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## Putting the Heart Back in the Heartland: Regional Land Bank Initiatives for Sustainable Rural Economies

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## **Putting the Heart Back in the Heartland: Regional Land Bank Initiatives for Sustainable Rural Economies\***

Almost half of the population of the world lives in rural regions and mostly in a state of poverty. Such inequalities in human development have been one of the primary reasons for unrest and, in some parts of the world, even violence. To ensure that we have a world that is happy, prosperous and peaceful, it is important for us to collectively evolve and implement methods that can empower and enhance the living standard and raise the income level of the world's deprived population in a sustainable manner.<sup>1</sup>

### **I. INTRODUCTION**

Traveling south from Kansas City, Missouri, Interstate 49 gives its users a view of the abundant rural landscape: pastures spotted with livestock, fields entrenched with crops, and, if lucky, a farmer or rancher carrying on his or her daily art of nurturing such commodities. However, after being on the road approximately an hour and half after leaving the Kansas City Metro area, travelers will come upon a small town nestled into the agricultural landscape. To many, this spot acts as a simple chance to refuel their vehicles and bodies before they escape to their destinations of greater desire. To others, this small town is so much more. This is Nevada, Missouri, and this is home.

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1. Nikita Garia, *Q&A: Former President Kalam on Eradicating Poverty*, WALL ST. J.: BLOG (Jan. 9, 2012, 11:56 AM), <http://blogs.wsj.com/indiarealtime/2012/01/09/qa-former-president-kalam-on-eradicating-poverty/> [<https://perma.cc/Q8GJ-SJ9M>].

Nevada, unbeknownst to some and confused with the state of Nevada by many, has long been a proud community for generations of families. The sense of pride within the community is commonly felt by students walking through the halls of Nevada High School, by local businesspeople of longstanding family establishments on “The Square,” and even at the plethora of local events. Nevada is rich with small-town, traditional values where respect is a requirement and nobody is a stranger. It is quite common to pass someone covered in dirt and grime while running an errand at a local business, evidence of the hardworking, rural lifestyle that many valiantly maintain. However, while many parts of the town seem like a twist out of a classic film, what many outsiders fail to see is the struggle: a town with an aging<sup>2</sup> and dwindling population,<sup>3</sup> local businesses closing or grappling to survive, a business environment that is too small to attract large corporations or to adequately support local growth, students halted by financial difficulties or expedited adult responsibilities,<sup>4</sup> individuals facing unemployment, and families lacking social or financial security and mobility.<sup>5</sup>

Many rural communities across the nation, like Nevada, Missouri, are beginning to feel the effects of the “hollowing out”

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2. The average median age in nonmetropolitan counties is now approximately thirty-nine, with nearly forty percent of the Midwest’s nonmetropolitan counties having median ages greater than forty years old. PATRICK J. CARR & MARIA J. KEFALAS, HOLLOWING OUT THE MIDDLE: THE RURAL BRAIN DRAIN AND WHAT IT MEANS FOR AMERICA 11 (2009).

3. Nevada resembles many of the small, rural towns in southwest Missouri. The communities, originally formed for the benefit of surrounding agrarian production, have gradually seen a decline in their population. Nevada is no exception for decreasing population. In 2010, the population of the city was 8,386, down from 9,736 in 1970. See U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, MISSOURI: 2010: POPULATION AND HOUSING UNIT COUNTS 78 (2012), <http://www.census.gov/prod/cen2010/cph-2-27.pdf> [<https://perma.cc/4EVW-N78E>]; BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, 1970 CENSUS OF POPULATION: CHARACTERISTICS OF THE POPULATION: MISSOURI 27-14 (1973), [http://www2.census.gov/prod2/decennial/documents/1970a\\_mo-01.pdf](http://www2.census.gov/prod2/decennial/documents/1970a_mo-01.pdf) [<https://perma.cc/6TL9-98Y3>].

4. Nevada High School has recently confronted premarital, teenage childbearing by implementing an in-school daycare program to help care for student’s children to help prevent teenage mothers from dropping out of school. Ralph Pokorny, *Little Tiger Den Daycare for Student’s Children*, NEVADA DAILY MAIL (Nov. 15, 2013), <http://www.nevadadailymail.com/story/2024264.html> [<https://perma.cc/QZ8R-QBNW>].

5. Vernon County, with Nevada as its county seat, has a median household income of approximately \$7,200 less than and a poverty rate 2.7% greater than the Missouri average. See *QuickFacts: Vernon County, Missouri*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/29217,29,00> [<https://perma.cc/2C7Y-Y6YT>].

or decline of their communities, a loss which could spell the end of small-town America.<sup>6</sup> Most people picture this rural life as the nostalgic, calm, and “good ol’ boy” lifestyle evidenced in classics like *The Music Man*, while, in reality, these communities are “facing a triple threat: a failing farm and factory-based economy, rising unemployment, and shrinking wages and benefits.”<sup>7</sup> Stagnating economies have resulted in the most highly educated individuals in these areas leaving in search of socioeconomic and geographic mobility, with greater than six percent of the nation’s non-metropolitan bachelor’s degree-holders migrating to metropolitan areas each year.<sup>8</sup> When combined, these results have led to a significant increase in many disadvantageous characteristics in the remaining local population, including increased poverty, nonmarital childbearing, divorce, welfare dependency, and serious crime.<sup>9</sup> In effect, thousands of rural communities across the nation are witnessing this spiraling decline and “find themselves twenty, ten, or even five years away from extinction because there are too few taxpayers, consumers, and workers to keep [the towns] going.”<sup>10</sup>

One of the most surprising aspects of this dilemma, however, is the minimal attention that it has been given relative to the comparable struggles of its urban counterparts.<sup>11</sup> As writer Timothy Egan states, “[T]he politicians who inveighed against moral and economic decline in the big cities have yet to weigh in on rural breakdown . . . .”<sup>12</sup> While urban projects have been and continue to be a great and much-needed success, it is almost inconceivable that little to no progress has been contemplated or performed in Rural America for the same purpose outside various short-term and inefficient funding solutions.<sup>13</sup> Whether this lack of progress stems from sparsely populated community problems being often hidden from view, denial, or lack of an ability to grasp the seriousness of the issue may never be explained.<sup>14</sup> Whatever

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6. CARR & KEFALAS, *supra* note 2, at 1-2.

7. *Id.* at 3, 9.

8. *Id.* at 4-5.

9. *Id.* at 7.

10. *Id.* at 2.

11. *See infra* Part III.

12. Timothy Egan, *Pastoral Poverty: The Seeds of Decline*, N.Y. TIMES, Dec. 8, 2002, at C3.

13. *See infra* Part II.

14. CARR & KEFALAS, *supra* note 2, at 8-9.

the reason may be, the time has come where we should no longer “fail to see that the abandoned barns and quiet Main Streets are symptoms of a decaying way of life in just the same way that burned-out buildings and forgotten urban neighborhoods are monuments to the city’s moral and economic decline,”<sup>15</sup> especially with one in five Americans still living in nonmetropolitan areas.<sup>16</sup>

This comment sheds light on an issue that is often overlooked in the present economic, legal, and political environment, and it provides insight into a hybrid land bank legislation model to benefit Rural America, including the states of Arkansas and Missouri. This comment is composed of five parts. Part II describes the historical downward-spiraling problem of capital and economic depletion in rural communities and the current response by federal and state governments. Part III contrasts the decline in rural economies with that of its urban counterpart and explains the governmental response with the creation of land banking authorities in urban communities, as well as the success of these institutions. Part IV analyzes land banking legislation, or lack thereof, and the present land banking entities in the states of Arkansas and Missouri. Finally, Part V proposes an initiative to accommodate and cultivate growth in rural communities by (1) passing land bank enabling legislation and (2) creating regional and local land banking entities with unique operations to better accommodate rural communities and economic realities.

## II. THE DECLINE OF RURAL COMMUNITIES AND THE GOVERNMENTAL RESPONSE TO RURAL DECLINATION

Rural America once stood as the backbone of American society.<sup>17</sup> From the founding of our nation up through the

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15. *Id.* at 24-25.

16. *Id.* at 8.

17. In 1776, more than ninety percent of the American population lived in rural areas where agricultural production was the centerpiece of the overall economy. Jami Curley, *Rural America: Historical Overview 1* (Wash. Univ.: Ctr. for Soc. Dev., Working Paper,

twentieth century, rural agriculture drove overall economic growth, especially in agriculture-related industries.<sup>18</sup> With this growth came technological advancements,<sup>19</sup> which further spurred growth, but eventually led to the beginning of the decline of rural economies as world connectivity brought about globalization with increased trade and global competition.<sup>20</sup> This trend led to a demand for increased productivity, which resulted in lower demand and employment for labor-intensive agricultural industries.<sup>21</sup> The shift from agricultural employment to industrialization resulted in only a short-lived positive effect in rural societies,<sup>22</sup> as this rural economic enlightenment eventually

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2005), <https://csd.wustl.edu/publications/documents/wp05-53.pdf> [<https://perma.cc/6NFZ-EKZW>]. During this time, agriculture was central to the economic viability and success of both Rural America and the nation as a whole. *Id.* at 6.

18. Curley, *supra* note 17, at 6. This success continued through the first couple decades of the Twentieth Century, where rural agriculture was labor intensive and was characterized by a large number of small, diversified farms. CAROLYN DIMITRI ET AL., THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY 2 (2005), [http://www.ers.usda.gov/media/259572/eib3\\_1\\_.pdf](http://www.ers.usda.gov/media/259572/eib3_1_.pdf) [<https://perma.cc/2V6B-L989>]. Eventually this time period came to be known as some of the most productive and prosperous years for American agriculture, which was exemplified by new technology, new innovations, high demand, and increased yields and profits for the rural, agricultural labor force. Curley, *supra* note 17, at 6-7. The success of rural communities was highly attributable and dependent upon the income and employment by farms, farm policy, and farm families, with agrarian operations employing approximately half of the American workforce. Thomas G. Johnson, *The Rural Economy in a New Century*, 24 INT'L REGIONAL SCI. REV. 21, 21 (2001); DIMITRI ET AL., *supra* note 18, at 2.

19. Curley, *supra* note 17, at 6-7.

20. Johnson, *supra* note 18, at 22.

21. An increase in global competition resulted in a demand for increased productivity, which was accomplished by combining greater amounts of capital with each unit of labor and, in many cases, actually substituting capital for the higher-cost labor. *Id.* at 22-23. The decoupling of production and employment caused by technological change led to a loss of comparative advantage for agriculture producing industries that use labor extensively in rural areas. *Id.* at 23-24. As agrarian production became more efficient, farms became more vertically integrated in order to compete in the modern economy. Cornelia Butler Flora & Jan L. Flora, *Developing Entrepreneurial Rural Communities*, 8 SOC. PRAC. 197, 198 (1990). This led to the agricultural sector becoming concentrated within a much smaller number of large, specialized farms. DIMITRI ET AL., *supra* note 18, at 2. In fact, since 1900, the average farm size has increased by sixty-seven percent, while the number of farms has decreased by sixty-three percent. *Id.* Today, just two percent of Americans operate farms. CARR & KEFALAS, *supra* note 2, at 6.

22. Increases in productivity equated to a reduced need for household labor on farms, which led many rural individuals to migrate in search of employment opportunities in nearby rural economies. Johnson, *supra* note 18, at 21-23. This rural industrialization, which occurred around the 1970s, saw the creation of manufacturing jobs to supplement or replace agrarian employment, which was made possible through a relatively cheap United States dollar and low to negative interest rates in the expanding world economy. Flora & Flora,

gave way as the United States's economy shifted from manufacturing to services.<sup>23</sup> The shift drastically affected rural communities because they did not have the population density to compete in the service industry and were dwarfed by large businesses in the manufacturing industry due to many factors, one being high transportation costs.<sup>24</sup>

Decreases in the employment capacity of the agrarian sector and the lack of competitiveness in the manufacturing sector has caused a massive outmigration of rural individuals, especially skilled and highly educated individuals,<sup>25</sup> in search of more stable employment in urban society. This migration contributed to an increase of urbanization.<sup>26</sup> These forces, which began in the 1980s,<sup>27</sup> resulted in almost half of the 2,300 nonmetropolitan counties in America experiencing a decrease in population, with more than 700 nonmetropolitan counties losing at least ten percent of their populations between 1988 and 2008.<sup>28</sup> This epidemic, known as "rural brain drain," has resulted in many college-educated people leaving smaller, rural towns to head for opportunities in urban areas.<sup>29</sup> As this talented, energetic, and high potential group leaves in search of something bigger and better, rural areas are left without the resources, tax base, or professionals that it takes to sustain a community.<sup>30</sup> These events have created rural populations characterized by high poverty, nonmarital childbearing, divorce, welfare dependence, and serious crime.<sup>31</sup> Without the ability to compete in an industrial

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*supra* note 21, at 199. These economic conditions favored both agricultural exports and light manufacturing in Rural America. *Id.*

23. Flora & Flora, *supra* note 21, at 200. In response to tax laws and the political and economic environment, capital migrated away from American industries to areas of the world with a much less expensive labor force and lower health, safety, and environmental regulations. *Id.* American employment shifted to the facilitation of services for this capital movement. *Id.*

24. *Id.*

25. CARR & KEFALAS, *supra* note 2, at 4-5.

26. Curley, *supra* note 17, at 4; Matt Vasilogambros, *Midwest a Victim of 'Rural Brain Drain'*, HUFFINGTON POST (Mar. 2, 2011, 4:10 PM), [http://www.huffingtonpost.com/matt-vasilogambros/rural-brain-drain-iowa\\_b\\_830352.html](http://www.huffingtonpost.com/matt-vasilogambros/rural-brain-drain-iowa_b_830352.html) [<https://perma.cc/UX4J-JY7E>].

27. Johnson, *supra* note 18, at 22.

28. Allie Bidwell, *Beating the Brain Drain: How Education Can Help Rural Economies*, U.S. NEWS (Mar. 14, 2014, 5:56 PM), <http://www.usnews.com/news/articles/2014/03/14/beating-the-brain-drain-how-education-can-help-revive-rural-economies> [<https://perma.cc/PUG7-C2Q5>].

29. Vasilogambros, *supra* note 26.

30. *Id.*; Bidwell, *supra* note 28.

31. CARR & KEFALAS, *supra* note 2, at 7.

capacity and without the ability to attract those young, entrepreneurial individuals who might have the ability to provide the competitive edge to compete in the global economy, rural communities across the country experienced and continue to experience this economic downward-spiral and capital depletion.<sup>32</sup>

Today, rural communities still fall drastically behind Urban America in economic development and financial sustainability.<sup>33</sup> With such a large difference in economic growth and vitality, one would believe that the federal and state governments would be responding with considerable measures to enhance rural life and well-being.<sup>34</sup> But while the government is responding, it is doing so in a centralized manner, which has historically been unable to efficiently and expeditiously rejuvenate rural economies.<sup>35</sup> The federal government has chosen to promote rural economic development primarily in the form of top-down funding programs, which “are too broad with respect to eligible investments”; enable rural investments to be siphoned-off to urban and suburban areas; and are wholly inefficient.<sup>36</sup> Likewise,

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32. See Bidwell, *supra* note 28.

33. In 2014, nearly six years into the recovery effort following the Great Recession, overall economic performance remained weak, especially in rural areas. U.S. DEP’T OF AGRIC., RURAL AMERICA AT A GLANCE 1 (2014), <http://www.ers.usda.gov/media/1697681/eb26.pdf> [https://perma.cc/4D5Z-7P6M]. Urban employment growth has dwarfed that of its rural counterpart, rising 5% and 1.1% from 2010 to 2014, respectively. *Id.* at 2. This fact is further exacerbated by the unemployment rate decreasing in rural communities, not because of growth, but because the relatively large decrease in labor force participation rate, from 62.2% to 60.6%. *Id.* Another daunting statistic shows that, while urban income is still below the pre-recession averages, the urban median household income stands over \$10,000 greater than the rural median household income, with those numbers averaging \$52,988 and \$41,198, respectively. *Id.* at 3. Finally, the discrepancy in poverty rates, which have declined in urban areas but remain unchanged in rural communities, will likely worsen in the future as lower birth rates, increased outmigration, and a greater amount of less educated individuals will likely lead to stagnated recovery and a greater divergence in overall earnings capacities. *Id.* at 3-6. In fact, the number of working-age adults with at least a four-year degree in urban areas (32%) greatly exceeds the number of individuals with the same qualifications in rural areas (18%) and the number of individuals in urban areas with advanced degrees (12%) doubled the number of individuals with advanced degrees in rural communities (6%). U.S. DEP’T OF AGRIC., *supra* note 33, at 5. “These class-structured migration patterns reinforce a level of uneven development not seen since the Civil War.” CARR & KEFALAS, *supra* note 2, at 8.

34. See Bidwell, *supra* note 28.

35. See *id.*

36. David L. Barkley, *Policy Options for Equity Financing for Rural Entrepreneurs*, in MAIN ST. OF TOMORROW: GROWING & FINANCING RURAL ENTREPRENEURS 107, 122 (2003); Brian M. Reidl, *Top 10 Examples of Government Waste*, HERITAGE (Apr. 4, 2005),



state-created programs are not tailored to communities' needs; allow officials to "engineer" the system by "picking" winners; and provide too much "easy money" from inefficient top-down spending solutions.<sup>37</sup>

All in all, the evidence that many of these solutions are ineffective is the fact that nothing, or very little, is changing for the better in Rural America.<sup>38</sup> Besides being grossly inefficient, many state and federal programs and policies are tailored to attract certain classes of individuals and professionals,<sup>39</sup> while ignoring the untapped resources and potential of the people currently living in these rural communities.<sup>40</sup> In order to benefit rural communities it is advantageous to analyze the relatively comparable problem of urban blight in many large cities and the legislative response of land bank legislation that empowered and committed local communities to "bottom-up" development.<sup>41</sup>

### III. THE RESPONSE OF URBAN AMERICA: THE CREATION OF LAND BANK LEGISLATION

#### A. Background and Creation of Land Bank Authorities

Many urban areas have faced, and are currently facing, economic obstacles to growth, viability, and sustainability, which

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<http://www.heritage.org/research/reports/2005/04/top-10-examples-of-government-waste> [<https://perma.cc/JQ3L-52HW>]; see *supra* Part II. These funds offer incentives to rural areas in the form of grants, loans, and general guidance, with most of these programs being developed by the White House Rural Council, U.S. Department of Agriculture, and U.S. Department of Housing and Urban Development. Tracy King Sharp & Victoria Tucker, *Tax Incentives and Other Benefit Programs Designed to Support Rural America*, J. MULTISTATE TAX'N & INCENTIVES 21, 21-23 (2012). This funding is led by the White House Rural Council, which was established in 2011 to address the challenges faced by rural communities and to promote growth in rural areas, who, in 2014, announced a \$10 billion investment fund to promote rural economic development by increasing capital for rural infrastructure projects and speeding up the process of rural infrastructure improvements. *Id.* at 22; *FACT SHEET: Increasing Investment in Rural America*, THE WHITE HOUSE (July 24, 2014), <https://www.whitehouse.gov/the-press-office/2014/07/24/fact-sheet-increasing-investment-rural-america> [<https://perma.cc/5HC7-WFCH>].

37. Sharp & Tucker, *supra* note 36, at 25-16, 28-29; Barkley, *supra* note 36, at 113, 122; Tim Mazzarol, *6 Ways Governments Can Encourage Entrepreneurship*, WORLD ECON. FORUM (Dec. 29, 2014), <https://agenda.weforum.org/2014/12/6-ways-governments-can-encourage-entrepreneurship/> [<https://perma.cc/S54S-MBPU>].

38. CARR & KEFALAS, *supra* note 2, at 139-42.

39. See, e.g., Hannah Alsgaard, *Rural Incentive Programs for Legal and Medical Professionals: A Comparative Analysis*, 59 S.D. L. REV. 585, 588-600 (2014).

40. CARR & KEFALAS, *supra* note 2, at 21.

41. Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 311, 316, 320-21 (2003).

has developed into an effort to understand and overcome “urban blight.”<sup>42</sup> Just as the twentieth century brought the eventual decline of rural communities,<sup>43</sup> this point in time was also the beginning of an economic downward spiral that resulted in urban decay in cities caused, in part, by increased industrialization;<sup>44</sup> the Great Depression;<sup>45</sup> the “White Flight” movement;<sup>46</sup> and, more recently, failing inner-city school systems, rising crime rates, and the Great Recession and accompanying foreclosure crisis.<sup>47</sup> With this accumulating urban decay, state and local governments were

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42. Urban blight, also known as “urban decay,” which is commonly defined today as “the decay and deterioration of an urban area due to neglect or age,” has a history of rarely being defined with any precision in state statutes. *Urban Blight*, COLLINS DICTIONARY, <http://www.collinsdictionary.com/dictionary/english/urban-blight> [<https://perma.cc/5L3W-3RYR>]; Gordon, *supra* note 41, at 308. Instead “defining blight became an art form,” with one Philadelphia planner proposing in 1918 that a blighted area “is a district which is not what it should be.” Letter from Phillip Isenberg, Assemb., Ninth District, Cal. Leg., to Hon. Tom Campbell, Chair, Cal. S. Hous. & Land Use Comm., and Hon. Charles Calderon, Chair, Cal. S. Select Comm. on Redevelopment (Dec. 13, 1995), *reprinted in* Redevelopment and Blight: J. Interim Hearing Before the S. Comm. on Hous. & Land Use & S. Select Comm. on Redevelopment, 1995-1996 Leg., Reg. Sess. 831-S (Cal. 1995) (available on appendix of Written Materials Submitted to the Committees); ROBERT M. FOGELSON, DOWNTOWN: ITS RISE AND FALL, 1880-1950, at 348 (2001).

43. See *supra* Part II.

44. Gordon, *supra* note 41, at 308; see Jonathan M. Purver, Annotation, *What Constitutes “Blighted Area” Within Urban Renewal and Redevelopment Statutes*, 45 A.L.R.3d 1096 (1972).

45. Gordon, *supra* note 41, at 309. It was at this time that the meaning of “slums” began to merge with the meaning of “urban blight” because “urban blight” was seen “as a set of conditions often analogized as a disease or cancer, which resulted in slums.” *Id.* at 310; see also FOGELSON, *supra* note 42, at 348-49; MABEL L. WALKER, URBAN BLIGHT AND SLUMS: ECONOMIC AND LEGAL FACTORS IN THEIR ORIGIN, RECLAMATION, AND PREVENTION 4-5 (1938) (discussing several definitions of blighted areas). These areas were seen as an “economic liability” because their high demands on the public purse outstripped the same areas’ tax revenues. Gordon, *supra* note 41, at 310.

46. *Brown v. Bd. of Educ.*, in which the Supreme Court ruled “separate educational facilities are inherently unequal,” promulgated school desegregation across the nation. 347 U.S. 483, 495 (1954). This desegregation effort prompted the “white flight” movement in many cities, like Kansas City, Missouri. David Crow, *Google in Kansas City: A Tale of Two-Speed America*, FT MAG. (Sept. 4, 2015), <https://www.ft.com/content/7e18b044-51c3-11e5-8642-453585f2cfd> [<https://perma.cc/4PX6-M4YE>]. White flight, defined as “the departure of whites from places (as urban neighborhoods or schools) increasingly or predominantly populated by minorities,” left behind low-income manufacturing workers, a decline in heavy industry, and a resulting increase in crime and drug problems. *White Flight*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/white%20flight> [<https://perma.cc/C7SJ-GRJE>].

47. See Jason Hancock & Mike Hendricks, ‘Land Bank’ Proposed to Help KC’s Urban Blight, THE KANSAS CITY STAR (Feb. 15, 2012, 12:00 AM), <http://www.kansascity.com/news/local/article301005/Land-bank-proposed-to-help-KCs-urban-blight.html> [<https://perma.cc/U4AD-XM7A>].

forced to respond.<sup>48</sup> Despite the differences in historical causal connections, the response to urban blight has been fairly consistent over time through the public financing of private economic development and property transactions.<sup>49</sup> These solutions have been provided through various community development initiatives, with one such initiative being land bank institutions.<sup>50</sup>

The concept of “land banks”—defined as “governmental or nonprofit entities that acquire, hold, and manage foreclosed or abandoned properties”<sup>51</sup>—engaging in “land banking,” or “the process or policy by which local governments acquire surplus properties and convert them to productive use or hold them for long-term strategic public purposes,”<sup>52</sup> first emerged during the 1960s as a proposal for new urban planning tools.<sup>53</sup> This new idea was introduced to confront two key issues: (1) “the unconstrained and unrestrained shift of new development to ever-expanding rings of first tier and second tier suburbs”; and (2) “the decline and abandonment of inner-city neighborhoods.”<sup>54</sup> Land bank initiatives were proposed for the purpose of acting as “a form of a ‘land reserve’ through which a public entity would engage in early acquisition of land to be held in reserve for future public uses.”<sup>55</sup> By acquiring and managing property that was no longer accessible to or desired by the public, land banks could preserve public spaces for future public needs and priorities, all while converting perceived liabilities into realizable assets.<sup>56</sup>

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48. Gordon, *supra* note 41, at 308-14.

49. *Id.* at 305; see Julie A. Goshorn, *In a TIF: Why Missouri Needs Tax Increment Financing Reform*, 77 WASH. U. L.Q. 919, 922-26 (1999).

50. See generally Diana A. Silva, Note, *Land Banking as a Tool for the Economic Redevelopment of Older Industrial Cities*, 3 DREXEL L. REV. 607 (2011) (proposing that land banks are effective and efficient solutions the “endemic stagnation of the real estate market” in industrial cities).

51. Stuart Pratt, *A Proposal for Land Bank Legislation in North Carolina*, 89 N.C. L. REV. 568, 571 (2011); OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP’T OF HOUS. & URBAN DEV., REVITALIZING FORECLOSED PROPERTIES WITH LAND BANKS 1 (2009) [hereinafter REVITALIZING WITH LAND BANKS].

52. FRANK S. ALEXANDER, LAND BANKS AND LAND BANKING 23 (2d ed., 2015) [hereinafter ALEXANDER, LAND BANKS], <http://www.communityprogress.net/filebin/LandBanksLandBankingVer2DigitalFinal.pdf> [https://perma.cc/WU7A-FR6V].

53. *Id.* at 18.

54. *Id.*

55. *Id.*

56. *Id.*

Since its first enactment, land banking has gone through three “generations” of development.<sup>57</sup> The “first generation” consisted of programs in St. Louis, Cleveland, Louisville, and Atlanta and “had a common focus on addressing abandoned, tax-delinquent properties, and each served primarily to foster the conversion of tax-delinquent properties to productive use.”<sup>58</sup> The “second generation” of programs, encompassing Genesee County, Michigan, and Ohio, mirrored the successful operations and practices of the first generation and is “viewed as those land banks that have emerged on the platform of new legislative initiatives, and new sociodemographic conditions, in the period since the beginning of the twenty-first century.”<sup>59</sup> Finally, the “third generation,” including New York, Georgia, Missouri, Pennsylvania, Tennessee, Nebraska, Alabama, and West Virginia, which are characterized by “legislation . . . built upon the knowledge and experiences of the first two generations, [have sought] to present the possibilities of land bank creation in the clearest and most direct form possible” in the last half decade.<sup>60</sup>

Creation of the land bank institutions begins with cooperative action at both the state and local levels.<sup>61</sup> Authorization of land banking usually begins at the state level through an enabling statute.<sup>62</sup> Local governments and communities must then act to establish the land banks.<sup>63</sup> The land banks may be set up as an independent entity, governed by an independent board of directors in accordance with its unique articles of incorporation, or as a program within a local government, which usually results in shared staffing and funding with the county and municipal governments.<sup>64</sup> Although most

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57. ALEXANDER, LAND BANKS, *supra* note 52, at 18.

58. *Id.* at 19.

59. *Id.* at 20; Sorell E. Negro, *You Can Take It to the Bank: The Role of Land Banking in Dealing with Distressed Properties*, 35 ZONING & PLAN. L. REP. 3-5 (2012) (giving a brief, practical overview of the Genesee County and Ohio land banks).

60. ALEXANDER, LAND BANKS, *supra* note 52, at 21.

61. Pratt, *supra* note 51, at 571.

62. *Id.* at 571-72; Frank S. Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L., 140, 142 (2005) [hereinafter Alexander, *Land Bank Strategies*].

63. Alexander, *Land Bank Strategies*, *supra* note 62, at 142; Pratt, *supra* note 51, at 571-72.

64. FRANK S. ALEXANDER, LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS 25 (2005) [hereinafter ALEXANDER, LAND BANK AUTHORITIES]; REVITALIZING WITH LAND BANKS, *supra* note 51, at 1-2; Thomas J. Fitzpatrick, IV, *Understanding Ohio's Land Bank Legislation*, in POL'Y DISCUSSION

land banks can be broadly characterized by these two organizational structures, and even the default powers and goals of land banking entities, no two land banks are the same.<sup>65</sup>

The default operations of land banking institutions can be broken down into a three-step process.<sup>66</sup> First, land banks act to acquire abandoned and/or vacant “properties through tax foreclosure, intergovernmental transfers, nonprofit transfers, and open-market purchases.”<sup>67</sup> Next, these institutions temporarily manage the property by “banking” the properties for future use, development, or resale.<sup>68</sup> Finally, the land banks will convey the properties to third parties, and by setting the price and terms to assist in property redevelopment, can help return the properties to productive use.<sup>69</sup> Through this process, with the goal of striving to maximize the return of properties to productive use,<sup>70</sup> these institutions can work towards the accomplishment of many community objectives, such as “(a) providing affordable housing; (b) putting property back on the tax rolls; (c) stabilizing declining neighborhoods by repairing, removing, or redeveloping abandoned property; (d) developing green spaces; (e) collecting and joining abandoned lots into one consolidated, developable site; and (f) facilitating the revitalization of” property where future use may be affected by real or perceived environmental contamination.<sup>71</sup>

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PAPERS, FED. RES. BANK OF CLEVELAND 3 (2009), <https://www.clevelandfed.org> [<https://perma.cc/FQD8-XFEB>]; Pratt, *supra* note 51, at 572.

65. ALEXANDER, LAND BANKS, *supra* note 52, at 18.

66. Pratt, *supra* note 51, at 572; Alexander, Land Bank Strategies, *supra* note 62, at 150.

67. Pratt, *supra* note 51, at 572; REVITALIZING WITH LAND BANKS, *supra* note 51, at 2.

68. Pratt, *supra* note 51, at 572; Julie A. Tappendorf & Brent O. Denzin, *Turning Vacant Properties Into Community Assets Through Land Banking*, 43 URB. LAW. 801, 801 (2011); *see also* Alexander, Land Bank Strategies, *supra* note 62, at 150.

69. Pratt, *supra* note 51, at 572-74; *see also* Alexander, Land Bank Strategies, *supra* note 62, at 150; REVITALIZING WITH LAND BANKS, *supra* note 51, at 2.

70. Pratt, *supra* note 51, at 574; *see also* ALEXANDER, LAND BANK AUTHORITIES, *supra* note 64, at 6.

71. Tappendorf & Denzin, *supra* note 68; *Brownfield Overview and Definition*, EPA, <https://www.epa.gov/brownfields/brownfield-overview-and-definition> [<https://perma.cc/4987-XBRN>]. Land banks may also provide formalized stewardship for increased socioeconomic diversity among community members through specified planning initiatives. *See generally* James J. Kelly, Jr., *Sustaining Neighborhoods of Choice: From Land Bank(ing) to Land Trust(ing)*, 54 WASHBURN L.J. 613 (2015) (exploring how utilization of land banks can promote a variety of social goods, including socioeconomic integration).

## B. The Success of Urban Land Banking

Since the inception of the St. Louis Reutilization Authority—established in 1971 as the first major contemporary land bank<sup>72</sup>—land banking institutions have seen paramount success.<sup>73</sup> The success of these early land banking legislations, along with the recent economic environment and housing crisis of the Great Recession,<sup>74</sup> has seen an increasing number of states adopt land bank enabling statutes and local communities and private organizations organize and develop land banking initiatives. In fact, by 2014, fourteen states had passed land banking legislation, with over half of those states making such changes in the last five years.<sup>75</sup> The increasing popularity of these land banking authorities has been recognized through the vast amount of public and private benefit given to local communities, which includes avoiding significant cost burdens of property maintenance, increasing tax revenue through new property ownership, increasing affordable housing, increasing funding for local school districts, decreasing criminal activity, increasing public safety, decreasing the cost burden on local police and fire departments, and boosting overall local economic activity.<sup>76</sup>

While each land bank does, in fact, differ in both structure and results, it is highly beneficial to highlight some of the unrivaled success stories of some of the urban and urban cluster community initiatives. For example, the Genesee County Land Bank Authority, which was established to confront the exacerbating vacant property problem in Flint, Michigan, has transferred more than 4,600 abandoned, tax-foreclosed properties to new ownership and has initiated large-scale redevelopment and repurposing projects as part of its maintenance of up to 2,000 lots each year since its inception in 2002.<sup>77</sup> From a monetary success

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72. Pratt, *supra* note 51, at 574; *see also* ALEXANDER, LAND BANK AUTHORITIES, *supra* note 64, at 6; Act of June 15, 1971, § 1, 1971 MO. LAWS 158, 159 (codified as amended at MO. ANN. STAT. § 92.700 (West 1998)) (authorizing the creation of the St. Louis Land Bank).

73. Pratt, *supra* note 51, at 570.

74. ALEXANDER, LAND BANKS, *supra* note 52, at 14.

75. PAYTON HEINS & TARIK ABDELAZIM, TAKE IT TO THE BANK: HOW LAND BANKS ARE STRENGTHENING AMERICA'S NEIGHBORHOODS 14-15 (2014), [http://www.thelandbank.org/downloads/ccp\\_take\\_it\\_to\\_the\\_bank.pdf](http://www.thelandbank.org/downloads/ccp_take_it_to_the_bank.pdf) [<https://perma.cc/AS34-QXQS>]; ALEXANDER, LAND BANKS, *supra* note 52, at 20.

76. Tappendorf & Denzin, *supra* note 68, at 801-02.

77. HEINS & ABDELAZIM, *supra* note 75, at 24, 31.

perspective, the Cuyahoga County Land Reutilization Corporation, established in Ohio in 2009, brought in nearly \$2.7 million in sales revenue and total revenues of approximately \$27 million in 2013 alone, just four years after its inception.<sup>78</sup> Finally, the Greater Syracuse Land Bank, established in 2012 to help solve the problem of the massive backlog of over 4,000 tax-delinquent properties, had already acquired 407 tax-delinquent properties, sold 54 lots, and boosted tax collections by more than \$5 million in less than two years.<sup>79</sup>

These results have proven that land banks “have served as one of the critical tools available to local leaders in combating vacancy and abandonment by helping to put property back into local control and ensure better outcomes for communities.”<sup>80</sup> This has resulted in, not only addressing individual properties, but also by “help[ing] to improve dysfunctional, antiquated systems that slow down or prevent opportunities for revitalization.”<sup>81</sup> Despite the successes of these institutions, land banking focus remains centered on urban centers and surrounding areas.<sup>82</sup> However, this focus has resulted in land banks, and their associated benefits, not effectively reaching rural communities, specifically in states with abundant rural regions.<sup>83</sup>

#### IV. OVERVIEW OF CURRENT LAND BANKING PROGRESS IN ARKANSAS AND MISSOURI

Arkansas and Missouri, both at the heart of America and both facing the deteriorating effects of capital depletion and worsening economies in their rural regions,<sup>84</sup> serve as evidence of the current conundrum of restrictively unequal redevelopment. Both states, along with a host of others, have successfully introduced land-banking institutions in some of their largest urban communities, while failing to extend such benefits to their faltering rural counterparts.<sup>85</sup>

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78. *Id.* at 32, 35.

79. *Id.* at 40, 45.

80. *Id.* at 66.

81. *Id.*

82. See Tappendorf & Denzin, *supra* note 68, at 803-07.

83. See HEINS & ABDELAZIM, *supra* note 75, at 18-19.

84. See *supra* Part V.

85. *National Map of Land Banks & Land Banking Programs*, CTR. FOR COMMUNITY PROGRESS, <http://www.communityprogress.net/land-bank-map-pages-447.php> [https://perma.cc/6R7C-6SQC].

### A. Arkansas

While land bank institutions are not a foreign concept to the state of Arkansas, the state has a limited exposure to the benefits that come with such establishments. Arkansas is unique in that it is one of only a handful of states that has a land-banking model without having a land bank enabling statute.<sup>86</sup> The odd thing about this characteristic is the timeline of the land bank's development.

Although Arkansas has no land bank enabling statute to date, an effort was initiated nearly a decade ago to create such a statute.<sup>87</sup> The first, and only, attempt to introduce such legislation occurred in 2007.<sup>88</sup> The Arkansas Land Bank Act, sponsored by Senator Irma Hunter Brown and Representative David Johnson, was introduced to the Senate in late February 2007.<sup>89</sup> The bill resembled many basic land bank enabling statutes of its time and granted broad powers to the land bank to foster development and revitalization within the cities of the state of Arkansas.<sup>90</sup> These powers were authorized over property as necessary to eliminate unhealthy or unsafe conditions, avoid uses detrimental to public welfare, prevent or remove blight, increase home ownership and affordability, and enhance the overall presence of commerce and industry in the cities.<sup>91</sup> While this legislation did not extend to all rural communities, it did encompass cities of the “first class,”<sup>92</sup> which are defined as cities with a population greater than 2,500.<sup>93</sup> However, like most states, the greatest focus of the bill was targeted towards its largest city, Little Rock, where over 7,600 properties sat destined for tax delinquency and Arkansas's foreclosure process, which is one of the nation's longest—with the possibility of lasting up to seven years per property.<sup>94</sup>

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86. *Id.*

87. S.B. 376: *The Arkansas Land Bank Act*, ARK. ST. LEGIS., <http://www.arkleg.state.ar.us/assembly/2007/R/Pages/BillInformation.aspx?measureno=SB376> [<https://perma.cc/2CWM-9DNN>].

88. *Id.*

89. *Id.*

90. S.B. 376, 86th Gen. Assemb., Reg. Sess. (Ark. 2007); *see also* Pratt, *supra* note 51, at 570-79.

91. S.B. 376, *supra* note 90.

92. *Id.*

93. ARK. CODE ANN. § 14-37-104 (2013).

94. Jennifer Barnett Reed & Max Brantley, *New Tools to Fight Blight: Legislation Would Allow City to Form a “Land Bank” to Redevelop Abandoned Property*, ARK. TIMES (Mar. 15, 2007), <http://www.arktimes.com/arkansas/new-tools-to-fight>



Unfortunately, after passing the Senate, and just over two months after its initial introduction, the bill failed to pass the House, met its sudden death, and it has not been reintroduced in the last near-decade.<sup>95</sup>

The reason for this sudden demise and lack of revival could be the almost simultaneous introduction of the land bank institution in Little Rock, echoing volumes of the bill's original focus.<sup>96</sup> The Little Rock Land Bank Commission, developed in 2008 and initiated in 2009, was created pursuant to a local ordinance for the benefit of the local population.<sup>97</sup> The purposes of this Commission are to reverse blight, increase home ownership, stabilize property values, increase housing affordability, improve the health and safety of city neighborhoods, and the very unique purpose of “maintain[ing] the architectural fabric of the community.”<sup>98</sup> The Commission even went as far as implementing a priority-based selection by allocating its limited resources to areas with the greatest “signs of decline,” which could include high concentrations of vacant structures, high criminal activity, high poverty rates, low homeowner occupation, and a low capacity for self-revitalization.<sup>99</sup> The Commission has made great strides benefiting various neighborhoods and individuals in Little Rock in a relatively short period of time.<sup>100</sup> Despite its successes, this policy limits its authority to areas “within the corporate limits of the city,”<sup>101</sup> while rural communities with these same “signs of

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blight/Content?oid=866311 [https://perma.cc/SU6T-3MLM]. See generally W. Dennis Keating, *Urban Land Banks and the Housing Foreclosure and Abandonment Crisis*, 33 ST. LOUIS U. PUB. L. REV. 93 (2013) (discussing the applicability and benefit of land banking to confront housing foreclosure and abandonment crises).

95. *S.B. 376: The Arkansas Land Bank Act*, *supra* note 87.

96. See *id.*

97. See *Bylaws for the Little Rock Land Bank Commission*, CITY OF LITTLE ROCK, [http://littlerock.org/%21userfiles/editor/docs/housing/colr\\_LBC\\_bylaws\\_approved\\_july162008.pdf](http://littlerock.org/%21userfiles/editor/docs/housing/colr_LBC_bylaws_approved_july162008.pdf) [https://perma.cc/HP65-SL8P]; *Land Bank Commission Meeting Minutes*, CITY OF LITTLE ROCK, [http://littlerock.org/citydepartments/housing\\_programs/landbankcommission/meetingminutes.aspx](http://littlerock.org/citydepartments/housing_programs/landbankcommission/meetingminutes.aspx) [https://perma.cc/3UKL-DAZ5].

98. LITTLE ROCK, ARK., MUN. CODE § 2-330.32 (1988).

99. *Bylaws for the Little Rock Land Bank Commission*, *supra* note 97.

100. See *Little Rock Land Bank Progress*, CITY OF LITTLE ROCK, [http://littlerock.org/citydepartments/housing\\_programs/landbankcommission/land\\_bank\\_progress.aspx](http://littlerock.org/citydepartments/housing_programs/landbankcommission/land_bank_progress.aspx) [https://perma.cc/BBN7-JZPA].

101. LITTLE ROCK, ARK., MUN. CODE § 2-330.34 (1988).

decline” continue to falter in a state where half its counties and forty-two percent of its residents live in rural communities.<sup>102</sup>

## B. Missouri

Missouri, a state with longstanding land banking experience, has also maintained land bank models solely for the benefit of urban communities.<sup>103</sup> The presence of contemporary, government-run land banking institutions was first established in the city of St. Louis, Missouri.<sup>104</sup> Like many of its urban counterparts, St. Louis witnessed a sharp population decline, approximately twenty-seven percent, between the years 1950 and 1970.<sup>105</sup> There were various factors present to bring about the need for the land banking model, including loss of industrial jobs, which led to the residents and businesses fleeing to the suburbs and leaving behind widespread abandonment and tax-delinquent properties.<sup>106</sup> In response, the city government enacted a local land bank enabling ordinance in 1971.<sup>107</sup> This ordinance created the Land Reutilization Authority (LRA), which has the power to acquire donated property, assemble such property, and maintain the property for future usage,<sup>108</sup> with most of its possession coming from property that was not able to be sold at tax foreclosure sales.<sup>109</sup> Today, the LRA continues to improve the city as it maintained 1,592 properties and sold 371 properties for roughly \$10.3 million in 2015.<sup>110</sup>

In terms of statewide legislation, Missouri was one of the states that originally enacted land bank legislation that only

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102. UNIV. OF ARK. DIV. OF AGRIC.: RESEARCH & EXTENSION, RURAL PROFILE OF ARKANSAS 7, 9 (2015).

103. See MO. ANN. STAT. § 92.875 (West 2016); ALEXANDER, LAND BANK AUTHORITIES, *supra* note 64, at 72.

104. Tim Logan, *City's Land Plan Has Successes, Shortcomings*, ST. LOUIS POST-DISPATCH (Feb. 25, 2012), [http://www.stltoday.com/business/local/city-s-land-plan-has-successes-shortcomings/article\\_cb0f6e66-5f09-11e1-94ca-001a4bcf6878.html](http://www.stltoday.com/business/local/city-s-land-plan-has-successes-shortcomings/article_cb0f6e66-5f09-11e1-94ca-001a4bcf6878.html) [<https://perma.cc/A3EL-QFHV>].

105. ALEXANDER, LAND BANK AUTHORITIES, *supra* note 64, at 6.

106. REVITALIZING WITH LAND BANKS, *supra* note 51, at 2.

107. ALEXANDER, LAND BANK AUTHORITIES, *supra* note 64, at 6.

108. REVITALIZING WITH LAND BANKS, *supra* note 51, at 2.

109. Logan, *supra* note 104.

110. ST. LOUIS DEV. CORP., 2015 REPORT TO THE REGION 4 (2015), <https://www.stlouis-mo.gov/government/departments/slhc/documents/upload/SLDC-2015-Annual-Report.pdf> (<https://perma.cc/782U-8JS4>).

enabled select jurisdictions to create land banks.<sup>111</sup> In Missouri, the metropolitan area of St. Louis was the only jurisdiction that was originally permitted to create this advantageous operation.<sup>112</sup> Missouri eventually adopted new land bank legislation on May 17, 2012.<sup>113</sup> However, this new legislation only allows “[a]ny municipality located wholly or partially within a county in which a land trust created under [MO. ANN. STAT. § 141.700] was operating on January 1, 2012, [to] establish a land bank agency,”<sup>114</sup> which, in effect, acted as legislation *only* for Kansas City.<sup>115</sup>

The Land Bank of Kansas City was initiated to rehabilitate and revitalize approximately 14,000 vacant properties having negative effects on a large number of city neighborhoods.<sup>116</sup> With its creation, the land bank effectively replaced the Land Trust of Jackson County, which had no budget to revive or maintain the properties, required that the properties be sold at two-thirds their market values, and allowed for speculators—who had no intention of improving the land—to purchase the land because the government had no ability to implement strategic rehabilitation through purchase power.<sup>117</sup> The legislation followed the modern concept of allowing the land bank institution to manage, sell, and transfer tax-delinquent, vacant, and abandoned properties with the goal of returning these properties to productive use.<sup>118</sup>

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111. See ALEXANDER, LAND BANK AUTHORITIES, *supra* note 64, at 72.

112. See MO. REV. STAT. § 92.700 (1998).

113. LOCAL INITIATIVES SUPPORT CORP. OF GREATER KANSAS CITY, ADVOCACY IN ACTION: THE STORY OF THE KANSAS CITY LAND BANK: A CASE STUDY 5 (2013) [hereinafter LISC CASE STUDY], [http://programs.lisc.org/Kansas\\_City/Images/Land\\_Bank\\_Case\\_Study.pdf](http://programs.lisc.org/Kansas_City/Images/Land_Bank_Case_Study.pdf) [https://perma.cc/N5WX-YPKT].

114. MO. ANN. STAT. § 141.980(1) (West 2016).

115. See LISC CASE STUDY, *supra* note 113, at 6.

116. Paul Wenske, *Brick by Brick: Banking Land for Urban Revitalization*, TEN 6, 7 (2013).

117. Jason Hancock, *Land Bank in KC is a Step Closer to Reality: Legislation Advances to Both Houses of the General Assembly*, THE KANSAS CITY STAR (Mar. 19, 2012), <http://www.kansascity.com/news/local/article301747/Land-bank-in-KC-is-a-step-closer-to-reality.html> [https://perma.cc/L6AU-HC7N]. In effect, the outdated land trust model was much like the passive land bank models, such as Ohio’s first land bank designed in 1976, which limited redevelopment capabilities as it could only hold properties for future use. Thomas J. Fitzpatrick, IV, *Ohio’s Land Bank Legislation: Modernizing an Aged Model*, 19 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 127, 131-35 (2010).

118. MO. ANN. STAT. § 141.980(1) (West 2016); LISC CASE STUDY, *supra* note 113, at 6.

Like many of the modern land bank models, the Land Bank of Kansas City has made substantial progress in community redevelopment and neighborhood revitalization.<sup>119</sup> The relatively new model embraces unique “programs,” beyond disposition of vacant and foreclosed properties, which include “Adopt-a-Lot” and “Lease-a-Lot” programs, which allow residents or organizations in a community to adopt or lease a vacant lot for the betterment of the community at no cost,<sup>120</sup> and a “Side Lot” program, which allows landowners to purchase adjacent abandoned, vacant, or tax-delinquent properties at a special, reduced price.<sup>121</sup> The land bank has continued to take positive strides in various locations across Kansas City, as numerous areas have created organizations that work to locally redevelop specific neighborhoods, while maintaining the unique, vibrant culture of its residents.<sup>122</sup> The Land Bank of Kansas City continues to redevelop and revitalize the city as it sold roughly 512 properties, reported revenue of approximately \$132,649 and Deeds of Trust of approximately \$2,228,704, and donated \$86,637 worth of property to public use in 2015 alone.<sup>123</sup>

Even with all these improvements and successes, there exists one blatant shortcoming to the Missouri legislation and work of the LRA and Land Bank of Kansas City: the benefits of the land banking models do not reach outside of the urban centers for which they were created.<sup>124</sup> Even the newly proposed statutory revision, which seemingly does very little to broaden land bank implementation, would only encompass “home rule cit[ies] with more than seventy-one thousand but fewer than seventy-nine thousand inhabitants . . . .”<sup>125</sup> As two writers correctly overstated, “Cities big and small—from Olathe to St. Louis—

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119. See HEINS & ABDELAZIM, *supra* note 75, at 14-16.

120. KANSAS CITY, MO., MUN. CODE ch. 74, art. IV, § 71(a) (2012); *Adopt/Lease Program*, LAND BANK OF KANSAS CITY, MO., <http://www.kcmolandbank.org/adopt-lease-program.html> [https://perma.cc/XJ6G-6A5K].

121. KANSAS CITY, MO., MUN. CODE ch. 74, art. IV, § 71(a); *Side Lot Program*, LAND BANK OF KANSAS CITY, MO., <http://www.kcmolandbank.org/side-lot-program.html> [https://perma.cc/2VUC-NP7A].

122. See, e.g., *About Us*, WESTSIDE HOUSING ORG., <http://www.westsidehousing.org/about/> [https://perma.cc/5FNT-2EFC].

123. *Minutes of the Meeting*, LAND BANK OF KANSAS CITY, MO. (Nov. 9, 2015), <http://www.kcmolandbank.org/meeting-minutes.html> [https://perma.cc/7759-AAVQ].

124. See *Frequently Asked Questions*, LAND BANK OF KANSAS CITY, MO., <http://www.kcmolandbank.org/faqs.html> [https://perma.cc/DJF5-VV6P].

125. S.B. 104, 98th Gen. Assemb., Reg. Sess. (Mo. 2015).

have created such ‘banks’ . . . .”<sup>126</sup> However, Olathe—which is actually in Kansas City, Kansas—has a population of approximately 130,000.<sup>127</sup> It goes without saying that the true “small” cities, the rural communities sprinkled throughout the rest of the state that continue to suffer from the same factors as their giant urban equivalents, have not and cannot benefit under the current land banking legislative regime.

## V. LAND BANK LEGISLATION TO ACCOMMODATE RURAL COMMUNITIES

It is no secret that many rural communities, especially those across the Midwest, are facing stagnant economies with limited opportunities for growth and development.<sup>128</sup> While the current government administration is responding to rural economic and capital depletion, it is doing so in a centralized and inefficient manner.<sup>129</sup> In order to adequately develop and meet local economic needs and opportunities, the federal government should incentivize state and local governments to adopt a regime with proven success in a way that capitalizes on the characteristics of rural communities. In order to do this, both Arkansas and Missouri should (1) create land bank enabling legislation; and (2) amend current land bank legislation to accommodate rural communities through the enabling of local land bank creation and the formation of Regional Economic Development Entities (REDEs).

### A. The Creation of Land Bank Legislation in Arkansas

Like Missouri, Arkansas should begin rural economic revitalization by passing land bank enabling legislation. With proven success in other state and local governments,<sup>130</sup> Arkansas communities will also be able to reap the immediate economic benefits from the creation of this legislation, which would act as a benefit to those outside of the Little Rock area.

Both urban and rural communities continue to decline in many areas of the country, especially with the problems

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126. Hancock & Hendricks, *supra* note 47.

127. *City of Olathe Fast Facts*, CITY OF OLATHE, KAN., <http://www.olatheks.org/FactsHistDemo/FastFacts> [<https://perma.cc/T3VQ-99PG>].

128. *See supra* Part II.

129. *See supra* note 35.

130. *See supra* Part III.B.

associated with the Great Recession and recent foreclosure crisis.<sup>131</sup> The multitude of foreclosures has vastly increased the number of vacant properties, which will continue to accrue due to rising rent and purchase prices.<sup>132</sup> These vacant properties have severely burdened state and local governments due to increased maintenance costs, lost tax revenue, decreased value of surrounding properties in the communities, and overall loss of aesthetic appeal.<sup>133</sup>

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131. See generally Andrea J. Boyack, *Community Collateral Damage: A Question of Priorities*, 43 LOY. U. CHI. L. J. 53 (2011) (explaining the “negative externalities” of foreclosures and defaults and proposes the solution of allowing the first mortgage lien’s priority to gradually erode during the assessment default period).

132. Nearly a decade after the massive housing crisis, while the national average for foreclosures has decreased, some areas have seen increased foreclosure activity, which serves as evidence of the continuing problem in American society. Morgan Brennan, *Worst of Foreclosure Crisis Is Over but Problems Remain*, FORBES (Jan. 17, 2013, 4:50 PM), <http://www.forbes.com/sites/morganbrennan/2013/01/17/worst-of-foreclosure-crisis-is-over-but-problems-remain/> [https://perma.cc/5SUD-JUQU]. In May 2015, foreclosure filings were reported on 126,868 properties in the United States, which equates to a foreclosure filing for one in every 1,041 housing units. Trey Garrison, *Foreclosure Activity Hits 19-Month High on Rise in REOs*, HOUSINGWIRE (June 18, 2015), <http://www.housingwire.com/articles/34224-foreclosure-activity-hits-19-month-high-on-rise-in-reos> [https://perma.cc/3X2L-GNYK]. This effect has led to an astonishing number of currently vacant homes—over 17.3 million. Press Release, Robert P. Callis & Melissa Kresin, U.S. Dep’t of Commerce, Residential Vacancies and Homeownership in the Second Quarter 2015, at 4 (July 28, 2015), <http://www.census.gov/housing/hvs/files/qtr215/currenthvspress.pdf> [https://perma.cc/FR5W-Y6RY]. Unfortunately, conditions are destined to worsen based on the increase in the average asking rent and sale prices of these vacant properties. In the past twenty years, both the asking rent and sale prices for vacant properties has almost doubled with current prices standing at \$803 and \$156,300, respectively. *Id.* at 1-2.

133. The costs associated with vacant properties are one of the greatest economic dilemmas of many state and local governments. John O’Leary, *The True Cost & Consequences of Vacant Properties*, SECURITY MAG. (Mar. 1, 2012), <http://www.securitymagazine.com/articles/82827-the-true-cost—consequences-of-vacant-properties> [https://perma.cc/TB3T-G65U]. Each vacant property can cost anywhere from just over \$5,000 to approximately \$34,200 annually, depending on whether the property has or has not been set for demolition or experienced fire damage. *Id.* Vacant property can lead to an onslaught of potential liability for local governments. See generally Kim Kroha, Note, *Potholes in the Motor City: How Vacant Properties and Neighborhood Stabilization Can Subject Detroit and Similarly Situated Municipalities to Liability*, 47 NEW ENG. L. REV. 715 (2013) (discussing actions municipalities can take in order to limit liabilities from risk of injury to private parties from city-acquired abandoned property and other dangerous structures). Additional costs to the state and local governments are realized due to lost tax revenues, with some larger cities failing to collect two to four percent of property taxes from delinquencies and abandonment, which results in recognizing huge losses—nearly \$4 billion to \$6 billion annually. NAT’L VACANT PROPS. CAMPAIGN, VACANT PROPERTIES: THE TRUE COSTS TO COMMUNITIES 7 (2005), <http://www.smartgrowthamerica.org/documents/true-costs.pdf> [https://perma.cc/L7ZE-FLMA].

The Midwest and Mid-South, including Arkansas, are no exception to the increasing trend in vacant properties and its incidental costs.<sup>134</sup> While most areas of the United States have seen a minimal, gradual decline in vacant housing, the Midwest has seen its vacancy rates increase from 7.5% to 7.7% in 2015 alone.<sup>135</sup> In fact, the most recent statistics show that the Midwest and Mid-South currently “lead” the nation in home vacancy rates.<sup>136</sup> These numbers are evident in the fact that a large number of the Midwest and Mid-South states have either equal or greater home vacancy rates than the national average, with Arkansas having the worst homeowner vacancy rate at 3.3%.<sup>137</sup> Currently, 14.09% of Arkansas homes stand vacant, with approximately 4,500 properties going through tax foreclosure in 2014 alone.<sup>138</sup> Arkansas maintains a relatively high foreclosure inventory and serious delinquency rate at 0.9% and 4.4%, respectively.<sup>139</sup> However, the problem stretches far beyond the grasps of many of these home vacancy and foreclosure statistics that show only statewide property documented in its current tragic state, vacant and abandoned.<sup>140</sup>

In order to begin the redevelopment process and confront rural declination in a largely rural economy, Arkansas should adopt land bank enabling legislation. Although only fourteen states have currently adopted enabling legislation, approximately seventy percent of existing land banks were created pursuant to enabling legislation.<sup>141</sup> There are currently three different ways

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134. See Press Release, Callis & Kresin, *supra* note 132, at 3 (stating that the South and the Midwest have the highest rental vacancy rates); *Housing Vacancies and Homeownership (CPS/HVS)*, U.S. CENSUS BUREAU Table 4, <http://www.census.gov/housing/hvs/data/ann14ind.html> [<https://perma.cc/6VBE-9K4M>] (showing that Arkansas had the highest home vacancy rate in 2014).

135. See Press Release, Callis & Kresin, *supra* note 132, at 1, 3.

136. See *id.* at 3.

137. *Housing Vacancies and Homeownership (CPS/HVS)*, *supra* note 134.

138. *Arkansas Real Estate Statistics & Foreclosure Trends Summary*, REALTYTRAC, <http://www.realtytrac.com/statsandtrends/ar> [<https://perma.cc/3FTS-UNLQ>]; CORELOGIC, NATIONAL FORECLOSURE REPORT: JANUARY 2015, at 9 (2015), <http://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-january-2015.pdf> [<https://perma.cc/FK4K-SYTH>].

139. CORELOGIC, *supra* note 138.

140. *About AAR, ABANDONED ARK.*, <http://www.abandonedar.com/> [<https://perma.cc/EEE7-NM46>].

141. *National Map of Land Banks & Land Banking Programs*, *supra* note 85; HEINS & ABDELAZIM, *supra* note 75, at 15; ALEXANDER, *LAND BANKS*, *supra* note 52, at 20; Restoring Prosperity, *State Policy Toolkit: State Land Bank Enabling Legislation*, CTR. FOR COMMUNITY PROGRESS,

in which these states have chosen to enable land bank creation.<sup>142</sup> In developing land bank legislation, states may choose to (1) give only select “local governments the authority to create land banks”; (2) authorize land bank pilot programs that begin in certain local governments before expanding statewide; or (3) authorize all local governments to create land banks.<sup>143</sup>

Missouri is an example of a state that has created legislation that only enables select governments to create land banks—St. Louis and Kansas City.<sup>144</sup> While this legislation has worked to revitalize numerous neighborhoods located in those urban cores,<sup>145</sup> it goes without saying that these benefits are exclusive to these jurisdictions. In fact, the exclusive urban redevelopment actually works to perpetuate the systemic rural decline that has plagued rural communities through unequal development patterns.<sup>146</sup> While legislation that enables select governments to create land banks benefits those areas, the rest of the state’s, usually rural, population—roughly forty-two percent in Arkansas<sup>147</sup>—is left out of this beneficial legislation.

While some legal scholars have urged for the adoption of land bank pilot programs, these scholars have also noted possible shortcomings of this type of implementation.<sup>148</sup> The standard of living for individuals within a specific area depends largely on the *long-run* rate of economic growth.<sup>149</sup> Because pilot programs depend on initial and immediate success in order to garner political support and expand authorization statewide,<sup>150</sup> these types of programs would not benefit rural areas due to the current capital depletion and economic stagnation in these communities that will only benefit from long-term policy goals.<sup>151</sup>

In order to benefit rural communities for long-term, sustainable development, Arkansas should emulate Georgia,<sup>152</sup>

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[http://www.communityprogress.net/filebin/pdf/nvpc\\_trnsfr/SGA\\_StatePolicyToolkit.pdf](http://www.communityprogress.net/filebin/pdf/nvpc_trnsfr/SGA_StatePolicyToolkit.pdf)  
[<https://perma.cc/F2F9-RF65>].

142. Pratt, *supra* note 51, at 580.

143. *Id.*

144. *See supra* Part IV.B.

145. *See supra* Part IV.B.

146. *See supra* Part II.

147. UNIV. OF ARK. DIV. OF AGRIC.: RESEARCH & EXTENSION, *supra* note 102.

148. Pratt, *supra* note 51, at 596-97.

149. ANDREW B. ABEL ET AL., *MACROECONOMICS* 212 (6th ed., 2006).

150. Pratt, *supra* note 51, at 597 n.227.

151. *See supra* Part II.

152. GA. CODE ANN. § 48-4-61(a) (West 2016).



Alabama,<sup>153</sup> Michigan,<sup>154</sup> and Ohio<sup>155</sup> by adopting legislation that allows any local government to create a land bank structure,<sup>156</sup> while also adopting a provision to create regional entities.<sup>157</sup> This type of legislation does not infer state-mandated local action, while also allowing local jurisdictions to respond to market demand. For example, in Arkansas, a regional land bank could be established to promote redevelopment in Northwest Arkansas by establishing regional development goals over multiple cities, with an emphasis on rural development in cities such as Pea Ridge, Siloam Springs, and Prairie Grove. At the same time, the four largest cities—Bentonville, Fayetteville, Rogers, and Springdale—could implement local land banks, when needed, to support local redevelopment in their city cores as the area continues to grow and the population density begins to expand beyond the cities' limits. By allowing local governments to create land banks when needed, the legislation would provide for overall market efficiency to supplement regional economic development depending on the differentiated growth rates of certain areas throughout the state.<sup>158</sup>

### B. The Creation of Regional Economic Development Entities

While land bank legislation and the resulting land banking entities have been successful in urban and semi-urban areas, there are evident problems in the current enabling legislation and the resulting entity formation, sustainable financing, and operations.<sup>159</sup> Current land bank enabling legislation generally only allows townships, cities, or a county containing such cities

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153. ALA. CODE § 24-9-6(a) (2016).

154. MICH. COMP. LAWS ANN. § 124.773(4)-(5) (West 2016).

155. OHIO REV. CODE ANN. § 5722.02(A) (West 2016).

156. Pratt, *supra* note 51, at 580.

157. *See supra* Part. III.B.

158. *See* ALEXANDER, LAND BANKS, *supra* note 52, at 42; FRANK S. ALEXANDER, LAND BANKING AS METROPOLITAN POLICY 8-9, 15-16 (2008) [hereinafter ALEXANDER, METROPOLITAN POLICY].

159. Luke Telander, *Dollars and Sense: The Search for Sustainable Land Bank Funding*, CTR. FOR COMMUNITY PROGRESS: BLOG (July 7, 2015), <http://www.communityprogress.net/blog/land-bank-funding> [https://perma.cc/2EUJ-PB3K].

to create a land bank authority.<sup>160</sup> While some of these types of enactments do not preclude highly populated cities and counties to develop land-banking institutions, most rural governments lack the necessary financial means to implement and maintain such an entity.<sup>161</sup> For example, the large metropolitan areas of Kansas City and St. Louis, Missouri, have expected tax revenues of \$912.4 million<sup>162</sup> and \$484.4 million,<sup>163</sup> respectively, for the year 2015. In comparison, tax revenues for the entire county of Vernon County, Missouri, amounted to \$4.2 million for 2015.<sup>164</sup>

A large problem with the classical land banking structure is the operational feasibility of such entities by these less-populated counties and municipalities.<sup>165</sup> While the land bank operation in St. Louis acquires and disposes of a large volume of property, costs for mowing and maintaining these properties stands at an estimated \$2.7 million annually.<sup>166</sup> This number is further exacerbated by additional annual operating costs, including salaries and professional services.<sup>167</sup> Even local land banks can require nearly a million dollars in initial seed financing by the local governing entity.<sup>168</sup> Additionally, because “Rural Flight”

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160. See GA. CODE ANN. § 48-4-61(a) (West 2016); ALA. CODE § 24-9-6(a) (2016); MICH. COMP. LAWS ANN. § 124.773(4)-(5) (West 2016); OHIO REV. CODE ANN. § 5722.02(A) (West 2016).

161. See ALEXANDER, METROPOLITAN POLICY, *supra* note 158, at 12; Ann Eisenberg, *Addressing Rural Blight: Lessons From West Virginia and WV LEAP*, 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 513, 519-21 (2016).

162. CITY OF KANSAS CITY, MO., ADOPTED BUDGET: FISCAL YEAR 2015-2016, at 39 (2015), <https://data.kcmo.org/Finance/Adopted-Budget-FY2015-16/ciiw-zn5p> [<https://perma.cc/8UAG-7BUY>].

163. CITY OF ST. LOUIS, MO., FISCAL YEAR 2016: ANNUAL OPERATING PLAN S-44 (2015), <https://www.stlouis-mo.gov/government/departments/budget/documents/upload/FY15-AOP-Summary-Overview-and-charts-S-1-to-S-82.pdf> [<https://perma.cc/662T-ECN7>].

164. Commission's Office, VERNON COUNTY, MO., [http://www.vernoncountymo.org/?page\\_id=25](http://www.vernoncountymo.org/?page_id=25) [<https://perma.cc/N9QL-XCZS>].

165. See Dawn Jourdan et al., *Meeting Their Fair Share: A Proposal for the Creation of Regional Land Banks to Meet the Affordable Housing Needs in the Rural Areas Of Texas*, 19 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 147, 150-51, 156-58 (2010).

166. Logan, *supra* note 104.

167. For example, operational expenditures, disregarding property maintenance costs, were approximately \$2.6 million for the Genesee County land bank in 2011 alone. Amy Hovey, *Land Bank Budget Summary*, COOK COUNTY GOV'T, <http://blog.cookcountyl.gov/economicdevelopment/wp-content/uploads/2012/11/Land-Bank-Budget-Summary-Amy-Hovey-CCP.pdf> [<https://perma.cc/7R9L-FLC7>].

168. See CITY OF FORT COLLINS: ADVANCE PLANNING DEP'T, LAND BANK FEASIBILITY STUDY 12 (2000), <http://www.fcgov.com/socialsustainability/pdf/land-bank-feasibility-doc.pdf> [<https://perma.cc/73A2-AGN6>].

and “Rural Brain Drain” have decreased economic demand in rural communities,<sup>169</sup> it is not viable for regional land banking to rely on consumer demand to dispose of properties.<sup>170</sup>

In order to accommodate these financing and operational differences, Arkansas and Missouri should adopt and/or revise legislation that creates REDEs. Although regional approaches have been contemplated by enabling legislation, their scope has been limited to local government entities that already lack sufficient funding to support such initiatives.<sup>171</sup> In order to provide for aspirational direction, these entities should be modeled after New York’s Regional Economic Development Councils (REDCs) that were created to support a new approach to economic and business development.<sup>172</sup> These entities were created to provide a coordinated, community-driven mechanism for economic growth that replaced the inefficient top-down economic development approach.<sup>173</sup> The goals of each council include establishing a vision for each region’s future; involving various stakeholders, which include businesses, community groups, local governments, and academia; generating effective, realistic strategies to capitalize on regional industry assets; identify, prioritize, and implement catalytic projects; leverage private, local, federal, and nonprofit resources to further growth potential; and connect program evaluation, while monitoring progress to improve regional strategies.<sup>174</sup> In a relatively short

169. See *supra* Part II.

170. See Jourdan et al., *supra* note 165, at 158.

171. See ALEXANDER, METROPOLITAN POLICY, *supra* note 158, at 12-13; ALEXANDER, LAND BANKS, *supra* note 52, at 42-43. Scholarly work regarding regional land banks has been limited to land banks’ potential benefits on affordable housing in rural areas. See generally Jourdan et al., *supra* note 165 (proposing land banks as models for meeting affordable housing needs in rural areas). However, although affordable housing to the rurally impoverished is a sincere, altruistic goal, the limiting of land bank redevelopment capacities to that use alone would perpetuate further welfare-dependent rural regions without providing the economic mobilization and growth that these types of institutions are capable of providing. CARR & KEFALAS, *supra* note 2, at 7; see *infra* Part V.B.4.i-iii.

172. Bobby Hall et al., *New York’s Regional Economic Development Councils*, 49 RES. & POL’Y BRIEF SERIES 1, 1 (2012), <https://cardi.cals.cornell.edu/sites/cardiacals.cornell.edu/files/shared/documents/ResearchPolicyBriefs/Policy-Brief-Aug12.pdf> [<https://perma.cc/N6JH-N5FH>].

173. REG’L ECON. DEV. COUNCILS, IDENTIFYING OUR OPPORTUNITIES 2015, at 1 (2015), [https://www.ny.gov/sites/ny.gov/files/atoms/files/REDC\\_Guidebook\\_9-10-15.pdf](https://www.ny.gov/sites/ny.gov/files/atoms/files/REDC_Guidebook_9-10-15.pdf) [<https://perma.cc/2ZVY-C4BA>].

174. EMPIRE STATE DEV., REGIONAL ECONOMIC DEVELOPMENT COUNCIL CAPITAL FUND PROGRAM: GUIDELINES 1 (2011),

amount of time, the bottom-up approach has enhanced sustainable economic growth through projects that have resulted in revitalizing vacant and underutilized property, enhancing job growth through the attraction of large employers, and increasing entrepreneurial efforts and opportunities.<sup>175</sup>

By mimicking this community-driven, regional economic development approach, REDEs' land-banking institutes may use non-traditional techniques to generate funding and increase consumer demand through property acquisition and redevelopment, as well as entrepreneurial startup seed financing, incubation, and oversight.

### 1. *Formation and Land Banking Structure*

As previously stated, both Arkansas and Missouri should adopt and/or revise land bank enabling legislation to an initiative that does not restrict development of land banks to specific jurisdictions.<sup>176</sup> This allows the land banking structures to efficiently work towards their overall purpose: to “reflect the needs and political realities of a given jurisdiction.”<sup>177</sup> This enabling statute will also primarily determine the form and structure of such land banks.<sup>178</sup> By allowing local jurisdictions to permissively create land banks as needed, along with the presence of the REDEs, the legislation will allow the market to react to economic and socioeconomic conditions of the respective communities.<sup>179</sup> While New York and Michigan require consent of state agency and authority to create a local land bank, Arkansas and Missouri should, instead, rely on decentralized demand of local communities to be the determinative factor in land bank creation.<sup>180</sup> Further, this legislation should grant broad authority for local communities, who may have periods of minimal demand for properties, to respond to differing market conditions.<sup>181</sup>

The land bank enabling legislation will also set the legal structure of these land bank entities, which is primarily

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[http://www.empire.state.ny.us/AboutUs/Data/BoardMaterials/August2011/081811\\_Item2\\_RCguidelinesdoc.pdf](http://www.empire.state.ny.us/AboutUs/Data/BoardMaterials/August2011/081811_Item2_RCguidelinesdoc.pdf) [<https://perma.cc/6JMC-D88K>].

175. See, e.g., REG'L ECON. DEV. COUNCILS, *supra* note 173, at 8-17.

176. See *supra* Part V.

177. ALEXANDER, LAND BANKS, *supra* note 52, at 62.

178. *Id.*

179. *Id.*

180. *Id.* at 62-63.

181. *Id.* at 63.

determined by the authority and allocation of powers between state and local governments.<sup>182</sup> As to their legal structure, land banks usually take the form of an independent public entity, an independent governmental authority, or a nonprofit entity.<sup>183</sup> Each of these legal structures presents possible advantages and disadvantages.<sup>184</sup>

Arkansas and Missouri should create legislation that (1) allows for local jurisdictions to create independent public legal corporations; and (2) creates the REDEs as separate, private nonprofit corporations.

By allowing a local jurisdiction to respond to local demand by creating independent public legal corporations, states are allowing land banks to possess some autonomy from state agencies, while also allowing these entities to retain some governmental functions.<sup>185</sup> This autonomy will help to rid these entities of many of the political considerations that negatively affect the decisions of local governments.<sup>186</sup> However, maintaining government functionality, like government appointment powers, may help staffing and employment mechanisms for local jurisdictions that may have a difficult time recruiting specialized individuals to these local areas.<sup>187</sup>

By allowing the REDEs to function as a private nonprofit entity, these institutions can more adequately perform based off market demand from a decentralized perspective. One of the greatest benefits in the private nonprofit structure is the ability to obtain private investments in redevelopment activities that cannot be utilized by public entities.<sup>188</sup> This benefit will allow for the creation of regional “cooperative” donations to more adequately meet funding needs and improve land-banking results.<sup>189</sup> This type of structure will also “privatize” typical functions of land banks, such as allowing the entity to operate without the need to satisfy the public meetings and public records acts.<sup>190</sup>

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182. ALEXANDER, LAND BANKS, *supra* note 52, at 63.

183. *Id.*

184. *Id.* at 63-64.

185. *Id.* at 64.

186. *Id.*

187. ALEXANDER, LAND BANKS, *supra* note 52, at 64.

188. *Id.*

189. *See infra* Part V.B.2.

190. ALEXANDER, LAND BANKS, *supra* note 52, at 64.

Once these structures have been determined and initiated, the local land bank and REDEs should also create intergovernmental agreements or local resolutions, articles of incorporation, and bylaws in order to comply with state law and provide guidance as to the legal requirements for the entities' creation.<sup>191</sup> These agreements will help to outline the key characteristics of the land bank, such as funding, staffing, and operational powers that are not dictated in the enabling legislation.<sup>192</sup>

## 2. Funding

Like many projects, one of the greatest determinative factors for the success of land banking initiatives is the availability of a stable, secure funding source.<sup>193</sup> Consequently, current land banks state that a lack of external funding or revenue source is the greatest barrier to their working capacities and ability to address redevelopment issues in their communities.<sup>194</sup> As land banking institutes developed over different "generations,"<sup>195</sup> so have the various funding sources to support these institutions.<sup>196</sup> While most land banks require an initial infusion of funding, the eventual goal of all land banks is to move towards being self-sustaining, similar to tax-increment financing.<sup>197</sup> Today, most revenue sources can be classified as either traditional public funding appropriations or state-enabled financing mechanisms.<sup>198</sup>

Traditional land banks of the "first generation" were funded almost entirely through internal operations or government support.<sup>199</sup> This type of funding comes from various sources, including the sale of properties, foundation grants, general fund appropriations from local governments, and federal and state grants.<sup>200</sup> One of the greatest issues of relying on local funding

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191. *Id.* at 64-65.

192. *Id.* at 65.

193. HEINS & ABDELAZIM, *supra* note 75, at 67.

194. *Id.* at 18.

195. *See supra* Part III.A.

196. ALEXANDER, LAND BANKS, *supra* note 52, at 56.

197. Kenneth S. Kamlet, *Land Banking, TIF Amendments, and the Tax Cap: What the Heck Do They Have in Common?*, 85 N.Y. ST. B.J. 30, 32 (2012).

198. HEINS & ABDELAZIM, *supra* note 75, at 67.

199. *Id.*

200. *Frequently Asked Questions on Land Banking*, CTR. FOR COMMUNITY PROGRESS, [http://www.communityprogress.net/land-banking-faq-pages-449.php#How is a land bank funded?](http://www.communityprogress.net/land-banking-faq-pages-449.php#How%20is%20a%20land%20bank%20funded?) [<https://perma.cc/P3BJ-R2MN>].

sources is the fact that these local areas are already stressed financially.<sup>201</sup> However, with explanation, many localities have come to realize that the cost of a vacant, abandoned property is much greater than the cost of property rehabilitation and disposition, and this can occur without significant expenditure of limited local resources.<sup>202</sup> However, two of the greatest issues in relying on this type of funding is that it tends to be effective only when incremental costs are low so that inventory is small and easy to address and specific annual funding is never assured, which could act to undercut the land bank in its endeavors to effectively and efficiently manage and dispose of properties adequately.<sup>203</sup>

To confront these internal and limited local funding issues, the newer generations of land banks and enabling legislation have tested and proven positive revenue results using state-enabled funding mechanisms, which include state-enabled borrowing and bond financing and various tax revenue-sharing devices.<sup>204</sup> The issuance of revenue bonds is a relatively new and unexplored borrowing source that currently exists in six state enabling statutes, including Michigan,<sup>205</sup> Ohio,<sup>206</sup> New York,<sup>207</sup> Missouri,<sup>208</sup> Pennsylvania,<sup>209</sup> and Nebraska,<sup>210</sup> which authorize the land banks to borrow through the issuance of revenue bonds.<sup>211</sup> These bonds may be used for short-term or long-term borrowing and can be backed by credit or security.<sup>212</sup> The greatest need for funding through borrowing appears when land banks need immediate funding to repair and rehabilitate property so that it can be sold to an identified third party.<sup>213</sup>

One of the most utilized sources for land bank financing comes from various tax revenue-sharing mechanisms.<sup>214</sup> First,

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201. ALEXANDER, LAND BANKS, *supra* note 52, at 56.

202. *Id.*; Mathew J. Samsa, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 CLEV. ST. L. REV. 189, 194-96, 231 (2008).

203. ALEXANDER, LAND BANKS, *supra* note 52, at 57.

204. *Id.* at 58-61.

205. MICH. COMP. LAWS ANN. § 124.769(1), (5) (West 2016).

206. OHIO REV. CODE ANN. § 1724.02(A)(1)(a)-(b) (West 2016).

207. N.Y. NOT-FOR-PROFIT CORP. LAW § 1607(a)(5) (McKinney 2016).

208. MO. ANN. STAT. § 141.994(1) (West 2016).

209. 68 PA. STAT. AND CONS. STAT. ANN. § 2107(5) (West 2016).

210. NEB. REV. STAT. ANN. §§ 19-5207(1)(d), 5212(1) (West 2016).

211. ALEXANDER, LAND BANKS, *supra* note 52, at 61.

212. *Id.*

213. *Id.*

214. *Id.* at 58-60.

states may implement Delinquent Tax Revolving Funds, which is a program that allows the land bank to borrow funds to pay off the delinquent taxes and in exchange it receives control of the property, all delinquent tax liens, the right to enforce such liens, and the interest and penalties that supplement such liens.<sup>215</sup> The second device used involves dedicating funding from delinquent tax charges to the land bank, which includes charging an additional fee on delinquent tax bills and can be in the form of a fixed amount or percentage of the aggregate original tax bill.<sup>216</sup> This process is heavily utilized by the Cuyahoga Land Bank to provide a stable, reliable revenue stream and debt service repayment if the land bank were to utilize its borrowing ability.<sup>217</sup> The final, and maybe most effective, tax-revenue sharing tool utilized by land banks is “tax recapture,” or the return of a specified portion of the property taxes generated by the property, once held by the land bank and sold to third parties, from the state and/or local government to the land bank for a specific number of years.<sup>218</sup> This funding is justified by the fact that the land bank places these properties back on the tax role, as well as the fact that all surrounding properties will have a higher reassessed tax value.<sup>219</sup> While a majority of states with land bank enabling statutes utilize tax recapture programs, the states’ tax recapture percentages and length of years differ: Michigan, New York, Pennsylvania, Nebraska, and West Virginia allow 50% recapture for five years;<sup>220</sup> Georgia allows 75% recapture for five years;<sup>221</sup> and Missouri allows 100% recapture for three years.<sup>222</sup>

Land bank legislation for both Arkansas and Missouri should follow the current land bank financing options available in the Missouri legislation, with one select change and a few additional tools. The one major alteration of the Missouri statute is to

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215. *Id.* at 59-60.

216. ALEXANDER, LAND BANKS, *supra* note 52, at 60-61.

217. HEINS & ABDELAZIM, *supra* note 75, at 35.

218. ALEXANDER, LAND BANKS, *supra* note 52, at 58.

219. Jonathan Geeting, *How to Fund a Land Bank with Value Capture*, NEXT CITY (Sept. 10, 2013), <https://nextcity.org/daily/entry/how-to-fund-a-land-bank-with-value-capture> [<https://perma.cc/DY29-XNC2>].

220. MICH. COMP. LAWS ANN. §§ 211.1025(4)(b), 7gg(2) (West 2016); N.Y. NOT-FOR-PROFIT CORP. LAW § 1610(c) (McKinney 2016); 68 PA. STAT. AND CONS. STAT. ANN. § 2111(c)(2) (West 2016); NEB. REV. STAT. ANN. § 19-5211(3)(a) (West 2016); W. VA. CODE ANN. § 31-18E-11(c)(2) (West 2016).

221. GA. CODE ANN. § 48-4-110(c) (West 2016).

222. MO. ANN. STAT. § 141.988(3) (West 2016).



change the tax recapture program of 100% for three years to resemble Georgia's tax recapture program of 75% for five years.<sup>223</sup> This lower percentage would help lower the skepticism from local bodies and individuals that might hinder implementation,<sup>224</sup> provide struggling rural governments with more funding in the short-term, while also providing for a greater overall return and a stable funding source for a greater number of years for the land banks.

The legislation and land banking institutes can also utilize the current rural environment for additional funding opportunities for the local land banks and REDEs. Just as New York initiated its Land Bank Community Revitalization Initiative that competitively awarded enterprises to support legally designated land banks,<sup>225</sup> both state and federal governments can reorganize the massive rural funding initiatives—especially the White House Rural Council's recent \$10 billion rural development investment<sup>226</sup>—and competitively award local land banks and REDEs for their operations and successes.<sup>227</sup>

Finally, and maybe most importantly, is how to structure the land bank entities so that they may be funded and operated as a cooperative with both local government authorities and individuals. A cooperative agreement with local leaders would allow for recognition of the goals and effectiveness of the land banking institution by sharing a portion of the “new” tax revenue with the land bank to help manage costs associated with management and operations.<sup>228</sup> From an individual standpoint, additional land bank funding, along with greater land bank success, can occur through a cooperative agreement where individuals donate money in return for one of the traditional rural investment incentives of state tax credits.<sup>229</sup> Because rural

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223. *Id.*; GA. CODE ANN. § 48-4-110(c).

224. ALEXANDER, LAND BANKS, *supra* note 52, at 58.

225. HEINS & ABDELAZIM, *supra* note 75, at 42.

226. *FACT SHEET: Increasing Investment in Rural America*, *supra* note 36.

227. The federal government could restructure current funding mechanisms to create a rural economic initiative, modeling the effort after Obama's “Race to the Top” education initiative. ULRICH BOSER, CTR. FOR AM. PROGRESS, RACE TO THE TOP: WHAT HAVE WE LEARNED FROM THE STATES SO FAR? A STATE-BY-STATE EVALUATION OF RACE TO THE TOP PERFORMANCE 1 (2012). This competitive grant program sparked reform through significant policy changes by granting monetary awards based off a state's ability to show collaboration and reform ability. *Id.*

228. HEINS & ABDELAZIM, *supra* note 75, at 41.

229. Barkley, *supra* note 36, at 113; Sharp & Tucker, *supra* note 36, at 25-29.

individuals are more likely to pool resources, donate to community-based enterprises, and develop a sense of empowerment to recognize local needs and act collectively to meet those needs,<sup>230</sup> the initiative would be met with much less resistance and land bank redevelopment projects would benefit from greater community involvement and support.<sup>231</sup> The land banks would have to garner the revenue to adequately support their staffing and operations through these various funding operations.

### 3. Staffing

The amount of intergovernmental cooperation, as allowed through the land banking structure, is highly determinative of the structure of the board of directors and the employment aspects of land banking institutions.<sup>232</sup> The two aspects that should be addressed in land banking entities regarding employment are (1) the Board of Directors and (2) independent staffing.

Because the REDEs are structured as separate legal entities,<sup>233</sup> the land banks will be governed by their own board of directors.<sup>234</sup> These directors may be private citizens, elected officials, or local government employees, unless limited by state or local law.<sup>235</sup> In order to generate further independency, the enabling legislation, local resolution, or intergovernmental agreement should have a requirement, like Pennsylvania,<sup>236</sup> Nebraska,<sup>237</sup> and West Virginia,<sup>238</sup> that requires at least one board member to be a resident, not a public official or employee, and not a member of a civic organization.<sup>239</sup> Like Alabama,<sup>240</sup> the state enabling legislation should provide that all other requirements for the board are determined by the Articles of

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230. Flora & Flora, *supra* note 21, at 205.

231. *Id.*

232. ALEXANDER, LAND BANKS, *supra* note 52, at 62.

233. *See supra* Part V.B.1. Although local land banks will be set up as independent public legal corporations, the board and general staffing will resemble private entities but local governments will retain its appointment and other governmental staffing powers. *See id.*

234. ALEXANDER, LAND BANKS, *supra* note 52, at 65.

235. *Id.*

236. 68 PA. STAT. AND CONS. STAT. ANN. § 2105(b)(3) (West 2016).

237. NEB. REV. STAT. ANN. § 19-5205 (West 2016).

238. W. VA. CODE ANN. § 31-18E-5(b)(3) (West 2016).

239. ALEXANDER, LAND BANKS, *supra* note 52, at 65.

240. ALA. CODE § 24-9-10(c)(4) (2016).

Incorporation to allow for optimal development at the local level.<sup>241</sup> In order to promote efficiency, the state enabling legislation should replicate Ohio's statute<sup>242</sup> by providing that the board of directors may contain five, seven, or nine individuals, in order to be large enough to represent diverse interests, yet small enough to maintain operational efficiency.<sup>243</sup> This requirement provides for an odd number of directors in order to avoid tie votes.<sup>244</sup> In addition, the board of directors should serve in the interest of the communities, thereby without pay or other compensation.<sup>245</sup>

In addition to the board of directors, the enabling statute, local resolutions, or intergovernmental agreements should expressly authorize the land banks to have the authority to hire executive directors and employees.<sup>246</sup> While some agreements "provide that the land bank 'staff' are actually the staff of other local government departments,"<sup>247</sup> this requirement should be disregarded in order to more efficiently perform governmental tasks with less involvement of political interests. Duties, responsibilities, and compensation should be articulated in the Articles of Incorporation for each land banking entity in order to further generate local cost efficiency and flexibility. Further, regional land bank entities should work to incentivize and attract skilled, private sector individuals for employment or build partnerships with such individuals to optimize land bank powers and further land banking goals.

#### 4. Operations and Powers Possessed

The original purpose of land banks was "to acquire, maintain and dispose of problem properties according to local land use goals . . . ."<sup>248</sup> Land banks were created in response to legal and financial barriers that reduced effectiveness, hindered

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241. ALEXANDER, LAND BANKS, *supra* note 52, at 65.

242. OHIO REV. CODE ANN. § 1724.03(B) (West 2016).

243. *Id.*; ALEXANDER, LAND BANKS, *supra* note 52, at 65.

244. *Id.*

245. *See id.*

246. *Id.* at 66.

247. *Id.*

248. CTR. FOR CMTY. PROGRESS, LAND BANKS AND LAND BANKING, <http://static1.squarespace.com/static/5342bfabe4b076ea499631f5/t/5394c1bee4b092dc8ae434da/1402257854813/About+Land+Banks+and+Land+Banking+by+Kim+Graziani.pdf> [<https://perma.cc/GW5D-45QJ>].

responsible, private investment, and impeded efficiency in public or nonprofit entities when dealing with these problem properties.<sup>249</sup> To overcome these obstacles and address community needs, land banks must have specific legal powers granted to them by the state enabling statute.<sup>250</sup> When granting such authoritative powers it is important to balance broad powers that may potentially be inconsistent with local policy goals with very limited powers, which could hinder the land bank's effectiveness through legal limitations.<sup>251</sup> Historically, land banks have had the following abilities:

- (1) "Obtain property at low or no cost through the tax foreclosure process";
- (2) "Claim the right of first refusal to purchase tax-foreclosed properties";
- (3) "Hold land tax-free";
- (4) "Clear title and/or extinguish back taxes";
- (5) "Lease properties for temporary uses"; and
- (6) "Negotiate transfers to future owners in a manner that most closely aligns with community needs . . . ."<sup>252</sup>

In order to maximize redevelopment efforts and provide entrepreneurial incentives and development for rural locations, the REDEs and local land banks should possess powers to (1) acquire, manage, redevelop, and dispose of properties; (2) provide seed financing for rural startups and small businesses; and (3) provide growth incubation and oversight to these rural startups and small businesses.

### *5. Property Acquisition, Management, Redevelopment, and Disposition*

In order to meet the specific needs of the problem properties that the private market or public entity has discarded, land banks are usually empowered specifically by state legislation in order to advance specified community goals.<sup>253</sup> However, one consistency remains among past and current land banks: they all

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249. HEINS & ABDELAZIM, *supra* note 75, at 11.

250. ALEXANDER, LAND BANKS, *supra* note 52, at 50.

251. *Id.*

252. HEINS & ABDELAZIM, *supra* note 75, at 11.

253. *Id.*

have the core legal authority to acquire, manage, and dispose of property.<sup>254</sup>

Most land banks are authorized through the enabling statute to acquire properties through tax foreclosure, nonprofit transfers, intergovernmental transfers, and even open-market purchases, with tax foreclosure transfers being the most common method of property acquisition.<sup>255</sup> Some land banks automatically receive title to all properties that do not sell at these tax foreclosure sales for a minimum statutory bid;<sup>256</sup> some receive, but are not automatically given, property that is not sold at tax foreclosure sales due to local government property rights;<sup>257</sup> and some land banks may not automatically receive title to any property after a tax foreclosure sale, but may only tender payment at the sale and acquire the property if there is no higher bid.<sup>258</sup> However, in Ohio, land banks receive title to all properties that go unsold at tax foreclosure proceedings, but the local government may also choose to convey certain properties to the land bank prior to the tax foreclosure sale.<sup>259</sup> Further, while most land banks may receive title to any kind of property, Ohio only allows land banks to receive title to unimproved property, property set for demolition by the local government, or improved property—but only if the local government determines that the property is “necessary for implementation of an effective land reutilization program.”<sup>260</sup>

There are three other primary methods for land bank property acquisition of publicly owned property: from local government entities, through transfers and donations from the private sector, and through purchase or lease on the open market.<sup>261</sup> These broad powers of acquisition help to promote the goals of land banking redevelopment and revitalization, without unduly authorizing the land bank to take property through

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254. ALEXANDER, LAND BANKS, *supra* note 52, at 50; Anne E. Kline, *A Case for Connecticut Land Banks*, 88 CONN. B.J. 210, 215-221 (2015); Darren M. Belajac, Comment, *The Pennsylvania Legislature Takes A Significant, Though Insufficient, Step Toward Addressing Blight and Tax Delinquency: House Bill 712, the Land Bank Act*, 49 DUQ. L. REV. 79, 82-83 (2011).

255. REVITALIZING WITH LAND BANKS, *supra* note 51, at 2.

256. ALEXANDER, LAND BANKS, *supra* note 52, at 50.

257. *Id.*

258. *Id.*

259. OHIO REV. CODE ANN. § 5722.03(C)-(D) (West 2016).

260. ALEXANDER, LAND BANKS, *supra* note 52, at 51.

261. *Id.* at 51-52.

eminent domain.<sup>262</sup> Eminent domain, once a sought after power by land bank institutions in order to assemble larger tracts for redevelopment purposes, has not been accepted by any state in their enabling legislations due, in part, to state constitutional Takings Clause limitations, local governments already possessing such power, and strong public and political opposition to this act.<sup>263</sup> In order to garner local support, one of the most common challenges of land banks,<sup>264</sup> land banks should forgo seeking eminent domain and focus on the above-mentioned acquisition strategies for optimal land bank functioning.

After acquiring property, land banks then promote redevelopment by exercising powers, such as waiving taxes and clearing title, and provide maintenance services for vacant and abandoned properties, such as upkeep, demolition, and landscaping services.<sup>265</sup> Most land banks must, by law, maintain an inventory of their property and classify them as to their potential uses.<sup>266</sup> However, in order to obtain these potential uses and implement land bank and local policy goals, land banks are given broad powers relating to the management, rehabilitation, and demolition of property, depending almost entirely on compromised future uses and paths to reach such uses.<sup>267</sup> Recently, many land banks have been authorized by their respective enabling statutes to contract management and operations of certain properties to private third parties.<sup>268</sup>

While acquisition, redevelopment, and maintenance are important services, the central focus of land bank operations is to effectively dispose of property for positive, productive future use.<sup>269</sup> Because local governments are legally restricted in their ability to dispose of property, most land banks are given broad authority to establish policies governing sales for property transfers.<sup>270</sup> This disposition enables land banks to establish

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262. *Id.* at 50-53.

263. *Id.* at 53.

264. HEINS & ABDELAZIM, *supra* note 75, at 18-19.

265. REVITALIZING WITH LAND BANKS, *supra* note 51, at 2-3.

266. ALEXANDER, LAND BANKS, *supra* note 52, at 53.

267. *Id.*

268. *Id.* at 53-54.

269. KANSAS CITY, MO., MUN. CODE ch. 74, art. IV, § 71(a) (2012).

270. ALEXANDER, LAND BANKS, *supra* note 52, at 54. *See generally* Madeline Fletcher & Jessica Bacher, *A Practical Guide to Policies for New York State Land Banks*, 13 N.Y. ZONING L. & PRAC. REP. 1 (2013) (discussing the State of New York's policies for disposition of land bank property).

pricing policies applicable to the disposition and use of such policy that also parallels economic and socioeconomic conditions, as well as local government priorities.<sup>271</sup> Some potential avenues for property disposition include conveyances to nonprofit or local government entities to be used as parks, gardens, or other public uses for land which may have low market demand, or possibly catalyst programs that convey property at little or no cost but are contingent upon specified objectives and redevelopment activities.<sup>272</sup> Some such examples of these types of programs include Missouri's "Adopt/Lease-a-Lot" and "Side Lot" programs.<sup>273</sup>

In order to provide flexibility, while also ensuring land banking and local community goals, both local land banks and REDEs should possess broad core powers for the acquisition, redevelopment, management, and disposition of problem properties. The legislation should follow Ohio's broad power allocation for property acquisition and local government's selective authority in order to achieve optimal results in inventory capacity. Further, the land banks should follow many of the second and third generational maintenance and disposition strategies, including demolition, structure rehabilitation, and various programs like Missouri's "Side Lot" and "Adopt/Lease-a-Lot" programs and business incubation programs,<sup>274</sup> to allow maximum discretionary authority to achieve local and regional policy goals. With these powers, land banks would have the broad ability to implement revitalization plans specific to certain areas and would help to facilitate the central functions of land bank institutions.

### 6. *Providing Seed Financing to Rural Startups and Small Businesses*

One of the greatest needs of rural communities that should be accommodated in enabling legislation and the regional land banking institutions is the ability to connect rural individuals to

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271. ALEXANDER, LAND BANKS, *supra* note 52, at 54; Thomas Gunton, Comment, *Coping with the Specter of Urban Malaise in a Postmodern Landscape: The Need for a Detroit Land Bank Authority*, 84 U. DET. MERCY L. REV. 521, 561 (2007).

272. ALEXANDER, LAND BANKS, *supra* note 52, at 54.

273. KANSAS CITY, MO., MUN. CODE ch. 74, art. IV, § 71(a) (2012); *Adopt/Lease Program*, *supra* note 120; *Side Lot Program*, *supra* note 121.

274. See *infra* Part V.B.4.iii.

money (or financial capital) in order to overcome unequal urban/rural development patterns and help decrease movement of financial capital away from rural communities.<sup>275</sup> Although the federal government has recently enacted major initiatives for rural funding, rural communities are still suffering from these less than efficient programs.<sup>276</sup> Because employment growth dynamics, job creation, and overall economic well-being depend largely on the creation, expansion, and survival of startup companies, providing financial assistance to individuals with business concepts is essential to productive local redevelopment.<sup>277</sup> The lack of rural funding opportunities has been of great concern to both public and private sectors alike.<sup>278</sup> Therefore, seed capital, which is typically the first round of financing for a company and typically ranges from \$50,000 to \$250,000,<sup>279</sup> must be expanded to rural regions in America.

In order to provide business opportunities to the entrepreneurial-minded individuals, and therefore adequately redevelop rural communities, those individuals and communities must have access to adequate and timely financial capital to cover costs, as well as growth opportunities. Financial capital is “the purchasing power or medium that represents saved-up financial wealth, usually in the form of currency, which is used by firms or individual entrepreneurs to invest—to start or develop a business.”<sup>280</sup> One of the top reasons for small business failure is

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275. Deborah M. Markley & Sarah A. Low, *Wealth, Entrepreneurship, and Rural Livelihoods*, CHOICES MAG. (2012), <http://www.choicesmagazine.org/choices-magazine/theme-articles/rural-wealth-creation/wealth-entrepreneurship-and-rural-livelihoods> [https://perma.cc/P2MM-2JBJ].

276. See *supra* Part II.

277. CTR. FOR RURAL ENTREPRENEURSHIP, GROWTH ENTREPRENEURS PROFILED 2 (2013), [http://www.energizingentrepreneurs.org/file\\_download/d4d36350-04ad-4936-b883-4a1e28cdc73a](http://www.energizingentrepreneurs.org/file_download/d4d36350-04ad-4936-b883-4a1e28cdc73a) [https://perma.cc/5GE4-T5NX].

278. Michael Gurau, *Financing Innovation and Entrepreneurship in the Country*, SCI. PROGRESS (Aug. 15, 2011), <https://scienceprogress.org/2011/08/rural-innovation-and-entrepreneurship/> [https://perma.cc/GF7D-7QKX].

279. Kevin Laws & Zeb Zankel, *Funding Innovation: Regulating Seed Financing*, 31 SANTA CLARA HIGH TECH. L.J. 1, 2 (2014); ALAN S. GUTTERMAN, BUSINESS TRANSACTIONS SOLUTIONS § 350:4 (West 2016).

280. Jarmila Curtiss, *Determinants of Financial Capital Use: Review of Theories and Implications for Rural Businesses 2* (Factor Mkts., Working Paper No. 19, 2012), [http://ageconsearch.umn.edu/bitstream/122846/2/FM\\_WP19%20Determinants%20of%20financial%20capital%20use.pdf](http://ageconsearch.umn.edu/bitstream/122846/2/FM_WP19%20Determinants%20of%20financial%20capital%20use.pdf) [https://perma.cc/99HK-E53A].



lack of financial capital, resulting in resource poverty.<sup>281</sup> While there is a positive relationship between access to external financial capital and the performance of small businesses, the growth of small businesses, and their surrounding communities, is currently suffering due to a high dependence on internal financing measures.<sup>282</sup>

Like most operations, access to financial capital is crucial for entrepreneurial development, particularly in Rural America, which is typically described as having a severe lack of access.<sup>283</sup> As previously stated, the centralized nature of public programs and funding organizations has created an inefficient funding mechanism to rural communities, which leads to a lack of reciprocity in overall growth development.<sup>284</sup> This is primarily due to the fact that the supply of financial capital does not adequately consider the effective demand for financing in rural areas.<sup>285</sup>

Because relatively few resources have generated knowledge regarding the role of equity financing in rural communities,<sup>286</sup> the REDEs and local land banks must survey and collect primary data regarding the demand for financing based on locality.<sup>287</sup> This can be accomplished through a partnership with regional business institutes, like the Arkansas Small Business and Technology Development Center, which produce various, high-quality market research resources.<sup>288</sup> Entities should then analyze this data over time to more effectively and efficiently allocate financial capital in the right place and at the right time in order to meet the needs of the entrepreneurial and business community.<sup>289</sup> These institutions should respond to market imperfections with adjustments in governance structures, formulation of suitable market-supporting institutions, and optimizing the capital structures to maximize value within firms and increase funding

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281. Olawale Olufunso Fatoki, *The Impact of Human, Social and Financial Capital on the Performance of Small and Medium-Sized Enterprises (SMEs) in South Africa*, 29 J. SOC. SCI. 193, 198 (2011).

282. *Id.*

283. Markley & Low, *supra* note 275.

284. *Id.*

285. Markley & Low, *supra* note 275.

286. Curtiss, *supra* note 280, at 40.

287. Markley & Low, *supra* note 275.

288. See, e.g., *Market Research Resources*, ARK. SMALL BUS. & TECH. DEV. CTR., <http://asbtdc.org/resources/market-research-resources/> [https://perma.cc/5LMR-JB9M].

289. Markley & Low, *supra* note 275.

capacities.<sup>290</sup> The emphasis in these efforts should be to develop and communicate demand for financial capital from external sources, including venture capitalists and angel investors located in urban and suburban areas.<sup>291</sup> By communicating demand and generating higher rates of economic return on rural small businesses, increased public support would lead to the attraction of outside investors, including the mobilization of angel and venture investors.<sup>292</sup> By providing initial financing, land banks would act as a catalyst to small business development and could then work to stabilize and grow such business communities.

### 7. *Business Incubation and Oversight*

While providing financing to startups and small businesses is vital in early-stage development, these businesses must continue to grow in order to have optimal impacts on local, rural economic development.<sup>293</sup> In fact, it is the businesses that survive the startup phase that create more net jobs and have a vastly more beneficial impact on regional and local economies.<sup>294</sup> With many of the skilled workers and much of the financial capital migrating away from rural communities,<sup>295</sup> it is important to provide assistance to developing businesses to ensure that more of these companies survive and maintain a longstanding presence in rural areas.

By building a community that attracts and preserves entrepreneurship and small businesses, local communities will be able to generate a capital stock that allows for long-term self-sustainment and government independence.<sup>296</sup> In rural communities, there remains an uncompromising need to move from necessity entrepreneurs, or individuals starting businesses because they have no other economic alternative, to growth

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290. Curtiss, *supra* note 280, at 39.

291. *Id.* at 40.

292. *Id.*

293. CTR. FOR RURAL ENTREPRENEURSHIP, *supra* note 277, at 4.

294. *Id.*

295. Neil Shah, *Smallville, USA, Fades Further: Migration Trend Underlines Economic Shift as Young People Chase Jobs in Cities*, WALL ST. J. (Mar. 27, 2014, 12:10 AM), <http://www.wsj.com/articles/SB10001424052702303325204579463761632103386> [<https://perma.cc/7XFW-4P3Q>].

296. Alex Curcuru, Note, *The World is Indeed Flat: Preparing Students for the Global Market Through Law School and Small-Business Incubator Partnerships*, 78 UMKC L. REV. 543, 546 (2009).

entrepreneurs.<sup>297</sup> Entrepreneurship, which is associated with improved rural livelihoods due to increased income and wealth accrual, could also further education, amenity, and economic development efforts that improve livelihoods.<sup>298</sup> Increased entrepreneurial activity results in increased returns to local investors, increased revenue raising for local governments and regional entities, as well as various other beneficial “allied multiplier impacts” to the local region.<sup>299</sup> Simply put, the future of regional economies lies in the encouragement of entrepreneurship.<sup>300</sup>

One proven way to accomplish the assisted growth of entrepreneurs is through the use of business incubators.<sup>301</sup> Business incubation, or “a business support process that accelerates the successful development of startup and fledgling companies by providing entrepreneurs with an array of targeted resources and services,”<sup>302</sup> was first introduced to the United States in 1956.<sup>303</sup> Since this time, entrepreneurial firms have been utilizing business incubators to gain access to shared office services, equipment, professional services, professional advice, and flexible leases, which allow entrepreneurs to easily grow and expand as development ensues.<sup>304</sup> Through these measures, business incubators can successfully serve as stimulators to local economies, push economic growth by providing adequate and timely resources to small businesses, and prepare businesses to compete in a changing economic world.<sup>305</sup>

Although business incubators might differ in whether they choose to be general or specialized incubators, their overall policy goals and successful results remain the same.<sup>306</sup> The long-term goals of incubators revolve around the dedication to create jobs and enhance long-term economic growth, thereby justifying a

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297. Markley & Low, *supra* note 275.

298. *Id.*

299. *Id.*

300. *Id.*

301. GUTTERMAN, *supra* note 279, § 150:19.

302. David Mielach, *Business Incubators and Accelerators: Here's the Big Difference*, BUS. NEWS DAILY (June 19, 2013, 10:22 AM), <http://www.businessnewsdaily.com/4658-business-incubator-accelerator-difference.html> [<https://perma.cc/ED2R-D8LP>].

303. Curcuro, *supra* note 296, at 545.

304. GUTTERMAN, *supra* note 279, § 150:19.

305. Curcuro, *supra* note 296, at 544.

306. GUTTERMAN, *supra* note 279, § 150:19.

community or region's investment in the incubator.<sup>307</sup> As soon as these incubated companies can prove financial and economic viability, then they can stand on their own through community support and business alliances.<sup>308</sup> As evidence of incubation success, businesses that have graduated from incubators have an eighty-seven percent survival rate, compared to forty-four percent by those businesses that are not incubated, and eighty-four percent of graduated businesses stay in the communities in which they were incubated, thereby furthering local economic growth initiatives.<sup>309</sup>

While REDEs and local land banks cannot conceivably provide incubation under one roof, they serve as an unparalleled opportunity to create an external incubation environment with various services and guidance. Through their powers of property acquisition, maintenance, and disposition,<sup>310</sup> regional land banks can adequately and strategically review and plan various local business concepts, while also providing property and redevelopment access to stimulate these ideas. Land banks can create low, or no, cost leasing or rental usage for incubation servicing. By utilizing their staffing opportunities and by increasing partnerships with key public and private sector individuals, regional land banks can effectively connect and nurture entrepreneurial and small business growth in rural communities through connections with shared financial capital access, exposure to markets, and professional services and advice. By increasing small business opportunities and, thereby, increasing job opportunities and elevated overall local economies, land banks can help to systematically reverse capital depletion. Through their unique powers and policy goals, land banks serve as an unrivaled opportunity to redevelop and revitalize Rural America as an oversight to business incubation and partnerships to compliment such incubation.

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307. Curcuro, *supra* note 296, at 546.

308. GUTTERMAN, *supra* note 279, § 150:19.

309. Ned Smith, *Incubators Heat Up Chances of Small Business Survival*, BUS. NEWS DAILY (Oct. 5, 2010, 1:01 PM), <http://www.businessnewsdaily.com/272-incubators-increase-small-business-success.html> [<https://perma.cc/J5H2-VC8Z>].

310. HEINS & ABDELAZIM, *supra* note 75, at 10.

## VI. CONCLUSION

Since the 1980s, Rural America has been a victim of capital mobility and depletion. While this occurrence has had devastating consequences on the community, economy, and present population, the debilitating conditions have been “swept under the mat” in most legal, political, and economic conversations, whether that be because these problems are unknown, overlooked, or just simply ignored. However, these abhorrent social and economic conditions are not unique to the rural countryside alone. Urban communities faced with “urban blight” have also faced reciprocal conditions but have been granted with redevelopment initiatives, like land banks and land banking. While land banks have rapidly gained popularity and usage in large cities throughout the nation, this positive redevelopment model has not been made available or reconstructed for the benefit of America’s vast rural population.

This analysis presents a problem of declining rural conditions and presents a suggested idea to encompass the benefits of land banking institutions in a way that reflects the economic and political realities of these communities, through REDEs and accompanying local land bank creation and operation. Arkansas and Missouri, acting as true reflections of “Rural America” with large rural populations, can use this analysis to bring attention to an issue that has been overlooked for much too long, can borrow and adapt provisions of mentioned legislation in implementing such design, and can serve as leaders in America for redeveloping and bringing light to rural populations. By providing wide discretion for REDEs and local land bank operations and prioritizing overall economic redevelopment for small businesses and entrepreneurs, both Arkansas and Missouri, as well as any other state, will ensure a brighter future for the American countryside.

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