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INDUSTRIAL BONDS

LOCAL INDUSTRIAL DEVELOPMENT BOND FINANCING

The use of industrial development bonds issued by local governments has grown considerably in the past decade. In 1953 only six states[1] authorized local governments to issue them. By 1961 the number had increased to sixteen.[2] Today the total stands at thirty-one.[3] This spectacular rise in the use of industrial development bonds[4] has made the adverse effects of these programs more apparent. Three main proposals have been suggested to alleviate the problem: (1) Amendment of Section 103 of the Internal Revenue Code of 1954.[5] (2) modification of the Treasury Department's Revenue Rulings,[6] and (3) enactment of uniform model state enabling legislation.[7] The purpose of this article will be to examine the operation of local industrial development bond programs, to analyze the proposals which have been made, and to propose an effective and desirable solution to the problems which will be discussed below.

I. Operation of Local Industrial Development Bond Programs

The local governments in thirty-one states are presently authorized to issue industrial development bonds purportedly "to relieve conditions of unemployment . . . and to encourage the increase of industry within [the] state, thereby reducing the evils attendant upon unemployment."[8] The validity of this enabling legislation is well settled.[9] The bond authorizations have been for either general obligation and/or revenue bonds. The general obligation bonds pledge the credit of the local government, while the revenue bonds are backed only by the income from the project.

[1] Alabama, Illinois, Kentucky, Louisiana, Mississippi, Tennessee.

[2] Arkansas, Colorado, Georgia, Maryland, Missouri, Nebraska, New Mexico, North Dakota, Vermont, Wisconsin.

[3] Alaska, Arizona, Hawaii, Iowa, Kansas, Maine, Michigan, Minnesota, Oklahoma, Rhode Island, South Dakota, Virginia, Washington, West Virginia, Wyoming.

[4] "Through the first half of 1965, the Investment Bankers Association estimates $729 million of municipal bonds have been issued." Of this total $178,627,000 were issued in 1964 alone. This represents a twenty-fold increase from the 1957 total of $7,612,000. Lechner, Industrial Aid Financing 6 (1965).

[5] Speech by Representative Henry S. Reuss, cited in American Industrial Development Council, Professional Notes No. 5, PN 3 (1964) (hereinafter cited as A.I.D.C.).

[6] Spiegel, Financing Private Ventures With Tax Exempt Bonds: A Developing "Truckhole" in the Tax Law, 17 Stan. L. Rev. 224 (1965).

[7] Council of State Governments, Suggested State Legislation, 1964 at 51 (1963).

[8] See, e.g., Ill. Ann. Stat. ch. 24 § 11-74-3 (Smith-Hurd 1962).

[9] See generally 70 Yale L.J. 789 (1961); 59 Colum. L. Rev. 618 (1959). In order to effectuate these programs many states have found it necessary to amend their state constitution when it restricts the state or its political subdivisions from using the public credit to finance private ventures. For example, Mass. Const. art. LXII § 1 provides, "The credit of the Commonwealth shall not in any manner be given or loaned to, or in aid of any individual or any private association, or any corporation which is privately owned or managed." Because of this prohibition Massachusetts has not enacted an industrial development bond program. However, an attempt is presently being made to amend the state constitution to permit such an enactment.

Typically, a municipality sells a bond issue to raise capital to construct facilities for a proposed industry. The bonds are amortized over a thirty to forty year period with the rental payments for the use of the facility being used to pay off the debt. The local government is the owner of the facility subject to the debt.

The industry, the local government and the bondholder each profit from these programs. These benefits derive from the Internal Revenue Code of 1954 which provides that: "Gross income does not include interest on (1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing. . . ."[10] Thus the income on the bonds is not taxable. This makes the bonds attractive to persons in the higher income brackets even though the bonds bear a relatively low interest rate. This low interest rate in effect allows the local government to borrow money at a lower rate than is available to private interests. In addition, the local government pays no income tax on the rental payments,[11] and the rental payment is a valid deductible business expense to the industry.[12] Since the local government is the owner of the facility, the property is also not subject to any local property taxes. Thus, the industry pays an unusually low rental rate for the constructed facility and the local government can look forward to owning the buildings free and clear after the bonds have been amortized, while presently enjoying an increase of jobs and personal income in the area.

II. Increased Liberality and Use

The "grandfather" of local industrial development bond financing is Mississippi's 1936 Balance Agriculture With Industry (BAWI) plan.[13] It was designed to strengthen the economy of a highly agriculturally oriented state. The act, stating that "the present and prospective health, safety, morale, pursuit of happiness, right to gainful employment and general welfare of its citizens demand, as a public purpose, the development within Mississippi of industrial and manufacturing enterprises,"[14] was upheld by the state supreme court,[15] although the state constitution expressly forbade the state or municipality to extend its credit to finance a private enterprise.[16]

The program authorized the local governments to issue general obligation bonds subject to the approval of a state authority which carefully screened all applications. Though criticized,[17] the central authority was indeed necessary. These general obligation bonds pledged the local government's credit in support of the bonds. Unlike revenue bonds, where the risk to the bondholder depends upon the strength of the industry, general obliga-

[10] Int. Rev. Code of 1954, § 103(a).

[11] Int. Rev. Code of 1954, § 115(a)(2).

[12] Int. Rev. Code of 1954, § 162(a)(3).

[13] Moes, Local Subsidies for Industry 71-80 (1962).

[14] Miss. Code Ann. § 8936(5) (1957).

[15] Allbriton v. Winona, 181 Miss. 75, 178 So. 799, appeal dismissed, 303 U.S. 627 (1938).

[16] Miss. Const. art. 14, § 258 (1957).

[17] Moes, supra note 13, at 76.

tion bonds are relatively risk free since the bondholder's income is assured whether the industry succeeds or fails. Since the investment was guaranteed, the programs might have attracted marginal industries which could have failed, leaving the local government with the burden of paying off the obligation. The fact that Mississippi has had so few failures attests to the soundness of the arrangement.[18]

Recent state programs have incorporated the benefits of industrial development bond planning without the safeguards found in the BAWI program. These subsequent enactments authorized the issuance of revenue bonds by the local government without the approval of a state authority.[19] One statute went considerably further. It authorized the local government to purchase an out-of-state industry and transplant it in the community through use of local revenue bond issues.[20] To protect their own industry from being pirated, states have been forced to further extend the use of local bond issues to finance improvement and expansion of existing facilities.[21]

A series of revenue rulings by the Treasury Department construing Section 103 of the Internal Revenue Code has aided the rapid growth of these industrial development bond programs. In 1954 the "interest on bonds issued by a municipality to finance construction of municipally owned industrial plants for lease to private enterprises" was declared tax exempt.[22] The fact that the bonds might be revenue bonds where the promise to pay is limited only to the income derived from leasing the property rather than general obligation bonds which pledge the municipal credit was declared immaterial.[23] In 1957 bonds issued by an Industrial Development Board were "considered issued in behalf of a municipality, a political subdivision of the State," thus exempting their interest from the federal income tax.[24] The next step was taken in 1963 when interest on the obligations of nonprofit corporations was declared excludable from gross income where the corporation was organized "for the purpose of stimulating industrial development within a political subdivision of the state."[25]

Despite their widespread use, there has been some question as to the effect of industrial development bond programs. Today it is becoming increasingly clear that they are not only an effective inducement to industry in determining a location within a particular region, but also make expansion economically feasible for industries which otherwise could not afford

[18] The State Industrial Board reports that "tax monies had to be used to fulfill a company's obligation" only three times in the past ten years. Lechner, supra note 4.

[19] E.g., Tenn. Code Ann. § 6-1705 (1955); Ala. Code tit. 37, § 511(20)-(32) (1959).

[20] N.M. Stat. Ann. §§ 14-41-31 to -43 (Supp. 1959), constitutionality upheld in Village of Deming v. Hosdreg Co., 62 N.M. 18, 303 P.2d 920 (1956), subsequently repealed by Laws 1965, ch. 300 § 595.

[21] See, e.g., Ala. Code tit. 37, § 511(20)-(32) (1959), as amended, § 511(22) (1963).

[22] Rev. Rul. 54-106, 1954-1 Cum. Bull. 28.

[23] Ibid.

[24] Rev. Rul. 57-187, 1957-1 Cum. Bull. 65.

[25] Rev. Rul. 63-20, 1963-1 Cum. Bull. 24.

to do so. As recent as 1958 when the first study of the effects of these programs was made, tax factors and financial aid ranked near the bottom of the list of factors which influenced management's location decision.[26] Labor markets and materials were the prime factors. But in the next seven years as industrial aid financing became increasingly popular in the states, it was recognized that the effect of local development bond programs was increasing. *The New England Business Review*, in recognizing the "locational effect," stated that "although not sufficiently influential to draw an industry to a region, such programs may be responsible for plants in a particular community within a region."[27] The Advisory Commission on Intergovernmental Relations further noted the "stimulus effect," stating that "industrial development bonds may make it possible for firms to innovate and expand that otherwise would remain static."[28] A 1965 study[29] which surveyed twenty-six recently located firms in the southern United States supported these statements. Twenty of the firms interviewed stated that although labor, markets and materials were key factors in determining industrial location, they would not have been able to expand without industrial aid financing.[30] Since the industrial aid stimulated the expansion, the new location of the industry would necessarily be in an area which offered such a program.

Many states offer alternative industrial aid programs either through direct loans, state-wide credit agencies, or mortgage guarantees.[31] The federal government also offers financial aid through the Small Business Administration[32] and the Economic Development Act of 1965.[33] The federal programs give especially low interest rates to areas which qualify as labor surplus areas. These programs were recently compared to determine the annual cost of financing a $1,000,000 industrial facility over a twenty-year period.[34] Typical state programs were used. The results were that the federal program would cost the industry $67,780 yearly, whereas the municipal bond plan would cost $79,200 yearly. The other results were: State loan plan—$76,080; state credit agency—$82,308; and mortgage guarantee plan —$89,586.

Although the federal program appears to be more attractive than a local bond program, it was pointed out that in Rhode Island the financially less attractive mortgage guarantee plan was used twenty-seven times during a period in which the federal program (ARA) was used only once.[35] The close

26 Bergin, "Critical Analysis of the Effect of State Aid to Industry in Selected Areas" (unpublished Ph.D. dissertation Syracuse University, 1958).

27 Federal Reserve Bank of Boston, New England Business Review, July 1964, p. 4.

28 Advisory Commission on Intergovernmental Relations, Industrial Aid Financing 72 (1963).

29 Lechner, Industrial Aid Financing 49-58 (1965).

30 Id. at 51.

31 For a tabular summary of the industrial aid programs offered by the various states, see Schmidt, Local Facilities Financing and a Comparison of Financing Plans, A.I.D.C. No. 5, at PN 12 (1965).

32 72 Stat. 186 (1958), 15 U.S.C. § 633 (1964).

33 79 Stat. 552 (1965), 42 U.S.C. § 3121 (1964).

34 Schmidt, supra note 31, at PN 7.

35 Id. at PN 10-11.

regulation and numerous restrictions[36] placed on the federal programs partially explain this. However, the key factor is the delay[37] in getting the federal agencies' approval of a proposal. Speed in obtaining funds is usually of the essence in selecting a program. It should also be noted that each of the annual cost figures is well below the conventional charge an industry would expect to pay.[38]

As compared with the other state programs, the big advantage that the municipal bond plan has to the state is that it uses in part federal money rather than state money to finance the industrial development. Thus, the municipal bond plan is a very useful device for a state to have available.

A. *Adverse Effects*

Local industrial development bond programs have had adverse effects on all levels of government. From the federal point of view the programs (1) use federal funds to finance local industrial development, (2) permit the local government to control the use of the federal money, (3) break down the progressive income tax structure, and (4) decrease the tax base.

As between the states, these programs are used both to attract industry seeking a new location and to pirate industry existing in other states. Although competition between the states for industry appears to be healthy, this is so only where the industry is itself seeking a new location and not when the industry is pirated from another state. A pirated industry which fills a local employment need, leaves the same problem behind in the area which it left.[39]

Although the intra-state problems are limited, these bond programs (1) create unfair competition for competitors who do not enjoy a similar low rental, and (2) permit, in some cases, expansion of facilities beyond the needs of the community,[40] thus attracting labor from other areas. This may well result in the program's failure with a consequent impairment of the local government's credit.[41]

Furthermore, the bond programs are sometimes used to finance industry that is in a sound financial position and could use conventional financing facilities,[42] and also to finance department stores and other activities which bear no relation to industrial development.[43] One of the most objectionable uses occurs whenever a lessee of the facility purchases the bonds itself,[44]

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[36] Id. at PN 6.

[37] Ibid.

[38] Id. at PN 10.

[39] A.I.D.C., supra note 5, at PN 5.

[40] Ibid.

[41] Especially where general obligation bonds are involved on which the local government must then make payment.

[42] Such firms as American Machine and Foundry, Olin-Mathieson, and United States Rubber have taken advantage of municipal bond plans to finance their expansion. Lechner, supra note 4, at 7.

[43] Topeka, Kansas issued a $3,700,000 revenue bond issue to finance a department store for Macy's. The income on these bonds was tax exempt. A.I.D.C., supra note 5, at PN 5.

[44] The Advisory Commission on Intergovernmental Relations suggested that Congress act to prevent this misuse of industrial development bond issues. Advisory

thus enjoying all the tax benefits[45] and indicating that it possessed the monies to finance the facilities in the first place.

The continued misuse and growth of local industrial development bond financing plans pose even greater problems for the future.

(1) The programs are defeating themselves through competition.[46] The increased popularity of the programs has forced more and more states to enact them as a defensive measure. Eventually each state will have a program and the programs will thus lose much of their effectiveness.

(2) The programs tend to favor the financially stronger industries[47] since the attractiveness of a revenue bond issue depends on the financial strength of the incoming industry. Also, since the interest on the bonds varies with the risk involved, financing becomes less expensive for the industry which is in a strong financial position.

(3) The erosion in the federal tax base increases directly with the growth of the programs.[48]

(4) The programs artificially stimulate development in areas which are not otherwise the most efficient location for the industry in terms of markets, materials and productivity. As the programs grow, so will this adverse effect on the efficiency of the economy.[49]

(5) As the adverse effects become more prevalent the pressures on the Congress will increase to eliminate the programs entirely.

Commission on Intergovernmental Relations, Industrial Development Bond Financing 31 (1963).

[45] In effect, the industry would make a rental payment which would be a deductible business expense. It would then be returned by the city to the industry as tax free income on the bonds. For example:

> A municipality issued $400,000 in 30-year tax-exempt revenue bonds at an interest rate of 5¾ per cent per annum. It sold all the bonds to a corporation desiring a $400,000 plant, and used the proceeds to build the plant to order for the corporation. The corporation then signed a lease renting the plant for 30 years at an annual rental of approximately $28,000, with a renewal option for another 30 years or more at $1 per year.
>
> The corporation's rent of $28,000 per year, a wholly deductible business expense, helped to reduce its income tax to the extent of 52 per cent of the rental cost. Only 48 per cent of the $28,000 or $13,400 can be considered, therefore, as the true rental cost. But in the first year under this arrangement, the corporation also earned $28,000 in tax-exempt interest. Therefore, that year the corporation got rent free premises and made a profit of $9,560, the difference between $23,000 interest income and $13,440 in rental cost. Over the entire 30-year period, the Investment Bankers Association points out, in addition to free rent of a new plant, the corporation would pile up a profit of $48,074 on its $400,000 investment.

A.I.D.C., supra note 5, at PN 4.

[46] Sparks & Pate, Revenue Bonds and an Approach to a Fair Appraisal, A.I.D.C. No. 6, PN 5 (1964); A.I.D.C. supra note 5, at PN 6.

[47] Sparks & Pate, supra note 46.

[48] This decrease is partially offset by the increase in taxable personal income in the area.

[49] Sparks & Pate, supra note 46.

II. A Look at the Proposals

The need for control has prompted proposals for action by the Congress, the Treasury Department and the states. Past Congressional attempts have been aimed directly at modifying Section 103 of the Internal Revenue Code of 1954. There have been two types of proposed legislation: (1) To disallow the deduction of the rental payments from the industry's taxable income,[50] and (2) to tax the interest paid on industrial development bonds.[51]

Neither type of legislation has met with favor, although the House version of the Internal Revenue Code of 1954 "included a provision prohibiting the deduction of rent paid for the use of property acquired or improved by the issue of so-called industrial development revenue bonds (where the credit of the municipality was not pledged), but the Senate would not agree and the provision was eliminated."[52] It was deleted only because of disagreement over whether denial of the rental deduction to revenue bonds would be an effective way to prevent abuses of the programs.[53] Proposals in 1961,[54] and 1963[55] and 1964[56] to disallow the deduction of the industry's rental payment and to tax the income on the bonds were not reported out of the House Ways and Means Committee.

The Advisory Commission on Intergovernmental Regulations recommended in its 1963 report that federal action be taken to prevent industries from buying the bonds themselves, thereby enjoying all the tax benefits.[57] Certainly this usage must be prevented, but such action alone is far too limited. It would attack only one abuse of the programs which has been quite limited up to this time.

The liberal position of the Treasury Department was previously noted.[58] Revenue Ruling 63-20[59] has been referred to by one author as "a blueprint for issuance of tax exempt bonds to finance private ventures."[60] It provided that bonds issued by non-profit corporations chartered in compliance with applicable state law would be tax exempt. The only limitations imposed were that (1) the corporation's activities be public in nature and non-profit, (2) the income not inure to a private individual, (3) the state or political subdivision have a beneficial interest and obtain full legal title to the facility when the indebtedness is retired, and (4) the issuance of the obligations be approved by the state or political subdivision thereof. By this ruling the Treasury Department extended the tax exemptions granted conventional

[50] H.R. 10547, 88th Cong., 2d Sess. (1964); H.R. 6772, 88th Cong., 1st Sess. (1963); H.R. 6368, 87th Cong., 1st Sess. (1961).

[51] H.R. 517, 88th Cong., 1st Sess. (1963); H.R. 798, 87th Cong., 1st Sess. (1961).

[52] Bittker, Federal Income, Estate and Gift Taxation 160 (3rd ed. 1965).

[53] S. Rep. No. 1662, 83rd Cong., 2d Sess. 40-41 (1954).

[54] H.R. 6368, H.R. 798, 87th Cong., 1st Sess. (1961).

[55] H.R. 6772, H.R. 517, 88th Cong., 1st Sess. (1963).

[56] H.R. 10547, 88th Cong., 2d Sess. (1964).

[57] Advisory Commission on Intergovernmental Relations, Industrial Development Bond Financing 31 (1963).

[58] Supra p. 698.

[59] Supra note 25.

[60] Spiegel, Financing Private Ventures with Tax Exempt Bonds; A Developing "Truckhole" in the Tax Law, 17 Stan. L. Rev. 224, 227 (1965).

methods of local industrial development bond financing to non-profit corporations approved by the local government. This revenue ruling may even permit the issuance of local industrial development bonds in the absence of enabling legislation.[61]

This "developing 'truckhole' in the tax law" prompted Hart H. Spiegel, the former chief counsel of the Internal Revenue Service, to urge a change in the Treasury Department's liberal attitude.[62] His criticisms were directed at the bonds issued by non-profit corporations authorized by the state or political subdivision thereof. This is merely a sophisticated form of the industrial development bond which was authorized by Revenue Ruling 63-20. In these plans the municipality holds the beneficial interest in the non-profit corporation which issues the bonds, rather than issuing the bonds itself as in the conventional plans. However, the criticism is equally applicable to industrial bond programs in general since the programs are essentially the same.

Spiegel suggests that the liberal rulings of the Internal Revenue Service regarding these programs are not necessitated by Section 103 of the Internal Revenue Code of 1954. The exemption granted under section 103(a) is limited to the "obligations of" the state and its political subdivisions. The Treasury Regulations interpret this as meaning obligations issued on "behalf of" the state or political subdivision thereof.[63]

From this starting point, it is clear that the income on any bond issue which is issued "on behalf" of a local government is tax exempt. This would include industrial development bonds, whatever their purpose. Such a position goes too far. The time has come for the Treasury Department to re-evaluate their position of interpreting section 103 as exempting the income on any bond issued "on behalf of" the state or its political subdivisions. As an example of the absurdity of this position, one need only consider industrial revenue bonds. They are *not* supported by the taxing power of the local government. Thus they are not *obligations of* the state or its political subdivision. Many state courts have so held in order to avoid conflicts with "credit clauses" in state constitutions.[64] Yet, because of Treasury Regulation Section 1-103-1 (1956) interpreting "obligation of" as meaning "on behalf of," the income on each of these bond issues must be granted tax exempt status.

There is no valid reason why the income on every bond issue of a state or its political subdivisions must be declared tax exempt. A "public purpose" test could be required of each bond issue in order for its income to qualify for the tax exempt status. Industrial development in qualified areas could be included within the definition of a "public purpose." Such an exemption

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[61] "It is not known to what extent non-profit corporations are taking advantage of this ruling. Several issues under this ruling have been made in North Carolina." North Carolina does not have legislation authorizing municipal industrial bonds. Schmidt, supra note 31, at PN 4.

[62] Spiegel, supra note 60, at 228.

[63] Treas. Reg. § 1-103-1 (1956).

[64] See, e.g., Faulconer v. City of Danville, 313 Ky. 468, 232 S.W.2d 80 (1950).

would be in the spirit of the seemingly limited exemption granted by section 103, and would eliminate clearly abusive bond issues since no one would buy them knowing that the Internal Revenue Service would not be required to allow ipso facto the tax exemption on their interest. However, unilateral action by the Treasury is beset with numerous problems. A "public purpose" test would be difficult to define satisfactorily. Furthermore, who would determine the status of each bond issue and when would this determination be made? Would the ruling on the status of the bonds be made at the time of issue or would it be required to wait until a buyer sought a tax exemption? What of the long delay period between rulings and appeals? Such questions and delays would not make these bond issues attractive. Although Section 103 of the Internal Revenue Code does not prohibit the Treasury Department from initiating action to control industrial development bond financing, this action would not be desirable. The Treasury Department's interest would be in preserving the tax base, not in developing the program as a whole. However, the possible exercise of this power should serve as a caveat to interested parties that, if the abuses do continue unchecked, this unilateral action on the part of the Treasury Department could be instituted.

The Council of State Governments, in its *Program of Suggested State Legislation, 1964,*[65] took another approach to regulate the local industrial development bond financing programs. It proposed that each state authorizing these bond issues enact further legislation providing safeguards so that the programs are "conducted in such a manner as to make a maximum contribution to the orderly industrial development of the state."[66] The main feature of the proposed legislation is that a state supervising agency would be established to authorize the bond issues. This agency would select which areas would be eligible, giving priority to those which suffered from chronic surplus labor and which lacked conventional credit channels. Such an agency could limit the amount of the bond issues and also prevent expansion beyond present needs, thus preventing intra-state piracy of industry and labor. By the standard set in the legislation, only certain areas would be eligible for the programs. They would be limited to the areas where the industrial development was lagging far behind the area's needs. This proposal provides the proper safeguards and protects not only the state's own interests, but also the federal interest regarding the tax subsidy which it extends to these programs. Furthermore, it justifies the use of the federal tax subsidy to finance private industrial developments. However, the beneficial effect of such legislation would depend upon each state's willingness to enact the safeguards. The key to the success of the Advisory Commission proposal is uniformity. Yet the proposal itself lacks the coercion necessary to make the states act, and it is unlikely that they would act unilaterally since amending their own programs without a guarantee that the other states will do the same runs too great a risk of incurring a competitive disadvantage.

[65] Council on State Governments, Program of Suggested State Legislation, 1964, at 51 (1963).

[66] Id. at 52.

III. Proposed Solution

One of the main problems confronting attempts at the proper use of local industrial development bond programs is the sharply conflicting interests of the parties involved. The federal government is concerned with the loss of tax base. The state is interested in getting the maximum federal subsidy without incurring the intra-state abuses. The local government merely wants industrial development. When these programs are misused by the local government, it suffers the least; this is also the level of government which gains the greatest benefits from the programs, whether they are used correctly or not. Yet, the control over these programs in most states is in the hands of those who stand to gain the most and lose the least—the local governments.

If the practice of local industrial development bond financing is to be continued, the control over it must be removed from the local level to insure that the programs will be used for the proper purposes. The desired result would be a program which struck a balance between the tax subsidy which the federal government grants and the socio-economic rejuvenation of the depressed areas where the programs are used. Such a balance would justify not only the federal tax subsidy, but also the use of public funds to finance private industry.

A program is needed which coerces the states into enacting the safeguards suggested by the Advisory Commission. It is clear that only action on the federal level can do this. But federal control raises the problems of delays and excessive paper work which reduces the effectiveness of any industrial development program. To avoid these problems Congress should establish a commission which would enforce certain minimum federal standards controlling who is eligible for the subsidy and to what area it goes. These standards would insure that the use of the public funds was within the public purpose requirement. This commission might be set up in a manner similar to that set up by Title VII of the Civil Rights Act of 1964.[67] It would police and enforce the federal standards, but it would defer to any state which showed that it could operate its own program within the prescribed standards. Such a program would make effective use of industrial development bonds, and it would coerce the states to enact minimum standards in order for their local bond issues to be eligible for the federal tax exemptions.

Congress has not acted favorably in the past regarding proposals to control industrial development bond financing. The past proposals, however, would have eliminated the attractiveness of industrial development bond programs. The present proposal merely limits the use of the programs and does not impair their effectiveness. The competition between the states for industry is increasing. As more states enact industrial development bond programs, they will become ineffective as an inducement. The time has come for a compromise solution which will not only preserve this industrial aid device, but also justify its use.

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[67] 78 Stat. 241 (1964), 42 U.S.C. § 2000e (1964).