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COMMENTS

MUNICIPAL DEBT LIMITATIONS IN PENNSYLVANIA

[Efforts to assuage urban ills often lead back to, and founder upon, the inability of cities to raise funds to implement critical programs. Legal, as well as financial obstacles contribute to this problem. Indeed legal limits on municipal borrowing may be the only bar to debt-financing and debt-financing is often the only as well as the last recourse to generate funds. As with the law of voter apportionment, however, the law of municipal borrowing advances but slowly against the drag of political and legal conservatism. Fresh illustrations of the dangerous lag between public need and law are found in the latest amendment to the debt limit provisions of the Pennsylvania Constitution. This review of the Pennsylvania experience may point the way for others to achieve more thoroughgoing reforms. (Editor's Note)]

I. INTRODUCTION

Prior to the Pennsylvania Constitutional Convention of 1968, there had been no major revision of the Commonwealth's municipal debt limitations for almost a century.¹ The changes drafted by that convention and approved by the electorate of the Commonwealth have radically changed the scope of these provisions. The purpose of this Comment is to evaluate the new provisions in light of the weaknesses of the pre-existing system. Initially the examination will focus on the prior provisions to determine how the system operated and whether it fulfilled the twin goals of the state — flexibility of municipal finances and promotion of fiscal solvency. Subsequent examination will focus on alternative methods of controlling municipal indebtedness. The workings of the new constitutional provisions will then be examined, compared to, and evaluated with the pre-existing law to determine whether further reform is necessary. Finally, an alternative provision will be presented, which will be designed to incorporate the best features of the several systems.

II. THE HISTORY OF PENNSYLVANIA DEBT LIMITATION PROVISIONS

A. *The Constitutional Structure*

Present day debt limitations on local government units are a carryover of provisions enacted primarily as a reaction to the financial collapse of

1. The only changes which were made during this time were percentage increases in permissible debt levels and the addition of specific exemptions from the computation of debt. See pp. 614-15 *infra*.

many municipalities in 1873. This collapse was caused by fiscal irresponsibility, largely in the area of economic inducements to railroads to promote railroad spurs in particular communities.² The financial decay of many municipalities was enhanced by a trend toward urbanization which created an increased need for public improvements. Further contributing to the need for debt limitation provisions were the methods used to provide these improvements. As one author aptly stated: "[T]he evil of public improvements lay in the extravagance, waste and corruption, typical of the day, with which such improvements were accompanied."³

It is evident that the initial debt limitation provisions were designed to promote fiscal responsibility in local government, and this intention is certainly admirable and worthwhile.⁴ However, a problem arose in framing such provisions in a manner which adequately recognized the future needs of municipalities. As a result of the failure to provide adequate flexibility, municipalities could not cope with the continued trend toward urbanization and its concomitant requisite of further improvements and services for residents. This inflexibility placed municipalities in a position whereby, when additional debt financing became a necessity, it could not be undertaken because of existing debt limit provisions.⁵ Thus, "[t]he impact of social demands upon the inherited processes of debt limitation made conflict inevitable."⁶

As in most states, the impetus for restricting municipal borrowing in Pennsylvania came from a rapidly growing debt arising in a period of high population growth.⁷ Between 1864 and 1874 the population of Penn-

2. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS — STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS ON LOCAL GOVERNMENT DEBT A-10, at 16-23 (1961) [hereinafter cited as ADVISORY COMMISSION]; Bowmar, *The Anachronism Called Debt Limitation*, 52 IOWA L. REV. 863 (1967); Magnusson, *Lease-Financing by Municipal Corporations as a Way Around Debt Limitations*, 25 GEO. WASH. L. REV. 377, 381 (1957); Morris, Jr., *Evading Debt Limitations With Public Building Authorities: The Costly Subversion of State Constitutions*, 68 YALE L.J. 234, 241 (1958); Rogers, Jr., *Municipal Debt Restrictions and Lease-Purchase Financing*, 49 A.B.A.J. 49 (1963); Snyder, Jr., *Computing Municipal Indebtedness Under Pennsylvania Constitutional Limitations*, 7 U. PITT. L. REV. 198, 199 (1941); Comment, *Municipal Improvements as Affected by Constitutional Debt Limitations*, 37 COLUM. L. REV. 177-81 (1937); Note, *Pennsylvania Constitutional Debt Limitations — Circumvention and Proposed Reform*, 37 TEMP. L.Q. 69-70 (1963); Note, 1966 UTAH L. REV. 462-63.

3. Comment, *Municipal Improvements as Affected by Constitutional Debt Limitations*, 37 COLUM. L. REV. 177, 180 (1937).

4. ADVISORY COMMISSION, *supra* note 2, at 39, states that the purpose of the limitations is:

[t]o empower local governments to make use of borrowing, prudently and in a responsible and locally responsive manner, as one means for financing their requirements.

See also Bowmar, *supra* note 2, at 867-68.

5. Bowmar, *supra* note 2, at 867-68, notes that many states and their local subdivisions quickly arrived at their debt limits and thus were precluded from utilizing the full potential for development. Magnusson, *supra* note 2, at 377-80; Comment, *The Construction of "Taxable Property" in Municipal Debt Limitation Statutes*, 72 DICK. L. REV. 619 (1968); Comment, *State Financial Aid for Municipalities*, 29 MISS. L.J. 298, 299-301 (1958). See Wagner, *Cities with Hands Tied*, 49 NAT'L CIVIC REV. 346 (1960), where the former Mayor of New York City discusses the important role of the local government unit in society.

6. Comment, *supra* note 3, at 184.

7. See note 2, *supra*.

sylvania increased by 21 percent and that of the larger cities approximately doubled.⁸ Many of these towns and cities became virtually bankrupt in an attempt to meet their real and imagined needs.⁹ In 1874, this financial instability caused the Commonwealth to adopt Article IX, section 8, of the Constitution.¹⁰ This section limited municipal debt to two percent of the assessed valuation of the taxable property of each political entity unless the voters authorized an increase.¹¹ With voter approval the debt limitation could be raised to seven percent of the assessed valuation of taxable property.¹² One exception was made to these limitations. If a particular political entity had exceeded the permissible seven percent limitation prior to the enactment, section 8 provided for a further increase in debt of three percent with the approval of the electorate.¹³

This constitutional provision was amended five times between 1911 and 1951 for the purpose of liberalizing the debt restrictions for the city of Philadelphia.¹⁴ Further constitutional amendments were also added for

8. THE PREPARATORY COMMITTEE, THE PENNSYLVANIA CONSTITUTIONAL CONVENTION, 1967-68, LOCAL GOVERNMENT, REFERENCE MANUAL No. 4, at 172-73 [hereinafter cited as LOCAL GOVERNMENT].

9. See note 2 *supra*.

10. PA. CONST. art. IX, § 8 (1874).

11. PA. CONST. art. IX, § 8 (1874), provided in pertinent part:

The debt of any county, city, borough, township, school district or other municipality or incorporated district . . . shall never exceed . . . two per centum upon such assessed valuation of property, without the assent of the electors thereof at a public election in such manner as shall be provided by law. . . .

12. PA. CONST. art. IX, § 8 (1874), provided:

The debt of any county, city, borough, township, school district or other municipality or incorporated district . . . shall never exceed seven per centum upon the assessed value of the property therein. . . .

13. PA. CONST. art. IX, § 8 (1874), stated in pertinent part:

[A]ny city, the debt of which now exceeds seven per centum of such assessed valuation, may be authorized by law to increase the same three per centum, in the aggregate at any one time, upon such [assessed] valuation. . . .

14. The 1911 amendment created exemptions from Philadelphia's debt computation. It provided in pertinent part:

[A]ny debt or debts hereinafter incurred by the city and county of Philadelphia for the construction and development of subways for transit purposes, or for the construction of wharves and docks, or the reclamation of land to be used in the construction of a system of wharves and docks, as public improvements, owned or to be owned by said city and county . . . and which shall yield . . . current net revenue in excess of the interest . . . and of the annual installments necessary for the cancellation of said debt or debts, may be excluded in ascertaining the power of the city and county . . . to become otherwise indebted: Provided, That a sinking fund for their cancellation shall be established and maintained.

PA. CONST. art. IX, § 8 (1911).

An amendment in 1915 applied only to the city of Philadelphia, and allowed an increase in debt from seven to ten percent of the assessed valuation of taxable property with the assent of the electors for the following projects:

[T]he construction and improvement of subways, tunnels, railways, elevated railways, and other transit facilities; for the construction and improvements of wharves and docks, and for the reclamation of land to be used in the construction of wharves and docks, owned or to be owned by the city.

PA. CONST. art. IX, § 8 (1915).

This amendment eliminated the exclusion provided for in the 1911 amendment. However, any net revenue yielded by the improvements or construction heretofore mentioned would be a credit against Philadelphia debt computed by a method approved by the General Assembly. PA. CONST. art. IX, § 8 (1915).

The next amendment was adopted in 1918 and provided for Philadelphia debt to be increased to 10 percent of the assessed valuation of taxable property for any

the purpose of exempting certain projects from the scope of Article IX, section 8. In 1913, Article IX, section 15, was adopted to expand the borrowing capacity of all cities and boroughs other than Philadelphia.¹⁵ This provision exempted expenditures for construction or acquisition of self-sustaining water works, subways, underground railroads, and street railways from the debt limitation provisions of section 8.¹⁶ A similar provision, Article IX, section 19, was added in 1933 to exempt from section 8 debt computation all Philadelphia expenditures for the construction of transit facilities to the extent that Philadelphia had levied special assessments to finance the expense.¹⁷

purpose. The other provisions remained virtually unchanged. PA. CONST. art. IX, § 8 (1918).

The 1920 amendment granted Philadelphia an exclusion for:

[A]ny public improvement, or in the construction, purchase, or condemnation of any public utility or part thereof, or facility therefor, if such . . . improvement . . . may reasonably be expected to yield revenues in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. . . .

PA. CONST. art. IX, § 8 (1920).

The 1951 amendment raised Philadelphia's borrowing capacity so that [t]he total debt of said city shall not exceed thirteen and one-half (13½) per centum of the average of the annual assessed valuations of the taxable realty therein, during the ten years immediately preceding the year in which such increase is made, but said city shall not increase its indebtedness to an amount exceeding three (3) per centum . . . without the consent of the electors. . . .

PA. CONST. art. IX, § 8 (1951).

It should be noted, in this context, that these provisions do not apply to Philadelphia county. PA. CONST. art. IX, § 12. PA. CONST. art. IX, § 13, abolished all Philadelphia county offices.

15. PA. CONST. art. IX, § 15 (1913).

16. PA. CONST. art. IX, § 15 (1913), stated in pertinent part:

No obligations which have been heretofore issued, or which may hereafter be issued, by any county or municipality, other than Philadelphia, to provide for the construction or acquisition of waterworks, subways, underground railways or street railways, or the appurtenances thereof, shall be considered as a debt of a municipality, within the meaning of section eight of article nine of the Constitution of Pennsylvania or of this amendment, if the net revenue derived from said property for a period of five years, either before or after the acquisition thereof, or, where the same is constructed by the county or municipality, after the completion thereof, shall have been sufficient to pay interest and sinking fund charges during said period upon said obligations, or if the said obligations shall be secured by liens upon the restrictive properties, and shall impose no municipal liability.

17. PA. CONST. art. IX, § 19 (1933), provided:

The city of Philadelphia, in constructing, for the benefit of the inhabitants thereof, transit subways, rapid transit railways, or other local transit facilities for the transportation of persons or property, shall have the power, in order the more justly to distribute the benefits and costs of such transit facilities, to levy special assessments against such properties, whether abutting or not abutting upon said transit facilities, as are or will be specially and particularly benefited by the construction or operation of such transit facilities; such power to be exercised in accordance with existing or with future laws or pursuant to statutes enacted prior to the adoption of this amendment but made effective by it. Such special assessments, when so levied, may be made payable presently when levied or in installments over a period of years, with or without interest, and shall immediately, when so levied, be deducted from any indebtedness incurred for such purposes in calculating the debt of such city. Such city may acquire by eminent domain either the fee or less estate or easements in land necessary for the construction or operation of such transit facilities or for the disposal of earth or material excavated in the construction thereof or for other incidental purposes; but this provision shall not create any additional powers for the condemnation of any railroad or street railway in operation.

1. *Dichotomies in Pennsylvania Debt Limitations*

Article IX, section 8, of the constitution differentiated between Philadelphia and the rest of the Commonwealth in the area of debt limitation. Distinctions were drawn in the means of computing the tax base, the percentages of that base to which debt was limited, and the lengths of time that the debt could be outstanding. Prior to 1966, the percentage of the tax base which was available for debt limitation purposes was higher for Philadelphia.¹⁸ Until that time, the Philadelphia debt was limited to three percent of the average assessed valuation of taxable property over the ten years precedent to the year for which the ceiling was to be measured.¹⁹ The maximum debt allowed was thirteen and one-half percent with the approval of the electorate.²⁰ In 1966, a new amendment was enacted which increased the debt ceiling of all other political subdivisions in Pennsylvania to five percent of their present assessed property valuation without voter consent and to fifteen percent with such consent.²¹ As can readily be noted, the measure of the Philadelphia and non-Philadelphia tax bases were computed in an entirely different manner. The Philadelphia debt limitation was made more consistent by averaging out over a ten year period the assessed value of taxable property. Presumptively the reason for this differentiation was that the larger monetary borrowing of Philadelphia should not be subject to the economic disparities — *i.e.*, changes in assessed valuations — which can occur on a year to year basis.

A distinction was also drawn on the basis of the maximum length for which debt could remain outstanding. While Philadelphia was allowed to issue obligations with a maturation period of fifty years,²² the debts of the other political subdivisions had to mature within thirty years. Since it is unquestioned that political subdivisions have varying problems dependent on their size and function, it appears rational to have some differentiation of debt limitations on that basis. However, Pennsylvania made only one differentiation, and that was between Philadelphia and the rest

18. The tax base and the percentage of that base which determine the level of permissible debt were delineated in PA. CONST. art. IX, § 8 (1951). The length of time for which Philadelphia's obligations can remain outstanding was set out in the same provision. The duration of the obligations of the other political subdivisions in the Commonwealth were set out constitutionally in PA. CONST. art. IX, § 10 (1951).

19. See note 14 *supra*.

20. See note 14 *supra*.

21. PA. CONST. art. IX, § 8 (1966), provided in pertinent part:

The debt of any county, city, borough, township, school district, or other municipality or incorporated district . . . shall never exceed fifteen (15) per centum upon the assessed value of the taxable property therein nor shall any such county, municipality or district incur any debt, or increase its indebtedness to an amount exceeding five (5) per centum upon such assessed valuation of property, without the consent of the electors thereof. . . .

22. PA. CONST. art. IX, § 10 (1969), provided that:

[I]n incurring indebtedness for any purpose the city of Philadelphia may issue its obligations maturing not later than fifty (50) years from the date thereof. . . .

of the state, even though greater disparities would seem to exist between other political subdivisions.²³

It should be noted in this context that such differentiations were in fact made on a political level. The constitutional debt limitation provisions merely provided a ceiling above which indebtedness could not be incurred.²⁴ Actual borrowing capacity was dependent upon General Assembly authorization to each individual political subdivision or homogeneous group of subdivisions.²⁵ For example, prior to the 1966 amendment to section 8, all political subdivisions except school districts of both the first class and first class A had been authorized to incur debts up to their constitutional

23. See generally PA. CONST. art. IX, § 8 (1966), which states:

The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as provided herein, and in section fifteen of this article, shall never exceed fifteen (15) per centum upon the assessed value of the taxable property therein nor shall any such county, municipality or district incur any debt, or increase its indebtedness to an amount exceeding five (5) per centum upon such assessed valuation of property, without the consent of the electors thereof at a public election in such manner as shall be provided by law. The debt of the city of Philadelphia may be increased in such amount that the total debt of said city shall not exceed thirteen and one-half (13½) per centum of the average of the annual assessed valuations of the taxable realty therein, during the ten years immediately preceding the year in which such increase is made, but said city shall not increase its indebtedness to an amount exceeding three (3) per centum upon such average assessed valuation of realty, without the consent of the electors thereof at a public election held in such manner as shall be provided by law. No debt shall be incurred by, or on behalf of, the county of Philadelphia.

In ascertaining the debt-incurring capacity of the city of Philadelphia at any time, there shall be deducted from the debt of said city so much of such debt as shall have been incurred, or is about to be incurred, and the proceeds thereof expended, or about to be expended, upon any public improvements, or in construction, purchase, or condemnation of any public utility, or part thereof, or facility therefor, if such public improvement or public utility, or part thereof, or facility therefor, whether separately, or in connection with any other public improvement or public utility, or part thereof, or facility therefor, may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. The method of determining such amount, so to be deducted, shall be as now prescribed, or which may hereafter be prescribed by the General Assembly.

In incurring indebtedness for any purpose the city of Philadelphia may issue its obligations maturing not later than fifty (50) years from the date thereof, with provision for a sinking fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be or shall have been incurred by said city of Philadelphia for the purpose of the construction or improvement of public works or utilities of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of, the interest and sinking fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred; and said city shall not be required to levy a tax to pay said interest and sinking fund charges as required by section ten of this article until the expiration of said period of one year after the completion of said work.

See also note 18 *supra*. By contrast, in other areas of municipal government the Commonwealth distinguishes between not only types of political subdivisions, but also between the various subdivisions by size. Thus, there are four classifications of cities by population, PA. STAT. tit. 53, §§ 101-03 (1957); eight classes of counties; two township classes; and five classes of school districts.

24. The Municipal Borrowing Act, PA. STAT. tit. 53, §§ 6101 *et seq.* (1957), delineates the actual borrowing authority for each group or sub-group of political entities.

25. The Municipal Borrowing Act, PA. STAT. tit. 53, §§ 1601 *et seq.* (1957).

limit.²⁶ Subsequent to the passage of that amendment, school districts of the second, third, and fourth classes were authorized to borrow up to their constitutional limit, while school districts of the first class and first class A were only allowed to borrow up to five percent of the assessed valuation of property in the district without voter approval.²⁷ It would appear, therefore, that the 1966 amendment was designed primarily for the aid of the smaller school districts. However, due to the then existing constitutional framework, an increase in limitations had to be authorized for all non-Philadelphia political subdivisions in order to conform to the existing constitutional design and to prevent the necessity of major constitutional reform.²⁸

As previously noted,²⁹ the prior distinctions between political subdivisions would seem to be inappropriate. The 1966 amendment was a vivid example of the irrationality of the differentiations. It also points out the evils of the pre-existing system. The maximum amount of debt was made rigid by requiring a constitutional revision to effectuate changes, thereby preventing necessary change in emergency situations.³⁰ Compounding this rigidity was the requirement that even within the constitutional limitation political authorization was needed before any debt could be incurred. Thus, any need for an increase in debt within the constitutional limit was subject to the political pressure for keeping debt capacity lower than necessary, since increased debt leads inevitably to increased taxes.³¹ It would appear, therefore, that Pennsylvania had incorporated detrimental features of both the statutory and constitutional methods of debt limitation into its system, and had made them greatly unresponsive to the needs of the various Commonwealth political subdivisions.

2. *Circumventing Devices*

However, as bad as the pre-existing Pennsylvania constitutional framework might have been, the ease with which it could be circum-

26. PA. STAT. tit. 53, § 6203 (1957), amended PA. STAT. tit. 53, § 6203 (Supp. 1969), provided in pertinent part:

(b) The debt of any municipality except a school district of the first class may be authorized to be increased by the corporate authorities thereof by the issue of general obligation bonds, with the assent of a majority of the electors thereof voting on the question submitted at a public election to be held in the municipality, to an amount not exceeding seven per centum of the assessed valuation.

(c) The debt of any municipality, authorized by the provisions of section fifteen, article nine of the Constitution to incur debt not exceeding ten per centum, may be authorized to be increased by the corporate authorities thereof by the issue of general obligation bonds, with the assent of three-fifths of the electors thereof voting on the question submitted at a public election to be held in the municipality, to an amount not exceeding ten per centum of the assessed valuation. At the time of this enactment municipalities could increase their debt to 10 percent of the assessed valuation with the consent of 60 percent of the electorate.

27. LOCAL GOVERNMENT, *supra* note 8, at 174.

28. PA. CONST. art. IX, § 8 (1966), makes a general limitation applicable to all non-Philadelphia political subdivisions.

29. See pp. 616-17 *supra*.

30. See generally PA. CONST. art. IX, § 8 (1966), set out at note 23 *supra*.

31. See generally Municipal Borrowing Act, PA. STAT. tit. 53, §§ 6101 *et seq.*

vented was certainly a more serious problem. The Municipal Authorities Act³² provides a major loophole by which the municipalities of the state could evade the constitutional requirements of debt limitation. This Act provides for the creation of independent authorities to run various aspects of municipal government.³³ These authorities are free to borrow funds through bonds or other methods and are not subject to the strictures of Article IX debt limitation.³⁴ Many local governments set up these auto-

32. PA. STAT. tit. 53, §§ 301-74 (1957).

33. PA. STAT. tit. 53, § 306A (Supp. 1969), provides:

Every Authority incorporated under this act shall be a body corporate and politic, and shall be for the purpose of acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, projects of the following kind and character, buildings to be devoted wholly or partially for public uses, including public school buildings, and for revenue-producing purposes; transportation, marketing, shopping, terminals, bridges, tunnels, flood control projects, highways, parkways, traffic distribution centers, parking spaces, airports, and all facilities necessary or incident thereto, parks, recreation grounds and facilities, sewers, sewer systems or parts thereof, sewage treatment works, including works for treating and disposing of industrial waste, facilities and equipment for the collection, removal or disposal of ashes, garbage, rubbish and other refuse materials by incineration, land fill or other methods, steam heating plants and distribution systems, incinerator plants, waterworks, water supply works, water distribution systems, swimming pools, playgrounds, lakes, low head dams, hospitals, motor buses for public use, when such motor buses are to be used within any municipality, subways and industrial development projects, including but not limited to projects to retain or develop existing industries and the development of new industries: Provided, That an Authority created by a school district or school districts shall have the power only to acquire, hold, construct, improve, maintain, operate and lease public school buildings and other school projects acquired, constructed or improved for public school purposes. The purpose and intent of this act being to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety and prosperity, and not to unnecessarily burden or interfere with existing business by the establishment of competitive enterprises, none of the powers granted by this act shall be exercised in the construction, improvement, maintenance, extension or operation of any project or projects which in whole or in part shall duplicate or compete with existing enterprises serving substantially the same purposes. This limitation shall not apply to the exercise of the powers granted hereunder for facilities and equipment for the collection, removal or disposal of ashes, garbage, rubbish and other refuse materials by incineration, land fill or other methods, if each municipality organizing or intending to use the facilities of an Authority having such powers shall declare by resolution or ordinance that it is desirable for the health and safety of the people of such municipality that it use the facilities of the Authority, and if any contract between such municipality and any other person, firm or corporation for the collection, removal or disposal of ashes, garbage, rubbish and other refuse material has by its terms expired or is terminable at the option of the municipality or will expire within six months from the date such ordinance becomes effective. This limitation shall not apply to the exercise of the powers granted hereunder for industrial development projects if the Authority does not develop industrial projects which will compete with existing industries. The municipality or municipalities organizing such an Authority may, in the resolution or ordinance signifying their intention so to do, or from time to time by subsequent resolution or ordinance, specify the project or projects to be undertaken by the said Authority, and no other projects shall be undertaken by the said Authority than those so specified. If the municipal authorities organizing an Authority fail to specify the project or projects to be undertaken, then the Authority shall be deemed to have all the powers granted by this act.

34. PA. STAT. tit. 53, § 306B (1957), provides in pertinent part:

Every Authority is hereby granted, and shall have and may exercise all powers necessary or convenient for the carrying out of the aforesaid purposes, including but without limiting the generality of the foregoing, the following rights and powers:

(i) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations (herein called "bonds")

mous authorities to control an aspect of municipal life — for example, parking or sewage disposal — and any further debts incurred to meet these particular municipal needs were not included in municipal debt³⁵ even though the municipality was often the instrumentality of repayment for these obligations.³⁶

When these obligations are incurred by the authority they create indebtedness, usually bonded, which must be financed either through payments by the municipality — *i.e.*, through leasing agreements — or payment by the taxpayers of the municipality in the form of service fees or assessments — *i.e.*, to finance revenue bonds.³⁷ Had the municipality itself

of the Authority, said bonds to have a maturity date not longer than forty years from the date of issue, except that no refunding bonds shall have a maturity date later than the life of the Authority, and to secure the payment of such bonds or any part thereof by pledge or deed of trust of all or any of its revenues and receipts, and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds, whether issued or to be issued, as the Authority shall deem advisable, and in general to provide for the security for said bonds and the rights of the holders thereof, and in respect to any project constructed and operated under agreement with any Authority or any public Authority of any adjoining state, to borrow money and issue such notes, bonds and other evidences of indebtedness and obligations jointly with any such Authority (emphasis added).

35. This is because the Act specifically provides that no municipality can be held liable for authority debts. PA. STAT. tit. 53, § 306C (1957). See Zimmerman v. Susquehanna Twp., 59 Dauph. 359 (1949).

36. While the municipalities can not be held liable for the debts of the authority, one of the common authority arrangements is for the municipality to give property to the authority and lease it back. Those lease payments by the municipality are used for the payment of authority debts. Thus, the municipality in effect pays authority debts. See p. 621 *infra*.

If this method is not used, authority debts are generally paid by the taxpayer through service fees or assessments for improvements on property.

37. With respect to leasing, see PA. STAT. tit. 53, § 306B(d)(k) (1957), which provide for the leasing of property to a municipality, and gives an authority the power:

(d) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

[and] . . .

(k) [T]o borrow money and accept grants from and to enter into contracts, leases or other transactions with any Federal agency, Commonwealth of Pennsylvania, municipality, school district, corporation or Authority.

With respect to service charges, see PA. STAT. tit. 53, § 306B(h) (1957), which provides the authority with the power:

(h) To fix, alter, charge and collect rates and other charges in the area served by its facilities at reasonable and uniform rates to be determined exclusively by it, for the purpose of providing for the payment of the expenses of the Authority, the construction, improvement, repair, maintenance and operation of its facilities and properties, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations, or with the municipality incorporating or municipalities which are members of said Authority or with any municipality served or to be served by said Authority, and to determine by itself exclusively the services and improvements required to provide adequate, safe and reasonable service, including extensions thereof, in the areas served: Provided, That if the service area includes more than one municipality, the revenues from any project shall not be expended directly or indirectly on any other project, unless such expenditures are made for the benefit of the entire service area. Any person questioning the reasonableness or uniformity of any rate fixed by any Authority or the adequacy, safety and reasonableness of the Authority's services, including extensions thereof, may bring suit against the Authority in the court of common pleas of the county wherein the project is located, or if the project is located in

made these improvements, and they were not to be financed out of subsequent current revenues, the bonds would constitute debt and, assuming debt in excess of the non-electoral level, would have to be approved by the electorate or, and in cases where the limit had been reached, they would be completely barred by the Constitution.³⁸ However, under the Act, the legislature has established no limitation on the amount of funds that such authorities may borrow, and no voter approval is required for these debts.³⁹ The only limitation is on the areas of government that such authorities can control.⁴⁰ However, this restriction would appear virtually meaningless since most areas of municipal concern are covered by the Act.⁴¹ Consequently, the debt limitation provisions of Article IX were rendered virtually nugatory and the municipalities were free to load "the future with obligations to pay for the things that the present desires but cannot justifiably afford."⁴² Such a result made a mockery of the avowed purpose of the debt limitation provisions.

B. *The Provisions in Practice*

In interpreting the foregoing constitutional provisions, the courts of Pennsylvania were faced with three major problems: (1) the effect of

more than one county then in the court of common pleas of the county wherein the principal office of the project is located. The court of common pleas shall have exclusive jurisdiction to determine all such questions involving rates or service. Appeals may be taken to the Superior Court within thirty days after the court of common pleas has rendered a final decision.

With respect to assessments, *see* PA. STAT. tit. 53, § 306B(r)(s) (1957), which provide the authority with the power to:

(r) To charge the cost of construction of any sewer constructed by the Authority against the properties benefited, improved or accommodated thereby to the extent of such benefits. Such benefits shall be assessed in the manner provided by section eleven of this act for the exercise of the right of eminent domain.

(s) To charge the cost of construction of any sewer constructed by the Authority against the properties benefited, improved or accommodated thereby according to the foot front rule. Such charges shall be based upon the foot frontage of the properties so benefited, and shall be a lien against such properties. Such charges may be assessed and collected and such liens may be enforced in the manner provided by law for the assessment and collection of charges and the enforcement of liens of the municipality in which such Authority is located: Provided, That no such charge shall be assessed unless prior to construction of such sewer the Authority shall have submitted the plan of construction and estimated cost to the municipality in which such project is to be undertaken, and the municipality shall have approved such plan and estimated cost: And provided further, That there shall not be charged against the properties benefited, improved or accommodated thereby an aggregate amount in excess of the estimated cost as approved by the municipality.

38. Under the old constitutional provisions self-financing projects could only be excluded from debt in certain areas. *See generally* PA. CONST. art. IX, § 15 (1913) and PA. CONST. art. IX, § 19 (1933), set out in notes 16 and 17 *supra*. *See also* PA. CONST. art. IX, § 8 (1911); PA. CONST. art. IX, § 8 (1915); PA. CONST. art. IX, § 8 (1920), set out in note 14 *supra*.

39. PA. STAT. tit. 53, § 307B (1957).

40. *See* note 33 *supra*.

41. *See* note 33 *supra*; LOCAL GOVERNMENT, *supra* note 8, at 174. The authority method of financing has become so popular that as of 1955 there were 914 known authorities with outstanding bonds of \$611,149,273 and with their debt increasing yearly by \$50,000,000. Hancock, *Pennsylvania Local Government*, PA. STAT. tit. 53, § 1, at 43, 62-63 (1957).

42. Hamilton's Appeal, 340 Pa. 17, 25, 16 A.2d 32, 36 (1940).

municipality borrowing in excess of the constitutional limitation; (2) the meaning of debt; and (3) the meaning of assessed valuation.⁴³ These problems were all acutely important to the municipalities in order to determine how much could be borrowed and what liability would result from borrowing in excess of the constitutional limit. These problems will be discussed individually to facilitate a clearer understanding of the computation of debt under the pre-existing law.

1. *The Result of Borrowing in Excess of Constitutional Limitations*

The courts in Pennsylvania consistently held that a contract or obligation entered into by a municipality which exceeded the constitutional debt limitation was void and unenforceable.⁴⁴ For example, in *Charleroi Lumber Co. v. Bentleyville Borough School Dist.*,⁴⁵ an action by a contractor to enforce a contract for labor and materials, the court held that expenses in excess of a legally authorized bond issue in the construction of a school could not be collected.⁴⁶ The rationale for this decision was that one who contracts with a government agency does so at his own peril and to allow the contractor the defense of estoppel would defeat the purpose of the constitutional provisions. Likewise, *quantum meruit* did not justify recovery where the building shell was completed within the statutory debt limitation but essential extras added to the cost by over thirty percent.⁴⁷

However, in cases where there was a minor increase in expenditures which caused construction expenses to slightly exceed the municipal debt ceiling authorized by the voters, but not the maximum debt limitation provided by the constitution, the courts have allowed recovery.⁴⁸ Thus, in *Miller & Sons Co. v. Mount Lebanon Twp.*,⁴⁹ the court enforced a contract against the city where expenditures exceeded the amount raised

43. LOCAL GOVERNMENT, *supra* note 8, at 176.

44. *See, e.g.*, *Pittsburgh Paving Co. v. Pittsburgh*, 332 Pa. 563, 3 A.2d 905 (1938); *McAnulty v. Pittsburgh*, 284 Pa. 304, 131 A. 263 (1925). *See also* *Raff v. Philadelphia*, 256 Pa. 312, 100 A. 815 (1917), where the court enjoined the entering of bids for the construction of a convention hall because authorization by the electorate had been predicated on a construction price of \$1,300,000 and the architects estimated cost had risen to \$2,225,000. The court there stated:

They [the voters] have a right to insist that what the city authorities so clearly gave them to understand was to be the cost of the hall when they cast their ballots in favor of the increase of the city indebtedness for that purpose shall not now be ignored by those authorities; for who can say that they would have voted for the increases if they had known the convention hall was to cost hundreds of thousands of dollars more than the sum indicated. . . .

Id. at 317, 100 A. at 817.

It should be noted that in the latter case the maximum debt authorized by the constitution was not reached, — the electorate could have approved the expenditure.

45. 334 Pa. 424, 6 A.2d 88 (1939).

46. *Id.*

47. *Id.* at 433, 6 A.2d at 92. The court did not explicitly use the term *quantum meruit*. *Accord*, *Kreusler v. McKees Rocks School Dist.*, 256 Pa. 281, 100 A. 821 (1917); *O'Malley v. Olyphant Borough*, 198 Pa. 525, 48 A. 483 (1901).

48. *See, e.g.*, *Athens Nat'l Bank v. Ridgebury*, 303 Pa. 479, 154 A. 791 (1931); *Hallock v. Lebanon*, 215 Pa. 1, 64 A. 362 (1906); *Gable v. Altoona*, 200 Pa. 15, 49 A. 367 (1901).

49. 309 Pa. 216, 163 A. 509 (1932).

through a bond issue authorized by the electorate by \$4,000. The excess on the original contract was a mere \$16,000 over the estimated cost of \$226,000. The court stated that since the excess was less than two percent of the contract price and since the contract was made in good faith by the town for necessary extras, there was no reason to refuse enforcement.⁵⁰ It would appear, therefore, that while as a general rule expenditures in excess of the constitutionally authorized debt limitations were declared void, those expenditures which were only slightly over an authorized increase but within the constitutional limitation would be enforced. Similarly, any excess in the authorized debt limitation caused by a judgment in a tort action has been enforced on public policy reasons to prevent the political subdivisions from becoming careless because they were judgment proof.⁵¹

2. *The Meaning of Debt*

In *Graham v. Philadelphia*,⁵² the Supreme Court of Pennsylvania stated that, "[a] debt within the meaning of the Constitution is created when an obligation is undertaken 'to pay in the future for consideration received in the present' . . ."⁵³ Under this rationale, absent an exemption under sections 15 or 19, substance would exceed form and any future obligation was to be considered a debt.⁵⁴ The term was defined as net debt and not gross debt. Thus, certain deductions had to be made from the gross debt figure. The most important of these were repayment of existing debt and the figure by which current revenues exceeded current expenses.⁵⁵ Those items most frequently included in current revenue were

50. *Id.* at 219, 163 A. at 510.

51. *See, e.g.,* *Keller v. Scranton*, 200 Pa. 130, 49 A. 781 (1901); *Plains Township's Appeal*, 21 Pa. Super. 68 (1902).

52. 334 Pa. 513, 6 A.2d 78 (1939).

53. *Id.* at 519, 6 A.2d at 80, *quoting*, *Keller v. Scranton*, 200 Pa. 130, 135, 49 A. 781, 783 (1901). *Accord*, *Kelley v. Earle*, 325 Pa. 337, 190 A. 140 (1937); *Trantner v. Allegheny County Authority*, 316 Pa. 65, 173 A. 289 (1934).

54. For the pertinent exemptions provided by these sections see notes 16 & 17 *supra*.

55. The computation of net debt is now covered by PA. STAT. tit. 53, § 6202 (1957), which states:

The net debt of a municipality shall be the net debt determined as follows:

From the gross liabilities of the municipality, which shall be the total amount of the following items: (1) the principal of all bonds authorized or outstanding for whatever purpose issued; (2) the amount of any overdue interest and state tax assumed on account of any general obligation bonds, and (3) all other debts of the municipality — there may be deducted the following items:

(a) The amount of any cash and bonds of the municipality held in any sinking fund for the payment of the principal of any outstanding debt.

(b) The par value of all legal investments other than bonds of the municipality held in any sinking fund, unless such par value shall be in excess of the actual value, in which case the actual value shall be used. It is the legislative intent of this clause, since legal investments in any sinking fund may be converted into cash and such cash used as a deduction, that such investments, having been legally authorized, should be deductible in like manner as cash and bonds of the municipality held in any sinking fund.

(c) The amount of undisputed municipal liens, other than tax liens, actually filed against property in such proportion as such liens are certain to be collected.

(d) The amount of the preliminary estimates of benefits, costs and expenses

liquid assets — including delinquent taxes, licenses, and fines — and other revenues deemed by the authorities to be collectable as well as anticipated tax income.⁵⁶

While, an obligation to pay in the future for present improvements was considered debt, if the repayment of that indebtedness were provided for out of subsequent current revenues there could be no debt in a constitutional sense.⁵⁷ Consequently, it was held that a contract calling for future installments to be paid, when due, out of current revenues created no debt, absent a showing that the installments would be beyond the scope of the anticipated revenue.⁵⁸ If, however, such installment contracts were

which may be assessed against the owners of property and for which liens may be legally filed in any case where a public improvement has been or is about to be made by any municipality and general obligation bonds have been or are to be issued for the payment of the same in whole or in part. Such estimates of assessable benefits, costs and expenses shall be signed and verified by the engineer, or other proper officer of the municipality in case the municipality has no engineer, and shall state that they are in his opinion fair amounts of benefits, costs and expenses which may be lawfully assessed in such proceedings.

(e) The amount of surplus cash not specifically appropriated to any purpose other than the payment of any item of debt.

(f) The amount of assessment bonds outstanding, heretofore issued for the construction of any project, where the cost of such project has been assessed on property specially benefited, which bonds purport to impose no municipal liability, but this clause shall not apply to assessment bonds where the courts have held the same to be general obligations of the municipality.

(g) The amount of all delinquent taxes on real estate in such proportion as such taxes are certain to be collected, except such amount thereof as may have been appropriated as current revenues in the current year's budget.

(h) The amount of current revenues which are applicable within the current fiscal year to the payment of the principal of any debt.

(i) The amount of any utility bonds issued for the construction or acquisition of waterworks, subways, underground railways or the appurtenances thereof, where it shall be determined in the manner provided in article six of this act that the net revenue derived from said property for a period of five years, either before or after acquisition thereof, or, where constructed by the municipality, after the completion thereof, shall have been sufficient to pay interest and sinking fund charges upon said obligations, or, if the said obligations shall be secured solely by liens upon the respective properties and shall impose no municipal liability, but the amount of such utility bonds so deductible shall be the total amount of such bonds outstanding less the amount of cash and investments held in any sinking fund applicable to the payment of such utility bonds as are general obligations.

(j) The amount of any bonds legally issued under this act or any other act of Assembly which impose no municipal liability, other than such bonds as may have been defined as deductible under the provisions of other clauses of this section.

(k) All other solvent debts due the municipality directly, payment of which it can enforce as one of its quick assets for the liquidation of any of its debt.

56. *Georges Twp. v. Union Trust Co.*, 293 Pa. 364, 143 A. 10 (1928). However, current expenses have priority over debt payments, and only anticipated surplus can be used in computing net debt. *Hillman C. & C. Co. v. Jenner Township*, 300 Pa. 108, 150 A. 293 (1930); *Schuldice v. Pittsburgh*, 251 Pa. 28, 95 A. 938 (1915). Current expenses are held to be only the normal incidentals necessary for the running of a municipality, and therefore permanent improvements should not be made payable out of current revenues unless all other municipal expenses are paid. *Kelley v. Earle*, 325 Pa. 337, 190 A. 140 (1937); *Georges Township v. Union Trust Co.*, 293 Pa. 364, 143 A. 10 (1928); *Lesser v. Warren Borough*, 237 Pa. 501, 85 A. 839 (1912); *Brown v. City of Corry*, 175 Pa. 528, 34 A. 854 (1896).

57. *See, e.g.*, *McAnulty v. City of Pittsburgh*, 284 Pa. 304, 131 A. 263 (1925); *Gable v. Altoona*, 200 Pa. 15, 49 A. 367 (1901); *Addyston Pipe & Steel Co. v. City of Corry*, 197 Pa. 41, 46 A. 1035 (1900).

58. *See, e.g.*, *Kelley v. Earle*, 320 Pa. 449, 182 A. 501 (1936); *Georges Township v. Union Trust Co.*, 293 Pa. 364, 143 A. 10 (1928); *Brown v. City of Corry*, 175 Pa. 528, 34 A. 854 (1896); *Appeal of City of Erie*, 91 Pa. 398 (1879).

not chargeable to current revenues, the entire anticipated payment became debt at the time of contracting.⁵⁹ Similarly, in *McGuire v. Philadelphia*,⁶⁰ it was held that "[e]very authorization of a municipal loan is . . . to be regarded as exhausting *pro tanto* the municipality's borrowing capacity."⁶¹ However, in a somewhat analogous situation, accrued interest was considered debt while unaccrued interest was not included in the computation.⁶²

While the term debt was used in its broad, common meaning, there were several exceptions which severely delimited its scope. The most significant exceptions, as previously noted,⁶³ were municipal authority bonds and long term leases between a municipality and the authority. In *Detweiler v. Hatfield Borough School Dist.*,⁶⁴ a taxpayer sought to enjoin the establishment of a joint secondary school pursuant to a contract between six school districts. The contracts provided that the districts would lease the building from the authority for thirty years. It was held that no debt was incurred since the money for the lease was to be paid out of current revenues.⁶⁵ Similar exemptions were affirmed in *Beam v. Ephrata Borough*,⁶⁶ where the court held that non-debt revenue bonds would not be included in debt where they were used for improvements in an electric company and could be paid back out of the revenue of the *entire* project.⁶⁷ However, in *Lesser v. Warren Borough*,⁶⁸ where a water works was purchased and secured by the revenue of the works and liens of the property, a debt was said to be created because the liens could be foreclosed and the city could lose its property and improvements.⁶⁹ The

59. See, e.g., *Kelley v. Earle*, 320 Pa. 449, 182 A. 501 (1936); *Brown v. City of Corry*, 175 Pa. 528, 34 A. 854 (1896).

60. 245 Pa. 287, 91 A. 622 (1914).

61. *Id.* at 298, 91 A. at 625 (emphasis added).

62. See, e.g., *Pennsylvania Power & Light Co. v. Bethlehem*, 323 Pa. 313, 185 A. 710 (1936); *Derry Twp. School Dist. v. Derry Borough School Dist.*, 310 Pa. 45, 164 A. 802 (1932).

It appears incongruous that authorized, but unissued bonds which create no indebtedness until issuance, are considered debt, while unaccrued interest, which is sure to become future debt absent the recalling of bonds, is not deemed debt until the interest comes due.

63. See pp. 618-21 *supra*.

64. 376 Pa. 555, 104 A.2d 110 (1954).

65. *Id.* at 562-63, 104 A.2d at 115. The court, quoting *Kelley v. Earle*, 325 Pa. 337, 345, 190 A. 140, 144 (1937), stated:

A self liquidating project . . . [is] one . . . wherein the revenues received are sufficient to pay the bonded debt and interest charges over a period of time. The source of the receipt is not important.

It was further held by the court that the agreement to buy back the property in thirty years could not be enjoined until the expiration of the lease. *Id.* at 561, 104 A.2d at 114. The court's rationale was based on the theory that the project was self-liquidating because the bonded debt and interest charges were to be paid from the lease revenues and the fact that said revenues were paid by the six municipalities was irrelevant. *Id.* at 562, 104 A.2d at 115.

66. 395 Pa. 348, 149 A.2d 431 (1959).

67. *Id.*

68. 237 Pa. 501, 85 A. 839 (1912).

69. *Id.* at 508, 85 A. at 841. The court there stated:

This is buying the waterworks on credit, pledging the waterworks to pay the debt. It is the exact equivalent of the borough giving its mortgage, upon the water system purchased, to the water company to secure the payment of the debt.

A default in payment would subject the property to foreclosure proceedings, and the borough would lose the property. A municipal debt will be incurred, for

distinction between these latter two decisions would appear to be that in the first no future debt was to be created, while in the latter, if the municipality could not meet its payments, a future obligation might well accrue to the municipality. It should also be noted, however, that in the *Beam* case, which was more recently decided, there is dictum to the effect that since the municipality could have made the same improvements without creating a constitutional debt by means of a municipal authority, it would appear that there would be no valid reason for objecting to the municipality doing directly what it was free to do indirectly.⁷⁰

Finally, in determining what constituted a debt, the exemption provisions of sections 15 and 19 must also be considered. In interpreting the modifying provisions of section 15, the courts held that those exemptions from the debt limitation provisions of section 8 only applied where: (1) the money was used for the construction or acquisition of a project; (2) the funds were used for waterworks, subways, underground railway, or street railway projects; and (3) the project had been self-sustaining for five years or was financed solely by liens on the project property and did not involve the general credit of the municipality⁷¹ — *i.e.*, where the liens were payable to the municipality. The extent of the limitation was further narrowed by the interpretation of the term municipality to include only cities and boroughs and not school districts, townships, and other incorporated districts.⁷² As previously noted,⁷³ the exemption for section 19 is predicated solely on special assessments levied by Philadelphia. Consequently, the litigation involving this provision has centered on the propriety of such assessments in specific cases and is beyond the scope of this Comment.⁷⁴

the payment of which certain municipal property will be pledged, and, if the debt should not be paid, that property will be sold to pay it.

70. 395 Pa. 348, 352, 149 A.2d 431, 433 (1959). The court stated:

For the past twenty-five years we have observed all types of municipalities finance innumerable public improvements through the facility of the "Authority." These self-liquidating projects were developed outside the framework of Article IX, Section 8 of the Constitution and imposed no obligation or debt upon the municipality. *Surely a municipality may do directly what it has done indirectly through the facility of an "Authority" without doing violence to Article IX, Section 8* (emphasis added).

This rationale, if ever formally adopted, would appear to put the Legislature above the Constitution. Such an emasculating of the constitutional debt limitation procedures would appear to make debt limitation a dead issue in Pennsylvania.

71. LOCAL GOVERNMENT, *supra* note 8, at 176; *Hoffman v. Kline*, 300 Pa. 485, 150 A. 889 (1930).

72. *Long v. Cheltenham Twp. School Dist.*, 269 Pa. 472, 112 A. 545 (1921). The rationale employed by the court centered on the fact that a school district "has no right to construct, or acquire 'waterworks, subways, underground railways or street railways.'" Consequently, the court reasoned that "municipalities" as used in the rest of the section could not be meant to include school districts.

73. *See* note 17 *supra*.

74. For a complete discussion of debt computation under the prior Pennsylvania constitutional provisions, *see* Snyder, Jr., *Computing Municipal Indebtedness Under Pennsylvania Constitutional Limitations*, 7 U. PITT. L. REV. 198 (1941).

3. *The Meaning of Assessed Valuation*

In interpreting the meaning of assessed valuation as used in sections 8 and 15, the courts found it to mean the value of property as it was computed for tax purposes.⁷⁵ Thus, even though the valuation of property for such purposes rarely approached its market value, the municipalities in the Commonwealth were constitutionally limited to that value.⁷⁶ This limitation took away a great deal of freedom as well as revenue from many municipalities since a county assessment board was in some instances authorized to make the determination of assessed value.⁷⁷ In applying this restriction the Pennsylvania Supreme Court held in *Breslow v. Baldwin Twp. School Dist.*,⁷⁸ that an amendment to the Municipal Borrowing Act⁷⁹ which provided for the issuance of general obligation bonds up to two percent of the assessed valuation was unconstitutional because assessed value was defined as market value.⁸⁰ As a result of this decision any attempt to circumvent this restriction would appear to be doomed to failure since it would automatically be viewed as an attempt to evade the constitutional strictures.

4. *Conclusion*

What emerged from the framework of debt limitation provisions under the prior Pennsylvania constitutional provisions was a picture of inflexibility and unequal borrowing authority, implemented politically through authorizations by the legislature. The uncertainties flowing from the political control of the final debt ceiling by the legislature were magnified and the limitation was made meaningless by the Municipal Authorities Act, by which the political subdivisions of the Commonwealth could evade the constitutional limitations. It was, therefore, quite incongruous that the courts took a strict view in interpreting constitutional limitations while at the same time upholding the constitutionality of this Act. It would seem significant that most of the cases interpreting the debt limitation pro-

75. Appeal of W.H. Brown, 111 Pa. 72, 2 A. 77 (1885). It is the last preceding assessment for the purpose of taxation. Cf. *McGregor Estate v. Young Twp.*, 350 Pa. 93, 38 A.2d 313 (1944); *Duane v. Philadelphia*, 322 Pa. 33, 185 A. 401 (1936); *Bullitt v. Philadelphia*, 230 Pa. 544, 79 A. 752 (1911).

76. LOCAL GOVERNMENT, *supra* note 8, at 175; *Breslow v. School Dist. of Twp. of Baldwin*, 408 Pa. 121, 182 A.2d 501 (1962).

77. See Snyder, Jr., *supra* note 74.

78. 408 Pa. 121, 182 A.2d 501 (1962).

79. Municipal Borrowing Act, P.L. 159 (1941), PA. STAT. tit. 53, § 6101 *et seq.* (1957). The amendment provided:

"Assessed valuation," the market valuation of all property at such rates and prices for which the same would separately bona fide sell taxable in the municipality for the purposes of the municipality, as last determined by the board, bureau or persons charged by law with the duty of determining the valuation of such property for tax purposes, or in any municipality in which the board, bureau or persons charged by law with the duty of determining the value of such property for tax purposes does not fix the market valuation of property, such market valuation shall be the market valuation fixed and certified by the State Tax Equalization Board.

PA. STAT. tit. 53, § 6102(h) (Supp. 1969).

80. 408 Pa. 121, 127, 182 A.2d 501, 505 (1962).

visions of the Pennsylvania Constitution have been decided prior to the adoption of Municipal Authorities Act, since it would now appear that the necessity of approaching the constitutional limitation has been made virtually nonexistent. Consequently, any reform which does not either repeal or control the use of municipal authorities would seem to be nothing but a sham changing form rather than substance.

III. ALTERNATIVE METHODS OF DEBT LIMITATION

Having explored the pre-existing municipal debt limitations in Pennsylvania, it is appropriate to investigate generally other alternatives. The main types of restrictive provisions which hinder the use of debt financing by municipalities are: (1) a debt-to-property ratio which is usually expressed in the form of a fixed percentage of assessed valuation of the taxable real property within a political unit;⁸¹ (2) a fixed percentage of assessed valuation debt with provision for a further percentage increase on approval of the electorate;⁸² (3) a coordination of current revenues of the political unit and percentage of assessed property;⁸³ and (4) unlimited indebtedness with voter approval.⁸⁴ These provisions may be either constitutional or statutory in form. For purposes of this Comment, the only relevance in this distinction is that constitutional provisions are more difficult to modify, and statutory provisions, although more flexible, are subject to political pressures when enacted or in need of reformation.⁸⁵ These factors should be kept in mind throughout the following discussion of existing provisions.

Additionally, there are other overriding considerations with which one must be familiar in order to completely understand the problems created by debt limitation provisions in any given situation. Therefore, as a framework for the subsequent sections of this Comment, the following general conditions which affect the impact of state restrictions on local governments are noted:

81. ADVISORY COMMISSION, *supra* note 2, at 1; Bowmar, *supra* note 2, at 866; Comment, *The Construction of "Taxable Property" in Municipal Debt Limitation Statutes*, 72 DICK. L. REV. 619, 620 (1968).

82. *Id.*

83. Bowmar, *supra* note 2, at 866-67; Comment, *supra* note 81, at 620.

84. Note, 1957 WASH. U.L.Q. 59.

85. ADVISORY COMMISSION, *supra* note 2, at 28. See LOCAL GOVERNMENT, *supra* note 8, at 178, where it is noted with regard to legislative control:

For those who believe that some municipal debt restrictions are useful, arguments in favor of leaving strictly to the Legislature the duty of establishing the restrictions are (1) that legislative control is more flexible; (2) that the Legislature is more responsive to the public need; and (3) that the Legislature is in a better position to fix and alter limits that will meet the changing and varying borrowing needs of all subdivisions. The arguments against leaving this matter strictly to the Legislature are (1) that the Legislature might be unwilling to oppose any programs desired by the municipalities and thus provide no real protection against unwise increases in the borrowing capacity; (2) that the Legislature might establish debt limits in response to pressures from the various subdivisions and not as a result of a careful consideration of the subdivisions' need to borrow and ability to pay; and (3) that few members of the Legislature other than those from the subdivisions involved would have sufficient knowledge to make an intelligent decision on such matters.

1. The level of property tax assessments.
2. The level of urbanization and population growth calling for increased public facilities.
3. The extent of voter interest and participation.
4. The particular local government structure as well as the functions of other local units.
5. The existence of state financial aid to local governments.⁸⁶

*A. Present Types of Constitutional and Statutory
Debt Limits*

The power to incur debts is not inherent in local governments and therefore this power must be granted by state constitutions, statutes, or by municipal charters.⁸⁷ The utility of existing restrictions will now be surveyed.

1. Fixed Percentage of Assessed Valuation of Real Property

Of the four types previously noted, the fixed percentage of assessed valuation is the type of restriction most commonly employed. To a large extent, the practical and theoretical criticisms manifested by this type of provision are equally applicable to its variations, since they all depend, in some degree, upon percentage of assessed valuation.⁸⁸

An initial criticism of the percentage of assessed value of taxable property approach is that it looks to the past to determine limits while the servicing of the long-term debt will take place in the future. Thus, the limit is plagued with the same problems as were the first debt limit provisions, in that the probabilities of shortsightedness are present in trying to adequately provide for the future. Consequently, such provisions may become too inflexible in meeting future municipal needs.⁸⁹ Further, the constitutional and statutory provisions often do not make allowances for "overlying" debt — bonds of other property-taxing governments that cover some or all of the same area.⁹⁰ This phenomenon of "overlying" debt is

86. ADVISORY COMMISSION, *supra* note 2, at 50.

87. Bowmar, *supra* note 2, at 863-64; Comment, *supra* note 81, at 619. For discussions of various provisions in different states, see Crawford, *Restraints on Municipal Indebtedness in Ohio*, 21 OHIO STATE L.J. 331 (1960); Keernan, *Wisconsin Municipal Indebtedness*, 64 WISC. L. REV. 173 (1964) (Wisconsin law); Patterson, *Legal Aspects of Municipal Bond Financing*, 6 U. FLA. L. REV. 287 (1953) (Florida law); Comment, 1957 WASH. U.L.Q. 59 (Missouri law).

88. ADVISORY COMMISSION, *supra* note 2, at 48-49. For purposes of the discussion on debt limit provisions:

It is extremely important to note that *where* States do impose any of the several types of restrictions . . . these usually apply only to local governments' issuance of full faith and credit debt, and not to the issuance of nonguaranteed debt.

Id. at 34. See also ADVISORY COMMISSION, *supra* note 2, at 1; Bowmar, *supra* note 2, at 866; Comment, *supra* note 79, at 620.

89. ADVISORY COMMISSION, *supra* note 2, at 2, 39. See p. 613 *supra* on the shortsightedness of the original enactments.

90. ADVISORY COMMISSION, *supra* note 8, at 2, 39.

quite common since each property-taxing unit has a separate debt limit and thus fragmentation — *i.e.*, special districts⁹¹ — raises the aggregate debt limits beyond that envisioned as prudent.

Additionally, the debt limit based on a percentage of the property tax base is not related to a local political unit's entire revenue; rather it is related to just one source — the local property tax. Currently this tax is not representative of the bulk of a unit's revenue and often accounts for less than one-half of such revenues.⁹² A further detrimental ramification of this type of limitation lies in the method by which the property base is determined. The customary technique in this regard is to determine the property base on a figure representing assessed value. These assessed values are frequently only a fraction of the real value of the property and consequently their use as a basis for determining debt limits immediately denies a local government extra debt-incurring capacity.⁹³ Therefore, a realistic assessment procedure requiring assessment at fair market value would have the immediate effect of raising debt limit ceilings. Conversely, the political and local pressures brought to bear on assessors may result in even more imprecise reflections of the true property tax base of a municipality.⁹⁴

A special difficulty arises where the percentage limitation is constitutionally provided. Under this circumstance, the likelihood is that the same percentage will apply to all of the local government units. This uniformity tends to discriminate against the urban centers and the more populous areas, since these metropolitan communities require a greater array and concentration of public services than do smaller towns. These needs in turn elicit a need for greater investment in facilities for local government,⁹⁵ consequently causing the limitations to operate more restrictively upon these urban centers.

2. *Fixed Percentage of Assessed Value Plus Further Percentage Increase upon Approval of the Voters*⁹⁶

This variation of the fixed percentage scheme is subject to all of the criticisms previously mentioned in regard to the first alternative. However, the provision for a further percentage increase with voter approval is an improvement because it leaves some room for flexibility if the limit is reached. This type of provision is the one existent in Pennsylvania

91. See pp. 632-33 *infra* for a discussion of special districts.

92. ADVISORY COMMISSION, *supra* note 2, at 2, 42-43.

93. *Id.* at 45-46; Bowmar, *supra* note 2, at 894; Comment, *supra* note 3, at 182, where it is noted that:

[t]here is no necessary relationship between the assessed value of property and a municipality's need for public improvements or its ability to finance such improvements.

94. ADVISORY COMMISSION, *supra* note 2, at 3, 47, 60-61; Comment, *supra* note 3, at 182.

95. ADVISORY COMMISSION, *supra* note 2, at 41; Comment, *supra* note 3, at 182-83.

96. ADVISORY COMMISSION, *supra* note 2, at 1; Bowmar, *supra* note 2, at 866; Comment, *supra* note 79, at 620.

and despite its somewhat redeeming feature is still plagued by the infirmities which have already been noted.⁹⁷

3. *Coordinated Current Revenue and Percentage of Assessed Value*

Again, insofar as this method involves a percentage of assessed valuation, it is incumbered with the same problems already noted in conjunction with the fixed percentage of assessed valuation method. However, under this view "debt is restricted to an amount equal to current annual revenues, with a larger debt permitted only upon approval by the electorate, with the maximum fixed at a percentage of taxable property."⁹⁸ The primary advantage of this method is that by initially tying the debt limit to current revenues, the local government unit will be assured of having ample funds with which to service any debts incurred. Additionally, the possibility of incurring further debt upon approval of the electorate adds the necessary element of flexibility. However, the maximum which is set at a fixed percentage of taxable property may be a big problem area, as it is in the other alternates. If this limit were realistically set, leaving enough leeway between current revenue and the maximum figure in order to promote community responsibility, a provision patterned on these lines would appear to recommend itself more than the ones previously noted.

4. *Unlimited Indebtedness with Voter Approval*⁹⁹

This provision requires a referendum every time a debt is to be incurred and thus, despite the fact that it is the most flexible alternative discussed up to this point, it suffers from the impracticality of having to go to the voters every time an increase in debt is needed. Absent this difficulty, it is apparent that this alternative is the most sound as far as being able to effectively deal with future needs, for no set limit is imposed. However, without some limits, the reliance for fiscal responsibility will be squarely placed upon the elected officers of a community as well as the voters themselves. In view of the fact that voter turnout, particularly in local elections, is usually poor,¹⁰⁰ it is possible that a minority of the residents of any political unit could vote increases in their debt. It would appear that at this time, it is not appropriate to "throw caution completely to the wind." Therefore, some control, at least in the form of some restric-

97. See pp. 629-30 *supra*.

98. Comment, *supra* note 81, at 620. See Bowmar, *supra* note 2, at 866-67. For a criticism of the use of a referendum to authorize bonds, see ADVISORY COMMISSION, *supra* note 2, at 49.

99. Comment, 1957 WASH. U.L.Q. 59. See note 98 *supra*, referring to criticism of a referendum procedure.

100. See, e.g., THE PHILADELPHIA BULLETIN ALMANAC at 23, 27 (1969), where it is noted that out of 1,004,091 registered voters in Philadelphia as of November 5, 1968, approximately 337,000 voted on the issue of city municipal improvements and approximately 341,000 voted on city sewer-water improvements in the general election of November 5, 1968.

Although perhaps far-fetched, it is even possible that the voters of a community might be persuaded by outside salesmen to finance and build an unneeded improvement.

tion on the approval power of the electorate predicated on the ability of the municipality to repay, would appear necessary. Likewise, requiring approval by at least a majority of the registered voters may be warranted as an added means of preventing possible fiscal instability. This suggestion is premised upon active and significant community participation, for without it, there would be a distinct possibility that no municipal indebtedness would ever be approved.

It should be noted, however, that all of these existing limitations apply only to "full faith and credit debt" guaranteed by the local government. Therefore, to the extent that other means of borrowing are available, the limitation on debt may operate as a stimulus to circumvention which only affects the form rather than the substance and amount of the debt.¹⁰¹ Thus, it would appear that these purported debt limits afford no assurance against financial difficulties.¹⁰² Although debt limitation provisions have tended to restrain local government borrowing,¹⁰³ they have simultaneously been the impetus behind concerted and successful efforts at circumvention.¹⁰⁴ The use of circumventing devices has become so popular that it may be said that at least one-third of all bonded debt outstanding for local governments is outside the scope of prevailing state-imposed restrictions.¹⁰⁵ Granting the widespread use of alternative methods to circumvent existing debt limitations, and the necessity for them absent basic reform to the debt limit provisions themselves, the examination of such devices would seem essential to a thorough understanding of the debt limitation systems.

B. Circumventing Devices

1. Special Districts

The special district is in essence a quasi-governmental unit which is formed to execute a particular function or series of functions and which encompasses either partially or totally the same geographic area as that

101. ADVISORY COMMISSION, *supra* note 2, at 47. See also note 88 *supra*.

102. ADVISORY COMMISSION, *supra* note 2, at 52. The aforementioned study has posited that:

It is difficult to find instances where the levels of State-imposed percentage limits on local debt appear to reflect a reasoned consideration of the prudent or "safe" borrowing requirements of local governments.

Id. at 43.

103. It appears that two reasons exist for local government borrowing. The first is that large capital expenditures arise irregularly so that they cannot be financed from stable recurrent revenue sources. This may not be true with respect to very populous areas, which may have relatively stable levels of expenditure. *Id.* at 9. The second reason is the difference in impact as opposed to financing from current revenues. In long term debt financing, projects are paid for over a long period of time instead of in advance. Thus, long term financing may impose a burden upon a resident which is more closely akin to his actual use of the project. This is especially helpful in light of the mobility of society today where people might resent paying for a project from which they will derive no benefit in the future. *Id.* at 9-10 n.5.

104. ADVISORY COMMISSION, *supra* note 2, at 52. Bowmar, *supra* note 2, at 892, suggests that debt limits encourage political subdivision and thus retard reform efforts in this area.

105. ADVISORY COMMISSION, *supra* note 2, at 35. The popularity of circumvention is also noted in Comment, *Pennsylvania Constitutional Debt Limitations — Circumvention and Proposed Reform*, 37 *Sch. & Bus. L.J.* 69 (1963).

of the existing municipal unit.¹⁰⁶ Each special district by virtue of its existence as an independent unit is capable of borrowing up to the full debt ceiling.¹⁰⁷ If direct taxation is relied on to pay off the debts incurred, the result could be a mammoth tax obligation on the residents of the area.¹⁰⁸ This result would occur through the overlying obligations of all of the separate units being foisted upon residents of the same area. Thus, the utility of this device is lessened unless a different basis for taxation or payment is introduced. Consequently, when the special district procedure is employed, the district normally looks to user charges, in the form of payment for services provided, to satisfy its debt payments.¹⁰⁹ However, even that mode of payment can be too burdensome if too many districts exist.¹¹⁰

2. *Exclusion of Certain Items in the Computation of Total Debt*

The primary rationale in this area is the fact that indebtedness which will be serviced solely from the revenues of the project financed and not from any other municipal revenues should not be considered debt.¹¹¹ Such projects are commonly referred to as being paid for by special assessments or by special funds. The special assessment is a charge placed upon the property benefited and is in essence a charge for use of the improvement.¹¹² The special fund doctrine is in practical effect very similar. It arose initially with financing of utility-type facilities through the issuance of revenue bonds. These bonds are subject to repayment solely from the charges for the services provided by the improvement.¹¹³ The use of revenue bonds, which are not guaranteed by the local government unit, has spread beyond utility-type operations in some states.¹¹⁴

106. Comment, *supra* note 81, at 621-22. See Bowmar, *supra* note 2, at 869.

107. *Id.*; ADVISORY COMMISSION, *supra* note 2, at 3, 34.

108. Bowmar, *supra* note 2, at 870.

109. *Id.* at 868-69.

110. For more extensive discussions of the use of special districts, see Magnusson, *supra* note 2, at 385-86; Morris, Jr., *supra* note 2, at 242; Rogers, Jr., *supra* note 2, at 50; Comment, *supra* note 3, at 201-08.

111. This would seem to lessen the utility of the special district device since by the use of this method the borrowing would not even be considered debt.

112. Bowmar, *supra* note 2, at 873-75. This commentator notes that a possible abuse of this device would be an extensive division of a governmental unit into benefit districts which would put more pressure on the residents in the form of numerous special assessment. *Id.* at 874. See also Comment, *supra* note 81, at 622. See generally Antieau, *The Special Assessments of Municipal Corporations*, 35 MARQ. L. REV. 315 (1952).

113. ADVISORY COMMISSION, *supra* note 2, at 2, 34. See Morris, Jr., *supra* note 2, at 242-43; Rogers, Jr., *supra* note 2, at 50.

114. ADVISORY COMMISSION, *supra* note 2, at 2. In Comment, *supra* note 3, at 187, "special fund devices" are defined as the debt of an authority constituting its own obligation upon which residents may not be taxed in order to guarantee repayment. They rather pledge their own full faith and credit. Another variant of the "special fund device" is created when a general corporation enters into an obligation payable only from a special fund without a pledge from its taxing power or general credit. For further discussion, see *Id.* at 186-201. Comment, *supra* note 105, at 72, states with regard to items excluded from determining debt:

Frequently excluded in the determination of debt, although not necessarily in Pennsylvania, are current expenses, necessary expenses, temporary loans or

3. *Contingent Obligations*

Under this heading fall two basic arrangements — lease-financing and authority financing. The two methods are virtually identical since most often it is a state authority which builds a project and then leases it to the municipal government with the municipality taking title to the building at the end of the lease term.¹¹⁵

a. *Lease-Financing*

The basis for the avoidance of debt limitation under this system is that where the government unit enters into a long term contract or lease — *e.g.*, with a utility — to provide services to be paid for in periodic installments, the payments may be construed as current expenses rather than an aggregate debt.¹¹⁶ Thus, future rents are not considered present debt¹¹⁷ and, like authority financing, the property is often conveyed to the municipality at the end of the term.¹¹⁸

This device has been subjected to a great deal of criticism, the bulk of which centers around the notion that lease-financing is really borrowing. In this regard it has been stated that:

It is clear that lease-purchase financing . . . is just another form of borrowing. If the municipality were to purchase its facilities outright through the issuance of its own general obligation bonds, it would have to levy an annual tax sufficient to make principal and interest payments on the bonds. Likewise it must levy an annual tax sufficient to make payments of 'rental' for its lease-purchase contracts. . . .¹¹⁹

Under the lease-financing arrangement, then, it is clear the intent of constitutional and statutory debt limitations is being frustrated.¹²⁰

One further objection to this method as a means of circumventing debt limits is that its ultimate objective of allowing localities to pursue more

loans to supply casual deficiencies of revenue, expenditures and indebtedness in cases of emergency, and indebtedness for certain specified purposes.

As an alternative to exclusion of certain items from the determination of total debt, it has been suggested that sometimes a provision exists constitutionally which allows debt for certain purposes to be incurred up to a greater limit. Comment, *supra* note 3, at 185.

115. Magnusson, *supra* note 2, at 387-88.

116. Bowmar, *supra* note 2, at 880. It is further noted that:

The distinction is thus made between an indebtedness not created until the consideration has been furnished, and indebtedness created at once, with only the time of payment being postponed.

Id.

117. ADVISORY COMMISSION, *supra* note 2, at 35; Bowmar, *supra* note 2, at 881; Magnusson, *supra* note 2, at 377; Comment, *supra* note 81, at 623.

118. ADVISORY COMMISSION, *supra* note 2, at 35; Magnusson, *supra* note 2, at 377, who believes that the leases cannot be terminated without the payment of damages or without being subject to injunction or mandamus proceedings to force payment. For what appears to be a contrary view, see note 127 *infra*; Comment, *supra* note 81, at 623. See also Comment, *supra* note 105, at 77.

119. Rogers, Jr., *supra* note 2, at 52.

120. As stated in Magnusson, *supra* note 2, at 377-78, it is really borrowing, and therefore the "[i]ntent of constitutional debt limitations is subverted and litigation is invited, bringing in its wake costs and uncertainties, and loss of credit standing." See also *Id.* at 390-92.

activities in their own behalf is doubtful. This is because such circumventing plans defer consideration of the basic problem of debt limitations, thus increasing the probability that when the situation becomes intolerable, there will be an overwhelming need for immediate federal funds and concomitant degrees of federal control of local spending may be imposed.¹²¹

b. Authority Financing

The most common function of authorities is to finance public works by borrowing and to levy charges which will be sufficient to repay the debt. Upon repayment the project is usually conveyed to the unit of government involved. Most authorities are organized as public corporations and those on the state level are usually created by special acts of the legislature.¹²² There are two common types of authorities — the operating authority and the building authority. The operating authority is similar to a publicly owned business which derives its revenues from private users — *e.g.*, a turnpike authority.¹²³ Since the revenues which repay the debt here are derived from commercial users, an analogy to true debt — *i.e.*, a municipal obligation to repay — is harder to draw than in a building authority.¹²⁴ The building authority constructs projects financed by authority bonds which are ultimately serviced by rental payments from the benefited governmental unit.¹²⁵ The reason this arrangement is not treated as a debt is the same as under the lease-financing arrangements — future rental payments are not considered present debt.¹²⁶ This type of financing appears to be closer to the long-term obligation of repayment by local governments which the debt limitation provisions were designed to prevent, since it is the funds coming from the government unit as rentals which constitute the source of repayment.¹²⁷

121. *Id.* at 380.

122. Morris, Jr., *supra* note 2, at 236-37; Comment, *supra* note 105, at 74. For a discussion of the primary legislation dealing with authorities in Pennsylvania, see *Id.* at 75-77. For the text of the primary Act, see notes 33 & 34 *supra*.

123. Bowmar, *supra* note 2, at 884; Morris, Jr., *supra* note 2, at 239.

124. Bowmar, *supra* note 2, at 884.

125. ADVISORY COMMISSION, *supra* note 2, at 35; Morris, Jr., *supra* note 2, at 239. The distinction is further amplified by observing that:

[W]hile operating authorities must attract private capital by convincing the financial community that commercial income will cover expenses, interest and amortization, building authorities can attract investors on the basis of prospective government rentals alone. . . .

Id. at 240.

126. See p. 634 *supra*; Comment, *supra* note 105, at 74. However, the authority is in essence involved in a long-term repayment obligation which debt limit provisions were designed to prevent. This is especially true with building authorities, where the rental payments come from the government. Morris, Jr., *supra* note 2, at 250; Comment, *supra* note 105, at 80. See generally Foley, *Revenue Financing of Public Enterprises*, 35 MICH. L. REV. 1 (1936) (discussing a possible extension of the municipal authorities doctrine); Gerwig, *Public Authorities in the United States*, 26 LAW & CONTEMP. PROB. 591 (1961); Holmes, *Local Authority Borrowing*, 108 SOL. L.J. 910 (1964) (describing the situation in London).

127. However, Morris, Jr., *supra* note 2, at 257-63, is of the opinion that one reason why such financing is not considered as debt is that it is assumed that the lessor-lessee relationship can be terminated before the end of the lease with no sanctions and that therefore the government is not locked into a repayment obligation.

In addition to the fact that both lease-financing and authority financing look suspiciously like the indebtedness envisioned in debt limitation enactments, they are in fact costing local governments more money. The cost of servicing building authority bonds, in terms of interest, is higher than the cost would be on direct government obligations, and the ratings on such bonds are lower. Thus, the necessity of using such devices to get around debt limits is in reality costing the governmental units more money while concomitantly denying them their credit standing.¹²⁸ Nevertheless, these devices have been judicially approved, thereby indicating "a recognition of the fact that the capital needs of a government must be met, and that debt limits, as they now stand, prohibit a government from fulfilling the functions expected of it."¹²⁹

In light of the preceding discussion, the question arises as to whether the legal system has, as a whole, operated at its optimum efficiency in dealing with the perplexing problem of fiscal responsibility at the local level. It seems that the legislative and constitutional schemes used were, within relatively short periods of time, anachronisms in relation to existing needs of the society. Perhaps the courts, which were in a position to rectify the situation, abdicated their responsibility by sanctioning devices which flagrantly violated the intent of the framers of the constitutional debt limitation provisions, rather than disapproving their use and thereby forcing the legislatures to deal more effectively with the problem. It appears that the time spent in fashioning means to avoid the debt limit provisions and then creating judicial fictions to support them would have been better spent in a serious reappraisal of the provisions themselves.¹³⁰

4. Possible Alternatives

The following section will present some alternative methods which have been suggested to deal with the debt limitation controversy.¹³¹ The basic framework to be kept in mind when evaluating the feasibility of proposed plans is that there is a need for preventing fiscal irre-

This view seems contrary to that expressed by Magnusson at note 118 *supra*. This assumption of ease of termination is dubious in reality, for, among other reasons, the governmental unit will not be likely to find other suitable accommodations too readily.

128. ADVISORY COMMISSION, *supra* note 2, at 3; Magnusson, *supra* note 2, at 395-96; Morris, Jr., *supra* note 2, at 265-66.

129. Morris, Jr., *supra* note 2, at 263-64. See generally LOCAL GOVERNMENT, *supra* note 8, at 174-75, on authorities in Pennsylvania.

130. See Magnusson, *supra* note 2, at 395. That commentator adds:

The enactors of the early constitutional limitations confused the doctrinal question of the scope of the community responsibility for furnishing internal improvements with the economic question of the proper debt level in relation to a community's ability to pay taxes. . . . Lease-finance developments highlight the bad results of the conceptualistic error of lumping all types of municipal borrowing into one category and of legislating social and financial inflexibility.

Id. at 394.

131. Present devices, other than well policed self-liquidating ones, are not justifiable in light of the intent of the debt limit provisions. Bowmar, *supra* note 2, at 890. This violation of the intent of the provisions is a possible reason for arguing against their broad construction which allows them to flourish. Comment, *supra* note 81, at 629.

sponsibility on the local level while at the same time "local initiative and responsibility should not be stifled arbitrarily by quantitative absolutes."¹³²

Several alternatives have been noted which might serve as replacements for the common percentage of property tax base valuation in debt limit provisions.¹³³ The first of these is a fixed dollar amount per capita. Under this suggestion a fixed dollar amount would be multiplied by the number of residents in a local unit to arrive at a fixed figure. The obvious problem with this proposal is that no criteria are enunciated to serve as guidelines in the determination of the dollar figure. Beyond this, there are difficulties in keeping any dollar figure constant through adjustments for inflation and recession. Additionally, there is the problem of keeping population figures up-to-date.¹³⁴

A second proposed option is a measure related to the economic capacity of the unit based upon the personal income of its residents. This approach suffers from the same malady as the fixed-dollar-amount-per-capita approach. This is evidenced by the lack of a concrete formulation to be employed in the determination of the economic capacity of the unit based upon the personal income of its residents. Further problems exist in the gathering and reliability of data, especially in local government areas which are not accustomed to collecting and compiling such information.¹³⁵

The third option would rely upon the value of the total current revenue of the unit. Again, the immediate problem is a definitional one. For example, is current revenue to be a gross or net figure? Additional uncertainty exists because of the questionable reliability of information received concerning revenue.¹³⁶ Despite these difficulties, a current revenue system would certainly appear to be a more realistic base than that of property tax revenues based upon assessed valuation¹³⁷ since it includes all revenues of the governmental unit. However, this approach fails to take into account the future revenue prospects of local units.¹³⁸

Another proposal suggests the repeal of mandatory referendums and debt limits and the substitution of regulation based upon net interest costs of prospective bond issues in relation to the present interest rates on high grade municipal securities. Under this method, the legislature would investigate the present yield on the highest grade municipal securities in the marketplace. This yield would then be multiplied by a factor, presumably established by the legislature,¹³⁹ which would have a value of unity if the municipality under consideration had the identical repayment capabilities of those municipalities presently supporting the highest grade securities.

132. Bowmar, *supra* note 2, at 891.

133. See pp. 629-30 *supra* on this method of valuation.

134. ADVISORY COMMISSION, *supra* note 2, at 67-68; Bowmar, *supra* note 2, at 894-95 n.137.

135. *Id.*

136. *Id.*

137. See pp. 629-30 *supra* criticizing the use of assessed valuation.

138. ADVISORY COMMISSION, *supra* note 2, at 68-69.

139. The use of the legislature would allow for more flexibility and would allow for periodic review in light of changed circumstances. ADVISORY COMMISSION, *supra* note 2, at 77-82.

As the abilities of the municipality being considered to repay decrease, the equivalency factor correspondingly increases to a value greater than unity. For example, if the present yield on the highest grade municipal securities is determined to be six percent and the factor established by the legislature is one and two-tenths, the multiplication would result in a figure of seven and two-tenths percent. This interest figure would be the one above which the municipality would refuse to float its bond issue.¹⁴⁰ Then, in the event that the market bids demanded more than this figure, there could be a provision for a mandatory referendum in which local unit repayment capabilities as well as citizen interest could be reflected in setting a new factor.¹⁴¹

It is but a short step from the aforementioned alternative to the suggestion of no regulation at all. Here the citizens, their elected officials, and the market mechanism would carry the burden of decision in any given situation. Decisions under such circumstances would probably reflect future capabilities to a larger extent because of the pressure of the market place in the scheme.¹⁴² In conformity with this notion, it has been stated by one commentator that public attitudes toward public debt have changed greatly and that today the electorate might feel that electing capable officials is more beneficial than having constitutional restrictions.¹⁴³

The above alternatives are the major ones that have been proposed.¹⁴⁴ Perhaps they are better than what presently exists, but all seem to create problems. The standard factor formula would appear to be subject to possibilities of political pressure or to emotionalism exhibiting itself in the form of statements such as "my community is just as good as anyone

140. *Id.*; Bowmar, *supra* note 2, at 896-97.

141. Bowmar, *supra* note 2, at 899-900.

142. For a scheme whereby the state only intervenes through a statute requiring notice of a proposed bond issue to be given to citizens of an area, see Bowmar, *supra* note 2, at 899-900. For the view that relying solely on the market place would be the best way to limit debt, see Magnusson, *supra* note 2, at 395. However, it must be remembered that "political pressures can affect the magnitude and timing of the hand issues and their associated expenditures." Taubman, *Slow Growth Ahead for State and Local Spending*, WHARTON QUARTERLY, Vol. IV, No. 2, at 18, 22 (1969). For further arguments for and against a plan of no restrictions, see LOCAL GOVERNMENT, *supra* note 8, at 177.

143. Morris, Jr., *supra* note 2, at 264-65.

144. There are other alternatives that have been suggested. The first is some method of state administrative agency supervision of local indebtedness. Bowmar, *supra* note 2, at 896. For schools, in addition to tax and bond revenue, an alternate would be some type of tuition. Magnusson, *supra* note 2, at 386 n.43. A further suggestion under the lease-finance rationale would be the establishment of a refunding authority to take over a special district debt and put the schedule of repayment on a year to year basis and thereby make it analogous to a rental. *Id.* at 386. However, this approach seems wrong for two reasons: (1) the common law recognized *rent* due for a leasehold interest as not constituting present debt; and (2) the alleged ease of termination that is found in lease-finance arrangements is contrary to the notion of a separate *debt* limit for special districts.

There are also further sources of funds which should be recognized as being of possible use in the future. The first of these is funds which could be raised by allowing municipalities to impose taxes on items not taxed by the state. Comment, *State Financial Aid for Municipalities*, 29 MISS. L.J. 298, 303-05. However, this has the unfortunate consequence of imposing increased tax burdens on residents who are most probably already overburdened. Lastly, it has been pointed out that major new sources of revenue are comprised of individual income taxes and transfers from the federal government. Taubman, *supra* note 142, at 19. These funds are important for their potentiality as debt-servicing funds.

else's." The possibility of no debt restrictions at all places a great premium on the responsibility of local officials and the rationality of the market place. Both of these presumptions may be too spurious to be accepted and therefore some other alternative might best serve all parties concerned.

IV. THE 1968 CONSTITUTIONAL AMENDMENTS

Having examined the limitation of debt as previously calculated in Pennsylvania and the alternatives to that procedure, this Comment will now focus on the new provisions. These provisions will be examined and criticized on the basis of the preceding analysis to determine whether they adequately protect the taxpayers and bondholders from municipal spending in excess of the municipality's capacity to repay, and at the same time give the municipalities the requisite flexibility to deal with their financial problems. This section will analyze Article IX, sections 10 and 12, the two new provisions which establish the method of determining the debt limits for the Commonwealth, and for Philadelphia respectively.

A. Section 10 — The Non-Philadelphia Limitations

1. The Tax Base

Section 10 of the revised Pennsylvania Constitution differs radically from old section 8 in several important respects. The first and most significant of these changes is the tax base which will now be used in determining the debt capacity of the non-Philadelphia municipalities and school districts. Prior to the changes the tax base had always been the assessed valuation of the property in the appropriate political subdivision.¹⁴⁵ By contrast, section 10 now provides that the "debt limit base shall be a percentage of total revenue . . ." of each governmental unit.¹⁴⁶ This change appears quite significant since it predicates the level of permissible debt on the actual ability of the political subdivision to repay.¹⁴⁷ Under the previous system all municipalities were allowed to sustain debt on the basis of a figure which did not adequately reflect the actual earning power of the local government unit. Property taxes vary from community to community and the assessed valuation standards did not take into account the varied income derived from different communities as a result of these discrepancies.¹⁴⁸ Consequently, the state exercised only a limited amount

145. PA. CONST. art. IX, § 8 (1966). For the pertinent text of this provision, see note 23 *supra*.

146. PA. CONST. art. IX, § 10.

147. The amount of revenue that a municipality has collected in the past should give a valid indication of future revenues. Since the obligation sustained by a municipality must be repaid from these revenues or from sinking funds, the legislature can predicate a municipality's debt limit on its apparent ability to repay and thereby exercise more accurate control over municipal insolvency.

148. The dollar tax per \$1,000 of assessed value is fixed by independent municipal and county assessment boards. See, e.g., PA. STAT. tit. 53, §§ 25891-900 (1957) (second class cities). Consequently, any uniformity of actual municipal revenue derived from property taxes based on assessed valuation is purely coincidental.

of control over the municipalities financial well-being, since those with a low assessment rate could less readily meet their financial burdens than those with a high assessment rate.¹⁴⁹ Under the new provisions, however, the level of permissible debt will reflect to some degree the actual ability of the individual municipality to repay. It creates a rational nexus between the permissible debt limitation and the ability of the political subdivision to repay, thereby allowing the legislature, in determining the percentage of revenue which will constitute the debt limit of communities, to insure a "solvent level of debt" in all communities.

While the revenue standard provides a rational means of deciding the debt ceiling for municipalities, section 10 presents a problem in leaving the definition of revenue to the General Assembly.¹⁵⁰ This legislative control, as previously noted,¹⁵¹ will create added flexibility to the debt limits but will subject any changes to political control. In this particular area, however, the problem of political abuse is severely limited by prior judicial decisions. In determining the validity of various constitutional provisions the courts of the Commonwealth have repeatedly stated that the words in that document must be construed to have their common meaning.¹⁵² For example, in *Breslow v. Baldwin Twp. School Dist.*, the Pennsylvania Supreme Court struck down the definition of assessed valuation as market value because the common meaning of assessed valuation is the value as determined by assessment boards for the purposes of taxation.¹⁵³ Consequently, while a restrictive definition of revenue as the amount of monies which accrue through recurring sources of income would probably be upheld, a definition that fails to include some sources of recurring revenue would probably be held violative of the spirit of the new provisions.¹⁵⁴ A more expansive definition, on the other hand, would appear to be within the constitutional intent, since revenue in its most expansive meaning could easily include income from both recurring and non-recurring sources.

2. *Percentage of Tax Base Which Determines Permissible Debt Limits*

A second major change, closely related to the first, is the granting of power to the General Assembly to determine what percentage of the new

149. It is not intimated here that the assessed valuation tax base allowed municipalities to bankrupt themselves. However, such a system, with a higher allowable debt percentage, might create such problems. Another coextensive problem created by this tax base measurement was the unequal treatment accorded to individual municipalities. Those who collected more money through their assessment rate were penalized by not allowing a greater municipal debt limit than those with lesser revenues, notwithstanding their ability to repay.

150. PA. CONST. art. IX, § 10, provides that "the debt limit base shall be a percentage of total revenue, as defined by the General Assembly. . . ."

151. See p. 628 *supra*.

152. See, e.g., *Keller v. Scranton*, 200 Pa. 130, 49 A. 781 (1901); *Appeal of the City of Erie*, 91 Pa. 398 (1879).

153. See *Breslow v. Baldwin Twp. School Dist.*, 408 Pa. 121, 182 A.2d 501 (1962).

154. This is especially true since the new provision refers to "total revenue." PA. CONST. art. IX, § 10 (emphasis added).

tax base will constitute the municipalities debt limit.¹⁵⁵ Under the prior provisions a constitutional limit was placed on each municipality, with the General Assembly having the power to determine the actual limit of indebtedness up to this constitutional maximum.¹⁵⁶ The 1968 revision, however, creates no maximum debt, so in effect the legislature has the sole power not only of determining the new tax base but also of determining the percentage of that base which will be the new debt limit, absent voter ratification. Thus, there is no longer a maximum indebtedness beyond which the legislature may not authorize debt. This new provision will give the Commonwealth municipalities a much more flexible scale of debt limitation. In emergency situations the legislature may grant an immediate increase in the debt limitation of an individual community or subgroup of communities.¹⁵⁷ However, the municipalities are still at the mercy of the state legislators in obtaining that increase. Thus, political pressures brought to bear against an increase in debt may result in a failure to gain the immediate response that a municipality may need. However, under this procedure there is a better chance of success than in the past, where a constitutional referendum was needed. In such cases, the troubled municipality had to wait until the next general election for relief and the results of that referendum would be determined not by the voters of its district, but by the voters of the state at large.¹⁵⁸ The statewide electorate might not have been familiar with the problems of the overburdened municipality and might even have had interests which were antagonistic to those of the troubled district. It is posited, therefore, that this change is beneficial, since it increases the flexibility of the debt ceiling to allow for resolution of the needs of individual municipalities, while at the same time providing some control over abuses in the exercise of the power to incur debt.

3. Exclusions

Another very significant change embodied in Article IX, section 10, is the exclusion as debt of any "indebtedness . . . which has been approved by referendum held in such a manner as provided by law."¹⁵⁹ This exclusion would seem to allow the municipalities of the Commonwealth to borrow as much as they wish without the authorization of the legislature, provided the indebtedness is approved by the electorate of that municipality. The legislature has the power under this section merely to determine the information which must be contained on the ballot for the proposed debt and the percentage of the electorate who must approve it.¹⁶⁰ Thus, the

155. PA. CONST. art. IX, § 10.

156. PA. CONST. art. IX, § 8 (1966). For the pertinent parts of this provision, see note 23 *supra*. See also pp. 617-18 *supra*.

157. Since the new provisions no longer prescribe a constitutional maximum there is no legal barrier to immediate changes in debt limitations.

158. For the problems this creates, see note 160 *infra*.

159. PA. CONST. art. IX, § 10.

160. If the need of a municipality is acute and the electorate is aware of its problems, there would appear to be an excellent chance of passage. However, under the previous constitutional provisions an increase had to be authorized by the total

electorate under this new proposal becomes the final arbiter of a municipality's indebtedness. The legislature may only proscribe limits which the municipality may not exceed without voter approval. This is a significant change, in that under the prior section both the Constitution and the legislature finally determined the amount which the electorate could approve.¹⁶¹ It is submitted that this change results in the proper allocation of power in determining debt, because the voters of each district are better informed as to the needs of their community. Since it is the electorate of such district who must ultimately bear the burden of repaying these obligations, it is only fitting that they establish the extent of the burden. The system, therefore, provides the utmost flexibility while adequately protecting against the incurrence of unneeded debt. However, the conclusion that the voters have the ability to adequately protect against fiscal mismanagement presupposes that the taxpayers will be loathe to increase their tax burden. The recent rash of voter rejections of bond issues would seem to justify having this faith in the electorate.¹⁶² This power also serves a beneficial purpose by mitigating against a municipality being placed in a precarious financial position by the failure of the legislature to adequately respond to an immediate need for an increase in permissible debt limitation.¹⁶³

4. *Limitations of Exclusions*

An additional change in section 10 which further guarantees fiscal restraint is that:

[a]ny unit of local government . . . shall at or before the time of [incurring any indebtedness] . . . adopt a covenant, which shall be binding upon it . . . to make payments out of its sinking fund or any other of its revenues or funds . . . as shall be sufficient for the payment of the interest thereon and the principal thereof when due.¹⁶⁴

This provision is merely a codification of the old Article XV, section 3.¹⁶⁵ It is a final check on the power of the municipality to incur debt. If the municipality cannot generate enough revenue to establish a sinking fund or sufficient yearly revenue to meet an obligation as it matures, it is estopped

electorate of the Commonwealth and had to be authorized for all non-Philadelphia subdivisions in Pennsylvania. PA. CONST. art. IX, § 8 (1966). Consequently, voters in the other municipalities who might have been against the increase because of possible repercussions in their own communities became a barrier to the troubled municipality's financial relief.

The percentage authorized by the legislature may have to be fifty percent. See note 209 *infra*.

161. PA. CONST. art. IX, § 8 (1966).

162. See BUSINESS WEEK, Nov. 9, 1968, at 104-05, commenting on the fact that five of nine million dollars of bond issues proposed to voters in that year's elections were defeated.

163. See note 160 *supra*.

164. PA. CONST. art. IX, § 10.

165. PA. CONST. art. XV, § 3 (1968), provided that "[e]very city shall create a sinking fund, which shall be inviolably pledged for the repayment of debt." This provision also applied to other political subdivisions. *Schuchman v. City of Pittsburgh*, 351 Pa. 527, 41 A.2d 642 (1945); *Gilberton Borough School Dist. v. Morris*, 290 Pa. 7, 137 A. 864 (1927).

from sustaining the indebtedness. This provision is now much more significant than it was under the old constitutional scheme, since the new procedures enable the municipalities to incur greater debt without legislative or constitutional approval.¹⁶⁶ An increase in debt, whether or not ratified by the electorate of the municipality, cannot be sustained if adequate revenue cannot be generated to repay the obligation. Thus, an added check has been provided against unnecessary capital expenditures by the municipality. A taxpayer could, under this provision, move to enjoin expenditures authorized by the electorate on the ground that there is no adequate provision for repayment or that the debt exceeded the constitutional limitations. Under the pre-existing law this was the rule,¹⁶⁷ and it presumptively continues. However, since there is a heavy burden on the taxpayer to prove that the debts cannot, in fact, be paid back out of current revenues, it would appear that without a changed interpretation of this burden, such protection might become a nullity.¹⁶⁸

5. *Determination of the Tax Base*

Another change, less important in scope, is the provision in section 10 that the revenue level which will be used as a tax base shall be computed over a period of years, with the period to be established by the legislature. Section 10 provides that "the debt limit base shall be a percentage of the total revenue . . . of the unit of local government computed over a specific period immediately preceding the year of borrowing."¹⁶⁹ Thus, unlike the previous provision which provided that the base would be the assessed valuation of the property in that municipality at the time the debt was incurred,¹⁷⁰ this new provision leaves to legislative determination the question of whether the revenue debt base will be computed as an average of the revenue over a number of preceding years or on the basis of the municipality's revenue over the last year preceding the indebtedness. There would seem to be no limitation on the legislature's ability to set any standard they choose, provided only that it is based on a time preceding the issuance of any bonds or the establishment of any other debt.¹⁷¹ As previously noted, for the benefit of consistency and to avoid any great debt limit fluctuation caused by changes in the economy or of tax rates, a base average over a number of years is preferable. It is hoped that the legislature in the interest of uniformity will define the period of time as

166. Under the old provision, approval had to be obtained through both the constitution and the legislature, and if the maximum debt limit with non-voter approval had been reached, through voter approval. PA. CONST. art. IX, § 8 (1966). Under the new provision indebtedness may be incurred on the wishes of the electorate alone. PA. CONST. art. IX, § 10. For the pertinent part of PA. CONST. art. IX, § 8 (1966), see note 21 *supra*.

167. See, e.g., *Daune v. Philadelphia*, 322 Pa. 33, 185 A. 401 (1936); *Ward v. Pittsburgh*, 321 Pa. 414, 184 A. 240 (1936); *Hoffman v. Kline*, 300 Pa. 485, 150 A. 889 (1930).

168. *Falkinburg v. Venango Township*, 297 Pa. 358, 147 A. 62 (1929).

169. PA. CONST. art. IX, § 10.

170. PA. CONST. art. IX, § 8 (1966).

171. PA. CONST. art. IX, § 10.

a yearly average in the same manner that Philadelphia's debt base will be averaged under the new section 12.¹⁷² Such legislation will supplement the improvements embodied in the new provision with uniformity, an element sorely lacking in other aspects of the new provisions.¹⁷³

6. *Codification of Prior Exclusions*

Although there is one other minor change in Article IX, section 10, which must be mentioned, it has a very insignificant impact on the municipal debt limitation provisions as they previously existed. Section 10 now provides for an exclusion "for any project to the extent that it is self-liquidating or self-supporting or which has heretofore been defined as self-liquidating or self-supporting. . . ."¹⁷⁴ This provision merely codifies certain exclusions which had previously been provided for in section 15 of the Constitution,¹⁷⁵ in decisions interpreting the constitutionality of the Municipal Authorities Act,¹⁷⁶ and in decisions defining the word debt.¹⁷⁷ As previously noted,¹⁷⁸ debt has been defined as a present obligation to pay in the future. Based on this definition, it was held under the old constitutional enactments that a project payable out of current revenues could not create a debt.¹⁷⁹ Therefore, this aspect of section 10 is only important as an indication that the framers intended no change from the existing law.

7. *Conclusion*

As a general proposition it would appear that section 10 of the new constitutional amendments is a significant improvement over the old section 8. By providing for legislative determinations of the percentage of tax base which can be incurred as debt by municipalities without voter approval, and by allowing unlimited indebtedness on approval of the electorate provided adequate provisions are made for its repayment, a flexibility has been incorporated into the constitutional debt limitation scheme which will allow each municipality to more effectively combat its individual problems. At the same time, there would appear to be sufficient restraints on the municipalities to prevent any abuse of their new power which might create problems similar to those which existed prior to 1874.¹⁸⁰ This new provision is likewise preferable because it makes the electorate of each municipality the ultimate arbiter of the level of the municipal debt.

172. For a discussion of this section, see pp. 645-46 *infra*. For its complete text, see note 182 *infra*.

173. For a discussion of these inconsistencies, see pp. 646-47 *infra*.

174. PA. CONST. art. IX, § 10.

175. For the pertinent part of this section, see note 16 *supra*.

176. See p. 645 *supra*.

177. See pp. 618-21 *supra*.

178. See pp. 623-26 *supra*.

179. See p. 624 *supra*. The rationale behind these discussions was that there was no present obligation to pay in the future. The obligation was paid as it accrued.

180. See pp. 612-14 *supra*. These restraints are the sinking fund or current revenue

Such a result is beneficial since it is that electorate who must ultimately insure the repayment of the debt. Further, while placing municipal debt limitation in the hands of the legislature to a certain extent, the Constitution has minimized political pressures by allowing for referendums by which the municipalities may circumvent their decision. Consequently, the knowledgeable blending of flexibility and stability should prevent any future fiscal crisis absent complete voter intransigence concerning the authorization of new debts. However, one significant defect in the procedure still remains — the Municipal Authorities Act. Given the more liberal debt limitation provision, this Act will not only continue to allow circumvention of the new provisions, but may create a danger of municipal bankruptcy as well.¹⁸¹ While self-sustaining projects financed by revenue bonds would no longer be a circumvention since they would not be debt to a municipality under section 10, any general obligation bonds would still be a substitute for municipal debt and authority use of such financing would create a danger of bankruptcy under the new liberal provisions.

B. Section 12 — The Philadelphia Limitations

1. The Extent of Change

In contrast to the enlightened changes embodied in section 10, section 12's limitation on Philadelphia debt remains virtually unchanged. The tax base and the percentage of that base which delimits Philadelphia's new level of indebtedness are exactly the same.¹⁸² The city cannot incur debt

181. While under the old constitutional provisions this Act was sometimes necessary to circumvent unreasonably low levels of permissible debt, with the liberal method of determining debt under the new constitution excessive circumvention and a permissive electorate might combine to cause fiscal instability.

182. Compare PA. CONST. art. IX, § 8 (1966), set out at note 23 *supra*, with PA. CONST. art. IX, § 12, which provides:

The debt of the City of Philadelphia may be increased in such amount that the total debt of said city shall not exceed thirteen and one-half percent of the average of the annual assessed valuations of the taxable realty therein, during the ten years immediately preceding the year in which such increase is made, but said city shall not increase its indebtedness to an amount exceeding three percent upon such average assessed valuation of realty, without the consent of the electors thereof at a public election held in such manner as shall be provided by law.

In ascertaining the debt-incurring capacity of the City of Philadelphia at any time, there shall be deducted from the debt of said city so much of such debt as shall have been incurred, or is about to be incurred, and the proceeds thereof expended, or about to be expended, upon any public improvement, or in construction, purchase or condemnation of any public utility, or part thereof, or facility therefor, if such public improvement or public utility, or part thereof, or facility therefor, whether separately, or in connection with any other public improvement or public utility, or part thereof, or facility therefor may reasonably be expected to yield revenue in excess of operating expenses sufficient to pay the interest and sinking fund charges thereon. The method of determining such amount, so to be deducted, shall be as now prescribed, or which may hereafter be prescribed by law.

In incurring indebtedness for any purpose the City of Philadelphia may issue its obligations maturing not later than fifty years from the date thereof, with provision for a sinking fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be or shall have been incurred by said City of Philadelphia for the purpose of the construction or improvement of public works or utilities of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used

beyond thirteen and one-half percent of the assessed valuation of taxable realty therein, and it can only incur debt up to three percent of that base without voter approval.¹⁸³ Likewise, the new provision continues the debt computation exclusion for any public improvement or construction, purchase or condemnation of any public utility, provided they are self-sufficient.¹⁸⁴ It further provides, in identical language, for an exemption for expenditures for wharves and docks.¹⁸⁵

C. *The Disparities Between Sections 10 and 12*

Section 12 when compared to section 10 is somewhat of an anomaly. As previously noted,¹⁸⁶ there seems to be no valid basis for the differentiation between Philadelphia and the other political subdivisions of the Commonwealth — especially considering the fact that no distinctions are drawn between any of the Commonwealth's other political subdivisions. Instead of taking steps to minimize the disparate treatment of the various entities, the present constitutional revision has widened the gap to Philadelphia's detriment. While the rest of the Commonwealth has been granted great latitude and flexibility, and with the consent of the electorate has in effect been given the power to create its own debt limitation, Philadelphia's debt limits are still circumscribed by the Constitution.¹⁸⁷ The city can make no change in its debt ceiling without an amendment to the Constitution.¹⁸⁸ It cannot even borrow up to that ceiling without the authorization of the General Assembly.¹⁸⁹ Thus, if ever faced with a financial crisis, the city will be at the mercy of its creditors and might be forced to curtail its needed services in order to continue to operate until a constitutional referendum on an increase in its debt limitation could be secured. The new Philadelphia provision, thus, lacks the flexibility inherent in the non-Philadelphia procedure and puts a much greater priority on fiscal stability. It appears spurious to assume that the politicians or electorate of Philadelphia are any less capable of handling their financial problems than those of the rest of the state. Therefore, it is hard to justify the need for greater checks. It is posited that the drafters of these new provisions were either politically motivated or they forgot the balance that they so soundly established for the rest for the state — the balance

in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of the interest and sinking fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred.

No debt shall be incurred by, or on behalf of, the County of Philadelphia.

183. Compare PA. CONST. art. IX, § 12, with PA. CONST. art. IX, § 8 (1966).

184. Compare PA. CONST. art. IX, § 12, with PA. CONST. art. IX, § 8 (1966).

185. Compare PA. CONST. art. IX, § 12, with PA. CONST. art. IX, § 8 (1966).

186. See pp. 616-18 *supra*.

187. Compare PA. CONST. art. IX, § 10, examined at pp. 639-45 *supra*, with PA. CONST. art. IX, § 12, set out in note 182 *supra*.

188. PA. CONST. art. IX, § 12.

189. PA. CONST. art. IX, § 12.

between flexibility and fiscal responsibility. In forgetting this balance, they have unjustifiably placed a heavy burden on the City of Philadelphia, and have turned what could have been an enlightened apolitical revision into a document so disparate that it could conceivably be overturned as violative of the equal protection clause of the United States Constitution and Article I, section 26, of the Pennsylvania Constitution.

3. *The Disparities as a Violation of Equal Protection*

The fourteenth amendment to the United States Constitution provides that "[n]o state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws."¹⁹⁰ Its counterpart on the state level, Article I, section 26, provides that "[n]either the Commonwealth nor any political subdivision thereof shall . . . discriminate against any person in the exercise of any civil right."¹⁹¹ It would appear that under the standards laid down by the United States Supreme Court the disparities between Philadelphia and the other subdivisions of the Commonwealth would give Philadelphia the right to attack its debt limitation provision and have it declared unconstitutional. However, the City of Philadelphia is not a "person" within the meaning of the Constitution,¹⁹² and therefore an initial problem in instituting such a suit would be the establishment of a sufficient nexus between the citizens of Philadelphia and the unequal treatment to allow them to bring suit individually or as a class.

Certain recent Supreme Court cases seem to indicate that a sufficient nexus exists since the citizens of Philadelphia could allege that they are being denied the right to decide for themselves the extent of municipal services they will receive. In the rest of the state, as previously noted,¹⁹³ the electorate is the final arbiter of the extent of permissible municipal indebtedness. This indebtedness determines to a large extent the expansion of existing services in each municipality. Assuming that Philadelphia's present indebtedness were not less than the city's constitutional limitation, it would seem that by denying to the citizens of Philadelphia the right to expand their debt ceiling, the provision disenfranchises them in an area in which they have a great personal interest.

A similar rationale has been accepted by the Supreme Court as a basis for standing in two recent cases. In *Kramer v. Union Free School Dist.*,¹⁹⁴ the Supreme Court struck down as violative of the equal protection clause a New York school bond election statute which disenfranchised

190. U.S. CONST. amend. XIV, § 1.

191. PA. CONST. art. I, § 26. This provision was not adopted until 1967 and since it refers only to civil rights, its applicability is uncertain.

192. See, e.g., *Williams v. Mayor & City Council*, 289 U.S. 36, 40 (1933); *Shelby v. City of Pensacola*, 112 Fla. 584, 151 So. 53 (1933); *Camden County v. Pennsauken Sewerage Auth.*, 15 N.J. 456, 105 A.2d 505 (1954); *Department of Labor & Industries v. Cook*, 44 Wash. 2d 671, 269 P.2d 962 (1954).

193. See pp. 641-42 *supra*.

194. 395 U.S. 621 (1969).

otherwise eligible voters who were either without school age children or without taxable property in the municipality. The Court there found a sufficient nexus in the interest that all members of the community had in quality education and on the effect that increased property taxes would have on the prices of goods and services sold in the community.¹⁹⁵ The Court concluded that in order to disenfranchise voters there must be a compelling state interest fostered by a narrowly drawn statute.¹⁹⁶ The fact that the owners and lessees of property would have the primary monetary interest in increased debt and that the parents of school age children would have the primary interest in the quality of education was not sufficient to justify the disenfranchisement of otherwise competent voters.¹⁹⁷

In a similar case decided the same day as *Kramer, Cipriano v. City of Houma*,¹⁹⁸ the issue presented to the Court was whether the equal protection clause of the federal constitution was violated by a statute allowing only "property taxpayers" to vote on the issuance of revenue bonds. The statute was overturned and a nexus was found between the non-voting electorate as a class and the repayment of the bonds, with the Court stating that "the benefits and burdens of the bond issue fall indiscriminately on the property owner and non-property owner alike."¹⁹⁹ However, unlike *Kramer* and *Cipriano*, the applicable provisions of the Pennsylvania Constitution do not discriminate between voters in the same municipality.²⁰⁰ Yet, this distinction would not appear so great as to deny standing to the voters of Philadelphia. The nexus between the Philadelphia residents and the violation would be their disenfranchisement in determining the quantity of goods and services they may receive from their city; a right the residents of all other municipalities within the confines of the Commonwealth are granted. This is virtually identical to the loss of the right to determine the quality of education vindicated in *Kramer*.²⁰¹

Having established the probable existence of standing for the residents of Philadelphia, either individually or as a class, to attack the Philadelphia debt limitation provisions, the next question is whether there is any justification for the disparate treatment accorded the residents of Philadelphia. To answer this question a preliminary determination of the appropriate equal protection test must be made.

In situations where no fundamental rights are involved the proper method of determining whether a violation of equal protection exists is

195. *Id.* at 631. While the court did not explicitly state that these contentions created standing, by hearing the case the Court approved them sub silentio.

196. *Id.* at 633.

197. *Id.* at 632.

198. 395 U.S. 701 (1969).

199. *Id.* at 705.

200. The new constitutional provisions disenfranchise the residents of the City of Philadelphia in situations where the citizens of the rest of the state are empowered to vote. In both *Kramer* and *Cipriano*, the disenfranchisement complained of concerned loss of the right to vote as compared to other members of their municipality.

201. The Court stated in *Kramer* that "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Kramer v. Union Free School District*, 395 U.S. 621, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

the "rational basis" test.²⁰² Under this test there is a presumption of constitutionality, and if a rational basis exists for the distinctions drawn between two groups, the statute or constitutional provision will stand.²⁰³ If, however, a fundamental right such as voting is involved, the state has the burden of showing a compelling state interest necessitating the disparate treatment and must further show that the statute does no more than is appropriate to effectuate this interest.²⁰⁴ Under the new Philadelphia debt limitation provisions, the rights of the Philadelphia citizens to vote on their debt limitation is severely curtailed in relation to the citizens of other state municipalities. However, the effect of this disenfranchisement is largely economic. Consequently, an argument could be made both for and against it being a fundamental right and therefore both for and against the compelling state interest test. It would appear, however, that the benefits and burdens in *Cipriano*²⁰⁵ are very similar to those involved under the new constitutional provisions. In *Cipriano* the plaintiff argued that he would be part of the class that had to repay the debt and hence should have a right in deciding its limits. Here the Philadelphia residents could argue that since they have the burden of repaying the debt they should not be limited in incurring this burden while other state residents have no such limitation. Therefore, the compelling state interest test should probably be used as a standard in determining if the equal protection clause is violated.

As previously noted,²⁰⁶ there appears to be no valid basis in fact for the disparate treatment accorded Philadelphia voters and those of the rest of the Commonwealth. There is one possible rationale, however, that might be suggested to explain this unequal treatment. This rationale pre-

202. See, e.g., *Lassiter v. Northhampton County Bd. of Elections*, 360 U.S. 45 (1959), in which the Court applied the "rational basis" standard to find that a literacy test was sufficiently related to the policy of promoting intelligent use of the ballot; *Breedlove v. Suttles*, 302 U.S. 277, *overruling*, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966), in which the Court upheld, under the "rational basis" test, a poll tax qualification which exempted certain classes. *But see* *Cardona v. Power*, 384 U.S. 672, 675 (1966) (Douglas, J., dissenting). See generally Tussman & TenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341 (1949); Comment, *Construction of State Disfranchisement Rule Under Equal Protection Standards*, 66 COLUM. L. REV. 1357 (1966); *Developments in the Law — Equal Protection*, 82 HARV. L. REV. 1065 (1969); Comment, *Rational Classification Problems in Financing State and Local Government*, 76 YALE L.J. 1206 (1967). See also McKay, *The Preference for Freedom*, 34 N.Y.U.L. REV. 1182, 1213 (1959), wherein the author states that "[s]ince at least 1938 it has been a truism of constitutional law that the Court will reject economic and social legislation only if there is no 'rational basis' for the law."

203. See note 202 *supra*.

204. The Court has consistently called voting a "fundamental matter in a free society." *Kramer v. Union Free School Dist.*, 395 U.S. 621, 626-28 (1969); *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). See Comment, 21 RUTGERS L. REV. 297, 308 (1966). See generally Cox, *The Supreme Court, 1965 Term, Forward: Constitutional Adjudication and the Promotion of Human Rights*, 80 HARV. L. REV. 91, 95 (1966); McKay, *supra* note 202; Van Alstyne, *The Fourteenth Amendment, the "Right" to Vote, and the Understanding of the 39th Congress*, 1965 SUPREME CT. REV. 33; *Developments in the Law — Equal Protection*, 82 HARV. L. REV. 1065, 1120-21 (1969).

205. *Cipriano v. City of Houma*, 395 U.S. 701, 705 (1969). See p. 648 *supra*.

206. See pp. 616-18 *supra*.

sumes that due to Philadelphia's large size, its financial stability is more important to the state than that of the other subdivisions because it accounts for a disproportionate part of Pennsylvania's revenue.²⁰⁷ However, this rationale would seem to fail for two reasons. First, no distinction is made between the other Commonwealth political subdivisions. It would appear even on cursory examination that the revenues derived from the Commonwealth's other large cities would be proportionately greater when compared to those of smaller townships than when compared to Philadelphia. Thus, if the distinction drawn between Philadelphia and the rest of the state is valid, it would appear necessary to make similar distinctions between the other large cities and the smaller municipalities to avoid the appearance of prejudice. Since the Pennsylvania constitutional scheme makes no such distinctions, such disparities can not be justified by the differences in state revenues derived from any one source.

Even assuming that Philadelphia's contribution to Pennsylvania revenue is so great when compared to the rest of the state as to require special treatment, it would appear that this end could have been accomplished by alternate means without the withdrawal of the franchise from the residents of Philadelphia on the issue of debt expansion above a constitutional maximum. The legislature has power under Article IX, section 10, to prescribe the mechanics of the vote by which an increase in indebtedness will be allowed to non-Philadelphia municipalities.²⁰⁸ Hence, if the revenue of Philadelphia is of monumental importance to the state, it might be free under this type of constitutional provision to require a greater percentage of the vote to authorize an increase in Philadelphia debt.²⁰⁹ In this manner the legislature could insure itself the necessary revenue and at the same time give the residents of Philadelphia voting power similar to that of the residents of the rest of the Commonwealth. While this provision, by state law or constitution, might also be violative of the equal protection clause absent a compelling state interest, it would at least give some credence to the view that the disparity exists to insure the solvency

207. This proposition appears highly conjectural since of the total revenue of the Commonwealth, \$3,796,000,000 in 1968, only \$47,000,000 was obtained from local governments. U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1969, at p. 420. This figure would not seem to justify different treatment, since even if Philadelphia accounted for all these monies, it would only be $\frac{1}{80}$ of the state's revenue and Philadelphia's insolvency would not affect state revenues from personal sources. Furthermore, the state is not liable for municipal indebtedness. PA. CONST. art. VIII, § 9.

The converse of this argument would also seem to destroy the Philadelphia revenue theory, since if the city has the burden of insuring the state, it should have the right to insure the solvency of other municipalities so as not to increase its burden.

208. PA. CONST. art. IX, § 10.

209. If Philadelphia were included within the provisions of PA. CONST. art. IX, § 10, the General Assembly, absent an equal protection violation, would be free to require a higher percentage of the vote in that city to authorize increased indebtedness. However, a three-judge federal court has recently ruled that such a procedure is violative of the equal protection clause. *Rimarick v. Johansen*, 38 U.S.L.W. 2453 (D. Minn. Feb. 4, 1970), where a provision requiring a 55 percent majority of votes cast to pass any home rule city charter amendment affecting liquor sales was invalidated, *since there was no compelling state interest to justify such a procedure.*

of Philadelphia, and might also reinforce the state's position that a compelling interest exists. Thus, it would appear that even if there is a compelling state interest in limiting the debt capacity of Philadelphia, the constitutional provisions are overly excessive in protecting that interest and therefore violative of the equal protection clause.

It would appear, however, that the actual reason for the disparate treatment was the insistence of the Philadelphia representatives at the Constitutional Convention that their debt limitation provision remain unchanged.²¹⁰ The major reason given for this intransigence was that a more flexible provision might endanger Philadelphia's credit standing.²¹¹ This rationale provides even less of a constitutional justification than the theory previously discussed. All equal protection actions arise out of government decisions which discriminate between different segments of the population.²¹² Such actions are the very evil that the equal protection clause was designed to protect. Therefore, the desires of the city officials of Philadelphia cannot be decisive or even important in determining the respective rights of her electorate unless there are valid reasons for the decision. In the instant situation, no such justification exists and, absent a compelling state interest, the new Philadelphia provisions would appear to be violative of the equal protection clause.

210. LOCAL GOVERNMENT COMMITTEE, PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-1968; PUBLIC HEARINGS BEFORE THE COMMITTEE OF LOCAL GOVERNMENT. Testimony of David V. Randall on behalf of Edward G. Bauer, Jr., Solicitor of the City of Philadelphia before the Local Government Committee of the Convention at Public Hearing, December 28, 1967, at 222. See also REPORT TO THE CONVENTION OF THE COMMITTEE ON LOCAL GOVERNMENT, February 6, 1968, at 15. Journal of the Constitutional Convention (1968), at 811.

211. Testimony of David V. Randall, *supra* note 210. Other reasons given by the Philadelphia delegates were: (1) authority financing was non-existent in Philadelphia; (2) Philadelphia had a favorable position with respect to grants from the federal government; (3) the size of Philadelphia restricts the methods of financing; (4) the ease with which referendum approval of debt can be obtained in Philadelphia; and (5) precedent recognized distinctions in Philadelphia borrowing power. REPORT TO CONVENTION OF THE COMMITTEE ON LOCAL GOVERNMENT, *supra* note 210, at 16.

All these arguments not only are inadequate constitutional reasons for the disparate treatment of Philadelphia but also are not substantively supported. A more flexible debt limitation provision would have no effect on the rating of Philadelphia's bonds. The credit rating of bond issues is based on the issuer's ability to repay. Thus, it is not the ability to assume debt but the extent of debt a municipality has actually incurred which is crucial. As Philadelphia has since found out the overlapping debt of the school board which, increases the burden on Philadelphia taxpayers, lowers credit ratings faster than a change in permissible debt. This problem will be even more significant under the new Pennsylvania Constitution since the Philadelphia School District is now covered by section 10 and has almost unlimited borrowing power. See pp. 641-42 *supra*.

Similarly, the extent of municipal authority financing effects the credit rating of the municipality, but it is no reason for not granting an increase in borrowing capacity. Neither would a more flexible tax base inhibit the city in gaining federal funds or increase the probability of the defeat of bond issues at referendum. As to the last reason — the previous differentiations — this just manifests the city's shortsightedness. The fact that the city at this time was well within its debt limitations does not mean that such a situation will exist in the future. Similarly, the fact that a disparity, permissible or impermissible, previously existed cannot justify improper treatment in the future.

212. U.S. CONST. amend. XIV, § 1, provides in pertinent part: "nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws." (emphasis added)

If one assumes, however, that the court were to determine that the interest of Philadelphia's voters was not so fundamental as to require the use of the compelling interest test, it would appear that a valid argument still exists against the new constitutional provisions under the "rational basis" test. If the reason for the distinctions drawn between Philadelphia's voters and those of the rest of the state is either of those discussed above,²¹³ it could be argued not to be a rational distinction, since the disparity between Philadelphia and the rest of the Commonwealth is certainly no greater than that between other large cities and small townships. Consequently, any breakdown of the different political subdivisions which does not take note of the relevant differentiations would appear to be irrational. While the case for the Philadelphia residents would not be as strong under this argument since they would have the burden of rebutting the presumption of constitutionality, a result in the residents' favor would still be possible if the state relied on the Philadelphia revenue theory or on the unsubstantiated views of Philadelphia officials. Consequently, it would appear that not only has the Pennsylvania Constitutional Convention adopted proposals of uneven quality, but also provisions which may fail to withstand judicial scrutiny under the equal protection clause.

V. A PROPOSED SOLUTION

From the above discussion it is clear that there are two prime concerns which must be reflected in any proposed provision relating to municipal debt limitation: flexibility and fiscal responsibility. The overwhelming emphasis should be placed upon flexibility since in the administration of today's local government units exigencies arise which call for immediate and purposeful responses. Therefore, the aim of fiscal responsibility must, of necessity, be expressed only in terms of avoiding financial collapse at the local level as was the case in 1873.²¹⁴

The following *constitutional* provision is proposed as a possible solution to the perplexing problem of municipal debt limitations for *all* the political subdivisions in Pennsylvania:

Subject only to the restrictions imposed by this section, the General Assembly shall prescribe the debt limits of all units of local government including municipalities and school districts. For such purposes, the debt limit base shall be a percentage of the total revenue of the unit of local government computed over a specific period immediately preceding the year of borrowing. Revenue is to be defined as all recurring sources of income while the applicable percentage figure is to be determined by the General Assembly. The debt limit to be prescribed in every such case shall exclude all indebtedness (1) for any project to the extent that it is self-liquidating or self-

213. See pp. 649-51 *supra*.

214. See pp. 612-13 *supra*.

supporting or which has heretofore been defined as self-liquidating or self-supporting, or (2) which has been approved in a referendum by sixty percent of those voting after full disclosure of the reasons for and per capita cost of such indebtedness.

Any unit of local government, including municipalities and school districts, incurring any indebtedness, shall at or before the time of so doing adopt a covenant, which shall be binding upon it so long as any such indebtedness shall remain unpaid, to make payments out of its sinking fund or any other of its revenues or funds at such time and in such annual amounts specified in such covenant as shall be sufficient for the payment of the interest thereon and the principal thereof when due.

A. Factors Constitutionally Prescribed

In reference to the debt limitation section of the proposed provision, it should be noted that the term revenue has been defined in the Constitution itself. The reason for so doing, rather than leaving the definition to the legislature, is that the term, especially since it includes all types of recurring revenue, is not likely to be a vascillating figure. Therefore, constant legislative re-evaluation will not be necessary since the original definition will continue to adequately reflect the needs and ability of a municipality to incur debt.

The second part of the provision allows for indebtedness with sixty percent voter approval based upon full disclosure of the reasons and prospective per capita costs of the indebtedness. It appears that the full disclosure principles should be constitutionally required because of the reliance placed on the voters to ultimately determine the extent of municipal indebtedness. The constitutional requirement of sixty percent approval among those voting is similar to a previous requirement in Pennsylvania,²¹⁵ and is designed to be high enough to prevent excessive debt incurrence while at the same time low enough to assure the approval of needed indebtedness. It should also be noted that if, for any reason, the "enlightened" electorate suddenly begins approving excessive indebtedness, the market mechanism would suffice to limit this extravagance and thus will act as a reasonable arbiter of the ability of any municipality to service its debt. Perhaps, in the long run, the market is the best determinant of the future ability of a municipality to incur indebtedness. The proviso that debts must be paid out of sinking funds or current revenues similarly would mitigate against any extravagance.

215. PA. STAT. ANN. tit. 53, § 6203(c) (1957), later amended to require only a majority of those voting to increase debt up to an amount not exceeding 15% of assessed valuation. PA. STAT. ANN. tit. 53, § 6203 (Supp. 1969). This, however, may in itself be violative of equal protection. See note 209 *supra*. Therefore, this section should be made severable from the rest of the provision.

B. Percentage as Legislatively Determined

The reason for allowing the legislature to set the percentage figure which, when multiplied by revenue, results in the dollar value debt limit, is flexibility. Legislative control over this figure is necessary to allow for a continuous reappraisal in order to meet the ever changing needs of local communities. It is further suggested that the legislature initially adopt a percentage of revenue roughly equivalent in dollar value to 5 percent of assessed valuation under the old Pennsylvania provision. The reason for this is that under the old law few local units had borrowed up to that limit and most had not even been authorized to reach that figure.²¹⁶

It should also be obvious that the suggested solution deliberately omits a special provision for urban centers such as Philadelphia since, as previously noted,²¹⁷ any reasons which could be advanced in support of such a distinction are at best inadequate.

Finally, for any debt limit provision to effectuate the intent of its drafters, the devices which have been created to circumvent these provisions — the most notable of which is the Authority²¹⁸ — must either be outlawed or have their general obligations included in the computation of debt. If authorities are to be retained with their obligations considered as debt in the same manner as municipal debt, then the expertise of the individuals controlling the Authority would appear to be its sole justification. Therefore, there should be standards for qualification adopted to insure the placement of competent, apolitical individuals at the helm of these Authorities. This appears necessary because the proposed provision by allowing a local unit to incur unlimited indebtedness with voter approval, provides sufficient flexibility so that without this expertise there is no legitimate reason for their retention.

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216. See pp. 617-18 *supra*.

217. See pp. 649-51 *supra*.

218. See pp. 635-36 *supra* and the accompanying footnotes.