Agenda For Positive Action: State Programs in Housing & Community Development

Prepared by
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November 1, 1968

A Report Prepared by
the Urban Coalition's Task
Force on Housing, Reconstruction
and Investment

Preface and Acknowledgements

On July 9, 1968, the Urban Coalition Task Force on Housing, Reconstruction and Investment met in New York City. At that time the Task Force members discussed the potential role of the states in helping cities meet urban needs.

The discussion soon revealed that a few states had begun innovative programs, many of which show promise of bringing better living conditions to an increasingly urbanized population. The Task Force accordingly requested the staff of the Urban Coalition to draw together and analyze legislative actions that had been taken, and which could feasibly be taken, so that states considering enacting housing and community development programs might have guidelines for action. This report is the result of that survey and analysis, and was prepared with the goals of the Urban Coalition in mind. The Task Force reviewed and commented on the paper in draft form and at its meeting on September 23, 1968, approved its publication.

The report is intended to enable those in each state responsible for administering, recommending and drafting housing programs to ask relevant questions and to be aware of possible patterns for state involvement. The paper describes an assortment of weapons in the armory of state action which can be combined to achieve overall objectives. The Task Force believes each of the tools described in this paper is worthy of serious consideration. It further believes that no recommendations for state action in housing and community development can be deemed complete without their consideration.

Although responsibility for the judgments in this document remains with the Urban Coalition housing staff, helpful suggestions were received from many sources. Chief among them were Seymour Baskin, Esquire, of Pittsburgh; Ralph Brown and Michael Herbert, Department of Community Affairs, State of New Jersey; Joel Cogen of Joel Cogen Associates, New Haven; Mrs. Glenda Sloane, National Committee Against Discrimination in Housing; and Stephen Ziegler, Esquire, of New York City. Each attended discussion meetings and critically reviewed the draft in detail.

Helpful advice, assistance or critical comments also were advanced by: S. Leigh Curry and H. Ralph Taylor of HUD; Stanley Berman, Esquire, of New York City; Peter Paul and William L. Slayton of Urban America; Professor Daniel Mandelker, Washington University Law School, St. Louis; Richard Blakley, Illinois State Housing Board; Eugene Rossland, National Bureau of Standards; James Martin of the National Governors' Conference; Stephen D. Moses of Boise-Cascade Corporation; and Warren Lindquist, Associate of David Rockefeller.

In addition, representatives of the Task Force co-chairmen supplied support and guidance from the inception of the study: Thomas Hannigan for Joseph Keenan; David Cohen for Walter Reuther; and Richard Dowdy for David Rockefeller. Jack Davies of the Chase Manhattan Bank and John Kolesar of the New Jersey Department of Community Affairs provided valuable aid in redrafting some of the material.

Helpful advice on presentation of the material was received from Commissioner Paul N. Ylvisaker, Mayor Jerome Cavanagh and James Rouse, members of a special Housing Task Force Subcommittee which reviewed the final draft.

Citations were checked and expanded by Stuart Stiller.

Two reports previously published: "The States and Urban Problems," a staff study of the National Governors' Conference, and a preliminary report ("Action for Our Cities—Part II—Housing") of the States Urban Action Center, Washington, D. C., stimulated Task Force thinking at the outset.

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Introduction

A Decent Home and Suitable Living Environment

At its Emergency Convocation in August 1967, the Urban Coalition called upon the nation to take bold and immediate steps to fulfill the national goal to provide "a decent home and suitable living environment for every American family" with guarantees of equal access to all housing, new and existing.

This goal requires a national effort vastly larger than anything done in the past. The Coalition set an objective of building or rehabilitating one million housing units a year for lower-income families. The National Advisory Commission on Civil Disorders later recommended construction of an average of 1.2 million units a year for low- and moderate-income families over the next five years. The Housing and Urban Development Act of 1968 set a goal of six million units in the next decade—an annual average of 600,000 units.

These goals exceed by a wide margin the current annual rate of production of less than 100,000 housing units for low- and moderate-income families.

Why State Action? State action must be part of any national program to provide the housing to meet the very real needs and expectations of millions of Americans.

The states have abilities and legal authority unavailable to the other levels of government. If these resources are withheld from national programs, the federal government, the cities and the private sector will be seriously hampered in carrying out their roles. If the states apply their authority and abilities creatively, they can enhance the effectiveness of the other partners in programs aimed at providing a decent environment for the residents of our communities.

States have authority to assist cities in modernizing governmental patterns and to amend laws that impede new programs for urban progress. States have great flexibility to experiment with a wide variety of instruments and incentives closely tailored to local conditions and requirements. States, moreover, have the capacity to respond directly to urban problems as they arise, and to work with cities in supplementing federal and local programs and to adapt them to the individual challenges each city faces.

A few states have already enacted their own housing and community development programs covering a wide variety of problems. But these programs are not as well known as they should be at a time when many states are seeking new avenues through which to enlarge their assistance to local communities to improve the quality of housing and community facilities.

The Purpose of This Report. This report on possible state programs has been prepared by the Urban Coalition's Task Force on Housing, Reconstruction and Investment as a guide for those in the public and private sectors concerned with greater positive action by the states to assist cities in housing and community development.

The programs for state action outlined here are designed to meet problems which fall into eight categories:

Programs in each of these categories are prefaced by a brief statement of needs and potentials in the area. And federal programs are related to state programs where a relationship exists.

The programs cited are designed to spur swift and effective action. This report does not envision establishing at the state level another set of complex administrative requirements alongside the existing federal regulations. *To the greatest feasible extent, where states supplement or relate to federal programs, the federal approval should be the principal criterion to obtain the additional state aid. Duplicating and possibly conflicting state requirements may only delay or frustrate needed action.*

Cities have built up a body of experience dealing with federal aid procedures, however complicated these rules may be. States must master the same procedures before they can work effectively to improve them. A state administration truly intent on helping cities through these programs will develop its own experienced and capable staff. It will, consequently, find its voice significantly strengthened in shaping the course of federal action. Strong voices are indeed needed, because in the last analysis increasing the effectiveness of federal efforts, backed by the far larger potential financial resources of the federal government, will prove crucial. States should join with their cities in working to channel these resources into urban needs.

Except for a suggested commission to revise complex laws for zoning and land use, no proposals are made that require extensive research. A suggestion is advanced for centralized state administration, but with one exception, no attempt is made here to deal with long-range constitutional or fiscal reforms. Though such organic and fiscal change is unquestionably vital, to maintain a sharp focus this report concentrates on specific measures which can be readily taken. Indeed, most of the measures described are already being undertaken in some form in one or more states.

In many states constitutional limitations may make it difficult to enact some of the provisions described here. States with restrictive constitutions are, however, already undertaking many of these programs by the use of responsible and imaginative legal counsel, financing devices and careful draftsmanship. Before a sensible course of action is discarded because of assumed constitutional difficulties, the statutes of other states should be carefully examined for possible solutions to the constitutional problem.

The primary objective of the majority of these programs is to attract greater federal aid—to bring in several federal assistance dollars for each state assistance dollar. A number of the programs also act to attract wider private sector involvement and to overcome legal and political impediments to swifter and more effective progress. In many cases, state assistance can be seen substantially to improve the scope and efficiency of federal and private programs.

No model legislation for these programs is included since such legislation must necessarily be drafted to fit the circumstances in each state. However, citations to existing state programs and other relevant sources are given in the references at the end of this report. These citations are intended to be illustrative rather than exhaustive. The staff of the Urban Coalition is prepared to provide further information and assistance to those interested in carrying out any of these programs in their states.

Each state is urged to review these suggested programs carefully within the framework of its own needs, priorities and resources. The programs outlined here could be combined or considerably altered to fit particular circumstances, and there is still certainly a great need for experimentation. Each housing and community development project, moreover, should be related to an ongoing local or metropolitan comprehensive planning effort. Ideally, each state should seek to combine new concepts and existing programs into a well-coordinated and effective effort.

It is a time to decide. It is a time to act. To justify the role of the state as an innovator—a laboratory for imaginative approaches to urban problems—state leaders must dramatically increase state assistance to urban communities.

Enactment and adequate funding of a comprehensive state housing and community development program which in some measure includes the specific programs described in this report would dramatize an important commitment that states could make to their own people.

I. Increasing the Supply of Low- and Moderate-Income Housing

Program 1

Interest-Free Seed Money Loans and Technical Assistance to Limited-Profit and Nonprofit Developers of Low- and Moderate-Income Housing; Grants to Nonprofit Developers of Low- and Moderate-Income Housing.

Federal and state low- and moderate-income housing assistance programs rely heavily upon nonprofit housing sponsors.*

Nonprofit housing sponsors are either broadly-based housing development corporations aiding or sponsoring a number of housing projects in the community or individual project sponsors, such as churches, charitable foundations, settlement houses, labor unions, fraternal organizations and other civic-minded groups.

As landlords or as organizers of cooperatives, these groups are likely to follow enlightened policies. As sellers, they are likely to help lower-income buyers adjust to homeownership. The social motivation of many nonprofit corporations, moreover, causes them to undertake the often risky, tedious and difficult task of building or rehabilitating housing in inner-city or "gray areas," where many private profit-motivated developers will not enter.

Experience has shown, however, that too many nonprofit groups are long on social dedication but short on money and skills. Thus, the difference between good intentions and housing in place is often assistance to nonprofit housing corporations in the forms of:

—seed money loans (advances from a revolving loan fund needed to cover initial costs, such as preliminary architectural fees, engineering fees, site options, tenant surveys, market analyses, and legal and organizational expenses during the project development stage, which are recoverable from the proceeds of the FHA-insured mortgage);

—grants for administrative costs, social services and other necessary expenses which are important to the success of the organization and the project, but which may not be recoverable from the mortgage proceeds;

—interim financing (construction loans needed when private construction loans are not available as described in program 5 below), and

—technical assistance (expert aid needed to train personnel, develop projects, secure project approval and oversee construction).

** As used in this paper references to nonprofit developers or nonprofit sponsors include nonprofit cooperatives as well as other nonprofit entities.*

The availability of grant money is particularly important to housing development corporations. These broadly based nonprofits need start-up and operating money that will not be recaptured from the proceeds of housing project mortgages.

Seed money loans interim loans and technical assistance might also be made available to limited-profit housing developers in need of this assistance.

The federal Housing and Urban Development Act of 1968 (hereafter the 1968 Housing Act) provides similar assistance to nonprofit developers of low- and moderate-income housing. It directs the Department of Housing and Urban Development (hereafter HUD) to provide information, advice and technical assistance. It also authorizes HUD to make 80 percent interest-free seed money loans to nonprofit corporations from a small, newly created revolving fund. It creates a government-chartered, nonprofit, private corporation known as the National Homeownership Foundation to encourage private and public organizations to provide increased homeownership and housing opportunities for low- and moderate-income families.

A state assistance program, however, would provide an additional and more flexible source of aid to developers of low- and moderate-income housing. A state program could be used to give encouragement to the formation of limited-profit and nonprofit housing groups within the state, when federal assistance is not available.

A state program, moreover, might put more emphasis on making non-recoverable grants, rather than recoverable seed money loans—the thrust of federal aid. Grants, rather than loans, are needed to help finance housing development corporations and pay for the extra costs of housing low-income people, such as the provision of important social services.

Program 2

State-Developed Low- and Moderate-Income Housing.

Developing housing for low- and moderate-income families requires a great deal of expertness. The services of a lawyer, real estate agent, builder, banker and administrator at a minimum are generally required. In many smaller communities it is difficult to find people who are both qualified and willing to render these services to a housing sponsor.

Thus, as a logical alternative to state or federal technical assistance to help local groups become qualified to develop housing projects, the state may wish itself to develop either public housing or moderate-income housing. It should only do so where there is no functioning local public housing authority or moderate-income housing developer to build the housing.

To produce public housing, the state would establish a public housing authority which could provide the necessary public housing anywhere in the state. Recent changes have added great flexibility to the federally assisted public housing program. A public housing authority can now lease as well as build or purchase housing, and can sell the housing to its tenants. State-wide public housing authorities are eligible to receive federal public housing assistance.

To build moderate-income housing, the state could create a nonprofit housing development corporation to develop this housing anywhere in the state. The corporation generally would serve as developer of the project. It would only serve as sponsor (i.e., the owner and maintainer of rented housing) in the absence of a local group which could serve as the sponsor.

In developing either public housing or moderate-income housing, the state would act in close cooperation with local public and private groups. And the state would not itself construct the housing; construction would be done by a private contractor under the "turnkey" system.

Program 3

Below-Market-Interest-Rate Mortgage Loans to Limited-Profit and Nonprofit Developers of Low- and Moderate-Income Housing.

States may use their power to borrow cheaply through the issuance of tax-exempt bonds to finance moderate-income housing projects at mortgage interest rates several percentage points below commercial rates. On long-term mortgages (usually forty years), this lower interest rate can be of substantial assistance in reducing the cost of housing. New York pioneered this assistance with its highly successful "Mitchell-Lama" program.

Federally assisted moderate-income housing programs also aid the production of housing by reducing interest rates. The FHA section 221(d)(3) program, for example, provides financing at a three percent interest rate. Nevertheless, at least five states have enacted their own below-market-interest-rate programs to supplement the federal programs.

There are many good reasons for states to establish their own below-market-interest-rate housing programs.

Comprehensive Program. A state agency may find it difficult to undertake a comprehensive program for encouraging the development of moderate-income housing without itself being able to assist in the mortgage financing of this housing. Without its own below-market-interest-rate mortgage program, the important decision of whether to finance a proposed housing project would be made exclusively by the Federal Housing Administration.

Flexibility. Many FHA programs can only be used to assist housing developers in communities which have enacted a "workable program for community improvement"—an overall plan of action for meeting problems of slums and blight, and for guiding community development. This "workable program requirement" greatly restricts the use of important FHA programs in many states where such a program has not been adopted by a locality. A state program would not be subject to this restriction.

The FHA allows a maximum six percent book return to limited-profit housing developers. To encourage greater participation, a state program may allow a greater maximum return, such as the eight percent return allowed under the New Jersey program.

Less Complex Administration. FHA processing of moderate-income housing proposals is complex and generally time-consuming. An adequately staffed state program may be able to simplify its rules and regulations and thus speed processing time. And based on its own experience, it may be able to suggest improvements in FHA regulations.

Experimentation. States may wish to innovate with their own programs, such as Illinois, Massachusetts and New Jersey are doing with "rent skewing." Through rent skewing, rents in a majority of apartments are raised slightly to allow larger reductions in the rents of a minority of apartments. Rent skewing allows a wider range of tenants' incomes in a housing project than would be possible without skewing.*

Program 4

Interest-Free Loans to Limited-Profit and Nonprofit Developers to Enable Them to Fall Within Federal Cost Limitations on Low- and Moderate-Income Housing.

Federal programs have almost exclusively assisted housing by reducing financing costs through mortgage loans, mortgage insurance and interest subsidies. The 1968 Housing Act expands these programs. Due to the existence of substantial federal assistance some states may not wish to engage in the same form of assistance. (As described in Program 3 above.)

Substantial reasons still remain, however, for states to make supplemental loans to developers to enable them to qualify for federal assistance when they otherwise would not.

The FHA and the Housing Assistance Administration (HAA) continually have under consideration proposals for housing projects which have been slowed or found infeasible because proposed costs exceed maximum federal cost limits. In many cases federal cost limitations simply may not adequately reflect local cost factors. Costs per unit for a project might, for example, exceed the federal maximum by as little as five to ten percent; yet, as the developer spends perhaps months redesigning his project to bring unit costs in line (often sacrificing desirable design features in the process), increases in construction costs during the redesigning period might well consume whatever other savings were managed. This tedious process causes many units of badly needed housing to die on the drafting boards.

State assistance can remedy this and similar cost problems. To reduce the total federal mortgage assistance amount to within maximum federal cost limits, the state could provide an interest-free loan to the developer of up to ten percent of his cost to supplement his FHA-insured financing. Repayment of the state loan would be deferred until after the federal mortgage loan is paid off or refinanced.

The state loan is secured by a state lien on the project. The loan is subordinated to the FHA-insured mortgage. It becomes a first lien after the

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** To lower rents, Illinois, Massachusetts and New Jersey also have enacted state rent subsidy programs to pay the difference between the amount a low-income family can afford to pay and the rents on state-assisted projects.*

Other states, however, may wish to delay initiating rent supplement programs until they see how two new sections of the 1968 Housing Act are administered.

Section 202(b) allows federal rent supplement payments to be made to state-assisted projects.

Section 236(b) allows the new federal interest reduction payments to be made for state-assisted housing. These payments will make up the difference between normal rents on a state-assisted project and the rentals which tenants can afford to pay if they pay 25 percent of their income for rent. The payment cannot exceed an amount which would lower the effective interest rate on the project mortgage paid from the rentals to less than one percent.

These combinations of state mortgage loan and federal rent supplement or interest reduction payments give promise of housing families of low income in state-assisted housing.

It does not appear, however, that in many cases the state below-market-interest-rate mortgage loan and the federal interest reduction assistance will combine to reduce rents below the amount they would be if the mortgage were FHA-insured at market-interest rates under the federal program, and not state-assisted at below-market-interest rates.

The federal interest reduction payment may not exceed the amount a mortgagor "is obligated to pay under the mortgage" and the amount he "would be obligated to pay if the mortgage were to bear interest" at the rate of one percent. To the extent this one percent limitation on federal assistance comes into play, the state below-market-interest-rate mortgage loan would simply reduce the federal subsidy by lowering the amount the mortgagor "is obligated to pay." In the absence of the state below-market-interest-rate mortgage loan, the federal government would make higher payments on the basis of FHA-insured market interest rate morgage.

FHA-insured mortgage is paid off. (FHA has indicated approval of this type of state assistance, since technically it does not constitute currently prohibited secondary financing.)

The state loan is well secured. Even were the improvements on the property to be depreciated completely by the end of the FHA-insured mortgage period, the land would still remain to secure it.

The small state loan brings high returns. If the state were, for example, to finance ten percent of the project cost with its supplemental loan, the state loan would call forth ten times its amount in private and federal investment.

Program 5

Construction Loans to Limited-Profit and Nonprofit Developers of Low- and Moderate-Income Housing.

The recent tight money situation and the general shortage of long-term mortgage financing in some areas have hampered the development of low- and moderate-income housing. Despite a commitment on the permanent financing by the federal government and in some cases FHA insurance of the interim construction loan, conventional loans have often been unavailable to finance the construction of housing in the interim period before the permanent financing takes place.

When interim construction financing is available for low- and moderate-income housing, the developer is often required to pay high rates, thus increasing housing costs.

The shortage and high cost of short-term construction financing can thus be a substantial bottleneck to the production of large amounts of low- and moderate-income housing.

State authority to invest millions of dollars of cash resources not immediately required for expenditure provides leverage to encourage banks to meet public objectives.

In January 1967, the state of Illinois announced a State Investment Program to forge a new partnership between the public and private sectors—between public treasuries and private banks. The program was implemented through administrative action by the state treasurer.

Under this program deposits of state funds are made in banks agreeing to make interim financing available for construction of low- and moderate-income housing. Working with FHA and several banks in the Chicago area, the state agreed to deposit, at competitive interest rates, about $90 million in those banks which in turn were willing to invest equivalent sums for interim

financing of federally insured housing for low- and moderate-income families. This action was instrumental in clearing the backlog in Illinois in 221(d)(3) housing.

As of October 1968, $288 million were allocated to qualifying banks in proportion to their outstanding loans. Additional sums for time deposits have been made available where needed by banks to meet special public needs. Those varied needs have included programs other than housing.

The Illinois plan involves no sacrifice to the state of earnings on its investments, or greater risks of loss.

Where this state stimulus is not possible and construction financing is difficult to secure, states might make or participate in providing interim construction loans at below-market-interest rates to developers of low- and moderate-income housing. A state could borrow its loan money through the sale of tax-exempt bonds and establish a revolving loan fund. Since construction financing is short-term, such a revolving fund would have a rapid turnover. Thus, a limited amount of money could finance a large number of projects. No net cost to the state would be incurred, and a state could in fact earn a sum on its loans sufficient to pay borrowing costs and the costs of administering the program.

Program 6

Financial Assistance for Acquisition and Sale or Lease of Housing Sites for Low- and Moderate-Income Housing at Market Value or Less Than Market Value.

A state program of assistance for land acquisition can: (1) increase the incentive of limited-profit developers to construct low- and moderate-income housing; or (2) help assemble large housing sites and, where justified, lower the cost of housing by writing down the cost of the land through its sale or lease to a nonprofit housing developer at less than fair market value.

(1) *Increasing the incentive of limited-profit developers to construct low- and moderate-income housing.*

Nonprofit housing sponsors alone cannot build or rehabilitate six million houses in the next five years. The private developer can produce a large share, either by building "turnkey" public housing (public housing developed by a private developer rather than the local public housing authority) or by operating as a limited-profit sponsor developing low- and moderate-income housing. Since 1961, when FHA assistance for moderate-income housing began, 42 percent of its projects have been built by limited-profit sponsors and 58 percent by nonprofit sponsors.

As a limited-profit sponsor the private developer is allowed a regulated return before taxes on its equity investment in a housing project. In FHA programs this is usually six percent. With the benefit of early writeoffs and other favorable investment factors to which a developer is entitled under the law, he can substantially increase his after-tax return above this amount.

Yet even with the favorable rate of return presently allowed under the law, only a small number of units of low-risk, moderate-income housing projects have actually been built by limited-profit developers, principally at times when other construction business has been slow.

To increase the incentive for a limited-profit developer to build low- and moderate-income housing, states could leverage the federal program by financially assisting communities to purchase land and to lease it to a developer at favorable terms without loss to the states or the municipalities. Land purchase and lease frees the developer from investing substantial capital in land, which cannot be depreciated, and substitutes an annual rent on the lease which is a deductible expense, thus increasing his after-tax return.

Such land purchase and lease would also lower the cost of housing by enabling lower sales prices or rents.

States may be able to obtain the money needed to help municipalities purchase and lease land by floating state-guaranteed, tax-exempt bonds which are repaid from rent receipts under the lease. The financing is analagous to state financing of industrial parks.

(2) *Assembling land and reducing the cost of low- and moderate-income housing.*

The increasingly high cost of suitable land in metropolitan areas is a major factor in boosting housing costs beyond the reach of low- and moderate-income families.

The federal government does not provide financial assistance in writing down land costs for housing except in urban renewal areas, which, for the most part, have been in the central city. Section 506 of the 1968 Housing Act, however, now allows federal assistance for "write downs" of *open* land in declared urban renewal areas for low- and moderate-income housing. But designating urban renewal areas and receiving federal funds is a long and cumbersome process, involving more than writing down land costs for housing projects.

Additional state assistance to communities

assembling and developing land for low- and moderate-income housing outside of urban renewal areas would give substantial aid to the large-scale production of low- and moderate-income housing. By use of the community's eminent domain powers, large tracts of land could be assembled. With state aid a municipality could sell or lease the land at less than market value to nonprofit developers where the write down was to be reflected in lower rentals or sales prices.

Program 7

Financial Assistance for Acquisition of Substandard Housing and Its Sale or Lease at Market Value or Less Than Market Value for Rehabilitation for Low- and Moderate-Income Housing.

Systematic rehabilitation of housing in the core or "gray areas" of cities is an important part of the nation's housing program. The federal assistance needed to clear these areas for the development of new housing is greater than is likely to be made available in the foreseeable future. Even if the money were available, the dislocation and disruption involved in clearance and reconstruction would weigh heavily against total reliance on clearance as a renewal instrument.

Of the six million standard houses that the Department of Housing and Urban Development sets as a production goal, two million (one third) are intended to be rehabilitated structures.

Housing rehabilitation could be increased greatly if the states were to help municipalities purchase substandard houses and resell or lease them to nonprofit developers which would rehabilitate them for sale or rental as low- and moderate-income housing.

With state aid a municipality could sell or lease the substandard houses at less than market value where the write down was to be reflected in lower rentals or sales prices.

In addition, a judicious use by a locality of its power of eminent domain would enable a systematic rehabilitation of all declining properties in a neighborhood or on a block, rather than the rehabilitation of only those houses which are on the market, as is now generally the case. This systematic rehabilitation has a greater effect in upgrading entire neighborhoods.

Program 8

Reimbursement to Communities for Abatement of Normal Property Taxes on Public Housing or Moderate-Income Housing; Payments to Cover Extra Public Service Costs Incurred by Localities on Account of This Housing.

Under the federally assisted public housing program, communities are required to abate real estate taxes on the project. They receive a payment in lieu of taxes of approximately ten percent of the rentals of the project. This reduction of tax income to communities has proven to be an important barrier to the production of public housing. State payments to make up the difference between what the public housing pays in taxes and the normal tax bill would help communities to provide needed public housing.

On the other hand, local property taxes often account for between twenty and thirty percent of the rents paid by occupants of FHA-assisted moderate-income housing. These projects are usually taxed as though they were conventional apartments even though the rental income they produce is limited by FHA. State payments to communities to reimburse abatements of normal local property taxes on federally and state-assisted housing would be a potent device to lower rents.

An additional barrier, even if full taxes are paid by or on behalf of low- and moderate-income housing projects, is the higher cost of public services for occupants of higher density housing, e.g., schools, playgrounds, social services.

State payments to communities in excess of local taxes to meet these extra costs would provide an inducement to communities to accept low- and moderate-income housing. This inducement would assist in locating low- and moderate-income families outside central cities, closer to places of expanding employment. Gearing these payments to an industrial development program would help relieve labor shortages which increasingly inhibit economic growth of outlying areas.

Program 9

Administration of Low- and Moderate-Income Housing Assistance Programs.

States administer housing assistance Programs one through eight in varied ways. A pattern of clustering programs designed to encourage the construction of low- and moderate-income housing—seed money loans and grants, technical assistance, construction loans, tax abatement—around the core program of making below-market-interest-rate loans to developers has, however, emerged in several states.

These programs are then either administered directly by the state with the below-market-interest-rate loans being made from a housing development fund. Or they are administered by a separate public benefit corporation, sometimes called a Housing Development Authority or Housing Finance Agency. State constitutions may well dictate this choice.

The important factor in administering these programs is to assure that one responsible agency has the authority to combine them imaginatively.

For example, a state seeking to increase the production of low- and moderate-income housing and homeownership by low- and moderate-income families, might administer each of the first eight assistance programs described.

The state could make seed money loans or grants and give technical assistance to help establish sponsors.

It could help finance projects by making construction loans and permanent mortgages to developers. And it could make additional loans to lower the costs of projects which exceeded FHA maximum cost limitations.

Where sponsors did not exist it could develop projects itself.

It could assist communities in purchasing and leasing housing sites or houses for rehabilitation. The sales or leases could either recover fully the state's costs or, if needed, could assist the project by recovering less, i.e., by writing down the land.

It could help to reimburse communities for abated taxes where needed.

And, in addition to the first eight programs, the state might be given some unearmarked demonstration funds to devise new ways of meeting its housing problems.

For example, using demonstration money, the state might:

—make equity loans to developers of cooperative housing to enable moderate-income families to purchase their houses on a cooperative basis with a minimal down payment and liberal financing of the balance over a period of years, or

—establish a rent assistance program to fill in gaps in federal programs whereby houses would be purchased or leased by the state and then leased or sublet to low-income families at reduced rentals.

To finance loan-type programs, such as seed money loans, construction loans, below-market-interest-rate loans, and purchase and leasing of land, the state would issue tax-exempt bonds (guaranteed by the state where the state constitution permitted). Grant programs and other assistance would be financed by state appropriations.

II. Increasing Housing Choice

Program 1

A Comprehensive Fair Housing Law Establishing a Strong Enforcement Agency.

The landmark June 17, 1968, Supreme Court decision, *Jones vs. Mayer Company* (20 L.Ed. 2nd 1189), interprets an 1866 Civil Rights law (guaranteeing to all citizens the right "to inherit, purchase, loan, sell, hold, and convey real and personal property") to prohibit racial discrimination in the sale or rental of housing.

The Jones decision, however, is not a substitute for a comprehensive fair housing law. It covers only racial discrimination and not discrimination on the grounds of religion or national

origin. It does not deal with discrimination in the provision of services or facilities in connection with the sale or rental of a dwelling. It does not prohibit advertising or other representations that indicate discriminatory preferences. It does not cover discrimination in financial arrangements or in the provision of brokerage sources.

Nor does it provide for administrative assistance to aggrieved parties or enforcement. And although courts can fashion effective remedies to enforce the 1866 statute, the statute contains no provision expressly authorizing a federal court to issue injunctions or to order payment of damages.

The 1968 Civil Rights Act, on the other hand, covers these specific acts of discrimination omitted in the 1866 statute and fashions administrative and legal remedies as well. The remedies, however, are not strong enough to provide adequate relief in many cases for those who suffer discrimination. The Secretary of HUD may investigate complaints. His powers, however, are limited to conference, conciliation and persuasion. He may not issue an enforceable administrative remedy.

For enforceable relief under federal law, the aggrieved party must himself generally go to court. (The Attorney General may bring suit based on a pattern or practice of discrimination or a denial of rights to a group of persons that raises an issue of general public importance.)

The 1968 Civil Rights Act, however, invites strong state action to guarantee fair housing. Section 810(c) provides that wherever a state (or local) fair housing law provides rights and remedies at least substantially equivalent to rights and remedies in the 1968 Act, the federal government will defer to the state in its enforcement activities.

Thus, in enacting a comprehensive state fair housing law and in establishing a strong state fair housing agency to secure the constitutional rights of racial and other minority groups, states would be filling the gap in federal legislation and taking advantage of the priority extended to state legislation by section 810(c) of the 1968 Act.

A strong and comprehensive state fair housing law should:

—establish an enforcement agency with adequate staff and appropriations to enforce the law;

—empower the enforcement agency to receive complaints from citizens, from appropriate state officials, and to initiate complaints on its own motion;

—ban all discrimination on the grounds of race, religion, or national origin in the sale or rental of all property, including:
  —refusal to sell or rent,
  —discrimination in the terms or conditions of a sale or rental,
  —use of advertisements or applications which express or imply any such discrimination,
  —discrimination by real estate salesmen or brokers, or
  —discrimination by lending institutions;

—empower the enforcement agency to use temporary injunctions on sale or rental during its investigation of a complaint;

—empower the enforcement agency to conciliate, issue cease and desist orders, require appropriate affirmative acts to cure the discrimination;

—provide penalties for a failure to comply with the enforcement agency's orders;

—subject the enforcement agency's orders to judicial review, and

—empower the enforcement agency to carry on appropriate research and education programs to eliminate housing discrimination.

Program 2

Financial Assistance to Nonprofit Metropolitan Area Housing Information Centers to Aid Families in Finding Decent Housing.

In most communities the existing supply of decent housing for low- and moderate-income families is not limited to the central city ghetto or to its gray areas. It is often found in other parts of the metropolitan area as well. The lack of information on available rental and sale housing throughout the metropolitan area, however, is a substantial barrier to the movement of families out of declining neighborhoods of the central city. Families in the housing market need help in finding housing they can afford, convenient to their jobs, and located in good school districts.

A nonprofit metropolitan area housing information center would list available housing, interest low- and moderate-income families in moving to areas with which they are initially unfamiliar, escort them on inspection of houses, educate the community to the need for providing more housing for low- and moderate-income families and undertake other associated activities.

The Metropolitan Denver Fair Housing Center, Inc. is the principal example of a housing information center providing these kinds of services. It is supported by private, local government, state and federal grants.

There is presently no regular source of funds for the support of housing information centers. States might make grants to help establish and operate such centers.

Program 3

Priority Assistance to Developers Which Have Affirmative Plans to Locate, Promote and Manage Their Low- and Moderate-Income Housing Projects to Achieve Integrated Housing.

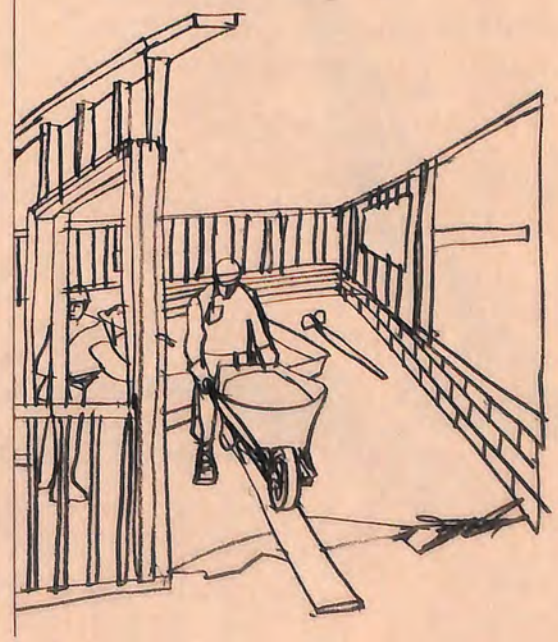
Racial integration of housing projects or neighborhoods rarely occurs without deliberate measures by developers.

Low- and moderate-income housing must be located in areas where housing for these families does not exist in great numbers.

The housing must be affirmatively marketed with minority communities not accustomed to considering housing so located.

Rental projects, if they are to become and remain integrated, must be managed with this objective always in mind.

A state can encourage developers to locate, market and manage projects with the objective of achieving integration by giving priority on its state assistance (Programs one through eight) to developers with affirmative and practical integration plans.



III. Improving Building Codes

Program

A Model Building Code Embodying Performance Standards for Permissive Adoption by Communities; A Building Codes Appeal Board; Aids for Building Inspection.

In most states, communities enforce differing and generally outdated building codes. This profusion of outdated codes has tended to raise building costs by perpetuating the outmoded and uneconomic use of building materials and building techniques and by restricting the natural play of economies of scale in the construction industry. Higher building costs, in turn, unnecessarily restrict the availability of decent housing for low- and moderate-income families.

States might assist communities to improve their building codes and building codes enforcement. Specifically they might:

—authorize the development of a state model building code utilizing to the greatest extent possible performance standards for permissive adoption by communities. (To maintain uniformity the state should specify that the code would be automatically amended when state amendments were adopted, and that communities might only alter the model code upon specific approval of the administering agency);

—establish an appeals board to hear appeals from decisions on the administration by communities of the state model code or other codes adopted by communities;

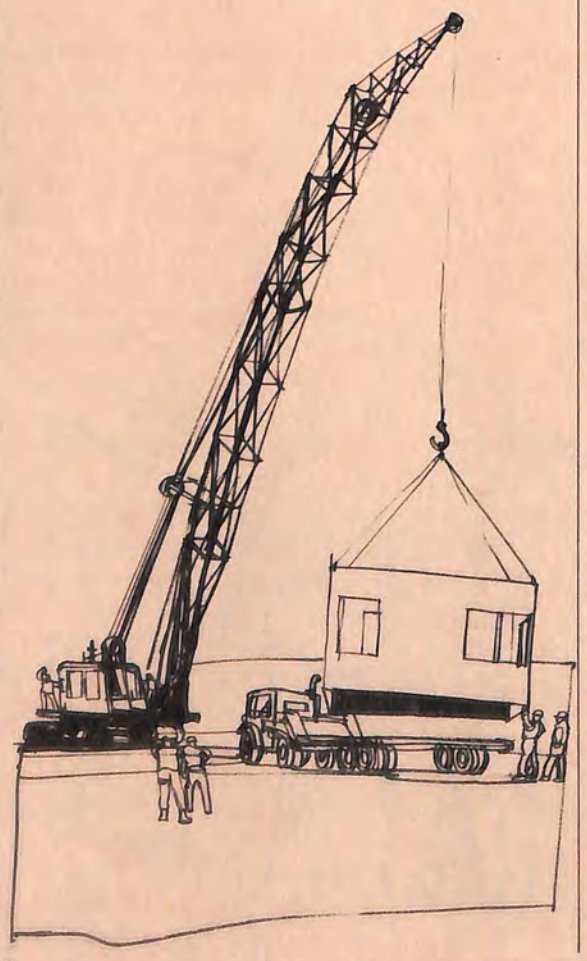
—require that state and local government agencies utilize the state model code for public construction;

—require that the state model code be used for federal or state-assisted nonpublic construction;

—establish professional qualifications for building inspectors, train and license them;

—establish minimum staffing requirements for community building inspection departments;

—offer building inspection services to communities which do not wish to maintain their own building inspection departments.



IV. Improving Relocation Assistance

Program

A Uniform Relocation Program to Assist Communities to Pay Relocation Expenses and to Provide Relocation Services to Families and Businesses Displaced by State or Local Government Action.

Communities cannot be rebuilt for public objectives without uprooting families and businesses. The public has the obligation to compensate these dislocated families and businesses for the costs of dislocation, and to see that they are relocated in suitable accommodations.

Unfortunately, families displaced by public action are often those with the least freedom in the housing market—the poor, minorities, large families and elderly. Special government efforts therefore must be made to relocate these families successfully.

States might establish a uniform relocation program for families and businesses displaced by state and local government programs. It would give financial assistance to communities in making relocation payments and providing relocation services where federal assistance is unavailable.

To reduce inequities in the treatment between families displaced by federally assisted activities and families displaced by state or local activities, to the extent possible there should be uniformity in the relocation assistance offered to families or businesses displaced by *any* public action—federal, state or local.

Federal urban renewal relocation assistance includes:

—relocation payments to families and individuals which may not exceed $200 for moving costs and property loss;

—relocation adjustment payments totaling up to $1000 over a two-year period to families and elderly individuals to assist them to relocate in standard accommodations;

—an additional payment to owner-occupants of residential property acquired for an urban renewal project (in lieu of a relocation adjustment payment) to enable them to purchase a replacement dwelling within one year. (This payment would be that amount, not in excess of $5,000, which, when added to the acquisition price paid for the owner-occupant's home, equals the average price for an adequate replacement home in the community, and

—relocation payments for moving expenses and reimbursement to business concerns or nonprofit organizations for property loss, up to $3,000, incurred in their move. (If no property loss is claimed, reimbursement for moving expenses can be made up to a maximum of $25,000.)

Such payments are covered in full by a federal relocation grant made to the appropriate local agency. If the moving expenses of a business concern exceed $25,000, the locality may elect to reimburse the excess costs through a local cash payment which will be shared by the federal government through a relocation grant in the same percentage as other urban renewal project costs.

State-assisted relocation agencies should be required to:

—establish a single central relocation agency to offer services to all families needing relocation in a metropolitan area;

—formulate a single relocation plan covering all foreseeable relocations by all government programs;

—see that displaced families are relocated in standard housing that is decent, safe and sanitary;

—relocate families to the greatest possible extent practicable outside of declining areas of the community;

—provide for temporary relocation of displaced families in decent housing where permanent housing is not immediately available;

—pay the expenses of moving the displaced family or business and fix payments to cover other expenses, and

—provide social services to relocated families with such needs.

V. Equalizing Landlord-Tenant Relations

The law governing the relationships between landlord and tenant in the Anglo-American system has not changed substantially since feudal times. Historically the law viewed a lease, not as a contract recording mutual obligations, but as a conveyance of an interest in land subject to conditions. Consequently, the law as formulated by the courts does not adequately, with some recent notable exceptions, reflect the new aspirations and economic realities of an urbanized society. An updating of these archaic laws not only will tend to reduce tensions in our cities by responding to the just claims of tenants, but may instill greater respect for law in general and provide greater incentives for the maintenance of property by those who occupy and own it. At the same time, responding to the valid claims of tenants while ignoring the legitimate interests of those who own and finance housing would not be productive.

Landlord-tenant relations have attracted legislative attention recently in Illinois and Michigan. The Illinois Legislative Commission on Low-Income Housing, in a 1967 report entitled "For Better Housing in Illinois,"examined many of the inadequacies in the laws governing landlord-tenant relationships and the enforcement of housing codes in that state. Revisions of these laws were recommended in ways which may be applicable to other states.

Five laws that significantly equalize the rights of tenants have recently been enacted in Michigan. These laws and similar provisions in other states are the basis for the following guidelines.

Program 1

Permit a Tenant to Institute a Housing Code Enforcement Proceeding, to Obtain Specific Relief for Inadequately Maintained Premises, and to Withhold Rent to Secure Code Compliance.

Anti-trust laws, securities laws and other modern regulatory measures have commonly provided for private as well as public enforcement. By contrast, although the tenant is a critically interested party, the enforcement of housing codes has been heretofore generally a two-party affair between the public enforcement agency and the landlord. Tenants have not been allowed to initiate or control enforcement proceedings. Yet their critical concern is justified in view of the fact that in many instances the proceedings can lead to the abandonment of the building, the eviction of the tenants, or a major increase in rent; and the failure to take action would result in the continuance of substandard and often intolerable conditions.

The Michigan law makes housing code enforcement a civil rather than a criminal matter, allowing a tenant to begin court action. The law also creates a variety of court actions that may be taken against landlords, including injunctions or orders permitting the tenant, a receiver or the city to make necessary repairs. The repairs can be paid for out of rents withheld in an escrow fund or by a lien on the property when the landlord is at fault, or by an assessment against the tenant when he is at fault. In Connecticut, state law authorizes municipalities to create repair receiverships with the state advancing the cost of the repairs until rent receipts replenish the fund.

These rent receivership or rent withholding measures are also a housing code enforcement technique. The state of New York, because of its dense patterns of urbanization, as long ago as 1930 allowed New York City residents to pay rent into court rather than to the landlord when a certified code violation exists. The court retains the rent, and evictions are stayed, until the violation is corrected. To stimulate prompt remedial action by the landlord, the law was amended in 1965 to permit the tenant to arrange for heat, electricity, janitorial service or make repairs and apply to the court to have bills paid out of the rent on deposit.

Another method of rent withholding, applicable to New York City tenants, permits one-third of the tenants in an apartment to bring action against landlords when conditions in the building are dangerous to "life, health or safety." The court may appoint an administrator to collect rents and use them to remedy defects.

Rhode Island, Pennsylvania (limited to Pittsburgh, Philadelphia and Scranton), Massachusetts and Maryland (limited to Baltimore) have recently enacted similar measures. In a related problem area, some states (Illinois, New York and Michigan among them) have enacted legislation suspending the legal duty of a welfare recipient to pay, and the right of a landlord to collect rent for housing in violation of applicable housing codes.

Program 2

Prohibit "Retaliatory Evictions."

The term "retaliatory eviction" refers to an eviction undertaken in retaliation for the tenant's complaint to municipal authorities of violations of housing and health regulations. Where landlords have resorted to this practice it has not been challenged. This may result from the law prevailing in most states, where a landlord may begin eviction proceedings without giving any reason. A few courts, however, have begun to rule that retaliatory evictions violate the tenant's constitutional right to petition for redress of grievances.

The Michigan law enables a tenant to resist an eviction by contending that it is in retaliation for exercising lawful rights, such as complaining to public code enforcement authorities. In addition, the new law reverses the general common law rule that the breach by the landlord even of an explicit promise to make repairs does not excuse the tenant from payment of rent. Thus the tenant may withhold his rent until the landlord makes the repairs he has promised.

Program 3

Require that Every Lease Pledge that Premises Are Fit to Live in When the Tenant Moves in and that the Landlord Will Keep Them in Good Repair.

The common law provides a tenant with little assurance that his dwelling will be comfortable or even habitable. No duty to repair is imposed on the landlord and he is under no duty, in the absence of express agreement to the contrary, to maintain or repair the premises. This rule is so firmly entrenched it is widely felt that specific legislation is required to override it.

In order to correct some of the injustices of the basic rule, courts long ago adopted the fiction of a constructive eviction—which permitted the tenant to move out without payment of further rent if he lost the beneficial use and enjoyment of the premises through lack of heat or light or some similar gross defect. The right to leave, however, is an empty one for the slum dweller.

The Michigan statute, accordingly, specifically places upon the landlord the duty of repair during the term of the lease, and the duty to comply with applicable health and safety laws, except when the disrepair or violation has been caused by the tenant. Presumably, the courts will construe this to give the tenant the right to sue for damages, consisting of the difference in the rental value of the premises as they are and their value if in the condition warranted by the landlord.

Program 4

Require Local Housing Authorities to Give Reasons for Evicting Tenants and Establish a "Board of Tenants Affairs" for Public Housing.

Local housing authorities are instruments for local, state and federal housing policies. Such

authorities are created by the state, subsidized by the federal government, and their members are appointed by the cities. Unlike the private landlord, the local housing authority is not motivated by profit.

The admission and eviction of tenants is the source of most controversy in public housing practices. Because of the silence of most state enabling statutes and the special concern of the federal government with financial aspects of subsidized housing authority operations, the local authority typically sets its own admission and eviction policies. These standards may not be published, or if published may not be clear; they often relate to the "social desirability" of prospective or existing tenants as determined by the management.

Nevertheless, tenants seeking to resist their eviction from public housing projects have found the courts frequently analogizing public landlords with private landlords, or using other rationales to avoid reviewing the merits of such cases. Although there have been exceptions to this rule, the results of most cases leave local housing authorities with power legally to evict, or refuse admission to anyone, without cause. Corrective regulations aimed at "upgrading . . . outmoded management policies" addressed to procedural problems have been issued by HUD. Section 3.5 of the HUD Low-Rent Management Manual ("Procedures Prescribed for the Operation of Federally Aided Low-Rent Housing") requires a local authority to adopt and publicize its admission policies, but does not prescribe policies beyond those imposed by law relative to income, age, disability, race, etc. Section 3.9 prohibits evictions without giving the tenant notice of reasons and affording him "an opportunity to make such reply or explanation as he may wish." Although these rules are intended as mandatory by federal officials, it is not clear that local authorities view them in the same light.

In the absence of an adequate supply of decent low-income housing, the refusal to confer, or the withdrawal of the benefits, of a dwelling in public housing constitutes substantial injury to a potential or existing tenant. It is within the purview of the state to prescribe the manner in which housing authorities deal with applicants and tenants. The ingredients of a policy reflecting commonly accepted standards of fairness might be:

— applicants for admission to public housing should be apprised within a specified period of a determination of ineligibility and given a right to appeal to a body other than the management;

— the reasons for an unfavorable decision should be clearly and concisely stated in relation to precise standards of admission;

— leases should be written in simple language and effective on a self-renewing basis terminable (for a cause other than exceeding income limitations or nonpayment of rent) only for conduct injurious to other tenants or substantially injurious to the project;

— evictions should be permitted only for good cause with the opportunity for a fair hearing; and

— rights of privacy of tenants should be respected and harassment in the form of fines, charges for repairs, threats of eviction, etc., prohibited.

The Michigan law adopts many of these principles.

Another essential ingredient of a soundly administered public housing program is an increased effort to involve tenants in the management of projects. This may be done through the creation of representative tenant organizations or the representation of tenants on the local housing authority board.

The Michigan law creates for public housing in the City of Detroit a "board of tenants affairs," one-half of which is composed of elected tenant members and one-half by appointees of the mayor. The board may veto rules and regulations of the authority and acts as a binding board of review on decisions of project management or the authority with respect to matters such as denial of admission to or eviction from public housing and rent increases.

A similar Rhode Island measure creates a board of tenants affairs for each city in the state with a public housing project. One-half the board is elected from among tenants occupying housing projects, the others to be appointed by the mayor from residents of neighborhoods in which the projects are located. This board advises the housing authority on tenant welfare, may veto authority rules on admission, occupancy, and eviction policies, and sits as a board of review for individual complaints on these matters.

VI. Enhancing Community Development

Housing without stable neighborhoods served by adequate community facilities will not provide long-term values to our cities and their people. States can take important steps to enhance the environment which supports new and rehabilitated housing. Just as an expanded supply of well-designed housing requires the stimulation of private initiative and assistance to local units of government, balanced community development cannot take place without a continuous partnership between government on all levels and private groups.

Program 1

Provide a Substantial Portion of the Required Non-Federal Share of Federally Aided Community Development Programs and a Substantial Portion of the Cost of Non-Federally Assisted Projects.

The federal programs to aid local community development require contributions to project cost from non-federal sources. These are often in the form of cash but usually in the form of non-cash items such as staff services, parks, schools or other facilities related to the project.

Increasingly, the ability of many localities to utilize these programs is dependent upon their ability to finance the non-federal share of a project.

Connecticut has recently implemented comprehensive community development legislation which, among other programs, extends state financial assistance to localities in the form of contributions to the non-federal share of federally assisted projects. In some instances this kind of help has spelled the difference between federal funding and no local program at all.

Connecticut, for example, funds one-half of the local share of federally assisted urban renewal projects, demolition of unsafe or uninhabitable buildings, construction of neighborhood facilities, and open-space land acquisition. The state contribution to the non-federal share of urban renewal projects actually began in 1955 and has contributed materially to the flow of federal urban renewal funds to cities in that state ever since. A Connecticut city need supply only one-sixth instead of one-third of net project cost. As a result, one dollar of city funds (supplemented by one state dollar) generates four federal dollars instead of only two. The form of state assistance was inaugurated in Pennsylvania as early as 1949, the year the federally assisted urban renewal program was enacted.

Neighborhood facilities, in particular, embrace a wide range of horizon-expanding centers

for persons of low- and moderate-income. These centers house health, recreational, social service, civic, educational, cultural and youth activities that can give residents a sense of identity, community pride and participation. In Connecticut, the state pays half the non-federal share of the cost of building these modern-day settlement houses, and there have been proposals to extend state aid to non-federally aided neighborhood facilities.

In Connecticut, a special state program also assists the development of child day-care centers for disadvantaged children by funding two-thirds of the operating cost to the locality (or an anti-poverty agency). The state normally relies on the application approval by the federal authorities in allocating its own contribution to the locality, thus avoiding unnecessary paperwork by municipal officials.

In New Jersey, the state, in addition to providing one-half of the local share, allows a flexible formula (up to 100 percent) for contributions to the local cost of federally assisted urban renewal projects to the extent they are devoted to public uses.

As a prerequisite to aid for community development programs, Connecticut requires localities to prepare a Community Development Action Plan (CDAP). The CDAP is a community's survey and estimate of its problems and the physical, economic and human resources for dealing with them. The state provides three-fourths of the cost of preparing the CDAP; some of these costs to the state, with respect to CDAPs for communities under 50,000 are in turn funded by HUD. It is vital, however, for a state to assure that these planning requirements do not become a substitute for or an inhibitor of program actions.

The Connecticut Community Development Act, moreover, permits state aid to many projects that do not receive federal funding. In such cases the state provides two-thirds of the cost of the project. A state which participates in the funding of federally assisted projects should retain this flexibility. Some deserving applications will not receive federal funding for a variety of reasons. The state may wish to help localities that have sought federal funding but have not been able to obtain it for reasons unconnected with the merits of the project.

Pennsylvania, for example, has launched an ambitious open-space land acquisition program financed by proceeds of a $500,000,000 bond issue. This pays for one-half of project cost to the locality.

Although Connecticut only makes grants for specific programs set forth in its statute, states might consider making a portion of their grant money available in block grants to cities for programs which do not fall within established categories of federal or state assistance. This will encourage local initiative and will help meet individual locality needs.

Program 2

An Urban Development Corporation with State-Wide Authority to Combine State and Private Resources for the Improvement of Metropolitan Areas.

There are many factors inhibiting private, profit-motivated entrepreneurial participation in city renewal efforts on the scale demanded by current needs. Profit-motivated entrepreneurs are used to assuming normal business risks. They are less accustomed to the political and public relations risks associated with publicly assisted programs. And they are disinclined to shoulder the additional commitment of personal and financial resources occasioned by protracted negotiation and processing which often lengthens the development period.

One way to bridge the gap between public control over land use and private entrepreneurial initiative has been indicated in New York. The state has recently created the New York State Urban Development Corporation (SUDS). SUDS is empowered to draw upon the combined talents and resources of the state and private business to work with local governments to produce development and redevelopment projects throughout the state. These projects are intended to include balanced combinations of housing, light industrial, commercial, recreational and cultural developments. As requested by agencies of the state or by cities, the corporation is to consider implementing projects within existing state and city programs.

The corporation board of an urban development corporation similar to SUDS could be one-half comprised of public officials and one-half chosen from the private sector. Initially, the corporation could be funded by the state through the issuance of tax-exempt revenue bonds. Conceivably, the corporation would eventually generate sufficient earnings to cover operating expenses with only investment capital furnished by the state in the form of loans at a rate approximating that of the state's cost of borrowing.

The corporation would plan projects and assemble the land, through eminent domain if necessary. In New York, SUDS has ultimate authority to override local building and zoning regulations. Although SUDS has extensive statutory authority in these respects, it is likely that it will operate most effectively and perhaps exclusively in communities where local governmental and planning bodies are cooperating with the corporation.

Rather than tie up its capital in the actual development of a project, the corporation could encourage private developers to undertake this work.

The corporation could also act as a developer itself where necessary. In such instances, after the project was completed, with long-term financing in effect and the project fully rented or functioning according to plan, the corporation would undertake to sell the project to a private investor or investors. The proceeds of the sale would be applied to the retirement of state loans to the corporation. Pursuant to conditions to be defined, some portion of the proceeds could be retained by the corporation. In some instances, the corporation might find it necessary to take back a lease in order to relieve the investor of the operating or supervisory burdens of ownership.

Conceivably the corporation might eventually cause various real estate investment trusts to be organized. Projects would be sold to the trust with a lease-back by the corporation. If feasible, this could be a method of mobilizing and channeling substantial amounts of private capital into investments to which it would ordinarily not be attracted. Direct investment in real estate and development requires experience, sophistication, and fixed amounts of equity money, with the additional difficulty, especially in the case of residential real estate, of responsibilities to tenants, legal, public relations and political hazards. However, purchasers of the real estate investment trust certificates could enjoy the benefits of real estate ownership and be substantially free of its hazards.

Program 3

Loan Guarantees to Owners of Residential Property and Small Businesses.

Private initiatives are necessary to rehabilitate the economic life and physical facilities of blighted communities. But often these are not forthcoming unless the additional risk of investment in deteriorated areas is reduced.

When needed capital, or bonding capacity, is not otherwise available, states might provide an urban development guarantee fund to guarantee loans made by conventional lenders to owners of residential property and small businesses.

A loan to an owner of residential property would have to be intended to provide housing for persons and families who could not obtain safe and sanitary accommodations provided by the unaided operations of private enterprise. A business would qualify for a guaranteed loan if it were unable to obtain adequate financing to maintain a stabilized work force or increase job opportunities by virtue of (a) its location; (b) its net assets; or (c) its dollar volume.

The New York Urban Development Guarantee Fund loans are to be used for the purposes of construction, rehabilitation, or refinancing of properties and, in the case of small business projects, for equipment, stock in trade or working capital. The monies of the fund are derived through the sale of debentures and from gifts. The fund is empowered to invest funds held by it and to charge a premium for its guarantees. In the event of default, the fund would pay to the lender the net amount of the loss.

Program 4

Technical and Financial Assistance to Communities to Draft Proposals for Federal Program Grants.

The increasing complexity of application requirements for some federal programs, even those whose ultimate objective is frankly experimental, has outrun the staff resources of many smaller communities.

The federal "Model Cities" program, for example, is intended to demonstrate how the environment and general welfare of people living in slum and blighted neighborhoods can be substantially improved through the orchestration of federal, state and local governmental and private efforts. Cities must submit proposals for planning grants. These proposals are to analyze the social, economic and physical problems of the model neighborhood area, what the city proposes to do about them, and the strategy and administrative machinery it intends to employ.

Under the program, cities with approved planning grants will become eligible for special grants supplementing assistance under existing federal grant-in-aid programs. The required non-federal contribution to every federally assisted project or activity carried out as part of an approved model cities program serves as the "base" for computing the special supplemental grant. The special grant may be up to 80 percent of the total non-federal contribution.

The development of a model cities or urban renewal proposal places a demand on the financial and technical capabilities of many localities. To help them obtain these grants, the state might:

(a) assist in drafting proposals for federal grants for communities which request technical assistance, and
(b) make grants to enable those communities which wish to draft their own proposals to hire competent staff and consultants for this purpose.

The stategic injection of assistance in this manner can help to enhance the flow of federal dollars to communities within the state. The purpose of this kind of assistance, however, should be the development of local competence to handle these administrative tasks in the future. It can be applied to a variety of federal grant-in-aid programs.

The New Jersey Department of Community Affairs has been particularly active in helping communities with Model Cities applications to HUD. Pennsylvania, through its Department of Community Affairs, provides similar help with applications for federal assistance for a broad range of programs.

HUD is authorized to make grants to states to provide technical assistance to communities under 100,000 in population. A state program as described here, organized as a special technical assistance effort, might be eligible to receive a 50 percent grant from HUD to cover its costs.

Program 5

Eliminate Constitutional Prohibitions, if Any, on the Involvement of Private Enterprise in Urban Affairs.

A concerted attack on the problems of urban housing and community development requires a public-private partnership. New legal and financial tools and interrelationships must be devised to permit states, local units of government and private groups to marshal their resources in ways not foreseen years ago. Some state constitutions, however, specifically prohibit the use of the state's credit for private undertakings or contain provisions which have been interpreted as precluding tax abatement and other desirable public-private cooperative arrangements.

The Advisory Commission on Intergovernmental Relations, a permanent, bi-partisan body established by Congress to study relationships among local, state and national levels of government, has recommended the following constitutional language to facilitate general cooperative efforts between state and local public agencies and private enterprise:

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.

These basic constitutional changes are important. It is nonetheless vital to recognize, for example, that a program of state aid to localities for urban renewal under existing constitutional provisions can go far to bring about a constructive public-private partnership.

Program 6

A Commission to Review and Assess Modern Techniques of Zoning and Land Use Regulation and to Recommend Legislation to Modernize the State's Zoning Enabling Act.

The period of rapid urbanization since the war has proven the inadequacy of present zoning statutes to control urban sprawl.

The American Law Institute is presently drafting a *Model Land Development Code* to overhaul antiquated state zoning enabling statutes and provide much needed new tools to communities for shaping urban development.

States should authorize the establishment of a commission to review and assess modern techniques of zoning and land use regulation and to recommend legislation for modernizing the state's zoning enabling act. A legislative committee of this nature is now at work in Connecticut, having the benefit of a report on that state's planning legislation. It is drafting specific measures that may have applicability in other jurisdictions.

The prime objective of such a review would be to introduce greater flexibility into typically rigid requirements which inhibit imaginative and progressive land use for community development, and to eliminate the use of zoning powers to undergird economic segregation in residential development.

Program 7

Excellence in the Design of Structures Involving the Use of State Funds or Credit and the Preservation of Public Buildings and Areas of Historical or Architectural Significance.

Stimulation of massive increases in needed housing and community facilities will not achieve durable improvements in urban life unless conscious and unremitting attention is paid to the quality of the structures and public spaces and their sensitivity to the needs of people.

Design quality is not a matter of style or patina or the application of cosmetic effects. It goes, rather, to the heart of the process by which space is shaped. Delay, inadequate fee arrangements, resistance to innovation, imprudent concern with short-run savings at the expense of long-run viability—any of these will drive superior talent away from design responsibilities in subsidized projects. Great architecture, it has wisely been said, requires great clients. The state, in its manifold direct and indirect role as a potentially "great client," should impress all those who deal with it or serve it as functionaries with the understanding that excellence in the end product is a keystone of the state's housing and community development policies.

The creation of a State Council on Architecture is one means of implementing these objectives. Such a Council has been created in New York to:

—encourage excellence in design of all buildings constructed by the state or under supervision or with assistance of any state agency;
—stimulate interest in architectural excellence in public and private construction throughout the state;
—accept gifts to further its objectives;
—obtain from other agencies of the state necessary cooperation and assistance;
—make grants to municipalities to rehabilitate structures of historical or architectural significance for public purposes.

Whether a council or some other instrument is created is secondary to assuring that what is designed, who is involved in the process, and how the process works is sensitive to user needs and community values as well as the normal economic structures. Even in purely economic terms, costs of managing, maintaining (and protecting) a structure may be sharply reduced by appropriate design in the first instance. The responsibility for analyzing and changing the manner in which public funds are employed in designing community facilities from capital budgeting to maintaining the end result—must be centralized and highlighted.

Program

New Community Development Corporations with Eminent Domain Powers; Deferral of Property Taxes during Development Period; State Approval of New Community Development Plans in Lieu of Other Land Use Regulation.

States can participate directly in solving urban problems by encouraging the development of new comunities on raw land outside of existing urban concentrations.

New communities offer opportunities both for alleviating the problem of overcrowding in the central city and for overcoming the ugly patchwork sprawl on urban fringes.

By providing a wide range of housing at varying prices, including low-income housing, new communities give promise of economically and socially integrated cities.

Through comprehensive planning, new communities can provide for orderly urban growth using the most desirable locations, timing their development to correspond with area-wide or regional development plans or objectives.

Internally, new communities can use land more efficiently, thereby cutting costs and providing better public services. They can break away from conventional thinking, developing new arrangements in such fields as building codes, land use controls, zoning regulations, public services and governmental structures.

New communities offer unique opportunities to enlist the talents and energies of the private sector in the inevitable expansion in the nation's metropolitan areas. They offer large-scale investment opportunities and new markets. Moreover, they offer a dramatic challenge to the private sector to demonstrate its ability to build new urban environments in a setting relatively free of the many constraints which hamper private initiative in existing cities.

A first step in undertaking a state new community program could be to inventory land now owned by the state which may be deemed surplus to its needs. It may be found, for example, in many states that thousands of acres were purchased in the last century for penal or mental

institutions and hospitals in then rural areas, which are no longer required in the light of modern medical or penal practice. Such land could be retained by the state, but leased to new community development corporations.

To help finance approved new communities, Title X of the Housing and Urban Development Act of 1965 provides FHA insurance of mortgages financing land and improvements for new communities. Title IV of the Housing and Urban Development Act of 1968 provides a federal guarantee of debt obligations of private new community developers. These provisions should ease the financing difficulties of new community developers.

States, however, can remove three other major barriers and thus stimulate the development of new communities within their borders.

First, they might charter new community development corporations which would be authorized to use the power of eminent domain to assemble large tracts of land necessary for the construction of new communities.

Second, they might defer local property taxes during the development period of the new community by temporarily reimbursing developers for local property taxes paid, as an interest-free loan to be repaid when the property is sold, but not later than the end of a stated deferral period.

Third, they might provide for state approval of new community development plans which would supersede local land use regulation that would otherwise apply to new community tracts. In many areas where new communities would be located, largely rural local government is unable to respond effectively to the needs of new community developers. Direct state action is needed to speed development or, indeed, to make it possible. State authority would then be relinquished to the government of the new community, once it was established.

A state land should not be leased, eminent domain powers granted, the deferral of local property taxes made, nor state approval of new community development plans given unless a state finds that:

—the development of a new community will make a substantial contribution to the economic and social development of the area in which it is situated;

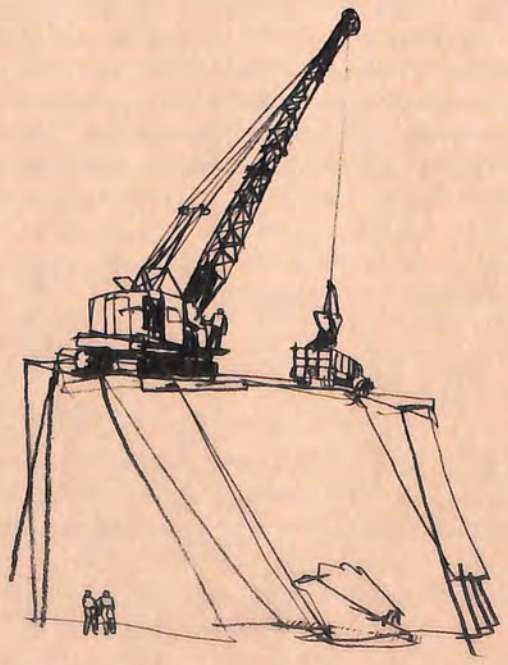
—the site selected for the new community is sound with regard to projected population trends, the availability of land required, the absence of undesirable topographical or geological features, and the availability of transportation;

—the proposed new community will have a sound economic base and sound land-use patterns;

—adequate provision has been made for local self-government;

—adequate provision has been made for all necessary public utilities and facilities, including those needed for education, health, transportation, open space, sites for industrial and residential uses, a central business center, and cultural and recreational facilities, and

—adequate housing is available to meet the needs of families of a wide variety of income levels, including a substantial number of families of low- and moderate-income levels.



VIII. Centralizing Administration of Housing and Community Development Programs

Program

A Cabinet Level Department of Housing and Community Affairs Responsible to the Governor, with Responsibility for Administering a Broad Range of Community Aid Programs.

A state's ability to help communities tackle the tough urban problems of poor housing and inadequate community facilities could be greatly increased if responsibility for aid to urban communities were centralized in a single department, agency or individual. Yet, today only a score of states have centralized authority for housing and community affairs programs.

A centralized agency for community affairs, with adequate authority to administer a broad range of community aid programs like those described above, should be able to:

—help communities attract private capital investment and business skills in solving community problems;

—help communities attract and effectively utilize greater amounts of federal assistance;

—help communities attract the financial assistance of private foundations;

—fill the gaps among existing federally-assisted community programs;

—help local governments improve their planning and management of community programs, so that they can better assess community needs and decide the kinds of federal and state assistance that are required;

—help communities develop new approaches to community problems through small-scale pilot programs which, if successful, could be widely repeated;

—marshal state resources for more effective assistance to communities;

—provide needed technical assistance to public and private groups, and

—be a clearinghouse for information on assistance available to communities and a coordinator among communities, between state and communities, and between the federal government and communities.

The form a centralized state authority for community affairs will take must fit into the administrative pattern of the state. At least three variations of centralized authority have been adopted:

—a department of housing and community affairs with broad statutory authority (e.g., Connecticut, New Jersey, Pennsylvania, Rhode Island);

—a housing and community affairs administrator with narrower statutory authority (e.g., Alaska, Illinois, Vermont);

—a special assistant to the Governor for housing and community affairs without statutory authority (e.g., Kentucky, Kansas, and North Carolina).

A department of housing and community affairs responsible to the Governor and armed with a full range of community assistance programs is, generally speaking, the best administrative arrangement. It dramatically demonstrates the state's commitment to assist its communities on a continuing basis; it allows the Governor to assert executive leadership, and it may make possible a marshalling of state resources in other programs toward solving community problems. A principal task of the department would be to see that state assistance programs are more directly aimed at aiding communities to solve urban problems.

At the same time, the department as its principal task must direct its energies to helping communities to help themselves. This requires an able staff familiar with both local needs and the federal and state resources available to meet them. It also requires sufficient funding to create incentives to attract community support and capable personnel convinced of their value to the localities they are assisting.

A special program of federal matching grants has been authorized to assist states in providing special training for professional, sub-professional and technical persons to be employed in housing and community development. Many states have already filed plans spelling out specific proposals, but these await federal funding, which is now anticipated. This program may thus provide the key resource for departmental staff development.

References

I. Increasing the Supply of Low- and Moderate-Income Housing

Program 1: Seed money loans, technical assistance and grants.

Connecticut: 8 Connecticut General Statutes Annotated, secs. 218, 220 (P.A. 522, laws of 1967, sec. 20-21).

Illinois: Chapter 67 1/2 Smith-Hurd Illinois Annotated Statutes, secs. 308-309.

Michigan: 12 Michigan Statutes Annotated, secs. 16:114 *et seq.*

New Jersey: 52 New Jersey Statutes Annotated, secs. 27D-59 *et seq.* (P.L. 1967 c. 82).

New York: 41 McKinney's Consolidated Laws, article 11.

Other: Urban America, Inc., *Proposed Kentucky Housing Development Fund; Proposed West Virginia Housing Development Fund.*

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Program 2: State-developed housing.

Alaska: Alaska Statutes, secs. 18.55.010 *et seq.*

Hawaii: 8 Revised Laws of Hawaii, 1955, secs. 74-1 *et seq.*

Vermont: Acts of 1961, no. 212 (as amended by H.B. 447, laws of 1968).

Program 3: Below-market-interest-rate mortgage loans.

Illinois: 67 1/2 Smith-Hurd Illinois Annotated Statutes, secs. 310 *et seq.*

Massachusetts: 2A Massachusetts General Laws Annotated, Chapter 23 A.

Michigan: 12 Michigan Statutes Annotated, secs. 16.114 *et seq.*

New Jersey: 55 New Jersey Statutes Annotated, sec. 14J-5 (P.L. 1957 c. 81); 52 New Jersey Statutes Annotated, sec. 27D-66 (P.L. 1967 c. 82).

New York: 41 McKinney's Consolidated Laws, article 2.

Program 4: Interest-free loans to developers.

New Jersey: Senate Bill 859, introduced June 13, 1968.

Program 5: Construction loans.

Illinois: 67 1/2 Smith-Hurd Illinois Annotated Statutes, sec. 310.

Massachusetts: 2A Massachusetts General Laws Annotated, Chapter 23A.

New Jersey: 144 New Jersey Statutes Annotated, sec. 14J-5 (P.L. 1967 c. 81).

Other: Urban America (see Program 1 above).

Program 6: Land acquisition and write-down.

Connecticut: 8 Connecticut General Statutes Annotated, sec. 214 (P.A. 522, laws of 1967, secs. 16, 17).

Program 7: Rehabilitation housing acquisition and write-down.

New Jersey: Senate Bill 859, introduced June 13, 1968.

Program 8: Property tax abatement.

Connecticut: 8 Connecticut General Statutes Annotated, secs. 215, 216 (P.A. 522, laws of 1967, secs. 18-19).

Michigan: P.A. 1968, No. 334.

New Jersey: 52 New Jersey Statutes Annotated, sec. 27D-51 (P.L. 1967, c. 80).

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Program 9: Administration.

Illinois: 67 1/2 Smith-Hurd Illinois Annotated Statutes, secs. 308 *et seq.*

Massachusetts: 2A Massachusetts General Laws Annotated, Chapter 23A.

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New Jersey: 55 New Jersey Statutes Annotated, secs. 14J-1 *et seq.* (P.L. 1967, c. 81).

New York: 41 McKinney's Consolidated Laws, article 3.

II. Increasing Housing Choice

Program 1: Comprehensive fair housing law.

Alaska: Alaska Statutes, secs. 18.80-010-.160.

Colorado: 69 Colorado Revised Statutes, article 7.

New York: 18 McKinney's Consolidated Laws, article 15.

Program 2: Metropolitan area housing information centers.

New York: Senate Bill 4099, Assembly Bill 6026.

Contact:
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Other: Paul Davidoff, Neil Gold, Harry Schwartz, *A Housing Program for New York State* (1968).

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Metro Denver Fair Housing Center, Inc.

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Program 3: Priority assistance for integrated housing.

III. Improving Building Codes

Program: Model building code.

New York: 18 McKinney's Consolidated Laws, article 18.

Other: Advisory Commission on Intergovernmental Relations, *1968 State Legislative Program,* pp. 287 *et seq.*

IV. Improving Relocation Assistance

Program: Uniform relocation program.

Connecticut: 8 Connecticut General Statutes Annotated, sec. 219 (P.A. 522, laws of 1967, sec. 24).

Maryland: 33A Annotated Code of Maryland, sec. 6A.

New Jersey: 52 New Jersey Statutes Annotated, secs. 31B-1 *et seq.* (P.L. 1967 c. 79).

Other: Advisory Commission on Intergovernmental Relations, 1968 State Legislative Program, p. 264.

V. Equalizing Landlord-Tenant Relations

Program 1: Means to secure code compliance.

Connecticut: Community Development Act.

Illinois: "For Better Housing in Illinois," Report of the Legislative Commission on Low-Income Housing (April 10, 1967).

Maryland: Code of Public Laws, Baltimore City, 1949 ed., sec. 459A.

Massachusetts: Mass. Gen. Laws Anno., Ch. 111, sec. 127H (1967).

New York: Real Property Actions and Proceedings Law, sec. 755 (McKinney Supp. 1966).

Pennsylvania: Pa. Stat. Anno. Lit., 35 sec. 1700-1 (Supp. 1967).

Rhode Island: R. I. Gen. Laws Anno., 45-24.2-11 (1956).

(Rent withholding by welfare agencies):

Illinois: Ill. Rev. Stat., Ch. 23, secs. 11-23 (1967).

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New York: N.Y. Social Services Law, sec. 143-b (McKinney 1966).

Program 2: Evictions.

Michigan: Laws of 1968, P.A. 297.

Program 3: Private obligation to repair.

Michigan: Laws of 1968, P.A. 295.

Program 4: Public housing policies.

Michigan: Laws of 1968, P.A. 267, 344.

Rhode Island: R.I. Gen. Laws Anno., 45-25-18 (House Bill No. 1605, Laws of 1968).

Other: The American Bar Foundation, under contract to the U.S. Office of Economic Opportunity, is preparing a "Model Landlord-Tenant Code." The final report, expected to be available by January 1969, will consist of a statutory text together with relevant notes and comments. Its purposes include the codification of existing Landlord-Tenant Law, as well as the suggesting of useful changes. The Code is designed for eventual submission to the various state legislatures after initial submission to the National Conference of Commissioners on Uniform State Laws.

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VI. Enhancing Community Development

Program 1: Financial assistance for community development programs.

Connecticut: Community Development Act, P.A. 522, Laws of 1967.

New Jersey: State Aid for Urban Renewal Projects, Laws of 1967, c. 80 (NJSA 52:27D-44 *et seq.*).

Program 2: Urban development corporation.

New York: Chap. 174, Laws of 1968.

Program 3: Loan guarantees.

New York: Chap. 175, Laws of 1968.

Program 4: Assistance to obtain federal grants.

New Jersey: Laws of 1967, c.82 (NJSA 52:27D-59 *et seq.*).

Program 5: Constitutional reform.

Other: Advisory Commission on Intergovernmental Relations, *State Legislation Program for 1969.*

Program 6: Zoning and planning reforms.

Connecticut: New Directions in Planning Legislation, American Society of Planning Officials.
1313 East 60th Street
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Other: American Law Institute, *Model Land Development Code.*

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Program 7: Improving design quality.

New York: Chap. 982, Art. 22, Laws of N.Y.

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VII. Developing New Communities

Program: Aiding the development of new communities.

New York: Laws of 1968, Chapters 173, 174.
Other: Advisory Commission on Intergovernmental Relations, *1969 State Legislative Program,* pp. 507 *et seq.*

VIII. Centralizing Administration of Housing and Community Development Programs

Program: A centralized department of housing and community affairs.

Connecticut: 8 Connecticut General Statutes Annotated, secs. 201 *et seq.* (P.A. 522, Laws of 1967.
New Jersey: 52 New Jersey Statutes Annotated, secs. 27D-1 *et seq.* (P.L. 1967, c.293).
Pennsylvania: Reorganization Plan 2, Act 582, 1965, Reg. Sess.

Further information concerning the operation of the state programs referred to can be obtained from the following officials:

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