PLANNING, SWANSEA CITY COUNCIL, SWANSEA ENTERPRISE PARK MONITORING REPORT No. 3, at 0.5–0.7 (July 1982).

249. The authors are grateful for the written comments of an earlier version of these conclusions provided by E. S. Savas, assistant secretary for policy and Research, U.S. Dep't of Housing and Urban Development, and for the opportunity to discuss these and other aspects of this article, all provided during September of 1982 at a Planning for Enterprise International Seminar in Swansea, Wales.

250. *See e.g., Controversy Over Urban Enterprise Zones*, CONG. DIG., March, 1982 at 69; GENERAL ACCOUNTING OFFICE, *supra* note 3; Ratcliffe, *Enterprise Zones*, EST. GAZETTE (International Supplement) May 16, 1981, at 26; Zones for Enterprise, COMMUNITY ACTION, Jan.–Feb. 1981, at 25; *MacLeary & Lloyd, A Step Forward?*, EST. GAZETTE, July 12, 1980, at 149; *Half an Enterprise Zone Is Better Than None. . . .*, EXEC. WORLD 24; Taylor, *The Politics of Enterprise Zones*, 59 PUB. AD. 421 (1981); Lloyd, *Enterprise Zones: The American Experience*, EST. GAZETTE, Feb. 27, 1982, at 745; Myers, *Urban Enterprise Zones: UDAG Revisited?*, HISTORIC PRESERVATION, Nov.–Dec. 1981, at 12. Purton & Douglas, *Enterprise Zones in the United Kingdom: A Successful Experiment?*, 1982 JPL 412 (1982); *Enterprise Zones: The Concept, supra* note 5; S. BUTLER, ENTERPRISE ZONES, *supra* note 6.

favored treatment of some firms to the detriment of others located outside the zone?

5) Is the "local share" burden reasonable?

A. *Will Enterprise Zones Attract Business?*

1. There is some question whether enterprise zones are meant to attract small or large business ventures. It has been suggested from a number of quarters that the enterprise zones as structured in the United States will attract only large and profitable industries able to take advantage of the relatively modest federal incentives for location. Of course, if the goal is simply economic revitalization and job creation, perhaps this should not matter. If, on the other hand, the goal is to aid new, small businesses, then provisions that aid "start-ups," such as federally guaranteed real property tax "holidays" should be considered.

2. Except potentially in the "local share" requirements discussed in section III–B, there is no provision for increased security for persons and property. Moreover, except as prospective local governments offer it as part of their package, no guarantee of new or increased services and infrastructure (roads, sewers, water, electricity) is included in the United States program. Because the federal government is offering no new money to provide these services (quite the opposite, actually), it may be difficult for local government to provide them. The British program—if Swansea and the Isle of Dogs are typical—seems to result in the provision of both, although it is not required to do so by the terms of the parliamentary legislation.

3. The lack of federal aid to enterprise zone areas is a nagging problem. Recent British experience indicates that most of their zones are located in areas which have already received—and will in many cases continue to receive—central government financial incentives through a number of national programs. Indeed, it has been pointed out that very nearly $10 million was poured into Swansea from various sources *before* its designation.[251] The British experience would seem to suggest that continued, substantial federal aid is the sine qua non of a successful enterprise zone program. Tax breaks and regulatory simplification alone are not enough.

4. The British experience demonstrates the value of publicity

251. I. McDonald, The British Enterprise Zones (paper delivered at Planning for Enterprise International Seminar, Swansea, Wales, September 17, 1982).

and marketing.[252] Many British firms have located in enterprise zones in part because of the aggressive courting undertaken by such zones as Swansea, through advertisements, displays, conferences and dinners for corporate executives. Moreover, the glare of publicity provides both a measure of focus and a guarantee that local authorities will not foot-drag in the processing of development application. These are lessons worth learning if the entire zone program is going to be successful in the United States—and some potential enterprise zone communities such as Baltimore are already heavily engaged in such "marketing."

5. Capital investment incentives in the United States and British programs may produce an abundance of capital-intensive businesses (such as warehousing), but which provide relatively few employment opportunities. It does appear that both programs provide more extensive investment and income benefits than employee/employment benefits, so that a distortion of the market in favor of such high-cost, low-employment industries may well occur in an enterprise zone.

6. The United States and British proposals focus on tax incentives as the primary mechanism to attract business. But taxes are only one area among many which persuade businesses to change location. If they are to be an increasingly large factor, then the tax incentives must be correspondingly large. In this respect, the inducements provided by the British program exceed those provided by the United States proposals by a considerable margin, especially in the area of guaranteed *ad valorem* real property tax relief. Nor is it likely that such relief will be easily forthcoming as "local shares." This is so because the United States government is offering no reimbursement for such "tax holdings" to local governments—as the British provide—yet expect the local governments to provide vastly increased local service and infrastructure improvements.

7. Many of the proposed solutions for increasing the likelihood of employing enterprise zone residents will probably increase reporting and monitoring requirements, the elimination of which is one of the goals of enterprise zone programs.

B. *Standards for Designation*

1. The imposition of UDAG and UDAG-like standards will eliminate many areas of the county from participation in the program

252. J. Stambollouian & I. McDonald, U.K. Enterprise Zones (paper delivered at Lincoln Institute for Land Policy Roundtable Meeting, London, May 1982).

altogether, even though they might benefit substantially from an enterprise zone program. The United States criteria for designation—especially relating to levels of unemployment and poverty which generally track the criteria used in selecting UDAG recipients—are vastly more detailed and complicated than the selection standards in the British program. There is accordingly less administrative flexibility in designating the zones. It is not altogether clear that the implications of incorporating these detailed provisions, designed primarily to encourage public-private partnerships in physically depressed areas, are necessarily appropriate for enterprise zone programs, unless what is sought is simply a variation of the UDAG program minus federal funding commitments. Although some federal budget agencies think otherwise, the cost of the enterprise zones in the forgone tax revenues is slight when compared with previous federal grant programs. If new commercial ventures are established—rather than simply a shifting of enterprise across a zone border, and if unemployed are again employed, then the federal government ultimately loses very little in "lost" taxes. Moreover, once the zones self-destruct at the end of their designated lives, new tax revenues will have been gained which would not have been realized but for the initial establishment of an enterprise zone. Therefore, the concern that an area be virtually blighted in order even to be *considered* for designation is questionable. It would seem more productive if criteria were less onerous in their area, and levels of poverty become but one factor among others to consider in the designation of zones nationwide. Given the experimental nature of the enterprise zone program, this significant factor, and others, deserve consideration. The wide diversity in the British system might provide a clue to the range of zone areas which might usefully be considered.

2. The commitment to limiting the number of enterprise zones in the United States—as compared to the British program, which contains no limitation even though the central government reimburses the local government for all *ad valorem* real property taxes lost—seems at least only marginally defensible. It may be that fewer, or more, than the twenty-five per year presently contemplated in the Administration bill would be appropriate. Surely there is nothing magic about the number chosen, so why set a limit? An upper limit as low as twenty-five tends to discourage applications. With a population roughly one-third of ours, Britain will have designated twenty-five zones roughly within the first twelve months of its enterprise zone designation process. While direct, statistical comparison is somewhat simplistic, the numbers

nonetheless suggest that perhaps our program is niggardly, especially given the paucity of federal resources committed to it.

C. *Business and Revitalization: Post Hoc?*

1. As (if) businesses move into the enterprise zone area, will they displace residential areas and residents? Will we see a "commercial gentrification"?[253] Many have suggested that a substantial rise in property values in the zones will drive out both the poor residents and marginal businesses. Indeed, there is evidence of such a rise in value in some of the British zones. On the other hand, even if this is the result, the goal of "revitalization" may nonetheless be met.

2. Will businesses actually employ zone residents, or will they bring their employees with them? This is obviously an important issue if one goal of the zones is to alleviate unemployment. Clearly, much depends on the kind of business attracted: whether it is a new or existing venture and, if the latter, whether it comes from nearby or afar; whether it is labor-intensive or, like warehousing, for example, capital-intensive, as many of the large enterprises in British zones are—and as parts of the Administration bill's tax inducements may encourage. Suspending the minimum wage laws in the zone might increase the likelihood of local employment, thereby increasing the financial viability as well as the competitive edge of firms locating there.

3. Will the "revitalization" be temporary or permanent? Some British commentators have questioned whether their ten-year limit is too short to provide anything but short-term relief to distressed areas. The Administration bill provides for a longer time. Perhaps certain benefits could or should last longer than others.

D. *Equity and Enterprise Zones*

1. One of the most common criticisms of enterprise zones is that firms located within them will have competitive advantage over nearby firms, especially those located at the periphery, but just outside, the zone. While the problem can be ameliorated by a careful drawing of boundaries (indeed some have been modified in Britain to avoid just such problems), to some degree, this effect may be unavoidable. While it has been suggested that a general economic upturn in the enterprise zone area may work to the benefit of all commercial enterprises, this may not be so in the short

253. P. Hall, Prepared Statement, Hearings on April 15 and 16, 1982, *supra* note 9, at 8–9.

run. Indeed, there is controversy over this "bootstrap" effect on the area generally, especially if the "outside" firms are competing with "inside" firms in markets removed from the enterprise zone area.

2. The effect could be particularly great with respect to those enterprise zones established away from traditional city centers. As in the United States, many British cities have long employed a variety of measures to revitalize their deteriorating or stagnant city centers. In order to avoid a retail drain, most of the British enterprise zone authorities have set stringent limits on the size of retail businesses they will permit in a zone. It may be that United States communities contemplating enterprise zones would be wise to do the same.

3. The movement of firms from nearby areas into a more attractive enterprise zone environment may revitalize the zone area at the expense of others. This would be especially true if the incoming businesses tend to be ones already contemplating a change due to conditions in their present location. This did occur in the Swansea area, though there is some evidence that many of the firms would have moved somewhere anyway due to local conditions.[254]

E. *"Local Share" Issues*

1. If successful, enterprise zones may drain municipal resources by drawing large amounts of municipal services without paying for them due to local tax elimination or reduction. This could be particularly troublesome if: (a) local development exaction regulations were suspended as part of the local share commitment, and (b) the local government were also providing an extraordinary amount of new service to attract businesses in the first place.

2. If a zone is unsuccessful, municipalities may still be forced to comply with their agreements with the federal government on pain of loss of designation. Moreover, if municipalities agree to be "liable" to incoming businesses if enterprise zone designation is revoked (as encouraged by the Administration bill), then they will be faced with potentially large economic losses. Thus, if the zones are not successful in generating economic revitalization, the local governments appear to be likely to suffer the greatest losses.

3. The substantial elimination of land use and planning controls will destroy local attempts at comprehensive planning and may endanger historic districts and sites which are often in deteriorated

254. Monitoring Report No. 3, July 1982, *supra* note 248, at par. 0.6.

areas. This is particularly true since there are substantial questions as to whether traditional land use controls have really inhibited *commercial* development. *Environmental* laws and their land use impacts may do so, but there is no suggestion that these be eliminated in *either* the United States or the British programs; indeed, few seriously suggest they should be. Enterprise zones ought not to be used to dismantle the local land use management system.

4. The expediting of permit processing, including those for development, is another matter. The increasing complexity of land use control programs at the state and local level cries out for simplification. While it may be (as some commentators have suggested) that the speed with which land use schemes have been adopted and development permits are to be approved is too short under the British system for meaningful decision making, it is (or should be) obvious that months and years of delay in commencing development because of tedious multilevel reviews and permit requirements adds unnecessarily to the costs and precariousness of many land development decisions, regardless of the individual merits of each set and level of regulation. Therefore, a commitment to vastly expedite the permitting process as a sine qua non of the local share package should be most welcome.

In sum, the enterprise zone concept is probably worth trying. The British have had sufficient success with their enterprise zones over the past years to designate more. However, the United States program is in danger of doing too little to attract business and jobs to its zones and is expecting too much of local government in the bargain. One retains the impression that, rather than solely a bold experiment, the United States enterprise zone proposal is meant to substitute for a range of federal aid programs to distressed areas. If so, it is too weak a vessel to bear such a burden. If strengthened by means of additional federal inducements and commitments, however, it holds much promise for producing the kind of public-private partnership that may well arrest the economic and physical decay of urban neighborhoods and help provide permanent solutions to our national urban problems.

APPENDIX

Isle of Dogs Enterprise Zone
DOE Circular 1/72 Appendix 1

Industry	Materials involving	Total storage quantity requiring detailed investigation
Petrochemical* and plastic polymer manufacture	All	≠
Other chemical works	Acrylonitrile	50 Tons
	Ammonia	250 Tons
	Bromine	100 Tons
	Chlorine	25 Tons
	Ethylene Oxide	20 Tons
	Hydrogen Cyanide	50 Tons
	Phosgene	5 Tons
	Sulphur Dioxide	50 Tons
Fertilizer manufacturer	Ammonia	250 Tons
Aluminium and magnesium powder production	All	≠
Aluminum refining	Chlorine	25 Tons
Paper pulp manufacture	Chlorine	25 Tons
	Sulphur Dioxide	50 Tons
Air liquification plants and steel works	Liquid Oxygen	135 Tons
Flour and sugar silos	Flour	200 Tons
	Refined White Sugar	200 Tons
All	Liquified Petroleum Gas	100 Tons

Economic size of plant would involve such quantities of materials that the risk would invariably be present.
Petrochemical manufacturer is defined as the manufacture of chemicals from an oil refinery product or from natural gas.