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The Quasi-Public Corporation and Constitutional Revision--Formula for Urban Community Development in Florida

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NOTES

THE QUASI-PUBLIC CORPORATION AND CONSTITUTIONAL REVISION – FORMULA FOR URBAN COMMUNITY DEVELOPMENT IN FLORIDA*

Since the summer of 1965 America has experienced three years of urban riots and outbreaks that have threatened the political, economic, and social fabric of the nation. Although spared the devastation of Watts, Detroit, and Newark,[1] twenty-four Florida cities were torn by disturbances and destruction during the same period.[2] The National Advisory Commission on Civil Disorders classed Tampa as a "major disorder," while the National Commission on the Causes and Prevention of Violence devoted a special report to the 1968 disturbances in Miami.[3]

This developing urban crisis has been subjected to extended analysis since the initial explosion in Watts in August 1965.[4] It is attributable, in part, to the marked redistribution of the nation's population that has taken place over the past twenty years. From 1950 to 1966, approximately 2 million Negroes, most of them unskilled and semi-literate, moved to the North and West seeking better employment in the metropolitan areas; even in the South more than half of the Negro population now lives in cities.[5] At the same time, the white middle class was fleeing from the central cities to the suburbs in even greater numbers.[6] As a result, present trends indicate that by 1972 seven major American cities, including Jacksonville, will have Negro majorites, while the suburbs ringing them will remain largely all-white.[7] Because of redistribution of population within Florida, urban areas, including the central core districts and the suburbs surrounding them already constitute a majority of the state's population; by 1985 present estimates suggest there will be at least fifteen urban areas with over 50,000 population.[8]

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1. *See generally* NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT (Bantam ed. 1968) [hereinafter cited as RIOT REPORT].

2. The total was developed from figures in RIOT REPORT, *supra* note 1, at 158-59 (6 municipalities) and from numerous reports published in the Miami Herald and St. Petersburg (Fla.) Times during the period Aug. 1, 1965 through Dec. 31, 1968.

3. RIOT REPORT, *supra* note 1, at 113; MIAMI STUDY TEAM ON CIVIL DISTURBANCES IN MIAMI, FLA. DURING THE WEEK OF AUG. 5, 1968, REPORT (submitted to the Nat'l Comm'n on the Causes and Prevention of Violence, Jan. 15, 1969).

4. *See, e.g.*, RIOT REPORT, *supra* note 1; PRESIDENT'S NATIONAL COMMISSION ON URBAN PROBLEMS, REPORT (1969); GOVERNOR'S COMMISSION ON THE LOS ANGELES RIOTS, VIOLENCE IN CITY – AN END OR A BEGINNING (1965).

5. RIOT REPORT, *supra* note 1, at 240-43.

6. *Id.* at 245-46.

7. *Id.* at 391. The inclusion of Jacksonville in this list is now in doubt as the consolidation of all of Duval County into Jacksonville, bringing with it a higher concentration of white residents, occurred after the RIOT REPORT figures were developed.

8. Grove, *Metropolitan Planning?*, 21 U. MIAMI L. REV. 60, 71 (1966). *See generally* STAFF REPORT TO INTERIM COMMITTEE ON URBAN AFFAIRS OF THE FLORIDA LEGISLATURE,

Not only the white middle class has been fleeing to the suburbs; industry too has joined the hegira. Squeezed by a lack of reasonably priced land for expansion, inadequate traffic patterns and parking facilities, and an onerous real estate tax burden, business and industry have relocated in the relatively open expanses of the suburbs.[9]

The suburban migration of business, industry, and middle-class families has seriously undermined the economic foundations of urban centers. Left behind are core areas often incapable of financially supporting the services required in a complex metropolitan center. Consequently, many of the central cities are experiencing deterioration and blight. At the same time, the exodus has brought the suburbs to the beginning stages of blight and decay, with industry, housing, and other facilities so hurriedly set up that there is "no planning and little sense of community." As the President's Task Force on Suburban Problems recently acknowledged: "The suburbs do not stand alone. They are an integral part of the great metropolitan areas where two of three Americans already live. Help to the troubled central city and the suburb must move in parallel. Without the improvement of both, all will suffer."[10]

One of the most critical aspects of this urban decline is the lack of adequate housing for the economically disadvantaged. In Florida, in 1960, the most recent year for which accurate figures are available, there were an estimated 635,000 people living in either "deteriorating" or "dilapidated" dwellings.[11] Nationwide, within metropolitan areas, almost one-sixth of all families[12] — and nearly two-fifths of nonwhite families[13] — live in housing classified as "substandard," "deteriorating," or "dilapidated." Yet, housing improvement alone, even when tied to urban renewal, will not provide the ideal balanced community development including large-scale land acquisition, site development, industrialization, provision for neighborhood facilities,[14] and comprehensive metropolitan and transportation planning.

This note focuses upon present efforts at dealing with elements of urban community development in Florida and examines the emerging concept of the quasi-public corporation as a format for joinder of the public and private sectors in an effort to combat the problems of the metropolitan

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NEW PERSPECTIVES ON COMMUNITY REDEVELOPMENT (1969).

9. N.Y. Times, Sept. 3, 1967, at 54, col. 4. *See generally* PRESIDENT'S NATIONAL COMMISSION ON URBAN PROBLEMS, REPORT (1969).

10. N.Y. Times, Dec. 15, 1968, at 40, col. 1.

11. *See* 1 U.S. BUREAU OF THE CENSUS, DEP'T. OF COMMERCE, 1960 CENSUS OF HOUSING, pt. 3, at 11-6, table 2 (1963). This figure was developed through statistical calculations using the figures of 170,367 deteriorating housing units, 73,780 dilapidated housing units, and the average of 2.6 persons per unit.

12. 2 *id.* pt. 1, at 1-20, table B-4.

13. *Id.* at 1-30, table B-14.

14. *See* Community Development Act, CONN. GEN. STAT. ANN. §§8-201 *et seq.* (Supp. 1968). *See generally* HOUSING STAFF OF THE NATIONAL URBAN COALITION, AGENDA FOR POSITIVE ACTION: STATE PROGRAMS IN HOUSING & COMMUNITY DEVELOPMENT 15-16 (1968); G. Schermer Associates, MORE THAN SHELTER: SOCIAL NEEDS IN LOW- AND MODERATE-INCOME HOUSING 41-3, 54 (Nat'l Comm'n on Urban Problems Research Rep. No. 8, 1968).

sprawl. Discussion of the leading quasi-public attempts in this area, New York's Corporation for Urban Research and Development and Urban Development Corporation, illustrates the potential application of the approach. Finally, this note indicates constitutional barriers to implementation of this form in Florida and proposes an amendment to the 1968 Florida Constitution to circumvent the obstacles.

TRADITIONAL APPROACHES TO URBAN DEVELOPMENT

While it is not the purpose of this note to examine in depth current federal and Florida efforts in urban development, some limited analysis is desirable, especially in light of the inherent incapacity of these programs to solve the state's current urban demands.

These governmental efforts developed in response to needs that were unmet by the private sector. The reasons for failure to provide enough new facilities and to prevent deterioration of existing buildings in slum areas are not hard to discern. Costs of materials, labor, and financing for construction or rehabilitation are high throughout the field; rentals cannot yield a rate of return competitive with that which can be earned by devoting investment to new building in the suburbs.[15] Moreover, investors demand a higher return on urban investments because of added risks: vandalism and tenant neglect increase maintenance costs; high vacancy rates, tenant turnover, and "rent skips" make the income flow uncertain; and potential buyers' fears of being locked into an unprofitable investment make resale difficult. Due to this substantial element of risk, obtaining mortgage financing from conventional lending institutions for investment in slum areas is extremely difficult. Money for new construction is virtually unobtainable[16] and short-term, purchase money mortgages at high interest rates are usually the only form of financing available to buyers of slum area buildings.[17]

The inadequacy of the private market in this area has long been recognized. Since the first modest efforts of the Housing Division of the Federal Public Works Administration[18] concentrated on clearing slums and provided housing for low-income families, federal and local governments have initiated a succession of programs intended to solve developing urban problems. Regrettably, most state governments, including Florida's have not been active participants and innovators. Despite these efforts, however, it is becoming increasingly evident that the public sector alone will be unable, in the foresee-

15. *See* U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, SCIENCE AND THE CITY (1967). *See generally Hearings on Financial Institutions and the Urban Crisis Before the Subcomm. on Financial Institutions of the Senate Comm. on Banking & Currency*, 90th Cong., 2d Sess. at 73-82 (1968) (testimony of William Ross); W. GRIGSBY, HOUSING MARKETS AND PUBLIC POLICY (1963); N.Y. Times, Feb. 25, 1969, at 53, col. 4; *id.* Feb. 2, 1969, §3, at 1, col. 4.

16. *Hearings, supra* note 15, at 157-58; C. RAPKIN, THE REAL ESTATE MARKET IN AN URBAN RENEWAL AREA 46-58 (N.Y. City Planning Comm'n 1959); G. STERNLIEB, THE TENEMENT LANDLORD 104-20 (1966). *See generally* N.Y. Times, Feb. 28, 1969, at 20, col. 1.

17. C. RAPKIN, *supra* note 16, at 49-52.

18. Act of June 16, 1933, ch. 90, tit. II, 48 Stat. 200.

able future, to provide sufficient resources to eliminate the backlog of necessary improvements, much less to meet increasing needs.

Public Housing

As already noted, public housing or an alternate approach to providing satisfactory housing to urban inhabitants, forms one of the basic elements of any community development effort. The advent of public housing can be traced to early efforts of the Public Works Administration (PWA).[19] In 1935, a federal district court ruled that the federal government could not use eminent domain to acquire property for low-rent housing;[20] the next year a state court held that a local government could condemn for housing projects.[21] As a result of these and subsequent state cases,[22] PWA began encouraging local participation in the housing effort by making available loans up to seventy per cent and grants up to thirty per cent.[23] The major federal effort in public housing, the United States Housing Act of 1937,[24] carried out the same pattern of operation. The federal administrative agency for the public housing program, the Housing Assistance Administration, would neither construct nor operate housing projects itself, but assisted localities in their effort to provide adequate housing.

In order to avail itself of the largess and advisory assistance of the federal government the locality had to create, pursuant to state enabling legislation, a local housing authority.[25] Florida Statutes, chapter 421, authorizes the establishment of such authorities. In 1940 the Supreme Court of Florida upheld the statute as a general welfare act resting on the police power of the state.[26] Two years earlier the court had rendered its first opinion in the public housing area; until now this decision in *Marvin v. Housing Authority of Jacksonville*[27] has not precluded public housing construction, but it may portend doubt on expansion of the program in Florida. The Housing Authority involved in *Marvin* had been created under chapter 17981, Acts of 1937, now encompassed in chapter 421; the authority had the power to undertake slum clearance and exercise eminent domain. The act was found

19. *See* R. FISHER, TWENTY YEARS OF PUBLIC HOUSING 82-89 (1959). *See generally* Ebenstein, *The Law of Public Housing*, 23 MINN. L. REV. 879 (1939).

20. United States v. Certain Lands in the City of Louisville, 9 F. Supp. 137 (W.D. Ky.) *aff'd*, 78 F.2d 684 (6th Cir. 1935), *petition for cert. dismissed*, 294 U.S. 735 (1935). *But see* Oklahoma City v. Sanders, 94 F.2d 323 (10th Cir. 1938) (recognizing that slum clearance and low-cost housing have a beneficial effect upon the nation as a whole by reducing illness, disease, and crime; aiding morals; increasing employment; and stimulating industry in a particular community, even though some parts of the nation may not immediately feel the benefits of such activity).

21. New York City Housing Authority v. Muller, 270 N.Y. 333, 1 N.E.2d 153, 279 N.Y.S. 299 (1936).

22. *See* Annot., 172 A.L.R. 967 (1948); Annot., 130 A.L.R. 1075 (1941).

23. R. FISHER, *supra* note 19, at 86-89.

24. Ch. 896, 50 Stat. 888.

25. *Cf.* Act of Sept. 1, 1937, ch. 896, §2 (11), 50 Stat. 889.

26. Higbee v. Housing Authority, 143 Fla. 560, 197 So. 479 (1940).

27. Marvin v. Housing Authority, 133 Fla. 590, 183 So. 145 (1938).

valid under substantive due process despite the contention that low-cost housing and slum clearance was not a public purpose. In commenting on the powers of all housing authorities under the act, the court observed:[28]

> It has been granted power so that its objectives may be accomplished, viz., the clearance of slums and the eradication of slum evils in the different areas of Florida, and to erect in their places low-cost houses so that persons with low incomes can be more abundantly cared for and the attendant evils of slum conditions reduced to a minimum.

The difficulty in application of the statute to contemporary housing efforts evolves from the changing nature of public housing.

Traditional public housing, insufficient in scale to meet present urban needs,[29] has demonstrated inherent defects that render it of doubtful value in dealing with the social and economic problems of the slums. Public housing projects have usually become miniature ghettos in themselves, offering a living environment residents find intolerable.[30] Public housing is constructed according to popular concepts of how the poor should be permitted to live, without considering that its Spartan shabbiness becomes a permanent form of blight upon the community.[31] Constructed in dilapidated neighborhoods, such projects have separated low-income residents physically as well as psychologically from higher-income areas.[32] Rigidly enforced maximum income limits have made public housing a barrier to integration of economic groups and have probably encouraged racial segregation.[33] In larger cities public housing has now been directed primarily to the elderly.[34] Furthermore, public housing has proved to be at least fifteen per cent higher in costs than privately financed housing.[35]

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28. *Id.* at 617, 183 So. at 156. *But see* Lott v. Orlando, 142 Fla. 338, 196 So. 313 (1939).

29. In its thirty-year history, the low-rent housing program has completed only 660,129 units, despite a 1949 congressional authorization of 800,000 units to be built over a six-year period. Washington Post, Nov. 26, 1968, at 2, col. 8. *See also* RIOT REPORT, *supra* note 1, at 467-79. PRESIDENT'S COMM. ON URBAN HOUSING, A DECENT HOME 60-1, 88 (1969).

30. *See* C. ABRAMS, THE CITY IS THE FRONTIER 35 (1965); A. SCHORR, SLUMS AND SOCIAL INSECURITY 113 (U.S. Dep't of Health, Education & Welfare, Social Security Admin., Div. of Research & Statistics, Rep. No. 1, 1963); Hartman, *The Limitations of Public Housing*, 29 AM. INSTITUTE OF PLANNERS J. 283 (1963); Mulvihill, *Problems in the Management of Public Housing*, 35 TEMPLE L.Q. 163 (1962).

31. *Hearings on Urban Highway Planning, Location, and Design Before the Subcomm. on Roads of the Senate Comm. on Public Works*, 90th Cong., 1st Sess., pt. 1, at 9 (1967) (testimony of William Slayton, Exec. Vice President, Urban America).

32. *See* A. SCHORR, *supra* note 30, at 46-51.

33. *Id.* at 111; Bauer, *The Dreary Deadlock of Public Housing*, 27 ARCHITECTURAL FORUM 140 (1957).

34. *See* Comment, *Government Housing Assistance to the Poor*, 76 YALE L.J. 508, 511-12 (1967). This comment provides a useful discussion of the status of government low-income housing programs prior to the enactment of the Housing and Urban Development Act of 1968.

35. Amdursky, *The Urban Crisis, Private Enterprise and State Constitutions: A Plan for Action*, 19 SYRACUSE L. REV. 618, 620 n.20 (1968) (statement of Robert C. Weaver, former Secretary of the U.S. Dep't of Housing and Urban Development, Aug. 5, 1967).

In response to these criticisms, public housing efforts in the last three years have centered around the concepts of rehabilitation,[36] the "turnkey" approach,[37] and leasing of private dwellings for low-income families.[38] While it appears that these approaches are being utilized to a limited extent in Florida,[39] and although there has not been a challenge to the utilization of these techniques, two cases suggest difficulty for any public housing program that goes beyond slum clearance in the urban core and expands to single-unit leased and rehabilitated facilities in the suburbs.[40]

In a case arising in Panama City, the Supreme Court of Florida held that the housing authority could acquire realty but could not turn it over to private interests for development of a proposed low-rent housing project for the naval personnel under private control.[41] The arrangement was constitutional only "if the Authority can do it as the body politic that it is, and retain control . . . after completion, and keep it a public project from start to finish."[42] In view of the lack of public control in various stages of the turnkey and leasing approaches to public housing, the *Lewis* case might impose barriers.

In another decision handed down in September 1965, the Florida supreme court invalidated a rural development plan for the construction of houses

36. Rehabilitation encompasses development of additional units of low-income housing through acquisition and repair of existing units, as contrasted to new construction. Rehabilitation is accomplished either through contracting out the work, after acquisition, to private builders, or having the authority utilize its own staff to perform the work. A third method provides for selection of properties that have already been renovated by the private builder. *See generally* PRESIDENT'S COMM. ON URBAN HOUSING, *supra* note 29, at 100-12; Ledbetter, *Public Housing—A Social Experiment Seeks Acceptance*, 32 LAW & CONTEMP. PROB. 490, 513-15 (1967); McGuire, *Rehabilitation for Public Housing*, 22 J. HOUSING 595 (1965).

37. The "turnkey" technique permits the local housing authority to purchase a "packaged deal" from a builder or developer. The authority invites a landholding private developer to build a project, fix the price, and buy the finished development. The 1968 Housing and Urban Development Act featured a significant expansion of this approach. *See* H.R. REP. No. 1585, 90th Cong., 2d Sess. 26-27 (1968). *See generally* Ledbetter, *supra* note 36, at 517-18.

38. The leasing program is authorized by the Housing Act of 1937, §23, 42 U.S.C. §1421b (1964), *as amended* (Supp. III, 1968). Once the authorities have obtained local and federal government approval, the housing authority can lease standard housing and sublease to persons eligible for public housing; or the authority can enter into agreements with owners of substandard dwellings whereby the owners will upgrade the units before the authority will accept them. *See* 114 CONG. REC. E6442 (daily ed. July 12, 1968). *See generally* U.S. DEP'T. OF HOUSING AND URBAN DEVELOPMENT, THE LEASING PROGRAM FOR LOW-INCOME FAMILIES (1966).

39. *See, e.g., HUD and Municipal Developments*, 42 FLA. MUN. RECORD, Sept. 1968, at 11 (notes grant for leasing 198 housing units in Jacksonville and use of turnkey method for purchase of 104 low-rent, high-rise homes in Orlando); *id.* Nov. 1968, at 11 (notes Pinellas County utilization of 16 rehabilitated public housing units).

40. *See* Grubstein v. Urban Renewal Agency of Tampa, 115 So. 2d 745 (Fla. 1959), wherein the court, in dictum, notes the fundamental purpose of the Housing Authority Law is the clearance of slum areas and construction of low-rental houses thereon. *Id.* at 748-50.

41. Lewis v. Peters, 66 So. 2d 489 (Fla. 1953).

42. *Id.* at 493-94.

to be sold or leased to private individuals, on the ground that the plan would not accomplish a public purpose.[43]

In June 1964 the Washington County Development Authority had resolved to borrow 244,000 dollars from the United States through the Farmers' Home Administration (FHA) of the Department of Agriculture and to execute an installment promissory note for that amount. The indebtedness was to be incurred pursuant to a larger rural development project of which the specific resolution was a part. The homes were to be sold or leased at appraised market value as determined by the Administration to purchasers or lessees approved by the Government. It was provided that the note would be paid solely from the authority's income from the project.

The Washington County Development Authority issued a certificate of indebtedness (promissory note) to the federal government in the amount of 244,000 dollars. The state argued that the housing plan was invalid under section 10, article IX, of the Florida constitution of 1885, which prohibited the pledging or lending of the credit of the state or any political subdivision, unit, or agency to any individual, corporation, or association.[44] The authority's indebtedness to the United States was to be satisfied by the private homeowners' mortgage payments to the authority. Thus, the state concluded, there was a pledging of state credit, through the authority, for the benefit of the individual homeowner.

The supreme court recognized that the county as a whole would benefit from the housing project but considered the real question to be whether the community itself could go into business to receive a benefit that it would otherwise receive if the project were executed by private enterprise. The court held that such a project could not be construed to be for a public purpose. The majority recognized that the constitutional prohibitions had been held to be satisfied where the private benefit was only incidental to the project,[45] but held that the plan at issue was the converse: the primary benefit would be to persons securing homes while the public advantage would be only incidental. Ironically, the court was forced to conclude: "Laudable as is the effort of the people to lift their locality to a more prosperous condition by their own bootstraps, so to speak, we do not think it can be done within the framework of our laws. Sec. 10, Art. IX, seems completely to bar the way."[46] This finding that the Washington County housing projects were not related to public health, public safety, public morals, or public welfare and hence did not meet the requisite tests of public purpose would seem to hinder efforts to expand public housing beyond its traditional role as an element of a slum clearance effort.

Yet even if expansion of public housing is not barred by such constitutional impediments, and even if investment and expenditures in public housing should ever approach a level equal to the scale of present urban

43. State v. Washington County Dev. Authority, 178 So. 2d 573 (Fla. 1965).
44. Article VII, §10 of the 1968 constitution retains this prohibition.
45. *Id.* at 574.
46. *Id.*

needs, it is unlikely that public housing will form a significant contribution to Florida's urban community development. Florida's efforts in public housing are dependent upon federal support of this approach to low-income housing. Yet, in recent years federal efforts in public housing have fallen short of even the original 1949 goal.[47] The trend of recent federal programs has been toward incentives for home ownership and toward private rental by low-income groups.

Although Federal Housing Administration mortgage insurance was originally intended to permit financing of low- and moderate-income homes, which would otherwise present risks too great for the private mortgage market, the FHA has nonetheless been extremely reluctant to insure mortgages for low-income families under its regular program because of the high element of risk.[48] Partially to remedy this, a special section 221 (h) program was enacted in 1966 to provide subsidized, insured mortgages to low-income home buyers.[49] Even though repeatedly labeled a "demonstration program," and limited in authority to 2,000 such mortgages, this program was the precursor of title I of the Housing and Urban Development Act of 1968.[50] This provision was intended to enable low-income families to purchase their own homes by providing a federal subsidy that could bring down the effective rate of interest of the purchaser's home mortgage. The subsidy would amount to the difference between twenty per cent of the family's monthly income and the required monthly payment under the mortgage for principal, interest, taxes, insurance, and mortgage insurance premium. In every case, however, the purchaser would be required to make payments at least equal to the payment that would be required if the mortgage were made at a rate of one per cent.[51] This title further established a Special Risk Insurance Fund,

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47. *Cf.* note 29 *supra*. *See also* N. KEITH, HOUSING AMERICA'S LOW- AND MODERATE-INCOME FAMILIES 4-6 (Nat'l Comm'n on Urban Problems Research Rep. No. 7, (1968)).

48. In 1966, of all families whose home mortgages were insured by FHA under §203 of the National Housing Act, 12 U.S.C. §1709 (1966), only 1.6% had incomes below $4,000; about half of all §203 mortgages were for families with incomes over $8,000. SUBCOMM. ON HOUSING AND URBAN AFFAIRS OF THE SENATE COMM. ON BANKING AND CURRENCY, 90th Cong., 1st Sess., PROGRESS REPORT ON FEDERAL HOUSING PROGRAMS 56, table E-11 (Comm. Print 1967). However, there have been recent indications that the FHA might reverse this trend, *see Hearings on Housing and Urban Development Legislation of 1968 Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking & Currency*, 90th Cong., 2d Sess., at 128-29, 305-06 (1968). *See generally Hearings on Financial Institutions and the Urban Crisis Before the Subcomm. on Financial Institutions of the Senate Comm. on Banking & Currency, supra* note 15, at 157-61.

49. Demonstration Cities and Metropolitan Development Act of 1966, §310 (a), 12 U.S.C. §1715*l* (h) (Supp. III, 1968), *amending* National Housing Act §221, 12 U.S.C. §1715 (1964).

50. National Housing Act §235, 12 U.S.C. §1715 (1964), *as amended*, 12 U.S.C.A. §1715z (1969).

51. *Id.* at §1715z (c). This provision would operate as follows: Jack Smith, who has an income of $4,200, has applied for federal assistance under this provision. His income is well within the $6,000 local limitation for program eligibility, so assistance is approved. Jack goes to a local lending institution and obtains a mortgage loan of $12,000, to be repaid over a 35-year period. The Government draws up a contract with the private lender to pay him a monthly interest subsidy on Jack's mortgage. Assuming a market interest

which would not be intended to be actuarially sound and under which claims would be paid on mortgages insured under FHA low-income programs.[52]

Incentives for rental housing for low-income families was provided in title II of the 1968 Act. This program of subsidies was for the construction or rehabilitation of rental and cooperative housing; federal assistance payments would cover the difference between the market rate mortgage and the amount that would be required on a mortgage bearing an interest rate of one per cent.[53] To qualify for mortgage insurance under this section, a mortgagor would have to be a nonprofit organization, a cooperative, or a limited-dividend entity.[54] This requirement would effectively preclude participation by existing housing authorities in Florida. This title also provided that tenants in projects built under this program pay twenty-five per cent of their income as rent up to the full market rental.[55]

The rent supplement program, which was instituted in 1965[56] and which provides direct government subsidization of individual families' rent payments, was acclaimed as the federal solution to the low-income housing dilemma.[57] Under rent supplement, nonprofit, limited-dividend, and cooperative sponsors obtain federally-insured mortgages at market interest rates on buildings that they rent to low-income tenants. The tenants pay twenty-five per cent of their family incomes toward these rentals; the Government makes up the difference in direct payments to the landlord. The rent supplement concept could avoid many of the evils of public housing. But congressional opposition, due partly to vicissitudes in the scope and operation of the approach,[58] has kept appropriations at a level inadequate for it to have had a substantial impact on the slums.[59] Furthermore, rising costs of construction and financ-

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rate of 6¾%, Jack's required monthly payment is $99.66. As long as his income remains the same, his payment will be $70 (20% of his monthly income) and the government subsidy will be $29.66. His income will be recertified every two years, and appropriate adjustments will be made in the federal assistance payments to reflect any change.

52. National Housing Act §237, 12 U.S.C. §1715 (1964), *as amended*, 12 U.S.C.A. §1715z-2 (1969).

53. National Housing Act §236, 12 U.S.C. §1715 (1964), *as amended*, 12 U.S.C.A. §1715z-1 (1969).

54. 12 U.S.C.A. §1715z-1(j)(3). *Cf.* 12 U.S.C. §§1715*l*(d)(1), (d)(3) (Supp. III 1968). This requirement intentionally was structured to insure that public agencies would not serve as mortgagors on these projects. This was done to remove the stigma attached to renting from a public authority rather than from a private landlord. H.R. REP. No. 1585, *supra* note 37.

55. 12 U.S.C.A. §1715 z-1(f) (1969).

56. Housing Act of 1961, §101, 12 U.S.C. §1715*l*(d)(3) (Supp. III 1968), *amending* National Housing Act §221, 12 U.S.C. §1715 (1964).

57. For a history of the rent supplement concept and its legislative vagaries, *see* Krier, *The Rent Supplement Program of 1965: Out of the Ghetto, Into the . . . ?*, 19 STAN. L. REV. 555 (1967). *See generally* Welfeld, *Rent Supplements and the Subsidy Dilemma*, 32 LAW & CONTEMP. PROB. 465 (1967).

58. *See* Lawson, *Housing*, 2 CITY Jan. 1968, at 29.

59. The initial appropriation (a total of $32 million) came in fiscal 1967 and 1966. The initial authorization had been $150 million, but no funds were appropriated the first

ing, at least before the Housing and Urban Development Act of 1968, have made investment in rent-supplemented buildings unprofitable under existing FHA rent ceilings.[60]

Urban Renewal

Even if all authorized housing efforts were fully operative and providing "a decent home and a suitable living environment for every American family,"[61] comprehensive urban community development could not be achieved without involvement in other programs. The urban renewal program is visualized as such an adjunct. Urban renewal may be viewed as involving three steps:[62]

> (1) land assembly (the bringing under one ownership of all of the land in an area marked for redevelopment);
> (2) land clearance and the removal of existing structures;
> (3) redevelopment of the area by construction of improvements in accordance with a development plan, keyed in theory to a master community plan.

State legislation in this area preceded federal efforts. In 1945 the Florida legislature purported to provide municipalities with a means of undertaking urban renewal programs.[63] The Florida law appears to have been based upon a model suggested by the National Public Housing Conference, a political lobby for nationwide public housing authorities.[64] The Florida act provided for the establishment in each city of a municipal housing authority charged with the task of initiating redevelopment projects and responsible for the utilization of any available federal funds.[65] The act further prescribed the use of eminent domain and the lease or sale of condemned land to private developers. This law, a general law, was similar to urban redevelopment statutes in other jurisdictions; these enabling laws have been held constitutional in thirty-seven jurisdictions, notwithstanding provisions for sale or lease of condemned property to private developers.[66]

Federal support of urban renewal was implemented by title I of the Housing Act of 1949.[67] This act authorized capital grants for the execution

year. The total authorization through fiscal 1969 was $150 million, but total appropriations had been only $42 million, as the 1968 fiscal appropriation had been only $10 million. For fiscal 1969, $25 million additional appropriation was provided. 24 CONG. Q. ALMANAC 467 (1968). *See also* H. R. REP. No. 1585, *supra* note 37, at 25-26.

60. Note, *Government Programs To Encourage Private Investment in Low-Income Housing*, 81 HARV. L. REV. 1295, 1299 n.35 (1968).

61. Preamble to the Housing Act of 1949, 42 U.S.C. §1441a (1964).

62. Fordham, *The Challenge of Contemporary Urban Problems*, 6 U. FLA. L. REV. 275, 279 (1953).

63. Fla. Laws ch. 23077 (1945).

64. Mandelker, *The Comprehensive Planning Requirement in Urban Renewal*, 116 U. PA. L. REV. 25, 38 n.68 (1967).

65. Fla. Laws ch. 23077, §§2-3 (1945). *See also* 42 U.S.C. §§1450-55 (1964).

66. *See* Annot., 44 A.L.R.2d 1420 (1955).

67. 42 U.S.C. §§1450-55 (1966).

of renewal plans, along with loans and technical assistance. To qualify for most forms of aid, the local agency had to present to the Housing and Home Finance Administrator a "workable program" of urban renewal for the community.[68] Because of the importance of federal financial assistance, providing either two-thirds or three-fourths of the total costs, state enabling acts and local programs should have been oriented towards meeting federal requirements. In Florida they were not.

In 1950 the Housing Authority of Daytona Beach sought to purchase or acquire by eminent domain six and one-half acres of real estate in an area zoned for commercial and light industry. The land at that time was inhabited by low-income families. After condemnation, the land was to be turned over to private commercial and industrial enterprises. In *Adams v. Housing Authority*[69] the Florida supreme court held that the acquisition of real estate for such disposition was not for public use or purpose and that the statute authorizing the procedure was unconstitutional. Four provisions of the Florida constitution were found to have been violated.[70] Vitiating the Daytona Beach plan as a real estate promotion scheme disguised as a redevelopment plan,[71] the majority noted their belief in the adequacy of the city's police power to abate a blighted area. As a result of this case, Florida was left with no constitutional general law upon which a municipality might rely in attempting urban redevelopment. It is today the only state containing several large urban areas that lacks such a general authority.

The City of Tampa, acting pursuant to the Urban Renewal Law of 1957,[72] a special act applicable only to that city, undertook a redevelopment project

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68. Housing Act of 1949, §101(c), 42 U.S.C. §1451(c) (1964), *as amended.* The seven elements of a workable program, as defined administratively by the Department of Housing and Urban Development, include: effectively enforced codes and ordinances; a comprehensive plan for community development; analysis of blighted areas to determine their appropriate treatment — clearance, rehabilitation, or conservation; adequate administrative organization; adequate financing; a program for housing displaced families; and citizen participation in renewal plans. J. LOWE, CITIES IN A RACE WITH TIME 36 (1967).

69. 60 So. 2d 663 (Fla. 1952), *noted in* 13 U. FLA. L. REV. 344 (1960) and 28 TUL. L. REV. 96 (1953).

70. The court held the following provisions, *id.* at 670, of the Florida Constitution to have been violated and gave the indicated reasons therefore: "(1) Section 1 of the Declaration of Rights in that the inalienable right of the citizens to acquire, possess and protect property would be denied; public authorities would be permitted to take one man's property against his will and make it available to another group for their private purpose rather than a public use, (2) Section 12 of the Declaration of Rights and Section 29 of Article XVI in that the taking of private property for a purpose or use not public, to wit, for the purpose of selling or leasing the same for private use, profit and gain to other individuals, corporations, or associations is attempted to be authorized and consummated, (3) Section 5 of Article IX in that the expenditure of public funds and the assessment and imposition of taxes for a purpose not public nor municipal would be authorized, (4) Section 10 of Article IX in that an attempt is made to authorize and consummate the appropriation of public or municipal funds or money, or the loaning of credit of a municipality to corporations, associations, institutions, or individuals for a purpose not public nor municipal and for private gain and profit."

71. 60 So. 2d at 666.

72. Fla. Laws ch. 57-1904 (1957).

that involved forty acres of slum area within the city. In *Grubstein v. Urban Renewal Agency*,[73] involving a suit to enjoin the City of Tampa and its urban agency from further pursuance of the redevelopment program, the Florida supreme court upheld the act. The court recognized that *slum* as distinguished from *blight* clearance was per se a public purpose.[74] The court further held that the public purpose of the plan was not defeated because of lease or sale of the property to private interests, a possible non-public use. Here perhaps is a conceptual merger of public use with public purpose. The main object for which the land was taken was slum clearance, a public purpose. The public interest dominates and thus the only private use, development by private enterprise, is incidental to the over-all purpose. The area involved was to be returned primarily to residential use in conjunction with neighborhood commercial establishments to serve the residents. The court emphasized that the decision was confined to that part of the act relating to *slum* clearance and that it expressed no opinion on that part of the act relating to blighted areas.[75]

Confronted with the *Adams* case, the court in *Grubstein* relied heavily on the definitions of "slum" and "blighted area" to distinguish the two. Only a blighted area was sought to be redeveloped in *Adams*, and no relation to the public health, safety, or welfare that would justify use of eminent domain was found.

Justice Thornal, concurring in *Grubstein*, went further and asserted that the *Adams* decision had been "whittled away" to the point where its judgment was nothing more than the disposition of the particular project proposed in that case.[76] In other words, the *Adams* decision need not have

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73. 115 So. 2d 745 (Fla. 1959).

74. Fla. Laws ch. 57-1904, §§18(f), (g) (1957), define "slum" and "blighted area" as follows: " 'Slum area' shall mean an area in which there is a predominance of buildings or improvements, whether residential or non-residential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and over-crowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

" 'Blighted area' shall mean an area which by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use: Provided, that if such blighted area consists of open land the conditions contained in the proviso in Section 6(d) shall apply: And provided further, that any disaster area referred to in subsection (g) of Section 6 shall constitute a 'blighted area.' "

75. Grubstein v. Urban Renewal Agency, 115 So. 2d 745, 751 (Fla. 1959).

76. *Id.* at 755.

gone so far as to declare the Housing Authorities Law[77] unconstitutional but should have been confined to declaring unconstitutional the particular plan involved. Justice Thornal cited *State v. Cotney*[78] as the case where "this Court for all practical purposes, tolled the tocsin that sounded the death knell of the judgment in *Adams v. Daytona Beach Housing Authority*."[79] This conclusion is perhaps weakened by the court's later rejection, in *State v. Clay County Development Authority*,[80] of its *Cotney* holding. Even so, Justice Thornal's opinion reflects the conclusion of many critics.[81]

Justice O'Connell, dissenting with Justices Thomas and Drew, was unable to distinguish the Tampa Act and the Housing Authorities Law, finding "similar, if not identical circumstances, factual and legal."[82] As to the distinction of slums and blighted areas, the issue was never raised either at trial or before the supreme court and hence was not an issue to be judicially determined in either *Adams* or *Grubstein*.[83] Application of the strict *Adams* interpretation of the Florida constitution led Justice O'Connell to conclude that the urban renewal scheme was invalid.[84]

The narrow question of blight removal, pursuant to an urban renewal program, has yet to come before the Florida courts; until the question appears, it must remain a matter of conjecture how the court will hold. Apparent emphasis previously given by the court to the distinction between blight and slum precludes a prediction that the court will rule favorably on a redevelopment plan to remedy blight, except perhaps in cases where it can be shown that the blighted area has reached a point where only urban redevelopment can ward off a threatened debilitation of the public's health, welfare, and morals.[85] Other jurisdictions, while not distinguishing slum from blight,

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77. Fla. Laws, ch. 23077 (1945).

78. 104 So. 2d 346 (Fla. 1958).

79. Grubstein v. Urban Renewal Agency, 115 So. 2d 745, 755 (Fla. 1959).

80. 140 So. 2d 576 (Fla. 1962).

81. *See, e.g.*, Davis v. City of Lubbock, 160 Tex. 38, 326 S.W.2d 699 (1959); Fordham, *supra* note 62, at 429; Patterson, *Legal Aspects of Florida Municipal Bond Financing*, 6 U. FLA. L. REV. 312 (1953).

82. 115 So. 2d at 758.

83. *Id.* at 757.

84. *Id.* at 758-59, which states: "[T]he basic question, as I see it, is whether the *Adams* case is precedent to be followed under the doctrine of stare decisis . . . . A constitutional provision is intended to be a continuing instrument of government. Nevertheless, its meaning is fixed when the people adopt it. . . . The fact that situations, such as those present in the instant case, were not anticipated when the constitution was adopted does not mean that it should be given a different meaning when applied to the new conditions. A constitution must be . . . given the same meaning and intent which it had when adopted. Its flexibility must never be achieved at the expense of maintaining uniformity in its use and construction. . . . I hold that we should not by judicial fiat do what the people acting through their elected representatives have determined not to do.

"It is such action of other courts in our nation that has thrust upon us a dilemma and created a turmoil, involving the proper role of courts as opposed to lawmaking bodies, that have done untold damage to courts everywhere in our land and caused doubt that courts do or should have the ultimate power to determine the validity of statutes and meaning and application of constitutional provisions."

85. The court in *Grubstein* criticized the definition of "blighted area" in ch. 23077 as

as those terms are used by the Florida court, have held blight elimination to be a public purpose.[86]

As a result of the upholding of the Tampa Act, coupled with the refusal to reestablish the Housing Authorities Act, special acts to permit urban renewal within twenty municipalities in Florida have been enacted since 1957.[87] With minor differences, these acts have all utilized the provisions of the Tampa Act.[88] This special act procedure, in effect, finds the state legislature somewhat blindly creating institutions that shape the future development of part of the state on the basis of legislative courtesy. In addition to these special acts, Dade County has established an extensive program of urban renewal, acting pursuant to powers granted in the charter of Metropolitan Dade County.[89]

In 1967, Representative Gerald Lewis introduced a bill in the Florida legislature to establish general statewide authority for urban renewal.[90]

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containing elements that would not have any direct relation to the public health, safety, or welfare. Fla. Laws, ch. 23077, §2(1) (1945) defined "blighted areas" as: "[A]reas (including slum areas) with buildings or improvements which, by reason of age, deterioration, dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, *excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.*" (emphasis added). The *Grubstein* court criticized the inclusion of the emphasized portions, 115 So. 2d at 750. Yet it appears that many of the acceptable elements of the 1945 blight definition are now included in the definition in the 1957 Act. *See* note 74 *supra*. *Compare* Cannata v. State, 14 App. Div. 813, 221 N.Y.S.2d 457, *with* Crommett v. Portland, 150 Me. 217, 107 A.2d 841 (1954) *and* Redevelopment Agency of San Francisco v. Hayes, 122 Cal. App. 2d 777, 266 P.2d 105 (1954), *cert. denied*, Van Hoff v. Redevelopment Agency of San Francisco, 348 U.S. 897 (1954) *with* Miller v. City of Tacoma, 61 Wash. 2d 385, 378 P.2d 463 (1963).

86. Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945); Cannata v. State, 14 App. Div. 813, 221 N.Y.S.2d 457 (1954); Bellowsky v. Redevelopment Authority, 357 Pa. 329, 54 A.2d 277 (1947).

87. All references are to Fla. Laws: Cocoa, ch. 67-1229 (1967), 63-1232 (1963), 61-2020 (1961); Daytona Beach, ch. 67-1274 (1967), 61-2067 (1961); Ft. Pierce, ch. 67-1392 (1967); Key West, ch. 67-1596 (1967), 63-1493 (1963); Live Oak, ch. 67-1650 (1967), 65-1860 (1965); Niceville, ch. 67-1767 (1967); Titusville, ch. 67-2137 (1967); Lake Worth, 65-1793 (1965); Lakeland, ch. 65-1805 (1965), 61-2382 (1961); St. Petersburg, ch. 65-2207 (1965), 59-1809 (1954); Starke, ch. 65-2286 (1965); Tampa, ch. 65-2303 (1965), 57-1904 (1957); Ormond Beach, ch. 63-1728 (1963); Palatka, ch. 63-1733 (1963); Sarasota, ch. 63-1888 (1963); Auburndale, ch. 61-1867 (1961); Ft. Lauderdale, ch. 61-2165 (1961); Melbourne, ch. 61-2486 (1961); Winter Haven, ch. 61-3007 (1961); Tallahassee, ch. 59-1908 (1959).

88. The similarity between the Tampa Act, Fla. Laws ch. 57-1904 (1957), and the Daytona Beach Act, Fla. Laws, ch. 61-2067 (1961), enabled the Florida supreme court to uphold the Daytona Beach law in Hill v. Huger, 171 So. 2d 167 (Fla. 1965). *See* Hill v. Huger, 346 F.2d 127 (5th Cir. 1965).

89. CHARTER OF METROPOLITAN DADE COUNTY, FLA. §1.01(A)(8) (1968); The Board of County Commissioners has the power to "[e]stablish and administer housing, slum clearance, urban renewal, conservation, flood and beach erosion control, air pollution control, and drainage programs and cooperate with government agencies and private enterprises in the development and operation of these programs." *Cf.* DADE COUNTY, FLA. METROPOLITAN CODE §§2-186-189 (1968) (establishing a Housing and Urban Development Department), *and* ch. 30A (text of the Urban Renewal Act for the county).

90. Fla. H.B. 1481 (1967).

As with previous special acts, this proposal initially was quite similar to the Tampa Act. The bill was enacted, after significant amendment, as chapter 67-734.[91]

The 1967 Urban Renewal Law offered several significant advances over the 1945 proposal in the Housing Authorities Act, and any of its special act predecessors. First, it provided the authority for county-wide, as contrasted to single-municipality, renewal programs.[92] Moreover, it authorized utilization of existing Housing Authority units to operate the efforts in urban renewal.[93] In view of the necessity of close correlation of renewal and housing operations, especially in terms of relocating those displaced by the demolition of the slums, this combination should prove beneficial. Recently enacted federal programs to support application of "air rights"[94] to low-income housing and blight removal could now be utilized within the state.[95] Finally, it authorized preparation of neighborhood and community-wide plans for renewal and the establishment of planning commissions with authority to adopt and revise general plans for the physical development of any county or municipality within the state.[96] This would have been the first general planning legislation in the history of the state.

There were, however, several major defects in the law as enacted. It did not authorize state participation in new federal programs in advance acquisition of land for urban renewal[97] and did not provide interim assistance for blighted areas.[98] It neglected to guarantee relocation for those displaced by renewal.[99] The law continued the tradition of project selection on the basis

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91. Fla. Laws, ch. 67-734 (1967). For development of the act in its final form, *compare* the proposed legislation, *with* FLA. H.R. JOURN., 1967 REG. SESS. 1995-98, 2015-16, 2029-30, 2034, 2061 (1967). Fla. S. 513 (1969), a comprehensive urban renewal bill, similar in structure to the Tampa Act and drafted by the Legislative Reference Bureau in conjunction with the STAFF REPORT TO INTERIM COMMITTEE ON URBAN AFFAIRS OF THE FLORIDA LEGISLATURE, *supra* note 8, passed the Senate by a vote of 28-14. Miami Herald, May 21, 1969, at 14-A, col. 1. A companion bill, H.B. 942, was passed on June 4, 1969, and the approved legislation was before the Governor at the time this note went to press.

92. Fla. Laws, ch. 67-734, §1 (1967).

93. Fla. Laws, ch. 67-734, §20 (1967).

94. "Air rights" refers to the air-space over existing facilities, such as highways, or public parking areas. *Cf.* Price v. Philadelphia Parking Authority, 422 Pa. 317, 221 A.2d 138 (1966). *See generally* Housing Act of 1949, §110, 42 U.S.C. §1460(c) (1964) *as amended.*

95. Fla. Laws, ch. 67-734, §4(i)(8), (9) (1967).

96. Fla. Laws, ch. 67-734, §9 (1967).

97. Housing and Urban Development Act of 1965, §701, 42 U.S.C. 3101 (Supp. III, 1968).

98. Housing Act of 1949, §118, 42 U.S.C. §1466 (1964), *as amended,* (Supp. III, 1968).

99. Relocation has been a major difficulty encountered in conjunction with urban renewal efforts. Although federal requirements stipulate that grants shall not be made without an effective relocation program at the local level, 42 U.S.C. 1455 (1966), individuals have not, in the past, possessed standing to challenge lack of a relocation program. Johnson v. Redevelopment Agency of City of Oakland, 317 F.2d 872 (9th Cir.), *cert. denied,* 375 U.S. 915 (1963). *But see* Norwalk Core v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968). *Cf.,* Flast v. Cohen, 88 S. Ct. 1942 (1968). *See generally* discussing the problems of guaranteeing relocation, C. ABRAMS, *supra* note 30; MIAMI STUDY TEAM, *supra* note

of what is removed from a city — slums or blighted districts — rather than directly relating the project qualifications to satisfaction of community planning objectives. Without this direct relationship, urban renewal in the past has often disregarded and even negated the very plans that were prepared under the authority of the urban renewal law.[100]

Perhaps the most fundamental objection to the 1967 Urban Renewal Law is that in its final form it is not in fact a population or general act authorizing urban renewal. By amendment,[101] the original bill was changed to apply only to "all counties having a population of not less than three hundred and ninety thousand (390,000) and not more than four hundred and fifty thousand (450,000) [and] to all counties having a population of more than nine hundred thousand (900,000), according to the 1960 decennial census. . . ."[102] This amendment had the effect of limiting the applicability to Dade and Hillsborough counties, both of which already had effective and on-going programs. The intent of the exacting range was clear: the limits could not have extended 5,000 higher, lest the law would have included Duval County; they could not have been 20,000 lower, lest Pinellas County would have been eligible.[103] It has been suggested that general acts of special application, such as this population act, are unconstitutional as violative of constitutional prohibitions against use of special laws to provide for the jurisdiction, powers, duties, and privileges of cities and towns; further, such acts may be applied only to a single city or county.[104] However, the legislature's application of this approach as a frequent method of amendment precludes any certainty on this question.

Even with a general act of this type, the full potential of urban renewal is far from realizable in Florida. A number of later changes in the federal

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3, at 1; NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, HOW THE FEDERAL GOVERNMENT BUILDS GHETTOS (1967); Tondro, *Urban Renewal Relocation: Problems in Enforcement of Conditions on Federal Grants to Local Agencies*, 117 U. PA. L. REV. 183 (1968); Note, *Judicial Review of Displacee Relocation in Urban Renewal*, 77 YALE L.J. 966 (1968). Note, *Family Relocation in Urban Renewal*, 82 HARV. L. REV. 864 (1969). Fla. S. 300 and H.B. 546 (1969) would have required relocation payments and guaranteed the availability of adequate housing in any state program causing business or residential dislocation. The Senate bill died in committee. FLA. S. JOUR., 1969 REG. SESS. 180.

100. Mandelker, *supra* note 64, at 29-31.

101. FLA. H.R. JOURN., REG. SESS. 2016 (1967) (amendment offered by Rep. Dubbin).

102. Fla. Laws, ch. 67-734, §1 (1967).

103. U.S. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, CITY AND COUNTY DATA BOOK 42-53 (1962) listed the 1960 decennial census population of Hillsborough County as 397,788; Dade County as 935,047; Duval County as 455,411; Pinellas County as 374,665. For current estimates, *see* STAFF REPORT TO INTERIM COMMITTEE ON URBAN AFFAIRS OF THE FLORIDA LEGISLATURE, *supra* note 8; Grove, *supra* note 8, at 71.

104. L. BETH & W. HAVARD, THE POLITICS OF MIS-REPRESENTATION 182-85 (1962). *See also* Dauer & Havard, *The Florida Constitution of 1885 — A Critique*, 8 U. FLA. L. REV. 1, 60-65 (1955). Similar special law provisions are included in the 1968 constitution, so the strict constitutional question remains.

urban renewal program, since the 1949 Act, reflects a concept broadened from slum clearance to urban renewal and redevelopment. The program envisioned by these acts encompasses not only the clearance and redevelopment of substandard and unsanitary areas, but also the conservation and improvement of areas that are deteriorating but are not yet slums. They focus on the economic, social, environmental, and physical redevelopment and revitalization of the community as a whole rather than on housing alone or on isolated urban renewal projects within limited areas. These programs are primarily designed to prevent, rather than simply remove, urban blight and deterioration. They are not limited to residential areas or developments, but include the renewal of commercial and industrial areas as well.[105]

Yet in Florida any urban renewal effort beyond strict slum clearance is in jeopardy. Zoning and police powers are considered to be adequate to control and prevent blight and deterioration.[106] Other jurisdictions have not found the zoning power alone an effective weapon to control and prevent blight,[107] but even if this were the case Florida is the only urban state in the nation without sound general enabling legislation for urban planning and plan implementation.[108] Moreover, the *Adams* opinion rejected urban renewal in the only instance in which the Florida courts have ruled upon commercial development, as distinguished from residential usage, of the project area.

It should further be recognized that even an effective urban renewal program contains inherent problems. Some, such as relocation, have been noted as weaknesses in the 1967 Florida law. Generally, urban renewal has been charged with destroying more housing than it created.[109] Where it has provided any new housing in cleared slum areas, it has usually been for moderate- or higher-income families.[110] Numerous renewal sites have remained vacant for extended periods because of delays inherent in the program and

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105. Up to 35% of total authorized federal capital grants may be applied to nonresidential purposes if the "governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community." Housing and Urban Development Act of 1965, §305, 42 U.S.C. §1460(c) (Supp. III, 1968).

106. Adams v. Housing Authority, 60 So.2d 663, 664 (Fla. 1952).

107. *See, e.g.*, Randolph v. Wilmington Housing Authority, 37 Del. Ch. 202, 139 A.2d 476 (1958); Foeller v. Housing Authority, 198 Ore. 205, 256 P.2d 752 (1953); Belovsky v. Redevelopment Authority, 357 Pa. 329, 54 A.2d 277 (1947). *Cf.* Herzinger v. Mayor, 203 Md. 49, 98 A.2d 87 (1953). *See generally* Mandelker, *Public Purpose in Urban Redevelopment*, 28 TUL. L. REV. 96, 103-05 (1953).

108. "It is true that through special acts, and through the existing general enabling act for municipal zoning only, cities and some counties have a small measure of the planning and plan implementation powers that are so badly needed. But these special acts, variously written and all too often poorly written make up a potpourri of legislation which bedevils developers, confuses the courts, provides income for attorneys and planners, leaves citizens tearing their hair, and generally contributes to planning insanity in this State." Bartley, *A New Approach to Urban Redevelopment*, 19 FLA. PLANNING & DEVELOPMENT, Dec. 1968, at 10.

109. *The Case Against Urban Desegregation*, 12 SOCIAL WORK 16 (1967).

110. RIOT REPORT, *supra* note 1, at 142.

because of the reluctance of private developers to accept the risk.[111] Finally, urban renewal has proved to be too slow: usually the rate of renewal activity is outstripped by the rate of decay.[112]

Thus, it appears that neither urban renewal nor public housing, as currently operative in Florida, offers the potential to solve the state's developing urban problems and to provide an effective route to comprehensive urban development in metropolitan communities.

THE QUASI-PUBLIC CORPORATION

These conclusions have caused a search for new solutions to the urban problem. One emerging concept of considerable promise is the "quasi-public" corporation. This corporate organization is located in the legal spectrum somewhere between purely private and purely governmental corporations.[113] It may be owned privately and financed jointly with public and private funds or owned jointly by the government and private interests. It is organized for a quasi-public purpose, that is, for a purpose that is currently recognized as relating to a public interest. This may previously have been carried on customarily by private citizens. Its distinctive characteristic, besides its quasi-public purpose, is governmental participation either as part owner or partner or as principal creditor.[114] At the federal level the Communication Satellite Corporation (Comsat)[115] is an example of a recently developed corporate organization of this type.

The unique advantage of a quasi-public corporation in the housing and urban development fields is that it combines the resources and expertise of private enterprise and government. It can create a relatively risk-free market for private investment yielding an attractive rate of return. The capital funds thus generated can be invested in housing for low-income families and in urban development of the communities in which those families live.

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111. M. ANDERSON, THE FEDERAL BULLDOZER: A CRITICAL ANALYSIS OF URBAN RENEWAL, 1949-1962 (1964), *reviewed*, Groberg, *Urban Renewal Realistically Reappraised*, 30 LAW & CONTEMP. PROB. 212 (1965). *See also* C. ABRAMS, *supra* note 30, ch. 9.

112. Leach, *The Federal Urban Renewal Program: A Ten-Year Critique*, 25 LAW & CONTEMP. PROB. 777, 777-78 (1960), notes that in Boston: "'22,000 more dwellings have fallen into the substandard category. This is nearly three times the amount of poor housing eliminated in the last ten years.' What is true in Boston is true in virtually every urban area in the United States."

113. "When [a private corporation] is invested with certain powers of a public nature to permit it to discharge duties to the public, it loses its strictly private character, and becomes quasi public." Forbes Pioneer Boat Line v. Board of Comm'rs of Everglades Drainage Dist., 77 Fla. 742, 747, 82 So. 346, 350 (1919). *Cf.*, Kaufman v. City of Tallahassee, 84 Fla. 634, 94 So. 697, 699 (1922); Philadelphia Rural Transit Co. v. City of Philadelphia, 309 Pa. 84, 87, 159 A. 861, 863 (1932), which states that: "[A] private corporation to which has given . . . certain powers of a public nature, such for instance, as the power of eminent domain, in order [that it may] discharge its duties for the public benefit, in which respect it differs from an ordinary private corporation, the powers of which are given and exercised exclusively for the profit or advantage of its stockholders."

114. *See* Lesher, *The Non Profit Corporation*, 22 BUS. LAW. 951, 960 (1967).

115. 47 U.S.C. 701 *et seq.* (1964).

The private development funds created in such metropolitan areas as Pittsburgh, Detroit, and Cleveland demonstrate the effectiveness of this approach.[116] Each of these funds has as its purpose industrial, residential, or commercial development. The Development Fund of ACTION-Housing, Inc., precipitated the construction of $5 million worth of housing in Pittsburgh with loans from it of only 430,000 dollars.[117]

The Bedford-Stuyvesant Renewal and Redevelopment Corporation, created by the late Senator Robert F. Kennedy, is a notable example of this new corporate form. Bedford-Stuyvesant is the second largest Negro ghetto in the nation, containing 400,000 people in a 4,000 acre area in Brooklyn, New York. In 1960, eighty per cent of the residents were Negro, with half of the remaining twenty per cent Puerto Rican. The community had only one high school, so deteriorated that the board of education attempted to close it. It had no single major source of employment; it had no hospital or clinic within its boundaries. Despite extensive federal grants to New York City for urban purposes, through 1965 the district had been unable to secure a single urban renewal grant.

The corporation acts as sponsor of programs for housing rehabilitation and renewal,[118] and community development, including the creation and management of community cultural and recreational facilities. It works with government, community, and private agencies insuring that jobs created will be filled predominently by residents of Bedford-Stuyvesant and that programs are developed to train for these jobs. The corporation facilitates the economic development of the community by providing, under contracts and agreements, necessary inducements to and cooperation with private industry. Finally, it is responsible for all daily management of projects.

Major foundation support provided the initial capital required by the corporation. The Taconic Foundation, Rockefeller Fund, and Ford Foundation all contributed to implementation of detailed planning and development programs. Utilization of an urban renewal designation for the entire area, rather than zoning and district or neighborhood planning, permitted greater community control over land use patterns and facility locations.

Economic planning aims at the creation of a self-supporting, viable community, with jobs for all residents who can work. Development of light manufacturing and necessary support services receive special emphasis. The corporation purchased the largest building in the community, an old bottling plant, for a headquarters and community center. Local residents, trained to do the work themselves, accomplished the renovation of the facility. Plans for a major shopping center have been integrated with both needed community facilities and training programs to assure that residents fill almost all the sales and clerical jobs and some of the management positions.

116. *See generally*, ACTION, INC., A CRITICAL ANALYSIS OF SELECTED DEVELOPMENT FUNDS (1964) (unpublished report).

117. ACTION-HOUSING, INC., SEMI-ANNUAL REPORT TO THE BOARD OF DIRECTORS, (Sept. 1966).

118. The corporation in 1968 received a pledge of $100 million in mortgage guarantee funds from the FHA. The money may be used to "buy or rehabilitate homes or consolidate existing debts to them." N.Y. Times, April 2, 1968, at 1, col. 2.

All programs are developed, so far as possible, on a self-sustaining basis in an attempt to be independent of the need for public funding or charitable grants as soon as is practicable. The community plans to acquire title to most of the land that is redeveloped, in turn leasing it to business or residential users. Ownership will assure steady revenue for the area. Direct investment by the inhabitants, whether through direct capital contribution or by providing "sweat equity" in the form of contribution of services, is essential to the approach. The people of Bedford-Stuyvesant have been asked to contribute toward the purchase of condominium apartments, buy shares in neighborhood cooperative stores, or invest in local manufacturing companies.[119]

New York State Corporation for Urban Development

In 1957 a bill creating the Corporation for Urban Development and Research of New York (CUDR) was passed by both houses of the New York legislature. However, Governor Nelson A. Rockefeller vetoed the bill since the New York Constitution prohibited grants or loans of public funds to private or quasi-public corporations. Inasmuch as the Governor doubted the effectiveness of the corporation without considerable state financial assistance,[120] he signed a revised version into law on April 10, 1968.[121] The new corporation possesses many of the unique attributes of a partnership between government and private enterprise, which can be achieved only through a quasi-public corporation. Examination and evaluation of the corporate structure and operation suggest that a similar entity in Florida might permit the state to participate in a more successful attack upon the problems of urban community development.

Operations and Structure of the Corporation[122]

Membership in CUDR is open to any corporation, trust, association, partnership, or individual located or authorized to do business in the State of New York. Membership certificates are available in amounts of multiples of 500 dollars; in addition, members pay annual dues. Each member is

119. *Hearings on the Federal Role in Urban Affairs Before the Subcomm. on Executive Reorganization of the Senate Comm. on Government Operations*, 89th Cong., 2d Sess., pt. 13, at 2831-37 (1966) (speech by Senator Robert Kennedy). *See also* R. Kennedy, To Seek a Newer World 51-62 (1967).

120. *See* Governor's Memorandum on Bills Vetoed, New York State Legislative Annual at 347 (1967). S. 3830-A, 3831-B, N.Y. State Legis. Sess. (1967). Both bills were introduced by Senator H. Douglas Barclay.

121. N.Y. Unconsol. Laws §§6251-85, 6301-25, 6341-60 (McKinney Supp. 1968).

122. This description of the operation and structure of all three corporations is drawn from a telephone interview with Robert S. Amdursky, Counsel, N.Y. State Joint Legislative Committee on Housing & Urban Development, one of the chief draftsmen of the acts, March 20, 1969; interview with partners and associates of Debevoise, Plimpton, Lyons & Gates, General Counsel for the corporation, in N.Y. City, Nov. 25, 1968; Amdursky, *supra* note 35; Amdursky, *The New York Urban Development Corporation*, 41 N.Y. St. B.J. 100 (1969); provisions of the acts, N.Y. Sess. Laws, ch. 173-75 (1968).

entitled to one vote per 500 dollar certificate; proxy voting is permitted. There is a nine-man board of directors appointed by the Governor. Four of the directors are state officials serving ex officio; the remainder are selected from the private sector.[123] In addition to the board, there is provision for a membership council of between fifteen and fourty-five members to be elected by the certificate holders at an annual meeting. The council will work in liason between the corporation and the community business interests. It will also compile data and reports for the board, recommend specific housing and industrial projects, and nominate directors for subsidiary corporations.

The corporation will be financed initially by certificate capitalization, membership dues, and grants from private corporations, foundations, and the federal government. Later it will issue revenue bonds, backed by a reserve fund comprising a substantial portion of the grants. Its debt obligations will be further secured by mortgages or deeds of trust on the projects it undertakes or by pledges of its revenues and receipts. As of now, CUDR is without funds. However, several national foundations have indicated a willingness to contribute between $1 and $2 million.

CUDR's bonds will be exempt from all state and local taxes; a revenue ruling has been sought to determine that interest paid on them will not be subject to federal income tax.[124] In the drafting stages, New York officials rejected a suggestion that the ruling be obtained before corporate inception. Hence, pending receipt of a favorable ruling, CUDR has not attempted to float any bonds.

The corporation will stimulate private investors to undertake multi-purpose industrial, residential, and commercial projects in the state's core areas. It will create needed jobs in the slums by assisting existing businesses and inducing new commercial enterprises to locate there.

CUDR will provide seed money, loans of equity capital, and technical assistance to private developers to enable maximum use of existing state and federal financial assistance programs. But it will also experiment with new approaches to urban development.

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123. The private directors are Frederick Schoellkopf, Jr., President of the Marine Midland Trust Co. of Western New York; Prof. Kenneth Clark, City University of N. Y.; Whitney M. Young, Jr., head of the Urban League; George D. Woods, former President of the World Bank. The ex officio directors are the State Commissioner of Commerce, the Director of the Office of Planning Coordination, and the Superintendents of Banks and Insurance. Edward J. Logue, who attained national reputation for his redevelopment work in Boston and New Haven, has been appointed the corporation's president and chief executive officer.

124. INT. REV. CODE of 1954, §103; *see* Rev. Rul. 63-20, 1963-1 CUM. BULL. 24. The bonding provisions of the acts provide sufficient restrictions to comply with the requirements of this ruling. Even though the question of exemptions for industrial development bonds is now in flux, *see, e.g.*, N.Y. Times, Feb. 17, 1969, at 1, col. 1, the officials of the corporation feel that a distinction should be drawn between general industrial bonds and UDC/CUDR types since the latter are designed to provide jobs for the hard-core unemployed and housing in the urban cores, whereas the former are designed for the attraction of industry and only coincidentally serve other purposes. Telephone interview with Robert S. Amdursky, *supra* note 122.

For example, the corporation will enter into contracts to purchase housing units constructed by private developers who agree to limit their profits. CUDR will either sell under cooperative arrangements or rent these units to low- and middle-income families. This creates a risk-free market for new privately constructed housing and capitalizes on the ability of private enterprise to construct housing faster and more economically than can public agencies. As an alternative, CUDR can purchase the housing from the limited profit private developer who will then lease it back and manage it at regulated rental rates. This variation avoids any stigma of public housing by interposing a purely private landlord between the corporation and the tenants.

CUDR is also empowered to organize subsidiary corporations by resolution of the board. These subsidiaries may be organized under New York's business corporation law, membership corporations law, or private housing finance law. The board may transfer to the subsidiary any funds, property, or project held by the corporation. Since no subsidiaries have yet been formed, it is not certain if use of the subsidiary form will be limited to housing applications. Such has been the pattern taken with subsidiaries to the state's Urban Development Corporation.

Paralleling the operations of CUDR will be the Urban Development Guarantee Fund of New York.[125] This was a component of the 1967 Act, but for constitutional reasons was made a separate entity in the 1968 legislation. The fund is authorized to guarantee loan repayments to lending institutions providing financing of industrial or housing projects. This guaranteee may not exceed eighty per cent of the amount of the loan. To safeguard itself from losses, it may acquire, manage, or dispose of real or personal property, or take assignments of rentals or leases. Recipients of the guarantee would have to demonstrate their inability to obtain credit from conventional sources without benefit of guarantee fund assistance. (As noted in the earlier discussion or urban financing, conventional loans for these purposes have always been difficult to obtain.) The Guarantee Fund's capital derives from private gifts, grants, sale of debentures, and from the loan insurance premiums paid by the borrowers. The Guarantee Fund can guarantee loans to an amount not to exceed five times the amount of its capital; it has not yet obtained the required minimum capital loan guarantee fund of 200,000 dollars, but attainment of that level will thus enable it to start off with $1 million loan guarantee capacity.

The 1967 bill vetoed by Governor Rockefeller also contained provisions that have now been incorporated into a separate act to establish a state public corporation, the New York State Urban Development Corporation (UDC).[126] The governmental corporate form was necessitated by constitutional barriers to direct receipt of government assistance by a quasi-public body, whether in the form of legislative appropriation; backing of bonds by the full faith and credit of the state or locality; or municipal contributions to the corporation

125. N.Y. UNCONSOL. LAWS, subch. III, §§6341-60 (McKinney Supp. 1968).
126. N.Y. UNCONSOL. LAWS, subch. 1, §§6251-85 (McKinney Supp. 1968).

through donation of abandoned or vacant properties, or writing down the value of land in urban renewal areas.

To insure maximum coordination of efforts, both the Guarantee Fund and UDC utilize the same board of directors as CUDR. UDC further utilizes the services of community advisory committees. The members of these committees shall be appointed by the board, shall serve at the pleasure of the board, and shall operate under rules and regulations established by the board. These committees will hopefully insure citizens a genuine role in the decisionmaking process and will provide UDC with intimate knowledge of neighborhood problems and attitudes. However, the membership, specific means of selection, and the extent to which the committees' advice will be utilized in decisionmaking are not specified by the legislation. No projects have yet reached the stage of corporate commitment to warrant establishment of community advisory committees; hence, these questions remain unanswered.

For additional mortgage financing, UDC is authorized to obtain loans. These loans could be obtained from the Federal Housing Administration or from conventional lenders such as banks or insurance companies. The state provided an initial appropriation of $17 million. Further, the Act permits issuance of up to $1 billion in self-liquidating bonds. Although not backed by the state's full faith and credit, the bonds are protected by a legislative "moral obligation" to maintain a debt service reserve fund at the level necessary to cover outstanding bonds. However, in the absence of a favorable Internal Revenue Service ruling, no attempt has been made to float bonds.

UDC's housing program would be carried on through subsidiary corporations. The subsidiaries would be entitled to receive exemption from local taxes. It is anticipated that the housing would eventually come under private ownership through the sale of stock in these subsidiaries to private investors. If the tenants of a particular project are able to do so, it would be possible for them to form a mutual corporation for the purpose of acquiring title to the property. First priority in sale will go to cooperative tenants' associations and nonprofit neighborhood groups. For financing purposes, full use will be made of the resources of the New York State Housing Finance Agency (HFA). The HFA has over $1 billion in available funds and is authorized to lend UDC or its subsidiaries ninety-five per cent of the costs of limited-profit rental housing. This would enable $10 million in UDC equity to produce $200 million of residential construction. At present, these funds are not being used for lack of qualified nonprofit housing sponsors.[127]

Industrial projects would be financed by the sale of UDC's own bonds. These industrial buildings could then be sold or leased to corporate users who would provide new job opportunities. Industrial plants must receive exemption from local taxes if business is to be attracted to urban areas. Industrial and commercial projects are fully exempt from local taxes while owned by UDC although the tax status of projects conveyed by long-term leases is not certain. To the greatest extent possible, commercial or indus-

127. Amdursky, *The New York Urban Development Corporation*, 41 N.Y. St. B.J. 100 (1969); *see* N.Y. PRIV. HOUS. FIN. LAW 22, 26-b, *as amended* (McKinney Supp. 1968).

trial projects will be sold or leased before construction, or immediately upon the completion of construction. In this fashion, the corporation would have a binding commitment for disposal at a specified stage. Presently, UDC does not envision continuing corporate ownership of commercial or industrial properties for any extended periods of time. It contends such ownership, with full tax exemption, would constitute an inequitable competition with private enterprise.

UDC would also be authorized to develop urban renewal areas on a comprehensive basis by clearing, planning, and then allocating various portions of the area to other developers. Educational, cultural, recreational, or other community projects would also be a part of UDC's program. It would have the right, for these and all of its projects, to acquire land in urban areas by purchase or condemnation.

In its working with construction, manufacturing, and industrial firms, contractors, and labor unions UDC is expressly required to insure that residents of areas in which projects are to be located are afforded priority in the construction work on UDC projects and in the business operations of commercial and industrial projects assisted by the corporation.[128]

UDC would be able to sell its properties at any time during planning, construction, or operation, and preferably, at the earliest stage possible. In this way, private capital would flow in and release UDC's funds for use in new developments.

The UDC legislation expressly requires, as a condition precedent to undertaking any project, a finding that "there is a feasible method for the relocation of families and individuals displaced from the project area into decent, safe and sanitary dwellings," at rents within their financial means, and in the same area or in other districts "not generally less desirable." Where possible, UDC shall offer housing accommodations in corporate residential projects. In addition, it "may render . . . such assistance as it may deem necessary to enable them to relocate." This latter provision would appear to authorize UDC to bear all expenses of relocation.

One of the potentially most expansive powers granted UDC is the right to bypass local zoning regulations and ordinances and to substitute the state building construction code for local building regulations. Criticism centered around this power has hampered efforts to obtain cooperation between UDC and New York City; Mayor Lindsay attacked the corporation as an "invasion" and "encroachment" on local home-rule powers.[129]

Evaluation of CUDR Form and Operation

In the evaluation of New York's efforts at utilization of the quasi-public format for urban community development, consideration will be directed toward a single quasi-public entity, as the 1967 Act envisioned. Constitutional

128. N.Y. Unconsol. Laws §6254(11) (McKinney Supp. 1968).

129. N.Y. Times, Oct. 4, 1968, at 21, col. 1; *cf.* Editorial *id.*, Feb. 19, 1969, at 46, col. 2; President's Comm. on Urban Housing, *supra* note 29, at 25, 143-45.

doubts had so incapacitated previous New York community development efforts that it was felt necessary to segregate the quasi-public elements from direct state assistance.[130] In 1967 the voters of New York rejected a new constitution containing a provision that would have authorized a full scale quasi-public enterprise in state-wide community development, much like that envisioned in the vetoed 1967 Act.[131] Constitutional restrictions to the full application of CUDR/UDC's power have already appeared in commercial and industrial facility construction and in the planning and development of new cities. In response, the Governor's office is in the process of drafting a new community development article for inclusion in the New York constitution.[132]

If Florida were to adopt the quasi-public mode, it would be undesirable to model the proposal upon what New York was forced to accept. Amendment of the Florida constitution, as suggested in the conclusion of this note, would provide the means to implement this joinder of state and private enterprise.

The Role of Private Enterprise – Application of Tax Incentives?

By using low-rate loans of equity capital, "seed money" grants, and investment incentives, CUDR/UDC seeks to incorporate the efficiency, initiative, and resources of private enterprise into the otherwise inefficient and often exploitative urban redevelopment field. Since the plight of the urban core is in many ways the result of unregulated private economic activity,[133] it may seem anomalous to propose expansion of private, profit-motivated investment as the vehicle for attacking the problem. But the assumption underlying the entire quasi-public approach is that the private sector must be an element of any successful effort to meet urban community requirements on a scale sufficient to meet rapidly increasing needs.[134] While some might

130. New York repeatedly has encountered problems of constitutional support in attempting to implement community development legislation. The Urban Redevelopment Corporations Law of 1941 (PRIV. HOUS. FIN. LAW, art. VI) purported to authorize the use of tax exemption and eminent domain to encourage private residential and nonresidential redevelopment. This concept was never implemented as constitutional doubts precluded the attraction of any private capital. The Community Development Corporations Act of 1963 failed to materialize because of reservations on the part of the state Housing Finance Agency on the constitutionality of authorized loans. *See generally* TEMPORARY STATE COMMISSION ON THE CONSTITUTIONAL CONVENTION HOUSING, LABOR NATURAL RESOURCES 24-25, 54 (1967) (New York).

131. "Notwithstanding any other provision of this constitution, the state, its political subdivisions, and any public corporation may, as provided by law, where a public purpose will be served, grant or lend its funds to any individual, association, or private corporation for purposes of participating or assisting in economic and community development." PROPOSALS FOR 1969, ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS STATE LEGISLATIVE PROGRAM, *reported in* 28 COUNCIL OF STATE GOVERNMENTS, SUGGESTED STATE LEGISLATION 1969, E-89 (1968). *See generally* Kaden, *Some Observations on the 1967 New York Constitutional Convention, The People: No!*, 5 HARV. J. LEGIS. 343 (1968).

132. Telephone interview with Robert S. Amdursky, *supra* note 122. See also N.Y. Times, Jan. 9, 1969, at 18, col. 3.

133. *See* State *ex rel.* Grubstein v. Campbell, 146 Fla. 532, 1 So. 2d 483 (1941).

134. *See An Act To Establish a Corporation for Urban Development*, 5 HARV. J. LEGIS.

argue that profit seeking corporations lack the values, interest, and sensitivity to become useful participants in any urban reform program,[135] the suitability of involving private industry can hardly be debated in the abstract. The issue is rather, whether a particular plan of incentives has a structure and system of internal control that would successfully insure that the private corporations serve publicly defined policy. Once it has been determined that private industry must be drawn into comprehensive urban community development, it seems evident that material incentives are far more likely than exhortations to corporate good citizenship to induce private corporations to undertake the organization and financing necessary to participate in such a program.

One of the most contemporary of suggestions for enticement of the private sector into urban community development is the granting of tax benefits, credits, and incentives for such participation.[136] CUDR/UDC provides only for state exemption of corporate properties and earnings of corporate bonds[137] and tax abatement at the local level through corporate rebates to affected municipalities. Yet in view of the numerous current proposals for revision of the Internal Revenue Code to encourage such investment, it is plausable to evaluate briefly this concept as a probable future addition to the CUDR/UDC structure.

There are objections in principle to the manipulation of the tax structure, rather than use of direct subsidies, to promote social goals.[138] Such objections have formed the bulk of the criticisms of the tax incentive or tax credit concept.[139] At the most general level, the objection to tax incentives is that they violate the principle of "horizontal equity" – that taxpayers with equal incomes be taxed equally, without regard to the source of their income.[140] Adherents of this position warn that acceptance of an incentive scheme intended to promote one popular objective creates a precedent for acceptance of incentives for other socially important or politically attractive

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529 (1968); PRESIDENT'S NATIONAL COMMISSION ON URBAN PROBLEMS, REPORT (1969).

135. *See* Harrington, *The Social-Industrial Complex*, 235 HARPERS MAGAZINE, Nov. 1967, at 55, *But see Editorial, What Business Can Do for the Cities*, FORTUNE, Jan. 1968, at 162; Smith, *Creative Federalism and Creative Capitalism*, VITAL SPEECHES, Feb. 1, 1966, at 233.

136. *See, e.g.*, N.Y. Times, Oct. 27, 1968, §111, at 14, col. 1; *id.* at 15, col. 3; *id.*, Jan. 27, 1969, at 1, col. 6. *But see* P. HODGE & P. HAUSER, THE FEDERAL INCOME TAX IN RELATION TO HOUSING 86-103 (Nat'l Comm'n on Urban Problems; Research Rep. No. 5, 1968); N.Y. Times, Oct. 29, 1969, at 17, col. 1; *id.*, Feb. 9, 1969, at 39, col. 1.

137. *See* N.Y. UNCONSOL. LAWS §6272 (McKinney Supp. 1968).

138. *See generally* Note, *Federal Tax Incentives for Higher Education*, 76 HARV. L. REV. 369, 374 (1963).

139. *See Hearings on S. 2100 Before the Senate Comm. on Finance*, 90th Cong., 1st Sess. 148 (1967). S. 2100 was a proposal of Senator Robert Kennedy to combine long-term mortgage loans by the Government with tax benefits to induce private investors to build or substantially rehabilitate low rent housing. For a discussion of the provisions of this proposal and a step-by-step evaluation of the S. 2100 approach, *see* Note, *Government Programs*, *supra* note 60.

140. *See* R. MUSGRAVE, THE THEORY OF PUBLIC FINANCE 160-82 (1959).

activities, which might result cumulatively in extensive erosion of the tax base.[141]

A second general argument against use of tax incentives refers not to their effect on the tax base, but to the difficulty of evaluating and controlling the programs they support. Evaluation of any program requires knowledge of its costs and benefits. The difficulties in estimation increase when the cost of the program is paid in foregone revenue rather than by direct appropriations.[142] Furthermore, tax incentives are extremely difficult to control through the political process once they are enacted. Since the tax provisions implementing an incentive plan are usually complex and their cost hidden in the over-all tax burden, it is hard for policymakers or the general public to assess their effectiveness.[143] And there is ordinarily no annual budget review of either the costs of tax incentive programs or the effectiveness of the response to them.[144]

In practice, these general objections have not precluded the use of tax incentives in the past to stimulate activity thought to be of high national priority. However, the argument is made that incentives such as the 1954 provisions permitting accelerated depreciation on industrial equipment[145] and the 1961 tax credit of seven per cent on investment on manufacturing equipment[146] apply to taxpayers "across the board," and should therefore be distinguished from incentives for a "narrow or specialized purpose."[147] Characterizing metropolitan community development, housing, or the elimination of slums as "narrow" purposes hardly seems appropriate. But even were the point conceded, the critics are disingenuous in ignoring highly specific tax provisions enacted in the past. Exceptionally rapid amortization has been provided for atomic research and development[148] and grain storage facili-

141. *See* Blum, *Federal Income Tax Reform — Twenty Questions*, 41 TAXES 672 (1963); Pechman, *Erosion of the Individual Income Tax*, 10 NAT'L TAX J. 1 (1957). *See generally* JOINT ECONOMIC COMM., 89th Cong., 1st Sess., FISCAL POLICY ISSUES OF THE COMING DECADE (Comm. Print 1965); Bittker, *A "Comprehensive Tax Base" as a Goal of Income Tax Reform*, 80 HARV. L. REV. 925 (1967).

142. *See* Note, *Government Programs, supra* note 60, at 1313-17. *See generally* Blum, *How the Growth of Favored Tax Treatment Affects Taxpayers and Practitioners*, 4 J. TAXATION 28 (1956).

143. The relatively low political visibility of tax incentive devices may have advantages as well as disadvantages in the low-income housing and community development: direct subsidies, unlike revenue losses, would be visible charges to the annual budget and would require raising budget limits or cutting back existing programs. *Cf.* Cahn & Cahn, *The New Sovereign Immunity*, 81 HARV. L. REV. 929 (1968).

144. *But see* Kraus, *The Tax Incentive*, N.Y. Times, Dec. 13, 1967, at 65, col. 6, suggesting that an annual submission to Congress of a companion budget showing the estimated costs in lost revenue due to existing tax preferences and the estimated levels of response to them, would subject these programs to the same scrutiny presently received by programs involving direct outlays.

145. INT. REV. CODE of 1954, §167 (b). *See* Brown, *The New Depreciation Policy Under the Income Tax: An Economic Analysis*, 8 NAT'L TAX J. 81 (1955).

146. INT. REV. CODE of 1954, §§38, 46-48. *See generally* Wilkinson, *The Investment Tax Credit Under the Revenue Act of 1962*, 42 TEXAS L. REV. 498 (1964).

147. *Hearings, supra* note 139, at 148.

148. INT. REV. CODE of 1954, §168 (3) (2).

ties.[149] Favorable tax treatment has been accorded the exploitation of mineral resources,[150] employee stock options,[151] and Western Hemisphere trade corporations.[152] Existing inequities in the Internal Revenue Code certainly present no persuasive argument for expansion of tax preferences.[153] However, unless current tax reform proposals impose uniformity on the Code, advocates of application of tax credits to metropolitan development cannot be criticized very severely for sharing in the general tendency to look to tax relief as an appropriate means of pursuing specific policy objectives.

Citizen Participation: Vehicle for "Black Capitalism"

Current discussions of urban problems,[154] as well as recent legislation,[155] emphasize that it may not be possible to serve social goals intelligently and sensitively through centralized administration. The debate on urban policy has gone beyond technology and economics; the most controversial issues center around the extent to which the poor themselves should participate in the planning and administration of programs designed for their benefit, and the mechanisms by which this participation should be achieved.

The CUDR/UDC provisions provide no effective guarantee that the poor will participate in planning the type or location of projects. The community advisory committee provisions do not necessarily fulfill this function. Although the UDC Act requires establishment of the committees, their composition, selection, and role are left to the determination of the board. The 1967 bill would have provided strong assurances of participation, but the drafters of the current act preferred to leave the language broad and indefinite. Further, in view of the tendency of government officials to appoint persons of their own choosing, allegedly possessing ghetto "leadership,"[156] selection

149. *Id.* at §169.

150. *Id.* at §§611-17.

151. *Id.* at §§421 (a), 422, 423.

152. *Id.* at §922 (taxable income reduced).

153. *See* Galvin, *The "Ought" and "Is" of Oil-and-Gas Taxation*, 73 HARV. L. REV. 1441, 1456-58 (1960).

154. *See* Babcock & Bosselman, *Citizen Participation: A Suburban Suggestion for the Central City*, 32 LAW & CONTEMP. PROB. 220 (1967); Snowden & Snowden, *Citizen Participation*, 20 J. HOUSING 132 (1963); Note, *Citizen Participation in Urban Renewal*, 66 COLUM. L. REV. 485 (1966).

155. *See* Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. §3303 (a) (Supp. III, 1968) ("widespread citizen participation"); Economic Opportunity Act of 1964, 42 U.S.C. §2782 (a) (3) (1964) ("maximum feasible participation of residents"); ARTHUR D. LITTLE, INC., STRATEGIES FOR SHAPING MODEL CITIES (1967); Note, *Participation of the Poor: Section 202 (a) (3) Organizations Under the Economic Opportunity Act of 1964*, 75 YALE L.J. 599 (1966). *See generally* MOYNIHAN, MAXIMUM FEASIBLE MISUNDERSTANDING: COMMUNITY ACTION IN THE WAR ON POVERTY (1969).

156. As noted by Daniel Watts, the editor of *Liberator*, "The Negro preacher has been the self-appointed leader of the community and the white power structure of the city would like to deal with him. But this does not get through to the 'soul brothers' who could get the idea to burn the community down." Chicago Daily News, June 7, 1967, at 9, col. 1, *quoted in* Babcock & Bosselman, *supra* note 154, at 221.

should have been left to the residents of the project area. Analagous provisions for appointment of special directors have been characterized as "a sop to the poor."[157] Real citizen participation requires delegation of governing power to the neighborhood level.

Although the CUDR membership council and certificate purchase provisions theoretically could provide a vehicle for participation, the 500 dollar cost per certificate effectively excludes the poor from the operation of the council. Even without this obstacle, motivating poor men to invest rather than to spend their money on immediate needs represents a considerable obstacle, to be overcome only if a high level of enthusiasm for ownership could be generated among residents.[158]

Even if certificate ownership were widespread among the poor, the idea of participation would not be fulfilled unless the holders also participated actively in council and corporate voting. The CUDR Act permits proxies, but says nothing of the necessary corollary of proxy solicitation. Further, the CUDR Act also is silent on cumulative voting, the traditional corporate procedure for securing minority representation.

An alternative forum for participation is available through the corporation's power to create subsidiary corporations. Yet the structure of these subsidiaries does not sufficiently insure an opportunity for participation. Similar problems of share acquisition and shareholder participation would burden the subsidiary; at least, here the CUDR/UDC Acts say nothing of costs per share, so the poor need not be priced out of competition as they were with the 500 dollar certificates. Currently, despite authority for creation of subsidiaries for multiple purposes, the corporation has indicated an intent to limit the subsidiary form to housing corporations.[159] Furthermore, the CUDR/UDC board, not the residents of the affected area, designates a majority of directors or trustees of the subsidiary, or possesses more than fifty per cent of the voting shares of the subsidiary. The board of directors of the subsidiary should be chosen by resident shareholders. Shareholders should participate at the director level, since their concerns with their own employment probably would preclude a more active role. Finally, participation at the director level puts the low-income shareholder in the unusual position of employer; as such, he has meaningful control over the development of his community.

With such modification, coupled with authorization for operation of the subsidiaries as profitmaking enterprises,[160] these forms might provide a basis

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157. *An Act To Establish a Corporation for Urban Development, supra* note 134 at 532 n.20.

158. In a recent interview, Mr. Saul Alinsky contended that such motivation is impossible without previous organization of the poor. Only such organization could overcome the distrust engendered by long series of disillusioning experiences with past poverty programs. He remarked that: "if the poor were given shares of stock, probably most would lose the certificates." Note, *Community Development Corporations: A New Approach to the Poverty Problem*, 82 HARV. L. REV. 644, 649 n.29 (1969).

159. Telephone interview with Robert S. Amdursky, *supra* note 122.

160. For consideration of factors relevant to choice between nonprofit and profit forms,

for the operation of "black capitalism" within the state. The subsidiary could then own and manage any business within its territory. It would operate as a typical incorporated business, with two exceptions: stockholders could acquire shares either for cash or by providing services but would have only one vote in the enterprise no matter how many shares they owned; and profits would be used to buy other enterprises and to finance social services and educational activities within the community. If an expansive network of federal and state tax incentives were implemented, companies might be granted incentives, credits, and write-offs if they agreed to establish industries and then turn them over to the subsidiary corporations when they were in working order, especially in terms of development of managerial talent to operate the enterprises.[161]

Proposed Amendment To the Florida Constitution

The urban renewal and public housing cases developed rigorous tests for determination of public use and public benefit. These tests, when considered with the narrow limits for approval of joint enterprises with the private sector resulting from the long series of industrial bond cases,[162] indicate that it is unlikely that the quasi-public form of metropolitan community development could be constitutionally implemented in Florida. The provisions of the 1885 constitution that preclude such a state enterprise were noted in *Adams v. Housing Authority*.[163] The 1968 constitution has neither abolished nor modified any of these barriers; the prohibition of article III, section 11 (a) (10), prohibiting special laws pertaining to disposal of public property for private purposes, may impose even more obstacles than did the 1885 constitution. Although a method for financing of industrial bonds, where they are payable solely from revenue derived from the sale, operation, or leasing of the projects, is now authorized,[164] public support of joint public-private enterprises in community development is not sanctioned by this addition. Thus, to accomplish metropolitan community development through use of a quasi-public form, the Florida constitution will need to be amended.

Beyond these state requirements, Florida and its localities have always been subject to a federal "public purpose" requirement in the disposition

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see *An Act To Establish a Corporation for Urban Development, supra* note 134, at 531-32. *See also* Lesher, *supra* note 114.

161. *See* the Community Self-Determination Act of 1969, H.R. 6738, 91st Cong., 1st Sess. (1969); S. 33, 91st Cong., 1st Sess. (1969); Note, *supra* note 158. *See also* 114 Cong. Rec. H7011 (daily ed. July 18, 1968) (remarks of Rep. Goodell); Cherry, *The Maverick Creature: Community Corporation*, 43 Fla. B.J. 263 (1969).

162. *See, e.g.*, Panama City v. State, 93 So. 2d 608 (Fla. 1957); Gate City Garage, Inc. v. City of Jacksonville, 66 So. 2d 653 (Fla. 1953); State v. Town of North Miami, 59 So. 2d 779 (Fla. 1952). *See generally* Tew, *Industrial Bond Financing and the Florida Public Purpose Doctrine*, 21 U. Miami L. Rev. 171 (1966).

163. *See* note 70 *supra*. Fla. S.J. Res. 301 and Fla. H.R. 515 were prefiled before the 1969 session of the Florida Legislature to amend Fla. Const. art. 7, §10 (1968) to authorize "joint investment of public and private funds in corporations whose objective is urban redevelopment and the elimination of slums and blight."

164. Fla. Const. art. 7, §10 (c) (1968).

of public funds or property and in the utilization of eminent domain. However, this federal test imposes no significant restriction on state action; it prevents only the "plain case of departure from every public purpose which could reasonably be conceived. . . ."[165] All that is necessary to insure that constitutionality of a particular expenditure is a legislative finding of public purpose confirmed by the state's highest court. The United States Supreme Court has frankly admitted that "subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive."[166] It is not surprising that no state decision on "public purpose" has ever been overruled by the Supreme Court.

The 1968 Florida constitution should be amended to include a community development article that is both flexible and fiscally responsible. The following formulation, which presupposes some general restrictions on grants and loans, may serve as an analytical starting point:[167]

> Section 1. The legislature may provide in such manner and upon such terms and conditions as it may prescribe for community development, including the acquisition, construction, reconstruction, rehabilitation and improvement of residential, industrial, manufacturing, commercial, civic, cultural, recreational, transportation, communication, educational, health, mental health, environmental health, or other community structures in any area or areas of the state; and for all capital facilities, improvements, land acquisition, securities, and obligations incidental or appurtenant thereto.
>
> Section 2. Notwithstanding any provision in any other article of this constitution, the legislature may provide by law for the contracting of indebtedness, use of public credit, loans, grants, or subsidies payable only with moneys appropriated from the general or other fund available for current expenses of the state of local governments, levy of taxes, exercise of the power of eminent domain, establishment and administration of public and quasi-public corporations, and the granting of the exemptions and abatements in whole or in part, or any combination thereof, for or in aid of any of the purposes of this article.

This article focuses, not on housing or slum clearance as separate, disparate functions of government, but on development of the urban community as a whole. It authorizes comprehensive, multi-purpose programs in which the state or local governments may redevelop simultaneously residential, industrial, commercial, and recreational facilities in economically depressed core areas or in the suburban fringes. In sum, the article provides the state and localities with broad flexibility to implement contemporary and

165. Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 515 (1937).

166. Berman v. Parker, 348 U.S. 26, 32 (1954).

167. This article is derived from the Republican minority proposal to the Committee on Health, Housing and Social Services at the 1967 New York State Constitutional Convention, *cited in* Amdursky, *The Urban Crisis and the Need for State Constitutional Revision*, 41 STATE GOVERNMENT 157, 162 (1968). The recently proposed community development amendment to the New York Constitution, *supra* note 131, parallels this form rather than the simplified Convention proposal. However, the Convention proposal could be used as an alternative amendment to the Florida constitution. *See also* TEMPORARY COMMISSION, *supra* note 130, at 59-62.

emerging concepts of community development, such as the quasi-public format.

Equally important, this article permits full cooperation between the public and private sectors in carrying out the programs. Subject to other interposed limitations, the state and local governments are authorized to use grants, long-term, low-interest loans, guarantees, tax abatements and exemptions, and the power of eminent domain to induce private enterprise to participate. Through the judicious use of this arsenal of incentives, substantial private investment in community development should be generated at minimum cost to the taxpayer. Application of this article might have the further benefit of forcing reexamination and revision of the state tax structure, including consideration of a general income tax, to insure the availability of sufficient resources to subsidize the state's contribution to the corporation.

Despite the breadth of the article, it contains certain limitations designed to promote fiscal responsibility by the legislature. Thus, grants and subsidies to private entities may be made only from current revenues. This restriction on the source of the grants should prove an effective deterrent to imprudent spending; the state or local government can make the grant only if tax moneys are available. Moreover, the structures financed with long-term, low-interest loans will constitute continuing security for the repayment of the debt.

Implementation of such an amendment would enable the state to respond to the challenge alluded to by Justice Terrell in his opinion in the first *Grubstein* case:[168]

> The man in the slums is too often a victim of the social and economic system that private enterprise has fostered. When he gets hungry and sees his dependents going without the dire necessities because of the system in which he is entrapped, he easily becomes a fertile source to generate crime and the political isms adverse to democracy. Hurrahs for justice and equality become empty cymbals when those on one block are bathing in luxury and those on the next block are cramped by destitution. To contend that democratic society cannot relieve against the evils of its own creation is to admit that it has become lost in anachronisms and can't respond to the demands made on it.

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168. State *ex rel.* Grubstein v. Campbell, 146 Fla. 532, 536 1 So. 2d 483, 484 (1941).