The Commonwealth of Massachusetts

LEGISLATIVE RESEARCH COUNCIL

Report Relative to

INDUSTRIAL DEVELOPMENT OF
CITIES AND TOWNS
(Proposed Constitutional Amendment)

For Summary, See
Text in Bold Face Type

February 3, 1965
ORDER AUTHORIZING STUDY

Italicized Text Below of Senate, No. 871 of 1964

Ordered, That the Legislative Research Council is hereby authorized and directed to make studies and investigations, — relative to four proposed legislative amendments of the Constitution which were adopted for the first time in 1963, as follows: (1) Industrial development of cities and towns, (2) joint election of the Governor and Lieutenant Governor, (3) reorganization plan procedure for executive departments, and (4) home rule for municipalities (based on House, Nos. 215, 1382, 1383 and 1384, all of 1963, respectively); and relative to reducing the annual number of legislative proposals, including carryover of bills between sessions and increased local referendum powers. The Legislative Research Council shall file its statistical and factual reports hereunder with the clerk of the Senate on or before the last Wednesday of January, nineteen hundred and sixty-five.

Adopted:
By the Senate, May 27, 1964
By the House of Representatives
in concurrence, June 4, 1964

Order Extending Reporting Date of Study

Ordered, That the time within which the Legislative Research Council shall file its statistical and factual reports of an order (Senate, No. 871, adopted in the Senate on May 27, 1964 and adopted in the House of Representatives on June 4, 1964) is hereby extended to the second Wednesday of March, nineteen hundred and sixty-five.

Adopted:
By the Senate, January 20, 1965
By the House of Representatives, in concurrence, January 21, 1965
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LETTER OF TRANSMITTAL TO THE
SENATE AND HOUSE OF REPRESENTATIVES

To the Honorable Senate and House of Representatives:

GENTLEMEN: — The Legislative Research Council submits herewith a report prepared by the Legislative Research Bureau on the basis of Senate Order, No. 871 of 1964 relative to the industrial development of cities and towns.

Since the Legislative Research Bureau is limited by statute to "statistical research and fact finding," this report contains no recommendations for legislative action. It does not necessarily reflect the opinions of the undersigned members of the Council.

Respectfully submitted,

MEMBERS OF THE LEGISLATIVE RESEARCH COUNCIL

SEN. MAURICE A. DONAHUE of Hampden, 
Chairman

REP. CHARLES L. SHEA of Quincy, 
Vice Chairman

SEN. JOHN F. PARKER of Bristol
REP. STEPHEN T. CHMURA of Holyoke
REP. JAMES F. CONDON of Boston
REP. SIDNEY Q. CURTISS of Sheffield
REP. HARRISON CHADWICK of Winchester
REP. PAUL A. CATALDO of Franklin
LETTER OF TRANSMITTAL TO THE LEGISLATIVE RESEARCH COUNCIL

To the Members of the Legislative Research Council:

GENTLEMEN: — Senate Order 871 of 1964 directed the Legislative Research Council to investigate and study the "industrial development of cities and towns".

The Legislative Research Bureau submits herewith a report in accordance with the above order. Scope and content have been limited by the policy which restricts Bureau manuscripts to factual information, without recommendation.

The preparation of this report was the primary responsibility of Robert D. Webb of the Bureau staff.

Respectfully submitted,

HERMAN C. LOEFFLER,
Director, Legislative Research Bureau
SUMMARY OF REPORT

This report discusses a proposed constitutional amendment that would make the industrial development of the cities and towns of Massachusetts a public function. The proposal has been approved once by the General Court; if so approved a second time, it will be submitted to the people for final ratification. Thereafter the General Court will by statute determine the scope and nature of implementation of the new constitutional provision.

The basic purpose of the amendment is to overcome the present constitutional prohibition against the use of public funds for a private purpose.

Present Industrial Aid Techniques

Four distinct financial practices have evolved among the states in their competition for industry: (1) private business development corporations, (2) public industrial development authorities that extend aid either through insurance or direct loans, (3) tax exemptions, and (4) authorizing cities and towns to issue municipal bonds for industrial development. Each device provides subsidies in varying ways and degrees for private industry, although the private business development corporation does not use either public funds or public credit for this purpose. The report summarizes the operation and benefits afforded by each technique.

1. Of the four practices cited, only the private business development corporation is employed in Massachusetts. In the ten years the Massachusetts Business Development Corporation has been operative it has made 259 loans in the aggregate amount of nearly $81 million.

2. Public industrial development authorities are supported from state funds. These authorities provide recipients with mortgage insurance loans at low interest rates for some of the building costs,
and other types of assistance. Maine and Rhode Island pioneered the loan guarantee program and reportedly had extended insurance loans of nearly $26 million by the end of 1963.

3. Tax exemptions are not so widely used. Their chief drawback is that they reduce the tax base. Usually hard-pressed local governments must bear the burden of consequent subsidies because the exemption generally means that local property taxes are waived.

4. The use of municipal bonds for industrial development is considered by many to be the most powerful industrial development tool. When fully operative this favored device provides exemption from state and local taxation on the site and building rented to the new industrial properties concerned, plus a long-term supply of capital at a low interest rate. But the advantages of this subsidization are accompanied by much controversy, and the report focuses on the pros and cons of this approach.

Public Industrial Financing

Municipal Bonds

Starting with the adoption of a municipal industrial aid program in Mississippi in 1936, and especially since World War II, several states have established programs authorizing the investment of state and municipal funds in factories and equipment as an inducement for industrial development. In part because of the massive war effort that transformed much of the South into an industrial growth area, and in part because of such factors as plant obsolescence, labor advances and local tax policies in the North, a Southward industrial migration began, accelerated by inducements offered by Southern states such as the Mississippi plan.

From the standpoint of the business receiving the inducement the precise form of the benefits is probably immaterial; the determining factor is the dollar value. On the other hand, from the standpoint of the community extending the inducement, the precise form of the benefit is of importance.

The Mississippi plan, first of its kind, is attractive to industry because of the savings passed on to the newcomer. As public property, the land and plant are exempt from state and local real property taxes. In addition, municipal bonds are marketed at lower
interest rates than private corporate bonds so that the lessee has less to amortize in rent. This interest saving springs from several factors. Public financing pledges future redemptions, and government obligations are therefore more attractive to investors even at lower interest rates than those of many small private enterprises whose ability to repay is not so certain. Moreover, income from municipal bonds is exempt from federal income taxes, and the bonds themselves are exempt from state personal property taxes so that a lower interest rate does not really reduce net income.

The ideal plan from the local point of view is one that has no cost for the taxpayers yet provides tangible benefits for businessmen. In an effort to attain these ends the industrial revenue bond was developed. Beginning in 1946, a number of state legislatures enacted statutes authorizing municipalities to finance the construction and equipping of industrial plants by their issuance. Although these plans are modeled on the original Mississippi approach of 1936, they differ in that the revenue bonds concerned are payable only from the income produced by the facility and not from general taxes.

**Second Mortgage Loans**

Another plan is the financing of second mortgage loans from current taxation. This approach originated in Pennsylvania in 1956. Appropriated funds enable the Pennsylvania Industrial Development Authority to make second mortgage loans on industrial plant constructed in areas which have a substantial labor surplus. These mortgage loans are made to local non-profit industrial development corporations which in turn lease the factories to private enterprises. Similar legislation was enacted in 1958 in Kentucky, and the two other states of Kansas and Arkansas have adopted variants of the plan.

**State Insurance of First Mortgages**

A different approach evolved in New England. In Maine, Rhode Island and Vermont, agencies were created with the power to insure long-term first mortgage loans by pledging the credit of the state. These loans, made by private investors for industrial plant construction, may be insured in amounts as high as 90% of the project
cost. The mortgagor must be a non-profit development corporation which intends to sell or lease the property to a private manufacturer.

Second Mortgage Loans Financed By Government Bonds

In Oklahoma, legislation adopted in 1959 created a state authority with the power to make second mortgage loans to local development corporations financing industrial development projects. This authority obtained funds by issuing general obligation bonds.

Variants of this plan were adopted in New York, Maryland, and New Hampshire. Thus, New Hampshire has made available short-term construction loans for the preparation of sites as industrial parks and for the construction of plants. Local development corporations are responsible for obtaining permanent financing from other sources.

Bond Types and Characteristics

Two basic types of municipal bonds are used for industrial development purposes: (1) the general obligation bond which is secured by the taxing power of the issuing government, and (2) the revenue bond which is secured only by the property acquired and the income of that property. The report discusses the various features that mark their difference.

A principal attraction of industrial aid bonds is the tax advantage that flows from their use: interest on such bonds is exempt from the federal income tax; a lessee who owns the bonds receives tax free income on his investment; amortization benefits due to faster write-off for tax purposes are possible; and the leased property and bonds may also be exempt from state and local taxes. These tax advantages are severely criticized by many opponents of industrial aid bonds. Efforts to eliminate such benefits are receiving increasing attention and sympathy, and bills to eliminate the federal subsidies involved have been introduced in the Congress.

Volume of Financing

Municipal industrial bond issues actually amount to only about one per cent of total corporate bond issues. — an insignificant ratio. However, their volume has doubled every two years since 1956,
and this increasing amount is causing concern among some investment observers.

Before 1951 only $7.2 million of industrial aid bonds were sold; that sum quadrupled in the next four years to $27.5 million; and between 1955 and 1963 sales soared to around $400 million. Also, before 1961 only one issue exceeded $5 million in size whereas there have been recent individual issues of $25 million and $50 million.

**Major Points of Contention**

Those who oppose municipal industrial bonds argue that their use curtails private financing and private ownership. They contend that a community’s credit standing is endangered and its ability to borrow for usual public purposes is reduced. Moreover, if the practice increases, an oversupply of tax-exempt securities in the market will develop and cause interest rates to rise.

Other bases of criticism are that these industrial bonds appeal to run-away and marginal types of industries or that they encourage established industries to abandon a community; that industrial competitors in older industrialized areas function at an unfair disadvantage; and that the artificially low costs which such subsidizing create promote a distorted basis for industrial location.

Those who favor the bonds answer that community credit is rarely affected. There have been few defaults on general obligation bonds, and revenue bonds are usually limited to firms with good credit standing. Further, firms that obtain municipal bond funds do not necessarily have the same opportunity in the regular corporate bond market. Industrial financing of this nature is continuing to grow and both major corporations and investment bankers are seizing tax exempt advantages that are offered. States that do not offer them are not considered as good potential locations for industrial sites.

**State and Federal Views**

The Department of Commerce of Massachusetts has not taken an official stand in the industrial bond controversy. However, its views are indicated in a staff report which describes Massachusetts
as being under a severe handicap in meeting competition from other states that offer several inducements not only to new industry contemplating locating in Massachusetts but to industry already located here. The report suggests industrial development bond financing as the possible answer to a perplexing problem.

Federal views have been crystallized by the President’s Advisory Commission on Intergovernmental Relations. The Commission published a comprehensive report in 1963 on industrial development financing that made quite clear the Commission’s disapproval of the use of the industrial development bond. It warned that unrestrained spread of this type of competition for industry will almost certainly lead to federal intervention. In particular the Federal Government is concerned about further abuses of tax exemptions. The Commission is cognizant however, of the widespread growth of industrial development financing and the likelihood of its continuance. Therefore the Commission has recommended several minimum safeguards that will insure that governmental powers are properly employed and are not diverted for private advantage. The specifics of these recommendations by the Commission are spelled out in the text of this report.

Legal Considerations

Public industrial financing has taken several forms and legal distinctions are therefore sometimes extremely important with respect to eventual community responsibilities. Some of these distinctions are discussed in this document.

Local industrial revenue bond plans have been the subject of litigation, with the majority of the relevant judicial decisions sustaining their validity under the public purpose test. According to one authority, public industrial financing programs based upon an enabling constitutional amendment present no substantial question of constitutional law. Minority views hold that issuance of revenue bonds may create a number of direct obligations so that credit clause restrictions should apply to revenue bonds as well as general obligation bonds. Thus, courts should inquire into the “public” nature of any activity financed by municipal bonds.
CHAPTER I. INTRODUCTION

Omnibus Senate Order, No. 871 of 1964 (see inside of front cover) directed the Legislative Research Council to investigate and study the proposed amendment to the State Constitution relative to the industrial development of cities and towns. This portion of the omnibus order stems from the following Article of Amendment that was proposed in House, No. 215 of 1963 and changed by the Committees on Bills in the Third Reading of the two Houses, acting jointly, as follows:

ARTICLE OF AMENDMENT

ART. The industrial development of cities and towns is a public function and the commonwealth and the cities and towns therein may provide for the same in such manner as the general court may determine.

This proposal was agreed to in a joint session of the General Court (on June 11, 1963 by vote of 232 yea and 18 nays) and was referred to the 1965-66 General Court for similar action. (See Senate Journal, June 11, 1963, for altered preamble). If the present General Court acts favorably on the amendment it will be submitted to the people for ratification.

The basic purpose of the amendment is to meet the constitutional prohibition against the use of public funds for a private purpose. Article LXII of the Amendments to the State Constitution, and the judicial decisions construing this section, agree that any offer of financial assistance to a private company for private development is not a public purpose and is therefore unconstitutional.

On several occasions the Supreme Judicial Court has reasserted the "fundamental principle of constitutional law" that "money raised by taxation can be used only for public purposes and not for the advantages of private individuals." Opinion of the Justices, 337 Mass. 777, 784 (and cases cited).

Thus, unless a constitutional amendment prevails making the industrial development of cities and towns a public function, the
court is almost certain to strike down legislation that is aimed at accomplishing that end. For it is unlikely that such legislation would meet the "paramount test" of the court, that the expenditure of public funds must confer "a direct public benefit ... to a significant part of the public, as distinguished from a remote and theoretical benefit."

Even if the amendment is adopted, expressly making the industrial development of cities and towns a public function, the form of that "public function" must still be established by the General Court. Thereupon, at least initially, the constitutionality of the specific language will undoubtedly be subject to Court scrutiny.2

Actually, the language of the proposed amendment is very general and leaves wide discretion for either Court or legislative determination of the type of activity constituting industrial development. Accordingly, the Court may decide that industrial development is considerably more or is considerably less, than either the framers of the amendment or the framers of specific legislation had in mind. Court approval or rejection of legislation could come by legislative request for an opinion on a pending bill, or as a decision on an act which has been challenged on constitutional grounds.

The Court has stressed that the Legislature has the duty to weigh carefully each expenditure of public monies and to make certain in each case that funds are being appropriated for a public purpose. Given the constitutional authority, there is still the "direct public benefit" test to a "significant part of the public" to be met. Experience in other states indicates that public funds obtained by municipal industrial bond financing are not confined to the subsidization of manufacturing industries. Nor are they, in some cases, restricted to areas of economic distress, or to small industries with limited capital. Even if the amendment is adopted it is doubtful that all of this type of activity would be condoned in Massachusetts.

1 Reference to the Court means the Supreme Judicial Court.

2 In a 1960 advisory opinion on a bill related to public expenditures at the Prudential center, the Court stated, "Where the whole scheme is not distinctly defined in the proposed statute, the determination as to whether it constitutes a public purpose is in the domain of speculation" Opinions, 341 Mass. 738, 759.
Several forms of industrial development aid are now in use. The purpose of this report is to survey all of these forms but municipal financing issues will be emphasized. Public industrial financing, one of the techniques used to encourage industrial development, is by far the most controversial question, especially the fast growing trend toward municipal bond financing.

In two past reports, the Legislative Research Council has discussed the industrial development in the communities of the Commonwealth.¹ No attempt will be made here to treat the familiar ground which they cover or to update the statistics which they cite. Rather the report will stress the possible effects of the proposal in bringing local industrial development within the scope of the "public purpose doctrine" of the constitutional law of Massachusetts.

**Study Approach**

In this report the Legislative Research Bureau confines the discussion first to a broad consideration of the promotional methods employed by communities to attract new industry or to encourage expansion of existing industry. The controversial practice of municipal industrial bonding is examined rather closely because such promotion appears to be the principal objective of the amendment even though its language makes no mention thereof. Views of authorities in the industrial development field and the municipal bond market are presented as to the wisdom and fruitfulness of the practice.

But the Legislative Research Bureau draws no conclusion as to the force or persuasion of these views. Instead, the favorable and unfavorable attitudes of various individuals and groups are presented for legislative decision on the action that is deemed best. The general observation seems warranted, however, that the opponents of municipal industrial bonding are far more vocal than the supporters; nevertheless, they have not been able to stem the increasing tide in favor of the practice.

In the light of interviews, correspondence, and examination of conflicting viewpoints, the Legislative Research Bureau appreciates the difficult local problem of steadily increasing municipal costs that seem to be forever outstripping available revenues. On the one hand the cities must find new sources of income, for which new industry is a most promising and painless source. On the other hand, these localities must compete with other communities and other regions to obtain such new industry, and often incur substantial risk in the form of financial inducements.

Legislative action is confronted with the very difficult problem of developing an acceptable formula for insuring that future proposals would embody a public purpose in line with the past pronouncements of the Court. The public purpose doctrine does not appear to be immutable, as witness some recent judicial decisions involving urban redevelopment.

Some Aspects of Relevant Literature

Recent materials discussing public financial assistance for industrial development fall into three general categories. First, there is an abundance of opposition articles that either (a) condemn outright the practice of municipal industrial aid bonding, or (b) sharply criticize it as a growing practice that should at least be controlled by safeguards which are then usually enumerated. Second, a much smaller number of approving articles that defend various forms of public financial assistance, particularly through controversial municipal bond issues. Third, a relatively few articles which attempt objective appraisals of the problem, but show a marked tendency to favor one or the other side; however, that tendency does not necessarily detract from the force of the arguments presented and in fact sometimes clarifies a very foggy area of debate.

The above three general categories may also be grouped under two classifications one of which is primarily concerned with economic issues, and the other with legal aspects.

In reviewing those materials the separation of fact from fiction is not always easy. Well informed specialists have been charged with carelessness in generalizing where specific exceptions are called for, thereby causing the reader to reach false conclusions.
The relevant literature contains repeated examples of a distorted picture of industrial aid developments. This distortion does not prove a lack of responsible writing on the subject, but it certainly does indicate that a good portion of what has been written has not always been well thought through.

In any case, enough has been stated on both sides by competent individuals to present a reasonably accurate picture of the controversy and to indicate principal pitfalls the General Court should avoid in considering future legislation.

A terse and enlightening critique of the opposing positions taken by adversaries in the industrial aid bonding controversy is that recently expressed by two members of the Maryland Department of Economic Development. They cite much misinformation concerning municipal industrial development revenue bonds that has appeared in some of the best writing on the subject. This misinformation is largely due to the failure of commentators to establish or agree upon terminology and to develop arguments based on the same facts. Lacking this common base, the authors argue, the controversy cannot be honestly and constructively resolved.

Instead, a "broad brush reporting technique" is used that "sometimes fosters and perpetuates misunderstanding." For example, some statements made by responsible writers fail to make the important distinction between revenue bonds and general obligation bonds. As a consequence, readers are misled into a belief that local risks of huge corporate burdens must be assumed in case of corporate default.

Thus, the town of Lewisport, Kentucky, with a population of only 700 people, issued industrial bonds in the comparatively large amount of $50 million to finance a new rolling mill of the Harvey Aluminum Company. More than one article cited this case as an example of potential financial catastrophe, without mentioning a revenue bond issue was concerned, as to which bondholders cannot look to the community in case of default.

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Other flaws were cited by the Maryland team in the arguments of critics, as follows:

"Pirating." Frequent charges that industrial financing is the basis of industrial pirating overlook two facts: (a) most shifts in the location of any specific industry are essentially geographic differentials in the rate of growth of industry, and (b) the rates of growth of both suburban and small cities have been outstripping the growth of large central cities since the turn of the 20th century. The resultant shifting of employment will reflect the latter trend regardless of financial inducements. The relocation of plants may play only a small part in this process of change.

Strain on Public Services. Some accounts stress the unreasonable burden said to be brought by a new industry to a community because the higher cost for increased public services must be spread among all the taxpayers. Yet industries using revenue bond financing frequently agree to payments in lieu of taxes to the community, or at least make certain that the local tax structure will yield sufficient revenue to offset the increased burdens. The obvious reason for this approach is that no responsible industry wants to locate in a bankrupt community, and certainly would not want to be the prime influence toward bankruptcy in the community where it is already located.

The most bothersome considerations for the above Maryland officials and for others involved in industrial development, is the actual and potential harm that flows from flaws in basic arguments even when correct conclusions are drawn. If a given thesis is correct, they forcefully argue, then the steps leading to that proposition should also be correct. "There can be harm in being right for the wrong reason. Being right in this way tends to concentrate discussions in the wrong issues while the correct issues die of malnutrition."

In view of the above reservations, succeeding chapters stress the conclusion that the question of whether government should help finance private enterprises calls for adequate examination of many complex issues, both primary and secondary. Certainly the authorized use of tax-exempt industrial revenue bonds for industries is an indirect government subsidy. Whether such government
subsidy is proper is a question of high public policy that goes beyond the province of this agency and must be decided by the General Court.

CHAPTER II. VARIOUS INDUSTRIAL DEVELOPMENT PRACTICES

In competing for new industry today, four distinct financial practices have evolved among the states, — (1) the privately financed, state-chartered business development corporations (BDC); (2) industrial buildings financed by states either through insurance or direct loans; (3) tax exemptions to new industry in some states, either at the state level, the local level, or both; and (4) authorizing the cities and towns to issue municipal bonds for industrial development.

In a recent series on industrial aid techniques, the Federal Reserve Bank of Boston referred to these four techniques as "money weapons" in the new war between the states. The first two practices are characterized as the "Blue's weapons" since they originated in the North where they are still used predominantly; the latter two practices become the "Grey's weapons" because of their Southern origin. This text can only present the highlights of the detailed discussion which is available in these Federal Reserve articles and in the law review articles listed in the bibliography to this report.

Private Business Development Corporations (BDC)

The BDC is an industrial financing device which is authorized in 32 states, of which 21 are known to be active, mostly in the East and South. This so-called "New England Form" first appeared in Maine in 1949, and subsequently in other New England States, before spreading into the northeastern states. This approach makes loans available and thus stimulates industrial development, but also seeks to stem the development of government credit participation. The latter effort has not been completely successful.

The Business Development Corporation is not created under the usual corporation charter. Rather it is chartered by special legislation which allows commercial lending institutions, the main strength of its membership, to lend assets to a BDC. Capital is obtained from sale of stock to the business community which is interested in economic development. This is the major cost to the community. Dividends are not expected by stockholders; at best they are small token payments (e.g. the BDC of Massachusetts recently paid a dividend of 10 cents per share).

A BDC induces a new industry to locate or a present industry to expand by providing long-term loans to business firms which cannot obtain financing from the conventional sources. This action is made possible by having members pool rather substantial risks on loans that would not ordinarily be granted to firms with industrial growth potential if the lending organizations were acting independently. Usually such a borrower is either a small or young firm that is growing and not yet able to obtain long-term financing from conventional sources, or is a firm whose owners do not want to sell part of their equity.

The BDC usually borrows at rates $\frac{1}{4}$ to $\frac{1}{2}\%$ higher than the prime rate and then lends to firms at higher rates, typically at $6\frac{1}{2}\%$. The latter rate is still half the amount that a commercial financing company would expect, assuming, of course, that the latter would lend at all. These organizations do not use public funds or credit.

Although the primary objective is to create industrial employment through financial assistance, the BDC spurs other forms of economic activity. Thus in one state a BDC advanced funds for a new warehouse and distribution center while in another state, a BDC made loans to resort motels.

Business development corporations have a higher loss ratio than do banks; this is understandable since all applications for BDC loans must previously have been turned down by commercial banks. Only by taking greater than ordinary lending risks can a BDC fulfill the role of providing a real advantage for development projects.

In New England, BDC loans have helped sustain or expand firms employing 57,000 persons. In this State, the Massachusetts Development Corporation (MBDC) has been in operation since 1954.
In the ensuing 10 years of operation it has made 259 loans, in the aggregate amount of $30.9 million; and 107 of these loans have been paid back in full. The MBDC states that in that period borrowers have been responsible for the creation or maintenance of over 30,000 jobs with an annual payroll of more than $126 million. In 1963 the MBDC had an operating profit of $114,036 and a reserve of $481,940. The average rate of interest paid on MBDC loans was 4.6% in 1963.

One observer is of the opinion that if BDC operations continue to grow, their comprehensive coverage may in part cancel the major competitive advantages between states.

Public Industrial Development Authorities

Public monies used for private purposes is not novel. However, many defaults on state and local loans in the 19th century triggered the adoption of state constitutional amendments prohibiting such use of public funds. Massachusetts prohibits the direct use of public funds for private purposes although the Supreme Judicial Court has ruled that incidental benefits to private individuals will not make use of public funds unconstitutional.

Among the types of public devices to assist in attracting industry is the state supported industrial authority. These authorities are an arm of state government. Their basic financial support comes from state funds and their most common purpose is to foster industrial development by making funds available for industrial buildings. They vary in the specific means of achieving this goal. Some methods include mortgage insurance, loans at low interest rates for part of the total cost of the building, and varying types of assistance to local development corporations.

There are two distinct types of state industrial finance authorities. One, prevalent here in New England, guarantees repayment to private sources of all or part of mortgage loans made by them on industrial facilities. The other type of authority makes direct loans of state funds to local development corporations to aid in the financing of industrial projects, and, in a few cases, will actually hold title to the project until a lease or sale arrangement is concluded. These authorities obtain funds by direct state appropriation and the sale of bonds.

1 MBDC, 11th Annual Report, 1963
The first industrial finance authority was organized in New Hampshire in 1955. By last year, a total of 15 states had active authorities, eight of them in the Northeast.

Industrial development authorities tend to encourage fuller participation by local development corporations and banks. These state authorities act mainly as guarantors or sometimes as subordinate participants to promote more attractive deals. They operate from a fund created by bond issues or they may use legislative appropriations. Loans are met with interest paid by financed projects. Generally, the loans have artificially low interest rates made possible by general state revenues or tax-exempt securities. New Hampshire has the direct loan type of program, recently adopted also by New York and Ohio.

A variation of the direct loan programs is the insurance type of assistance. In states having this program (all the other New England States do) a state building authority will insure conventional bank loans to industries up to 90% of the costs of land and structures. Most programs have as security a first mortgage on tangible industrial property. The borrower bears the primary cost of insurance through a charge of \( \frac{1}{2} \) to 1% on outstanding balances. In combination with basic interest, this charge results in a total cost of from 6 to 6 3/4%, or only slightly higher than a conventional bank mortgage. Applications are reviewed by an unpaid board of interested citizens and bankers.

An example of a loan guarantee program is that of the recently established Connecticut Industrial Building Commission. Given constitutional approval by the Connecticut Supreme Court in early 1963, the Commission has approved 17 applications for insurance on loans totaling near $14 million, ranging separately from $0.07 million to $6 million. Similarly, Maine and Rhode Island, the pioneers of this type program, had reportedly extended insurance loans of nearly $26 million by the end of 1963.

There has not yet been enough experience among the few states that have this type of program to evaluate its impact. However the Federal Reserve Bank of Boston gave a qualified endorsement of the insurance plan in its recent series cited above.

In view of the potential dangers in the use of state credit, most states have built into these programs restrictions limiting the use
of state credit for industrial purposes. Many observers concur that without minimum state safeguards, federal legislation may become necessary. One authority has suggested the following desirable limitations for state direct loan programs:¹

1. **Depressed Areas Only.** The use of direct loans by a state should be limited to less prosperous areas. Such limitation reflects the small justification that exists for extensive use of state funds to aid industrial growth in relatively healthy areas.

2. **Minimum Interest Rates.** Interest rates should be sufficient to cover both state borrowing costs and program administrative costs. A rate of 3½ or 4% minimizes the danger to state tax funds yet offers higher risk loans at lower cost than commercial lenders.

3. **Alternative Lacking.** State loans should be extended only when financing is not available from conventional financial institutions. Where financing by private sources is adequate, there is no need to use public tax funds. Where the financial needs can be serviced through the cooperation of several banks jointly, the use of state funds should be withheld, even though it is to the financial advantage of the borrower to obtain state funds.

4. **Bank Participation.** Where required, the bank typically receives the first mortgage position for this participation. Such a safeguard offers the advantage of utilizing the experience of commercial lenders.

5. **Limited to Land and Buildings.** State loans should be limited to land and buildings. Some states include machinery and equipment but if a state underwrites the entire cost of a project, the owners have virtually no financial liability. Further, much equipment is useful only for specific purposes, and has little resale value, thus raising the risk to state funds.

6. **Community Participation.** A common requirement, though not essential is community participation. The local community may be asked to provide from 5 to 20% of the loan.

State development financing devices are stressed as primarily significant for making industrial building projects possible, rather than for providing lower than average interest rates.

**Tax Exemptions and Concessions**²

The states use tax concessions primarily to increase their industrialization. New industry provides additional employment and income which in turn stimulates economic activity by increasing the demand for other goods and services. Tax concessions to new industry are perhaps the oldest form of industrial development incentives; they were permitted in 13 states in mid-1964.

The chief drawback of tax concessions is that they reduce the tax base. Tax exemption usually takes the form of relief from local property taxes and in this regard local governments bear the burden of industrial subsidies. Moreover, what one community offers can usually be duplicated by others. As subsidies are offered by more and more communities their values as incentives steadily diminish.

Yet each locality is afraid to discontinue its offers for fear of being by passed. Consequently, many communities will offer locations, and the few new firms involved acquire a superior bargaining position. Once concessions become common in a region, an industrial firm need only hint at a possible shift to another locality to obtain special tax consideration. The need to meet the competition of other communities sometimes forces even greater tax concessions. Not only do tax concessions then deprive the principal community of new revenues but the other taxpayers must bear the burden of providing new services to the subsidized plant and workers.

An important and obvious drawback of granting property tax concessions for new industry is the discrimination against existing industry. At the same time, tax concessions cannot readily be given to one firm and not to all. Thus, in order to attract one firm, subsidies may be paid to other firms which would have located locally without an inducement.

Almost all locational studies conclude that local tax concessions play only a minor role in a firm’s decision to locate in a particular region. For specific communities within a given region, however, they may have substantial influence. If competing communities are located across state lines, these exemptions may affect locations between states. If several locations can serve an industrial prospect equally well, tax concessions may tip the scales.

One of the major reasons given for industrial development efforts — at least in more prosperous areas — is to broaden and strengthen the tax base. Instead, tax exemptions directly cause a reduction.

*Municipal Bonding*

One of the most widely used and controversial techniques is the financing of *private industrial* projects by municipal credit.
For many years communities have been financing municipal projects with bond issue borrowings. Thus, school buildings, sewage systems, roads and bridges, airports and various types of municipal service buildings are constructed with bond issue funds.

A municipal industrial bond statute can carry this concept further by authorizing a local government to issue bonds for industrial development purposes. This practice receives special attention in the following chapter which is devoted exclusively to use of municipal bonding as a promotional device.

Summary

In summary, the following four broad industrial promotion devices have been shown to be in use: (1) Business Development Corporations, (2) Building Authorities or direct loan programs, (3) Tax exemptions, and (4) Municipal Bonding.

Each of these four devices provides subsidies in varying ways and degrees for private industry. As to their comparative importance, a questionnaire of the Federal Reserve Bank of Boston asked state industrial development program directors to rank the effectiveness of these devices. The responses indicated that municipal bonding was considered the most powerful tool of industrial development programs, followed by the low interest rates charged under state direct loan or mortgage insurance programs. It should be observed that Massachusetts uses neither method (see Table 1).

The relative strength of municipal bonding presents a dilemma for non-participating areas. This powerful device provides tax exemption for industrial properties plus a low interest, long-term supply of capital. The question is whether a loss of potential growth is thereby incurred, and whether promotional devices would involve fewer hazards. Thus, state industrial loan insurance programs can provide for the pooling of nonbankable risks without any increase in tax exempt securities and subject state credit to only minor risk. State direct loan programs supplement private loans by financing second mortgages. Private business development corporations do not affect state credit on the tax exempt market.

Municipal bonding however has two important drawbacks: (1) Local governments become deeply immersed in the ownership of industrial property, and (2) This practice increases the erosion of the Federal tax base.
Because of the interstate competition and public effects involved, effective control may be exercised at the Federal level.

TABLE 1.

State Financial Assistance to New Industry
As of May 1, 1964

<table>
<thead>
<tr>
<th>Region and State</th>
<th>Development Credit Corporation</th>
<th>State Indus. Finance Authority</th>
<th>Local Bond Issues General Obligation</th>
<th>Tax Concession</th>
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1 Legislation is pending.
2 Tax stabilization, rather than exemption.
3 Only in areas designed by Federal Area Redevelopment Administration.
4 Corporation authorized, but none has been formed.
5 Bond issue authorization enacted but details not available.
6 Permitted in four cities but seldom if ever used.
7 Only in 18 counties.
8 Only in port districts.

Source: New York State Department of Commerce *The Use of Public Funds or Credit in Industrial Location*, Research Bulletin No. 6, June 1964, pp. 4-5.
CHAPTER III. MUNICIPAL BONDING FOR PRIVATE INDUSTRY

Background

Most commentators on municipal industrial bonding agree that the movement started in Mississippi in 1936. In the midst of the Depression, that state passed a Balance Agriculture With Industry Act which authorized the use of municipal bonds for financing new plants. There was no hint then as to where the Mississippi program would lead. It probably began with no other competitive pattern in mind than to end the state's complete dependence on agriculture.

The program got off to a slow start, due to the economic conditions of that time. But World War II changed the picture abruptly. During the war effort the South began to expand and diversify its manufacturing capacity and to develop a large skilled employment pool. After the war the states could offer northern manufacturers many new plants, a greater number of skilled workers and a larger and more prosperous consumer market.

This great opportunity of the South had the essential ingredients for success, — specifically, markets for products, raw materials for production, and a labor force that was as yet unorganized in states with less stringent labor laws.

These factors promised cheaper production costs. The combination was too much for many northern industries to resist, with their plant obsolescence, labor demands, tax policies of local governments, and the heavier cost of financing new or expanded operations. The exodus began as several southern states began offering long term tax exemptions and total financing.

The New England chapter in this unhappy chronicle need not be repeated. It is enough to note that Massachusetts and her sister states experienced acute industrial losses. When long established, major northern manufacturing firms began to depart, the economic impact on various cities and towns, — even whole regions of some states — was crippling.

From this experience there developed a counter attack. In resilient fashion, Maine and New Hampshire struck back by author-
izing use of statewide private building development corporations.\(^1\) Later, New Hampshire created an agency empowered to borrow treasury funds for the development of industrial parks. Departing from the traditional frugality of New England, that agency was authorized to construct plans on a speculative basis, without specifically committed tenants. Rhode Island fashioned a program of complete financing of plants. So effectively did these devices operate, they were soon copied by both southern and midwestern states.

The war effort also produced a change in industrial techniques and marketing attitudes. Many manufacturers, who formerly put together a complete product in one central plant, began to employ regional units to produce sub parts of their products close to sources of raw materials or supplies. Then they assembled the complete product centrally, — all at considerable transportation savings and with expedited customer delivery and service. As one writer has described this development, “the day of the immobile industrial giant which paid a large share of state and local taxes is fast waning.”\(^2\)

In this setting, aggressive competition among the states has contributed to a buyer’s market for industry, so that expanding manufacturing firms have had substantial freedom to choose among numerous preferred locations. They are therefore able to bargain hard for tax advantages and concessions.

The financing of industrial aid development is only one part of industrial development. Nevertheless, as already indicated, municipal industrial aid bonds have become the most controversial weapon used in the current struggle among states. Many authorities are in accord that the rapidly increasing rate of issuance of these bonds to stimulate construction of building facilities to be leased for private purposes, has developed a dangerous and critical trend, with serious long-range consequences if allowed to continue unchecked.

### Types of Industrial Development Bonds

**General**

Funds to finance industrial buildings may be obtained by local

\(^1\) Discussed in Chapter II.
government issuance of general obligation bonds, revenue bonds, or both. These bonds are sold to obtain funds for the acquisition or improvement of facilities, plant sites and buildings, sometimes machinery and equipment as well, which in turn are sold to the private industrial enterprise concerned.

If these bonds are general obligations they are secured by the taxing power of the issuing government. If they are revenue bonds, they are secured only by the property acquired and its earnings.

Other basic features mark the differences between these two types of bonds. While the amount of general obligation bonds that may be issued is normally limited by statute or by State constitution, the market determines both the amount of revenue bonds a government can issue, and the rate of interest to be paid. With general obligation bonds a referendum or state approval is often required but this is not necessary with revenue bonds because they are not direct tax obligations. The marketability of general obligations is determined by the financial strength of the issuing government whereas marketing problems of revenue bonds will reflect the nature and location of the enterprise. General obligation bonds also usually sell at lower interest rates than revenue bonds. They are better designed to disperse small industry throughout a state and are not normally employed in financing the more costly industrial expansions.

State statutes authorizing local governments to issue revenue bonds for industrial development usually regulate interest rates and terms, prescribe that they shall never become an obligation of the issuing governmental unit, and stipulate that the bonds are conditioned upon benefiting the community and upon the feasibility of the project. Only one state, Missouri, requires industrial revenue bonds to be approved by referendum and administratively by the State. The argument usually made against State control of such local revenue bonds is that the market is the best judge of the feasibility of the project.

General obligation bonds for industrial development are necessarily related to local revenue resources and are usually statutorily related to the property tax base. Hence most States require voter approval of general obligation industrial bonds, and some require
not only approval by more than a simple majority in the referen-
dum but approval by a State supervisory agency.

The Federal Advisory Commission on Intergovernmental Relations prefers general obligation bonds to revenue bonds for financing the construction of regular governmental facilities.\(^1\) The disadvantages of revenue bonds are generally well known — namely the additional costs involved, their circumvention of debt limits, and their minimization of public accountability. However, revenue bonds are favored in some quarters on the ground that they con-
serve the general credit of the issuing unit of government for other purposes. Revenue bonds supported by a strong though small company may be more attractive to investors than general obligations issued by small rural communities. Certainly, revenue bond issues speed up a program since simpler voter and State agency approvals are required.

Of more than 500 separate bond issues for industrial develop-
ment, most are located in areas of surplus farm labor. The ab-
sence until recently of local government industrial development bond financing near large urban centers is attributed to (1) the political problems encountered in furnishing aid to a. new indus-
try in a community containing substantial established industry which developed without aid, and (2) the availability of adequate commercial credit and property leasing facilities in urban centers for servicing industry.

Banks are the principal source of credit for industry, and large
banks are able to lend all of their resources allocated to industrial bonds and mortgages to prime borrowers and within select areas. Banks in most of those cities and counties which have issued industrial development bonds are small — seldom with more than $10 million in deposits — and pursue a conservative investment policy. Some state laws restrict banks territorially. This limitation further handicaps banks in providing capital to construct industrial buildings in rural areas.

Banks in large commercial centers often make industrial loans at interest rates higher than are allowed by some of the states where local industrial development bonds are issued. This restric-
tion impedes the flow of capital to some areas. Capital provided

\(^1\) This Commission attitude is treated at length on pp. 49-52.
to relatively under-developed areas carry higher interest rates than in financial centers.

Several tax advantages flow from use of industrial bonds:

1. The interest on such bonds is exempt from income taxes.
2. If the lessee owns the bonds, he receives tax free income while investing in his own operation.
3. Amortization of the bonds during the lease contract period may often result in a rate of write off for income tax purposes which is faster than when the property is owned by the occupant.
4. The industrial property leased by the occupant and owned by the local government and the bonds themselves may be exempt from state and local \textit{ad valorem} taxes.

These tax advantages are a governmental subsidizing of private enterprise. The substantial federal subsidy is triggered by a third party, local government.

Income tax exemption of the interest on local industrial development bonds makes them more attractive, increases their availability and reduces their cost. The amount of federal subsidy represented by the loss of tax revenues from the exemption of interest on local industrial development bonds is relatively small, — about $9 million in 1963. Part of this loss is recaptured by way of increased taxable income for the lessee but the revenue loss will climb as the practice spreads.

One argument in favor of ending tax exemption of municipal bonds is that they divert investment from private enterprise. Moreover, the bonds lose any justification if issued for corporations not in need of assistance in financing expansion and if they are issued in areas where commercial credit and property leasing facilities are readily available.

When the lessee of a locally financed building purchases the bonds which financed the construction, more tax advantages may accrue. If by contract or pursuant to a stipulated or negotiated price the building becomes outright the property of the lessee upon retirement of the bonds, a part of the lessee's interest income from the bond investment is in effect equivalent to tax free return on an investment in a depreciable asset.

The literature on local industrial development bonds generally condemns their exemption of interest paid on them. Bills have
been filed in the Congress that would tax the interest from municipal industrial revenue bonds and disallow the federal income tax deduction of rental paid for the use of buildings financed with tax exempt bonds.

It is argued that if industrial expansion becomes applicable to one of two areas of otherwise equal advantage, the community subsidizing industrial development will be favored. This advantage may stimulate inter-community and interstate competition and may even lead to plant pirating. The development would penalize communities that have become industrialized without local government aid.

The case against municipal bond financing is strongest when a small community permits an industrial giant to borrow large sums of money cheaply to construct plants that import labor which the community can not readily assimilate. A conspicuous illustration cited by the Federal Advisory Commission on Intergovernmental Relations is the proposal of the small southeastern Missouri community of St. Genevieve to issue $500 million in industrial revenue bonds. In the Commission's view, the contemplated size of the operation is out of proportion to the employment needs of the area and the size of the community. The case of Champ, Missouri was also pointed out by the Commission. In that case the incorporation of the virtually unpopulated area of an industrial site in an urbanized region, apparently for the primary purpose of securing tax exempt financing, is a disadvantage to other St. Louis industrial property owners.

Statutory safeguards are urged by the Federal Advisory Commission which at least mitigate the following abuses of industrial development bonds:

1. The use of industrial development bonds to finance expansion of firms well able to obtain the required capital from conventional sources;
2. The purchase by the lessee of bonds issued to finance the facility he occupies;
3. The tendency of communities to over extend themselves and finance large industrial projects out of proportion to their employment needs, public service facilities and fiscal resources;
4. The use of the device principally as an instrument for competitively attracting industry; and
5. The formation of special districts solely for the purpose of issuing industrial development bonds to facilitate the perpetration of abuses.
Some Other Effects of Industrial Bonding

Experience with some state industrial bonds reveals serious local problems when the community cannot cope with the normal consequences of importing a large industry. For example, it is claimed that the announcement of large bond issues for a Lewisport, Kentucky aluminum rolling mill stimulated a rise in speculative property values in anticipation of labor importation and real estate development that were out of line with public service facilities and local fiscal limitations.

Objective evidence as to whether a local area would have grown without government financing appears to be scarce or inconclusive. Some evidence shows the tendency of individual industrial plants to improve general social and economic conditions among local Southern industry but their relative economic position against a national average has not improved. But allowing for improved conditions within a given state or community that offers local government financing, the effect on areas from which such industry migrated or expanded should be weighed in balance.

There have been allegations that local industrial development bonds appeal to so-called runaway or footloose industry. The Federal Advisory Commission found no evidence to support this charge "in any substantial way". It occurs "relatively infrequently" and makes "good copy". Only about 20 such firms could be identified that had moved "lock, stock and barrel from the North or East into industrial development bond financed buildings in the South."

The principal reasons usually attributed to industrial expansion into new locations are the improved availability of labor and raw materials, and the better access to markets. At some stage of their growth industries serving large market areas find decentralization to be advantageous in the interest of more efficient marketing operations. Industrial development bond financing may or may not be the factor spurring the move.

Whatever the local contribution of the industrial development bond may be to the solution of public problems, the Advisory Commission considers their value doubtful from the viewpoint of national policy. However, the apparent success of some communities in selected states in attracting industrial employment has not gone unnoticed in other localities. Comparable programs are
being urged in all parts of the country, presaging local competition for potential employers on an unprecedental scale. Growing concern is expressed by the Federal Government over the increased sales of tax exempt municipal bonds which are issued for purposes not universally regarded to be an essential function of local governments.

Volume of Financing

Certain profound institutional changes throughout the economy have curtailed the availability of long-term capital for small business, particularly manufacturing units. The need for more long-term capital, particularly for small manufacturing units, is directly reflected in the state industrial development programs. They are generally intended to make public funds and credit available to manufacturing rather than other industrial enterprises. Several statutes explicitly impose this limitation while others have been administered as if so limited.

Before 1951, only $7.2 million of industrial development bonds were sold, according to the Advisory Commission on Intergovernmental Relations. Over the next four years that sum was nearly quadrupled as sales of $27.5 million were reported, according to the same source. From 1955 through late 1963, sales soared to around $400 million. Total industrial development bonds are only an insignificant fraction of local government financing operations, but critics are disturbed by their rapid growth in volume and their geographic spread.

Before 1961, only one issue exceeded $5 million, whereas in 1961 alone there were three issues of more than $5 million, namely a $10 million county issue in Tennessee for Genosee Co.; a $14.4 million county issue in Tennessee for Olin Mathieson; and a $25 million county issue in Alabama for Armour and Company. The following year saw a $21 million issue by Opelika, Alabama for U.S. Rubber Co. and in 1963, Lewisport, Ky. (1960 population, 610) sold $50 million of industrial development revenue bonds to build an aluminum rolling mill for Harvey Aluminum, Inc.

1 The Investment Bankers Association of America puts the figure at $5.7 million.
2 IBA figure is $29.7 million.
3 Advisory Commission reports $406 million, IBA reports $337 million.
The Lewisport issue in 1963 marked the largest single issue to date. It will cover the costs of land acquisition, building construction, machinery, equipment and related facilities.

The extent of public industrial financing is indicated in the accompanying tabulation which groups project costs according to five distinct financing plans discussed by David E. Pinsky, Esq. in a 1963 law review article.¹ Some of the more recent bond issues cited immediately above are not included in the tabulation. Very briefly, the nature of each plan is as follows:

1. The Mississippi Plan: Municipally Owned Plants Financed by General Obligation Bonds.
2. The Revenue Bond Plan: Municipally Owned Plants Financed by Revenue Bonds.
5. The Oklahoma Plan: State or Municipal General Obligation Bonds to Finance Mortgage Loans to Local Non-Profit Development Corporations.

### TABLE 2

The Extent of Public Industrial Financing

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Projects</th>
<th>Total Public Invest.</th>
<th>Total Project Cost</th>
<th>Date of Stat. or Const. Amdt.</th>
</tr>
</thead>
</table>

1. Mississippi Plan

- **Alabama**: 9, $3,210,000, 1950
- **Arkansas**: 34, 9,931,250, 1958
- **Louisiana**: 16, 3,430,000, 1952
- **Mississippi**: 320, 110,343,000, 1936
- **Tennessee**: 44, 13,492,000, 1955

2. Revenue Bond Plan

- **Alabama**: 24, 39,935,000, 1949, 1951
- **Arkansas**: 25, 32,483,000, 1960
- **Georgia**: no inf., approx. 4 to 5 million, 1957
- **Kentucky**: 29, 30,570,000, 1946
- **Mississippi**: 2, 370,000, 1960
- **New Mexico**: 4, 9,113,000, 1955
- **North Dakota**: 2, 3,500,000, 1955
- **Tennessee**: 105, 49,733,000, 1951

3. Pennsylvania Plan

- **Arkansas**: 7, 601,000, no inf., 1955, 1960
- **Kansas**: no inf., 124,005, no inf., 1923
- **Kentucky**: 3, 517,000, 3,074,390, 1958
- **Pennsylvania**: 157, 19,507,174, 61,438,094, 1956

4. New England Plan

- **Maine**: 16, 5,103,431, 5,993,000, 1958
- **Rhode Island**: 15, 12,547,000, 14,000,000, 1958

5. Oklahoma Plan

- **Maryland**: 1, 17,500, no inf., 1960
- **New Hampshire**: 11, 3,202,000, 3,202,000, 1955
- **Oklahoma**: 3, 569,989, 2,557,160, 1960

Source: 111 University of Pennsylvania Law Review 265, 326 (1963)
The Policy Controversy

Pros and Cons

As might be expected in a private enterprise society, public industrial financing has met strong opposition. The Investment Bankers Association has recommended that its members exercise extreme caution in underwriting or marketing industrial financing bonds. Others have joined in the opposition. The federal income tax exemption of income from municipal obligations, particularly revenue bonds, has been under persistent attack. Commentators allege that public financing has been overemphasized at the expense of other factors far more crucial to industrial site selection.

There is also genuine concern that the use of public credit to finance private industrial expansion will hamper the ability of state and local governments to improve other community services. Furthermore, to the extent that public industrial financing becomes a weapon in the interstate struggle to attract new industry, the public participants may find that their losses from tax exemption and hampered borrowing power exceed their gains.

The curtailment of sources of long-term capital, particularly those available to small manufacturers, and the failure of the Federal Government adequately to correct the situation, is said to justify some commitment of public funds or credit by states with serious economic problems. However, since state programs are initiated and implemented in a context of interstate competition to attract new industries, it is difficult for any state to objectively draw a line between adequate and excessive allocation of public funds and credit for industrial financing. Presumably federal intervention is essential to provide the effective necessary restraint.

One suggestion for federal intervention is that Congress deprive the states, municipalities, and their lessees of the federal tax advantages they presently enjoy. Such a step, however, might be looked upon as a punitive measure directed primarily at the South. In addition, any attempt to modify the tax-exempt status of industrial financing bonds would be opposed by many nonsouthern state and local government officials who would view it as an entering wedge for the complete elimination of the tax-exempt status of all municipal obligations.
According to one source, federal action linked to the Federal Area Redevelopment Act would be more acceptable.\textsuperscript{1} This statute now prohibits federal financial assistance to aid the relocation of industries. Future amendments of this statute could, particularly if the amount of federal aid is expanded, require certain minimum fair standards of competition by states for new industry as a condition of eligibility for federal benefits. Creation of such standards would no doubt require careful consideration by the appropriate committees of Congress. However, until Congress takes such action, the danger that states and municipalities will overcommit their limited resources in industrial financing will persist. Municipal bonding is authorized in 28 states, of which 17 actually utilize the authorization. Since first introduced by Mississippi in 1936, more than one-half billion dollars of bonds have been issued. Although municipal aid bonds amount to only one per cent of all corporate bonds, their percentage increase is large. Since 1956 their volume has doubled every two years.

Ninety-five percent of all such bonds issued have been in southern states but in recent years Maine and Vermont as well as many central and western states have authorized their issues. Many states are doing so as a matter of self-defense. The proposed amendment would give the Massachusetts Legislature authority to enact similar legislation.

Few serious problems have arisen thus far from municipal bonds, but the abuses that are developing seem likely to multiply and to increase the prospect of federal intervention.\textsuperscript{2}

\textit{Tax exempt feature.} Municipal industrial bonds, like all debt instruments of a municipality, are exempt from federal taxation, which is an initial advantage over corporate bonds. A user of municipal bonds can borrow money at a lower interest cost than would be available to a private corporation either from a bank or from the securities market.

\textsuperscript{1} 111 University of Pennsylvania Law Review 265, (1963) Public Industrial Financing.
\textsuperscript{2} Some abuses are listed on p. 32. supra, and on pp. 42 and 50 intra.
Major Points of Contention. Critics of these bonds have raised several points of objection:

1. Such financing should be handled by private enterprise. Governmental borrowing for private enterprises is a step towards socialism; such programs curtail private financing and private ownership of industrial plants.

2. They may jeopardize a community's credit standing and thus limit its ability to borrow for the usual public purposes.

3. An increase in the practice will lead to an oversupply of tax-exempt securities in the market and thus raise interest rates for necessary state and local borrowing for other purposes.

4. Such bond issues encourage an industry to abandon an established community causing unemployment and other related community hardships. This "pirating" of industry also can lead to mislocation of industry.

5. Industrial competitors in older industrialized areas are put at an unfair disadvantage.

6. Such subsidizing creates artificially low costs that promote a distorted basis for industrial location. More emphasis is placed on political rather than economic factors in site selection.

7. A recent comparative analysis of a Massachusetts Business Development Program for a Massachusetts company with the bond program offered by the Arkansas Industrial Development Commission revealed the company under the Massachusetts plan over a period of 20 years would pay a total of $200,000 more than they would in Arkansas. However, at the end of 20 years in Massachusetts the company would own the plant. In Arkansas the company does not own the plant at the end of 30 years and must lay out additional funds in order to purchase the property.

8. Local industrial development bonds have a tendency to appeal to runaway and marginal type industries.

In answer, it is argued:

1. Community credit deterioration has been insignificant. Even in the few and infrequent cases of defaults on general obligation bonds, the community has been able to find a new tenant.

2. Revenue bonds are usually limited to firms with good credit standing.

3. Firms obtaining municipal bond funds do not necessarily have the same opportunity in the regular corporate bond market. In the latter market, interest is higher and in many cases the size of the bond issue is considerably larger. Smaller corporate issues also require very high credit standards that exclude many small corporations.

4. New industries are a benefit to a community because they boost local payrolls, stimulate the economy, and increase tax revenues.
5. Industrial financing of this nature is continuing to grow among the states with major corporations and investment bankers taking advantage of the tax exemptions offered. Therefore, states which do not offer them are not considered as a potential location for an industrial site.

6. Local industrial development bond projects have generally been orderly with few examples of abuse.

7. Legislation of this type is permissive and not mandatory.

8. This method of finance is similar to investment of public funds in baseball stadiums, sports arenas or recreation facilities to attract trade. Bond financing has also been used by such instruments of government as Port Authorities for the construction of warehouses and distribution plants. Bonds have been advocated more recently for the construction of a department store.

9. Area Redevelopment Administration encourages this type of financing and has purchased several issues of industrial aid bonds.

10. The amount of Federal subsidy represented by the loss of tax revenue from the exemption of interest of local industrial development bonds is now relatively small.

Another objection to municipal aid bonding is that it represents a federal tax subsidy to private enterprise. In addition the plants these bonds finance are usually publicly owned and thus exempt from state and local taxation. Equipment is often tax-exempt. The municipal bond program thus is a combination of federal, state and local subsidies. The fact that such property is tax exempt discourages the indiscriminate issue of municipal bonds.

Pirating. A brief text above dealt with the charge that financial aid promotes pirating of industries. An opinion was cited suggesting that such changes might be in large measure reflections of the readjustment made necessary by urban and suburban growth. Other facets of this problem show it does not lend itself to easy answers. A common use of this type of financing is for the creation of branch plants, some of which serve new markets while others lead to the elimination of older established plants. However, a company may be attracted to a community offering municipal bonding if alternative locations under consideration are in a nearby state without such a program.

Another answer to piracy charges, is that many locational shifts are simply a response to lower costs of labor, raw materials or

transportation. For example one observer states that “although these bonds are alleged to appeal to industries running away from collective bargaining, there is little factual evidence to support this view.”1 Another thinks that the greatest impact of the movement is probably its “announcement value”. The subsidy arouses enough interest to make a businessman give consideration to expansion or relocation of his plant as a logical step to take whether or not aid is provided for that purpose.

**Credit Gap.** There is some evidence that municipal aid financing does provide necessary credit. About half the firms receiving such aid are so small that they have not been rated by the major credit rating agencies. Long-term financing for buildings has been difficult to determine even with financially responsible prospective tenants. Many projects have been made feasible through funds backed locally.

**Some Abuses.** Although municipal industrial bonding has served a real need in some low income, rural areas, other instances show considerable abuse.

One building constructed with municipal aid in a large Southern city is leased by one of the largest corporations in the country. Neither the company nor the city really needed any type of subsidy. In another case, a corporation had surplus funds, but nevertheless took advantage of this program because the money was so cheap. Moreover, many large corporations are now using municipal aid bonding in areas with no labor surplus.

Another extreme case is that of one of the largest national retail chains which recently used revenue aid bonding to build a store in a large, rapidly growing metropolitan area. A further development in this area between private and public ownership is the use of revenue bonds to buy a corporation, move it into a community, lease it to its former owner and use the revenue to retire the indebtedness.

**Shift in Purpose.** Industrial development programs were formerly confined to states with sluggish economic growth or with be-

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1 New England Business Review, July, 1964, p. 5. The Federal Advisory Commission has found no substantial evidence to support similar charges. See p. 34 supra.
low average employment. Recent experiences described above demonstrates that industrial development programs utilizing various incentives and inducements have also spread to states with above average employment growth.

There is evidence that such programs are being used for defensive purposes as well. Thus, what was initiated to serve only as a financial lift for acute unemployment areas, is now candidly used as a competitive tool. And while increased competition for new industry can be beneficial, there is sufficient evidence to cause investment experts to sound a note of warning. These observers feel that many state and local governments are offering financial inducements that may jeopardize their future financial stability.

Another view is that at their best these state and municipal aids to industry shore up small, expanding firms that have little capital, while providing a stimulus to community programs of self-help. At their worst, it is added, they give private corporations an unfair financial advantage over competitors at governmental expense. Added jobs and income are desirable benefits, but municipal industrial financing, can also squeeze a community and cause severe financial strain, and become "a dangerous and dubious practice if applied incautiously."

Vigourous Opposition. Overzealous municipal financing of industry has stirred up sharp criticism by national as well as local observers. An oddity of this development is the strange assortment of critics that find themselves in harmony on this matter. For example, the Investment Bankers Association of America has for several years attacked the use of tax-exempt municipal credit to finance industrial construction; the AFL-CIO is also on record as opposed to this practice because industries are tempted to abandon established communities and leave serious social and economic problems when they go. Other opposition comes from the American Bar Association which has described the practice as one contrary to the interests of local government and to sound public policy.

1 Fortune, April, 1964.
3 Fortune, April, 1964.
Also opposed is the Municipal Finance Officers Association which feels that the use of public credit should be confined to recognized governmental functions. The Federal Reserve Bank of Boston notes that some abuses are developing and seem likely to increase. It also warns that municipal aid financing could remove a significant portion of industrial real estate from local tax rolls.

The *County Officer* describes the use of county-issued revenue bonds for the purpose of financing new plant construction as a prostitution of county tax exemption which can easily antagonize the public. *The Daily Bond Buyer*, a leading publication in the investment field, has likened the problem of industrial aid financing to that of "a festering sore that never quite healed."

Finally, the Federal Advisory Commission on Intergovernmental Relations has studied the problem in detail and "finds cause for concern in the unrestrained growth of this practice. . . ." The Commission's report offers several recommendations "designed to eliminate the abuse of this practice for private advantage and to foreclose the development of destructive interstate competition for industry at the expense of federal revenues and to the detriment of the public interest." The report which will be separately discussed later warns that state failure to regulate industrial bond financing may require Congress to legislate to curb the practice.

*Alternative Suggestions.* Of several solutions suggested to meet the competitive effects of industrial aid bonds, one approach has been to introduce legislation in Congress that would repeal the tax exempt status of municipal bonds issued for the purpose of providing plant facilities to private business. The tax exempt status of state and local governments bonds has been established on the basis of the inherent right of one sovereign power not to be taxed by another sovereign power. Legislation to modify that tax exemption feature even partially might be viewed as an entering wedge to the effort to bring about complete elimination of the tax exempt status of all state and municipal bonds.

This approach would run counter to the traditional reciprocal tax immunity accorded the Federal Government by the respective states, and vice versa. This reciprocity rests on the dual character
of our federal system of government which provides for independent
sovereign states within the limitation of the Federal Constitution.

A different legislative approach would be to amend the Internal
Revenue Code so as to deny a corporate lessee a deduction for the
rental payment to a municipality for the use of an industrial plant
which has been built out of proceeds of tax exempt bonds. This pro-
posal has the support of the investment banking fraternity. One
objection to this approach is that the national government is in-
jected into a controversy among competing states, without any issue
of constitutionality being involved. Moreover, such action by the
Federal Government would be challenged as a gross misuse of the
taxing powers granted the national government.

To avoid entangling the Federal Government in the controversy,
one observer has suggested that the best defense against the alleged
unfair competition is to fight fire with fire. He argues that if all
50 states authorized the use of industrial aid bonds, the states
and their municipalities would all be on the same basis in compet-
ing for industry from the standpoint of capital cost with relation
to tax exemption.¹ The argument runs that removal of local re-
straints on cities using such bonds to lure industry to their areas
away from other areas may result in no municipality or state using
this device. The current advantage held by some localities
would then be neutralized.

It is further urged that if the use of municipal bonds for in-
dustrial aid is to be legalized, revenue bonds only should be au-
thorized so that payments will depend solely on revenues from the
specific enterprise involved. When this is done the general credit
of the municipality is not involved and the bond buyer is forced to
evaluate the private corporation renting the facilities. Default could
not bankrupt the city since the bond holder and corporate lessee
alone would be the parties concerned; and local taxpayers have no
financial risk at stake.

In sum, this viewpoint holds that the existing situation is unfair
and either all states should permit issuance of municipal industrial
aid bonds or none of them should be authorized. As a practical

¹ Professor C. J. Pilcher, Univ. of Michigan, “An Academic Viewpoint” The
matter, the argument continues, the most feasible solution appears to be to encourage the rest of the states to pass legislation permitting the use of these bonds. If this is done, plant location decision will revert to being based on consideration of labor, materials and markets.

**Moderate View.** Somewhere between the respective positions taken by the most vigorous opponents and supporters of industrial aid financing, respectively, is the view that industrial aid financing may be subject to a variety of criticisms. Nevertheless current economic problems, tax burdens, revolutionary changes in industry, personal desires to move forward, and the like, all emphasize continued growth of this financial practice.

According to one observer the tax loss to the Federal Government is the least important of the tax considerations raised by the use of tax exempt industrial aid bonds.¹ Most important, in his view, is its impact on local property tax revenue.

Strong criticism has been levied against the position of the Investment Bankers' Association for its failure to clarify the problems related to industrial aid finance.¹ Complaints and pronouncements continue to the issued from this source, yet more and more investment banking firms are handling this type of financing. At the same time the list of prominent, financially sound corporations using this type of financing is growing. Since the problem is there and cannot be ignored, it is urged that in someway ground rules be established for industrial aid financing.

**CHAPTER IV. STATE AND FEDERAL VIEWPOINTS**

**Massachusetts Developments**

A recent staff report of the Massachusetts Department of Commerce and Development on industrial bond financing asserts that Massachusetts is "a happy hunting ground" for "high pressure, free spending organizations which have invaded Massachusetts ... offering 'pie in the sky' deals".² The lure of "all types of financial

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inducements" by various states leaves the Department "truly frustrated."

As indicated elsewhere, industrial development programs in this Commonwealth are inhibited by constitutional provisions which preclude the use of public funds for other than public purposes. Beyond the public purpose doctrine there is another constitutional requirement calling for proportional and reasonable taxation. The latter requirement would deem constitutionally objectionable a grant of tax exemption to a particular industry.\(^1\) Thus, even allowing for industrial development of cities and towns as a public purpose, the constitution already sets certain bounds within which the framers of any type of industrial aid statute must work.

Past efforts of the Commerce Department to get legislative support of a proposal similar to the financing program adopted by Maine proved unsuccessful. (See Appendix B for the language of the Maine constitutional amendment authorizing municipal industrial bonds). The Department concedes that various entities such as local industrial development foundations and the privately financed, state chartered Massachusetts Business Development Corporation have made significant contributions to the industrial economy of the Commonwealth. But the Commerce staff report concludes that not enough use of available financial tools has been made to meet the increasing competition and pressures from other states. To indicate the significance of this deficiency the report develops the following table to show industrial development aid in three Middle Atlantic States and the six New England states. The table underscores the handicap under which the commonwealth must meet competition. (See page 48).

The staff report also offered evidence that financial concessions and incentives are an important factor among a substantial number of large American corporations in their selections of plant locations in connection with expansion programs. One recent survey is cited indicating that tax concessions are the leading factor among

\(^1\) Article 10 of the Declaration of Rights has been interpreted to "forbid the imposition upon one taxpayer of a burden relatively greater or relatively less than that imposed upon other taxpayers". *Opinion of the Justices* 332 Mass. 769, 777. Also, Part II, c. 1, s. 1, art. 4 forbids class preference in the imposition of taxes.
### TABLE 3.

**Comparative Position of Massachusetts in Selected Northeast Region**

<table>
<thead>
<tr>
<th>State</th>
<th>Development Authority</th>
<th>Bond Issues</th>
<th>Tax Concession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maine</td>
<td>X</td>
<td>X</td>
<td>*</td>
</tr>
<tr>
<td>N. H.</td>
<td>X</td>
<td>X</td>
<td>—</td>
</tr>
<tr>
<td>Vt.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Mass.</td>
<td>X</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>R. I.</td>
<td>X</td>
<td>X</td>
<td>—</td>
</tr>
<tr>
<td>Conn.</td>
<td>X</td>
<td>X</td>
<td>—</td>
</tr>
<tr>
<td>N. Y.</td>
<td>X</td>
<td>X</td>
<td>—</td>
</tr>
<tr>
<td>N. J.</td>
<td>X</td>
<td>X</td>
<td>—</td>
</tr>
<tr>
<td>Pa.</td>
<td>X</td>
<td>X</td>
<td>—</td>
</tr>
</tbody>
</table>

* X In Effect

* Legislation pending

** Tax stabilization rather than exemption

several considerations. The indication that major manufacturers are basing location decisions on these concessions is forcing a hard look at competitive methods available to Massachusetts. The staff report states that "records in the Department indicate that one of the first questions asked by an industrial prospect is the availability of financing programs plus the type of concessions that are offered to a new industry."\(^1\)

After reviewing the arguments pro and con, and the recommendations of the President's Advisory Commission on Intergovernmental Relations (see following section), the staff report urges an industrial bond financing program applicable to all areas of the state and not only to labor surplus areas. The report concurred that local bonds should not be issued until all other means of financial assistance have been explored. Thus a company would first have to determine if it could be financed by any of the other available sources, — namely, the banks, insurance companies, the

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\(^1\) Sugrue, op. cit. p. 10.
MBDC, the SBA\(^1\) or the ARA\(^2\). Only after those possibilities have been exhausted would a community be authorized to proceed with a bond financing program.

The report concludes with the observation that Massachusetts is not giving enough attention to the new and expanding industries that lack financial capabilities to undertake expansion programs within the state. Industrial development bond financing, the report adds, “could be the answer to this perplexing problem.”

*Federal Recommendations*

In mid-1963 the Advisory Commission on Intergovernmental Relations, published a report relative to Industrial Development Bond Financing, perhaps the most comprehensive document available on the subject.\(^3\) This Commission is a distinguished federal agency consisting of 26 members selected from Federal, State and Local governments. The report considers the following questions:

1. Is the use of public credit for the acquisition of industrial plants for lease to private enterprise a constructive State and local government activity?
2. Is it compatible with the division of governmental responsibilities under the Federal form of organization?
3. If the answers to the foregoing questions are affirmative, how can the attendant friction points between governments and levels of government be minimized?

Of major concern to the Commission is the tax exempt feature of industrial development bond financing. In all cases of industrial development bond financing, the Commission points out, one of the costs incurred is a loss of federal revenue because interest payments to bond holders are exempt from federal taxation. The Commission recognizes that this loss is partially offset by revenue gains resulting from the fact that the benefitted enterprise is taxable.

\(^1\) Federal Small Business Administration.
\(^2\) Federal Area Redevelopment Administration.
\(^3\) Advisory Commission on Intergovernmental Relations. *Industrial Development Bond Financing* Washington, D.C. June 1963. A-18. The Honorable John E. Powers, former President of the Massachusetts Senate, was a Commission member who signed the majority report.
Sharp criticism of industrial development bond arrangements is levied by the Commission because of their vulnerability to misuse. Three categories of malpractice are identified.

(1) Where the beneficiary firm has access to adequate conventional financing. In some cases the abuse is aggravated by the firm's acquisition of the tax exempt bonds that financed its plant becoming in turn the beneficiary of tax exempt income.

(2) Where projects are undertaken far beyond the municipality's employment needs. This results in labor importation, a disturbed local economy and a strain on community facilities. There are cases where debt service on the bonds has been an excessive burden.

(3) Where one community has been able to pirate a going concern from an established location.

Evidence gathered by the Commission indicates that the use of public tax exempt financing for the benefit of nationally known firms well able to finance their expansion from private sources is increasing.

The Commission refuses to endorse or recommend the use of the industrial development bond. It warns that the unrestrained spread of this type of competition for industry will neutralize the efforts of state and local governments and will result in a substantial waste of public investment. In this sense, the Commission stated, the entire development is potentially self-defeating, unless confined to economically justifiable proportion and circumstances.

However, recognizing the widespread growth of the movement, and the likelihood of its continuance, the Commission recommends several safeguards that it considers essential. Such safeguards are urgently required "to insure that the governmental resources deployed for this purpose bear a reasonable relationship to the public purpose served and that the governmental powers employed are not diverted for private advantage."

Nine recommended safeguards are spelled out by the Commission which assume that the authority to issue industrial development bonds has been granted. The first recommendation is that the states should define by legislation the precise conditions under which approved activities may be undertaken.

Secondly, it is recommended that only those bonds approved by an appropriate state agency be authorized for issuance. In the absence of compelling reasons to the contrary, the approval of
such bonds should be vested in a state agency that has supervisory jurisdiction over local government financial administration.

Third, if political subdivisions are the bodies authorized to exercise control, the state should assign such authority to general units of government such as cities, towns and counties; these units are in a better position than special agencies and districts to decide what additional public services a new enterprise should place upon a community.

Fourth, priority should be given to governmental units that have a labor surplus and that are outside a conventional financing area.

Fifth, a limit should be placed on the total volume of such bonds that may be outstanding at any one time, and to the extent practicable, that volume should be controlled by meaningful criteria. The Commission believes that such liabilities should bear a reasonable relationship to the economic resources of the area, and more specifically to the ability of the affected citizenry to assume them. Also, industrial projects which are out of proportion to the size of the community in which they are located result in labor importation, in disturbed local economies, and in a need for greater public expenditure to provide required services.

Sixth, approval of such bonds should be conditioned upon the existence of a contract (a) with a responsible tenant, (b) with safeguards governing disposition of the property at the end of the lease, (c) with an indication of local tax revenue to be supplied; and (d) with a restriction against the pirating of industrial operations by one community from another.

Seventh, adequate provisions should insure that the public has an opportunity to understand the proposal and that citizens have the opportunity to initiate a referendum before application.

Eighth, industrial aid financing programs adopted by the state or authorized urban communities should be restricted to urban centers and be designed to minimize competition with conventional financial institutions. The Commission notes that the use of industrial development bonds by local governments is abused in urban and industrialized areas where private facilities for large volumes of credit are generally available.

Finally, the Commission, to correct tax exemption abuses among users of industrial development bonds, recommends that the Fed-
eral Internal Revenue Code be amended. The purpose of such amendment is to end the financing of industrial facilities with tax exempt securities wherever any part of the bonds are directly or indirectly held by a lessee, by denying the deduction of any industrial plant payments in the determination of taxable income.

This last proposal is aimed at financially strong corporations that buy the municipal bonds issued to finance their own plants. Then such a corporation cannot enjoy both a rental reduction due to a lower interest cost because of the tax exempt feature of the bonds, and also tax exemption of interest payments, despite the fact that the bond investment is subject only to the risk inherent in the business of that corporation. In the language of the Commission,

The States' failure to confine competition for industry within reason­able limits, and more particularly their failure to safeguard the National Government against the further abuse of tax exemptions within a reason­able period of time may oblige the Congress to prescribe it.

CHAPTER V. LEGAL CONSIDERATIONS

Constitutional Aspects

The experience of the 19th century which brought constitutional limitations on public aid demonstrates that if public funds are to be risked, the risk must flow from public rather than private decision. Adequate protection of public finance necessitates public control consonant with the risk being assumed.

The constitutional movement produced a paralleling judicial re­action — the enunciation of the public purpose doctrine. Al­though characterized by the courts as a limitation on the power to tax, the doctrine is more realistically a limit on spending power.

The actual degree of government control achieved by this public purpose approach has been scrutinized in many judicial decisions and more recently in several law review articles. In one of the latter articles, David E. Pinsky expresses some doubts despite the adequate public control he finds over the marketing of the

1 For complete discussion see David Pinsky, supra.
municipal bonds, plus the fact that plants are constructed by the municipalities or by contractors under direct supervision. Nevertheless he believes the evidence suggests that, unlike consumer facility projects, municipal control of planning and design over industrial financing is minimal, and much responsibility is turned over to the lessee. Where a proposed plant is (a) highly specialized and built around highly specialized processes, and (b) the public financing of equipment is included, there almost inevitably occurs virtually complete delegation of planning and design to the lessee.

To the extent that a project serves a particularized manufacturing process, the public investment will be jeopardized by private decision making. If, however, the needs of the lessee can be fulfilled by a relatively adaptable plant, and if public financing does not include payment for specialized equipment, municipal supervision is more feasible.

Industrial development corporations are sharply distinguishable from non-profit associations. The latter are generally charitable associations, which operate educational or recreational facilities, such as schools, museums and zoos. In doing so, the non-profit association acts as a quasi-public instrumentality for achieving public objectives. The same is not true of non-profit development corporations. They are not the primary agents for achieving public objectives, but only serve as conduits through which public funds flow to private manufacturers who ultimately benefit the public. The mortgage plans avoid any impression of being a publicly owned facility and make apparent the reality of the financial assistance being extended.

Pinsky believes that except in the case of a fully adaptable plant, the public assumes a considerable financial risk incident to private decision making; in all instances inadequate public control is reserved over the effectuation of the public economic objectives.

Since the meaning of the public purpose test can change with the times, pertinent factors must be judicially determined to direct the nature and course of its evolution.


Bond Plans and Legal Distinctions

Under the Mississippi plan the industrial facility is public property and the land and the plant are exempt from all state and local real property taxes. The lessee also has less to amortize in rent because municipal bonds are marketed at lower interest rates than private corporate bonds.

Mortgage plans of industrial financing have a common feature which distinguishes them from the Mississippi plan. The government of the state or municipality does not itself construct and then lease the finished plants. Instead, the government makes or insures mortgage loans to local non-profit development corporations to provide the means for their construction of industrial facilities which are then leased or sold by them to private manufacturers.

However, there is also a significant difference among the mortgage plans. The New England and Oklahoma plans pledge the public credit and are therefore prima facie subject to the credit clause. In contrast, the Pennsylvania plan, financed by funds appropriated out of currently levied taxes, is not.

The revenue bond plan is a type of municipal industrial financing only in a limited sense. Because the public credit is not pledged, the bondholders must look for repayment to a special fund fed solely by rental revenues. In the typical revenue bond project, the municipality agrees to construct and equip a manufacturing plant in accordance with plans and specifications approved by a private corporation and then to lease the plant to the corporation for a term of 20 to 25 years. The rental is fixed to amortize the bonded indebtedness and pay the interest charges during the term of the lease. The agreement usually is a net lease, under which the lessee is obligated to maintain the premises and to pay all insurance premiums. Both the facility and the bonds are tax exempt.

At the close of the primary term, the lessee usually has an option to extend at a nominal rent, often by successive short-term renewals. In many instances the lessee has an assured occupancy for a total period of 50 to 60 years. The lease usually can be freely assigned or the premises sublet without the consent of the municipality.
It is also common for the lessee to be granted an option to purchase during the primary term by satisfying the municipality's debt and interest charges, or after the close of the primary term by paying a nominal sum. The city meanwhile holds title to the land and facility, but the corporation is guaranteed the right to use the facility for virtually all of the useful life, so long as it pays the principal debt and interest, discharges its duties to maintain the facility, and keeps it properly insured.

**Judicial Decisions**

*Majority Views.* The majority of court decisions have sustained the validity of the revenue bond plans under the public aid limitations and the public purpose test. They hold that a statute which pledges only project revenues does not pledge the public credit, and therefore does not lend the public credit to anyone.

The rational basis which supports the revenue bond plan, it is argued, is the urgent need for more community income and the lack of private financing for industrial expansion. However, the revenue bond plans do not actually provide public financing; the municipality as "trustee" is said merely to facilitate private borrowing by federal tax exemption on municipal bond income and by state property tax exemption.

Pinsky argues that public financing is necessary because the critical need to expand incomes and to relieve the paucity of private long-term investment for industrial expansion. However, there is no reason to believe that industrial lessees need the indirect subsidy of tax exemption any more than do manufacturers who construct new plant facilities with private financing. Quite to the contrary, the manufacturer who with great difficulty obtains private financing at high interest rates may have the greater need of tax relief. And the economic benefits to the community from the latter's activity may be greater than those realized from lessees of municipal facilities.

In retrospect, public industrial financing is a development of the city and state planning movement which began in the early years of this century. Public planning guided private development, but rarely actively stimulated it. By the end of World War II, the emphasis had shifted from planning alone, to planning joined
with development. The primary economic energy for this latter drive has come from the industrially underdeveloped southern and border states. Significant secondary support has come from the mature economies of the Middle Atlantic and New England States that are being forced to come to grips with the many adverse long run regional trends.

The increasing affirmative role that the states and municipalities must assume in promoting local and regional development is also highlighted in the current public subsidization of commuter rail transportation in metropolitan areas.¹

Growing acceptance of the necessity for public industrial financing has stimulated a sharp modification in the 19th century constitutional court doctrines relative to public aid limitations and public purpose. The current movement has taken two forms: (1) out-right modification by constitutional amendment, and (2) erosive modification by combined legislative and judicial action. Pinsky concludes that public industrial financing programs based upon an enabling constitutional amendment present no substantial question of constitutional law.

Minority Views. While the majority view is that revenue bonds do not fall within a constitutional "credit clause" regulation of extension of credit there have been strong minority views. For example, a minority court has reasoned that the issuance of revenue bonds may create obligations such as executing leases, fixing rents, taking chattel mortgages, procuring insurance coverage, and assuming the added tax burdens of increased community services if the new industry failed to pay its way. The court also noted that any default on the bonds could damage the city's credit reputation causing higher interest rates and thus higher tax rates, in any future desired municipal securities issue.

Other ways a municipality may become directly liable to revenue bond holders would be (a) breach of an implied covenant of good faith, if the municipality were grossly negligent in issuing bonds in the face of a clear impossibility of project success, or (b)

through misrepresentation, implied covenant or warranty, and breach of trust.

Thus, one reviewer concludes that "credit clause restrictions should apply to revenue bonds as well as general obligation bonds, requiring courts to inquire into the 'public' nature of any activity financed by municipal bonds."

In his view, the distinction between purposes "public" and "private" is seldom articulated. A transfer of public funds to an individual to spend as he pleases is commonly regarded as serving a "private" interest. Transferring public funds to an individual in return for goods or services for the municipality is usually viewed as serving a "public" interest. Clearly, the differentiation between the two transfers is not that a private individual gains, for suppliers to local governments are also expected to profit. It is less apparent but equally true that the distinction does not rest on the fact that the community, or the public, receives nothing in return for the "dole". The community is, after all, nothing more than a group of individuals, and at least one individual, the donee, profits from an outright gift. The relevant distinction seems to be that the community does not receive value proportionate to the value it gives.

The courts presumably have this net gain to the community in mind when they speak of "public benefit" or of relieving conditions which affect the welfare of the people of an entire community. But, it is argued, if net gain to the community is at issue, it would seem irrational not to consider all the effects which a project may have. A full inquiry would include calculations of the economic need for municipal activity, the likely success of the project, its probable effect on existing industry, the consequences for local labor conditions, and the impact on community commerce. Even then, however, net gain cannot be meaningfully calculated unless the impact of the project on other community values such as enlightenment, health, and allocation of decision-making power are also considered.

In other words, the relevant inquiry would seem to be whether the proposed project will augment the community's total value position.

The question remains as to how far a court should inquire into these various factors when making a public purpose inquiry, and to what extent it should defer to the conclusions of legislative officials who have initiated the project.

Courts may believe that legislative and administrative bodies have more experience and greater resources for "expert" assistance. In their search for relevant information, such institutions are not limited by the restriction of a judicial proceeding. On the other hand, the reviewer suggests that the accuracy of these assumptions may be questionable in the context of municipal financing of industry. In considering the policy of deference to public opinion, it may be relevant to inquire whether the vigorous promotion of such projects by organized national and local business interests does not give local officials a one-sided view of public opinion concerning the project.
APPENDIX A

DIGEST OF INDUSTRIAL DEVELOPMENT PROGRAMS IN SELECTED STATES

CONNECTICUT

A. State Development Credit Corporation: Yes

B. State Industrial Finance Authority


2. Purpose: To encourage industrial development by insuring the repayment of industrial expansion mortgage loans.

3. Method of Financing: The commission may insure a mortgage loan on an industrial project for up to 90% of the total cost of the project or $5 million, whichever is less. Total insured mortgages outstanding may not exceed $25 million.

4. Capital: A $25-million Industrial Building Mortgage Insurance Fund, which is derived through the sale of State-guaranteed bonds.

5. Accomplishments: A decision upholding the constitutionality of the law was received on March 12, 1963. As of April 20, 1964, loan guarantees, totalling over $5.5 million, had been made and seven additional loan applications, totalling over $10.4 million, were pending.

C. Local Bond Issues: No

D. Tax Concessions: No

KENTUCKY

A. State Development Credit Corporation: Yes

B. State Industrial Development Authority

1. Name: Kentucky Industrial Development Finance Authority (established August 1, 1960).

2. Purpose: The Authority's purpose is to promote and develop industrial and manufacturing enterprises in local communities.

3. Method of Financing: Any nonprofit local development agency may apply for a loan for a specific industrial building or subdivision, either existing or planned, if it is unable to secure sufficient funds from conventional sources at going interest rates.

For industrial buildings, the Authority may loan up to 40 percent of the project, providing that the local agency puts up at least 10 percent and arranges for 50 percent from conventional sources.

1 Source: The Use of Public Funds Or Credit In Industrial Location, New York State Dept. of Commerce, Research Bulletin No. 6, June, 1964. Albany.
For industrial subdivisions, the Authority may loan up to 50 percent, providing that the local agency has funds or commitments for the balance.

4. Capital: Initial capital was provided by a $2,035,000 revolving fund appropriated from state funds. Beginning July 1, 1964, loan capital will be borrowed from state retirement systems.

5. Accomplishments: As of May 1964, the Authority had approved 13 loans for a total of $1,870,000.

C. Local Bond Issues: Plan I

1. Authorization: Any city (incorporated territory) may borrow money and issue negotiable revenue bonds for the purpose of defraying the cost of acquiring any industrial building, either by purchase or by construction.

2. Prerequisites: An ordinance must be adopted by the legislative body of the city specifying the proposed undertaking, the amount of bonds to be issued and the maximum rate of interest the bonds are to bear.

3. Description of Bonds: Interest on the bonds may not exceed six percent per annum, payable either annually or semiannually.

   The maturity of the bonds may not exceed twenty-five years.

   The bonds shall be payable solely from the revenue derived from the building which was financed by the issue.

4. Tax Status of Project: The properties are exempt from taxation to the same extent as other public property used for public purposes, as long as the property is owned by the city.

5. Accomplishments: From 1951 through April 1964, communities had sold 49 revenue bond issues totaling $91.3 million, including a $50 million issue to build an aluminum plant in the Town of Lewisport.

Local Bond Issues: Plan II

Under certain circumstances municipalities may issue general obligation bonds for the construction of industrial buildings with the approval of the voters. Through November 1963, three bond issues totaling $1,150,000, had been authorized.

D. Tax Concessions

Description: The legislative body of any city may by ordinance exempt manufacturing establishments from city taxation for a period not exceeding five years as an inducement to locating in the city. In third class cities, two-thirds of the members of the city's legislative body must concur.

MAINE

A. State Development Credit Corporation: Yes

B. State Industrial Finance Authority

1. Name: Maine Industrial Building Authority (created in 1957 and began operations in 1958).

2. Purpose: The Authority's goal is to further industrial expansion in the State by encouraging mortgage loans by private lending institutions.
3. **Method of Financing:** The Authority may guarantee a first mortgage loan covering up to 90 percent of the cost of a project owned by a local industrial development corporation. The local group must raise at least 10 percent and arrange for a first mortgage loan for the balance.

Other provisions are:

a. The local corporation must be nonprofit and may own only one industrial project at any time.

b. The insured part of any one mortgage may not exceed $8 million, nor may the outstanding obligations of the Authority exceed $20 million at any one time. (A constitutional amendment to increase the latter amount to $40 million will be voted on by referendum in November 1964).

c. The local group must have a lease agreement by which the lessee will pay principal, interest, local taxes (no exemption provided), land-lease rentals, and insurance called for by the first mortgage.

d. The Authority must charge a premium of not less than 0.5 percent nor more than 2 percent of outstanding principal balance of the mortgage. (The rate currently is 1 percent).

4. **Capital:** The Authority started operations with a state-appropriated $500,000 revolving fund. Bonds of the State have been authorized in the amount of $20 million to back up mortgage guarantees. No bonds have been issued to date.

5. **Accomplishments:** As of April 30, 1964, the Authority had guaranteed mortgages in the face amount of $8.5 million for 28 plants providing 2,500 jobs and had made conditional commitments for $10.8 million for eight plants which were planned or under construction, including a commitment for $8 million to assist in financing a sugar beet refinery in Aroostook County.

C. **Local Bond Issues**

The voters passed a constitutional amendment permitting localities to issue bonds to finance industrial development in November 1962. The State Legislature has not as yet passed implementing legislation.

D. **Tax Concessions:** No

**MASSACHUSETTS**

A. **State Development Credit Corporation:** Yes
B. **State Industrial Finance Authority:** No
C. **Local Bond Issues:** No
D. **Tax Concessions:** No

**MISSISSIPPI**

A. **State Development Credit Corporation:** Yes
B. **State Industrial Finance Authority:** No
C. **Local Bond Issues:** Plan I

1. **Authorisation:** Counties, supervisors districts or municipalities may issue general obligation bonds to finance the cost of acquiring land, erecting and equipping buildings, and to lease, sell or operate a business.
2. Prerequisites: The municipality must receive a certificate of public convenience and necessity from the Mississippi Agricultural and Industrial Board. This Board must determine that raw materials and supplies are readily available to assure economical operation for at least 10 years; that there is an adequate labor supply; that the bonded indebtedness for this purpose does not exceed 20 percent of total assessed valuation of the municipality.

Bond issues must be approved by at least two-thirds of those voting at an election on the question, provided that at least 51% of qualified electors vote.

3. Description of Bonds: Bonds must be sold at public sale at not less than par plus accrued interest.

The maturity of the bonds may not exceed 25 years.

An annual property tax shall be levied to cover principal and interest of bonds if necessary.

Bonds and income from them are exempt from all taxes, except gift and inheritance, in Mississippi.

4. Tax Status of Project: All projects acquired, constructed or owned are not subject to ad valorem taxes in Mississippi.

5. Accomplishments: See under Plan II.

Local Bond Issues: Plan II

1. Authorization: Counties, supervisors districts and municipalities may issue revenue bonds to acquire, own and lease projects for promoting industry and trade, and to lease projects to others.

2. Prerequisites: The municipality must receive a certificate of public convenience and necessity from the Mississippi Agricultural and Industrial Board under the same provisions as those mentioned in Plan I.

Prior to issue, a lease agreement must be completed providing revenue sufficient to pay bonds, build a sinking fund and maintain and insure property.

Election is not required for approval unless 20 percent of the qualified voters file a protest. If election is held, a majority of those voting must approve.

3. Description of Bonds: Bonds may be sold at either private or public sale.

Maturity may not exceed 30 years.

Interest rate is not specified.

Bonds and revenue from them are exempt from all State and local taxes in Mississippi.

4. Tax Status of Project: Project is exempt from all State and local taxes in Mississippi.

5. Accomplishments: Through the end of 1963, bond issues totaling over $128 million have been approved under the two plans for 370 industrial projects in the State. No estimate of the number of new jobs that have resulted is available.

D. Tax Concessions

Description: Industries may be exempted from ad valorem taxes by cities and counties for a period of ten years.
NEW HAMPSHIRE
A. State Development Credit Corporation: Yes
B. State Industrial Finance Authority
   2. Purpose: To aid local industrial development corporations in accomplishing
      construction of industrial parks and buildings, including machinery and
      equipment. This is not a permanent financing agency; sponsor of project
      must arrange for permanent financing after construction is completed. The
      Authority may, however, guarantee up to $5 million in mortgage loans to in-
      dustry.
   3. Method of Financing: The Authority makes construction money available to local industrial development groups in two ways:
      a. A loan is granted to the local group, which must agree to repay the
         loan in full as soon as the building is occupied;
      b. The Authority takes title to the land and arranges for construction,
         with the agreement that, when arrangements are made to sell or lease
         the project, the local group agrees to repurchase it from the Authority.
      The project must be approved by the Authority and then by the Gover-
      norn and Council. Factors considered are labor pool, transportation, ample
      utilities, topography and local government. Only one building may be con-
      structed under this program in any industrial park not owned by the Authority.
      Projects owned by the Authority are exempt from state and local taxes, but
      the Authority may agree to make in lieu payments for highway maintenance,
      fire protection or other services.
   4. Capital: No capital was appropriated from state funds. The Authority
      is authorized to issue notes and revenue bonds not to exceed $4 million at any
      time. The Governor and Council have the power to guarantee the bonds if
      they see fit. Notes, not of over three years maturity, may be issued to the
      State Treasurer, with the interest rate established by the Treasurer after con-
      sidering the current average rate on the State's outstanding marketable
      obligations.
   5. Accomplishments: Through April 1964, the Authority had assisted in
      the construction of ten plants with a combined employment of 1,300 persons,
      and carried out site development work at several industrial parks.
C. Local Bond Issues: No
D. Tax Concessions: No

NEW JERSEY
A. State Development Credit Corporation: Yes
B. State Industrial Finance Authority: Yes
   Legislation passed in 1962 authorized the establishment of an Authority
   to assist in the financing of projects in areas designated by the Secretary of
   Commerce of the United States as redevelopment areas under the provi-
   sions of the Federal Area Redevelopment Act. As of April 1964, five counties in New
   Jersey were so designated. No further details are available.
C. Local Bond Issues: No
D. Tax Concessions: No
NEW YORK
A. State Development Credit Corporation: Yes
B. State Industrial Finance Authority
   1. Name: New York Job Development Authority.
   2. Purpose: To create new jobs by aiding local development corporations in the construction, acquisition, and/or renovation of manufacturing facilities in "critical" economic areas and other areas of high unemployment. A "critical" economic area is one in which the average rate of unemployment over the past 36 months exceeds the state-wide average, or is at least seven percent or is 25 percent above the state-wide average over the past 24 months or is the greater of seven percent or 25 percent above the state average for the last six months because of other than seasonal factors.
   3. Method of Financing: The Authority may loan an amount not exceeding 30 percent of the total project cost to a local development corporation. The local group must have firm commitments for the remaining 70 percent of the cost. The loan must be secured by a mortgage which may not be subordinate to a first mortgage by more than 50 percent of the project cost.
   4. Capital: The Authority may issue bonds and notes totaling up to $100 million, $50 million of which is state guaranteed and may only be used in areas of "critical" unemployment.
   5. Accomplishments: Through May 1, 1964, the Authority had approved loans totaling over $7.5 million for 53 industrial projects. It is estimated that these projects will create over 3,500 new jobs.
C. Local Bond Issues: No
D. Tax Concessions: No

OKLAHOMA
A. State Development Credit Corporation: No
B. State Industrial Development Authority
   1. Name: Oklahoma Industrial Finance Authority. (The Authority was authorized by a constitutional amendment approved by the voters on July 26, 1960).
   2. Purpose: The Authority's purpose is to aid in financing new or expanding industry by making loans to local incorporated industrial development agencies (profit and nonprofit) for specific industrial projects. Costs incidental to construction may be included, but those for machinery and equipment may not.
   3. Method of Financing: The Authority may loan up to 25 percent of the cost of a new project, provided that the local agency supplies 25 percent and the balance is available from conventional sources.

   The Authority may also make loans up to 25 percent of the cost of existing projects of the local agency, provided that 25 percent was expended by the agency and the balance from conventional sources. This money must be used to finance additional projects by the local agency.
The State Authority is permitted to take a second mortgage.

Before approval of a loan, the applicant must show evidence of financing, a satisfactory lease or sale agreement, and evidence that the project will not cause removal of plant from one area in the state to another or will not replace an existing industry.

4. Capital: The Authority is permitted to sell general obligation bonds in an amount not to exceed $10 million at any time. Each issue must be approved by the Oklahoma Supreme Court.

Other provisions are:
- Bond's maturity may not exceed 30 years.
- Interest rate may not exceed 5 percent.
- Bonds may be sold at discretion of Authority.
- Bonds and income are exempt from State and Local taxes in Oklahoma.

5. Accomplishments: As of the end of 1963, a total of over $1.2 million was loaned for nine projects, the total cost of which was about $5 million.

C. Local Bond Issues

1. Authorization: Municipalities and counties may issue general obligation or revenue bonds to purchase or construct industrial facilities for lease or sale to private firms. Whenever necessary, the municipality or county may levy a special property tax not to exceed 5 mills per dollar to provide payment of principal and interest of general obligation bonds.

2. Prerequisites: Bond issues must be approved by a majority of the voters.

3. Description of Bonds: Maturity may not exceed 30 years. Interest rate may not exceed 6%. Bonds are exempt from all State and local taxes in Oklahoma.

4. Accomplishments: Through the end of 1963, bonds totaling about $3 million had been issued to assist three industrial projects.

D. Tax Concessions

1. Description: Cities and towns may grant a five-year exemption from municipal taxes on industrial properties, excepting land. School and county taxes remain in effect.

2. Accomplishments: Unknown; provision is seldom, if ever, used.

PENNSYLVANIA

A. State Development Credit Corporations: Yes

B. State Industrial Finance Authority

1. Name: Pennsylvania Industrial Development Authority (began operations in July 1956).

2. Purpose: The Authority's purpose is to reduce unemployment in critical economic areas by making loans to industrial development agencies to help pay for cost or purchase of industrial and manufacturing facilities.
3. **Method of Financing:** The Authority may loan any local development agency in a critical economic area up to 40 percent of the cost (not including machinery and equipment) of establishing an industrial project. (A "critical area" is one in which at least six percent of the labor force is unemployed for a period of not less than three years, or nine percent for not less than 18 months). The Authority may provide up to 45 percent of the cost of a research and development project.

The local group must provide at least 10 percent of the cost and arrange for the balance from conventional sources.

The interest charged by the Authority is a minimum of two percent, but equals the rate charged by the local group if it is over two percent.

The Authority may make loans on existing projects of local groups as long as the funds are used to construct new plants.

No loans may be made that would result in a relocation of a plant already in Pennsylvania.

4. **Capital:** The State initially appropriated a $5 million revolving fund and has since supplemented this amount several times to a total of $45.3 million.

5. **Accomplishments:** From July 31, 1956, through March 31, 1964, the Authority loaned $50.4 million on 365 projects costing $138 million. It is estimated that about 53,000 new manufacturing jobs could result from these loans.

C. **Local Bond Issues:** No

D. **Tax Concessions:** No

RHODE ISLAND

A. **State Development Credit Corporation:** Yes

B. **State Industrial Finance Authority**

1. **Name:** Rhode Island Industrial Building Authority. The Authority was approved at a referendum in November 1958, and began operations in January 1959.

2. **Purpose:** The Authority's goal is to encourage the granting of mortgage loans to further industrial expansion in the State.

3. **Method of Financing:** The Authority may insure industrial mortgages held by local nonprofit industrial development corporations for up to 90 percent of the total project cost (not including machinery and equipment). The other 10 percent may come from the Business Development Corporation of Rhode Island, and the Rhode Island Industrial Foundation can act where there are no local groups functioning.

Other provisions are:

a. Project cost must be at least $100,000 and the Authority's commitment to a single project may not exceed $5 million.

b. Any new manufacturing facility or any building which will improve job opportunities qualifies.
c. Maturity of the mortgage may not exceed 25 years.
d. Complete amortization provisions must be included covering periodic payments of principal, interest, taxes, land rentals and insurance.
e. The Authority collects a mortgage insurance premium not to exceed three percent per year on outstanding principal. (The current premium rate is one percent).

4. Capital: The State appropriated $100,000 a year for the first five years of operation. If more funds are required, the Authority may issue general obligation bonds not to exceed $30 million at any time. These bonds may be sold at the discretion of the General Treasurer and are exempt from State and local taxes in Rhode Island.

5. Accomplishments: From 1959 through 1962 the Authority had approved over $13 million in mortgage loans for 18 industrial projects that will provide an estimated 4,000 jobs.

C. Local Bond Issues: No

D. Tax Concessions

1. Description: Towns or cities, with the approval of the voters, may exempt manufacturing property from taxation for a maximum of 10 years. To qualify, the facility must have been attracted to the community by the tax exemption. They may also freeze tax rates on land and buildings involved in industrial expansion, with approval of voters.

2. Accomplishments: Unknown; a few communities have given tax concessions, but most have not.

VERMONT

A. State Development Credit Corporation: Yes

B. State Industrial Finance Authority

1. Name: Vermont Industrial Building Authority.

2. Purposes: To encourage the erection and expansion of industrial plants, the acquisition and rehabilitation of existing plants, the acquisition of new machinery and the obtaining of working capital by guaranteeing mortgage loans to local development corporations.

3. Method of Financing: The Authority will guarantee a mortgage loan to a local development corporation for up to 90% of the total project cost, including land, buildings, machinery and equipment, up to a maximum of $3 million on land and buildings and $2 million on machinery and equipment. The total amount of guarantees outstanding cannot exceed $25 million.

4. Capital: A revolving fund of $10 million, obtained through the sale of bonds by the State, is used for the operating expenses of the Authority and the payment of principal and interest that may be required under insurance contracts. To this fund is credited mortgage insurance premiums and proceeds from the sale or lease of projects. Additional funds, as needed, may be secured from the emergency board.

5. Accomplishments: The Authority has guaranteed two loans and four others are pending.
C. Local Bond Issues

1. Authorization: Municipalities may issue certificates of indebtedness (revenue only) to finance cost of acquisition, purchase, construction, improvement, betterment or extension of any industrial building.

2. Prerequisites: A resolution authorizing a bond issue must be approved by a majority of the municipality’s legislative body. Then a majority of qualified voters, balloting at a meeting called on the question, must approve.

3. Description of Bonds: The bonds may be sold publicly or privately. Maturity may not exceed 40 years. Interest rate may not exceed six percent a year. The certificates are exempt from all State, county and local taxes, except those on inheritances, transfers and estates.

4. Tax Status of Project: Since projects are publicly owned, they are exempt from all State and local taxes.

5. Accomplishments: No bond issues have been authorized.

D. Tax Concessions

1. Description: A municipal corporation may by vote of two-thirds of those present and voting at a special or annual meeting authorize its legislative branch to enter into contracts with new businesses to fix the valuation of real and personal property, the tax rate, or the annual tax to be paid for a period not to exceed 10 years.

Property of manufacturers, quarries and mines may be exempted from taxes for a period not to exceed 10 years from commencement of business, if the town so votes.

2. Accomplishments: Several communities have entered into tax stabilization agreements with businesses.
APPENDIX B

CONSTITUTIONAL AMENDMENT
ADOPTED BY STATE OF MAINE IN 1962

ARTICLE LXXXVII.
Authorizing Municipalities to Issue Bonds for
Construction of Industrial Buildings

Article IX of the Constitution is amended by adding thereto a new section, to be numbered 8-A, to read as follows:

"SECTION 8-A. Industrial building construction. For the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial and manufacturing enterprises within the physical boundaries of any municipality, the registered voters of that municipality may, by majority vote, authorize the issuance of notes or bonds in the name of the municipality for the purpose of constructing buildings for industrial use, to be leased or sold by the municipality to any responsible industrial firm or corporation."
## APPENDIX C

### SUMMARY OF STATE INDUSTRIAL BUILDING AUTHORITIES AND INDUSTRIAL DEVELOPMENT FINANCING AUTHORITIES

<table>
<thead>
<tr>
<th>State</th>
<th>Date</th>
<th>Type</th>
<th>Coverage</th>
<th>Interest Rate</th>
<th>Areas Included</th>
<th>Egpt. Cost</th>
<th>Single Proj.</th>
<th>Total Cost</th>
<th>Length, Amortization</th>
<th>No. Loans Made</th>
<th>Insur. Prem.</th>
<th>Miscellaneous</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALASKA</td>
<td>1961</td>
<td>Direct loans to Ind.</td>
<td>90% Max.</td>
<td>N.A.</td>
<td>No</td>
<td>N.A.</td>
<td>18 mil.</td>
<td>N.A.</td>
<td>no loans as of 12/63</td>
<td>N.A.</td>
<td>N.A.</td>
<td>Money by sale of debentures, applicant must buy 5%.</td>
</tr>
<tr>
<td>CONN.</td>
<td>Passed</td>
<td>Ins. first mortgage</td>
<td>90% Max.</td>
<td>Negotiation</td>
<td>No</td>
<td>No</td>
<td>5 mil.</td>
<td>25 mil.</td>
<td>as of 7/15/64</td>
<td>Max. 2%</td>
<td>Funds from sale of state guaranteed bonds.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ind.</td>
<td>first mortgage loans</td>
<td>100%</td>
<td>Yes</td>
<td>No</td>
<td>3</td>
<td>10 to 25</td>
<td>10/63</td>
<td>one project</td>
<td>N.A.</td>
<td>Prog. occup. must buy 5% of bonds. All-purpose bldgs. only.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Comm.</td>
<td>Decided</td>
<td>100%</td>
<td>3⅔%</td>
<td>to</td>
<td>4%</td>
<td>1</td>
<td>to 4%</td>
<td>20% on Proj. fund +2</td>
<td>N.A.</td>
<td>Counties must vote enabling acts.</td>
<td></td>
</tr>
<tr>
<td>GA.</td>
<td>1963</td>
<td>Second mortgage loans</td>
<td>100%</td>
<td>3%</td>
<td>No</td>
<td>3</td>
<td>10 to 25</td>
<td>10/63</td>
<td>one project</td>
<td>N.A.</td>
<td>Prog. occup. must buy 5% of bonds. All-purpose bldgs. only.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ind.</td>
<td>Second mortgage loans</td>
<td>100%</td>
<td>Yes</td>
<td>No</td>
<td>3</td>
<td>10 to 25</td>
<td>10/63</td>
<td>one project</td>
<td>N.A.</td>
<td>Counties must vote enabling acts.</td>
<td></td>
</tr>
<tr>
<td>KY.</td>
<td>1960</td>
<td>Direct loans to LDCs</td>
<td>Max.</td>
<td>4%</td>
<td>No</td>
<td>No</td>
<td>Based on proj. fund +2</td>
<td>2,085</td>
<td>as of 8/62</td>
<td>N.A.</td>
<td>20% on industrial bldgs., 50% on industrial sites.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ind.</td>
<td>Direct loans to LDCs</td>
<td>Max.</td>
<td>4%</td>
<td>No</td>
<td>No</td>
<td>Based on proj. fund +2</td>
<td>2,085</td>
<td>as of 8/62</td>
<td>N.A.</td>
<td>20% on industrial bldgs., 50% on industrial sites.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dev.</td>
<td>Direct loans to LDCs</td>
<td>Max.</td>
<td>4%</td>
<td>No</td>
<td>No</td>
<td>Based on proj. fund +2</td>
<td>2,085</td>
<td>as of 8/62</td>
<td>N.A.</td>
<td>20% on industrial bldgs., 50% on industrial sites.</td>
<td></td>
</tr>
<tr>
<td>Finance Auth.</td>
<td>Direct loans to LDCs</td>
<td>Max.</td>
<td>4%</td>
<td>No</td>
<td>No</td>
<td>Based on proj. fund +2</td>
<td>2,085</td>
<td>as of 8/62</td>
<td>N.A.</td>
<td>20% on industrial bldgs., 50% on industrial sites.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Date</td>
<td>Type</td>
<td>% Project Coverage</td>
<td>Interest Rate</td>
<td>Restricted to Depressed Areas</td>
<td>Eqpt. Included</td>
<td>Max. Cost Single Proj.</td>
<td>Max. Outstanding Total</td>
<td>Length, Amortization</td>
<td>No. Loans Made</td>
<td>Insur. Prem.</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>---------</td>
<td>-----------------------</td>
<td>--------------------</td>
<td>---------------</td>
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<td>------------------------</td>
<td>------------------------</td>
<td>----------------------</td>
<td>----------------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>MAINE</td>
<td>1958</td>
<td>Ind. Loan</td>
<td>90%</td>
<td>Negotiated</td>
<td>No</td>
<td>No</td>
<td>8</td>
<td>20</td>
<td>25</td>
<td>38</td>
<td>Not less than .5%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>to LDC</td>
<td></td>
<td>with</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>aggregate</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>lender</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>to $40</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>million</td>
<td></td>
</tr>
<tr>
<td>N. H.</td>
<td>1955</td>
<td>Direct Loan</td>
<td>100%</td>
<td>Not below</td>
<td>No</td>
<td>No</td>
<td>5</td>
<td>No limit</td>
<td>4/63</td>
<td>13</td>
<td>1%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>to LDC</td>
<td></td>
<td>those of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>usual on direct loans,</td>
<td></td>
<td>on guarantee,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>private</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>usually</td>
<td></td>
<td>can charge</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>financial</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>20 yrs.</td>
<td></td>
<td>more</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>institutions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>no limit</td>
<td></td>
</tr>
<tr>
<td>N. Y.</td>
<td>1961</td>
<td>Direct Loan</td>
<td>30% Max.</td>
<td>Auth. can</td>
<td>No</td>
<td>No</td>
<td>Up to 50</td>
<td>30 yrs.</td>
<td>10/63</td>
<td>38</td>
<td>N.A.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>to LDC</td>
<td></td>
<td>charge between</td>
<td></td>
<td></td>
<td></td>
<td>allowed,</td>
<td></td>
<td></td>
<td>1st mtge. max.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1% below</td>
<td></td>
<td></td>
<td></td>
<td>no</td>
<td></td>
<td></td>
<td>of 50% of proj. cost.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>to 1% above</td>
<td></td>
<td></td>
<td></td>
<td>approved beyond</td>
<td></td>
<td></td>
<td>State will not subordinate to a 1st mtge. more than this</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>cost of money</td>
<td></td>
<td></td>
<td></td>
<td>25</td>
<td></td>
<td></td>
<td>more</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>to State</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>more than this</td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td>Passed</td>
<td>Direct loans</td>
<td>50%</td>
<td>Up to 6%</td>
<td>10</td>
<td>10</td>
<td>N.A.</td>
<td>Ruled unconst.</td>
<td>by State</td>
<td>N.A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>in 1963</td>
<td>to companies</td>
<td>90%</td>
<td>to 6%</td>
<td></td>
<td></td>
<td></td>
<td>Supreme Court</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OKLA.</td>
<td>1960</td>
<td>Direct loan</td>
<td>25% Max.</td>
<td>No</td>
<td>N.A.</td>
<td>10</td>
<td>N.A.</td>
<td>LDC supplies</td>
<td>¼ of proj. cost.</td>
<td>N.A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ind.</td>
<td>may take 2d</td>
<td>5% Max.</td>
<td>No</td>
<td></td>
<td>30</td>
<td>N.A.</td>
<td>No relocation within State.</td>
<td>Bond issue subject to State Supreme Ct. approval.</td>
<td>N.A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fin.</td>
<td>mortgage</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Auth.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<td>---------------</td>
</tr>
<tr>
<td>PA. Ind. Dev. Auth.</td>
<td>1956</td>
<td>Direct second mortgage loans to LDC</td>
<td>40%</td>
<td>Min. of 2%</td>
<td>Yes</td>
<td>No</td>
<td>20</td>
<td>max. through 6/64</td>
<td>N.A.</td>
<td>Local group must provide at least 5% Balance from banks. No relocation within Pa.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>R. I. Ind. Bldg. Auth.</td>
<td>1959</td>
<td>Insure mortgage held by local non-profit (other from DCC (b), local dev. group or R.I. Ind. Found’n.)</td>
<td>90%</td>
<td>1% over prime rate</td>
<td>No</td>
<td>Yes</td>
<td>5</td>
<td>40</td>
<td>Through 1962 as high as 3%—current 1%</td>
<td>Minimum project $100,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vt. Ind. Bldg. Amend. Auth.</td>
<td>1961</td>
<td>Guarantee mortgage loans to LDCs</td>
<td>Up to 90%</td>
<td>negotiation with lender</td>
<td>No</td>
<td>Yes</td>
<td>5</td>
<td>20</td>
<td>Current 7/64</td>
<td>$250,000</td>
<td>*Under amendment working capital incl.—intd. to $2 mill.</td>
<td></td>
</tr>
<tr>
<td>W. Va. Ind. Dev. Auth.</td>
<td>1961</td>
<td>Direct loans to LDCs</td>
<td>30%</td>
<td>4% top</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>2</td>
<td>As of 7/64</td>
<td>N.A.</td>
<td>Modeled closely after the Pa. Auth. 10% from local dev. corp. 60% from banks.</td>
<td></td>
</tr>
</tbody>
</table>

NOTE: This table is intended to cover only programs of direct financial participation by states in projects involving financial assistance to industry. It does not intend to cover the use of revenue bonds, general obligation bonds or development credit corporations. Although the information is obviously incomplete, it is the feeling of the compilers that it is the best available information that could be obtained from published sources augmented by several telephone calls to the financing authorities which have had the greatest use. Source: "Professional Notes Amer. Industrial Dev. Council, Inc., Boston, Mass. 1964.

(a) LDC is “local development corporation”
(b) DCC is “Development Credit Corporation”
(c) N.A. is “not available"
Source Material


"Industrial Aid Bonds Major Inducement to Harvey Mill Location". The Daily Bond Buyer, Aug. 12, 1964.


APPENDIX D

(Continued)


