

1980

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Fordham University School of Law Urban Law Journal

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Recommended Citation

Robert W. Cockren, Maria L. Vecchiotti, and Donna M. Zerbo, *Local Finance: A Brief Constitutional History*, 8 Fordham Urb. L.J. 135 (1980).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol8/iss1/8>

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COMMENTS

LOCAL FINANCE: A BRIEF CONSTITUTIONAL HISTORY

I. Seventeenth Century to 1905

During the late seventeenth and early eighteenth centuries, New York City began the practice of municipal borrowing.¹ Among the purposes of this borrowing was "the construction of fortifications, jails for war prisoners and the purchase of arms."² The city's growth in the late eighteenth and early nineteenth centuries brought additional debt-funded appropriations for the construction of municipal improvements.³ During this period of urban development, municipalities were forced to supplement their methods of financing "by loans, sales of public lands, donations, subscriptions, [and] lotteries."⁴ Authorization from the legislature was required where the city chose to borrow its funds. An application for such permission required information as to the amount of the loan and the purposes for which the funds were to be used.⁵

The first officially labeled "municipal bond" was issued by New York City in 1812 for the purpose of construction of the City Hall.⁶ New York City increased its indebtedness from \$500,000 in 1834 to \$10,842,000 in 1840 and \$14,000,000 in 1842.⁷ Other municipalities followed suit by incurring debts for similar public improvements.⁸

1. This borrowing was done through private loans taken out by the municipality. There appears to be no authority identifying the lender. IV NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE, STATE AND LOCAL GOVERNMENT IN NEW YORK 542-43 (1938).

2. *Id.* at 543.

3. Public improvements which were financed included public buildings, waterworks, boardwalks, wooden pavements and public schools. *Id.*

4. *Id.*

5. *Id.*

6. "The exact date when the first municipal bond issue appeared in New York State is unknown, but New York City began to float securities in 1812 or thereabouts." *Id.* The amount borrowed totaled \$900,000. This money was used for the construction of an almshouse and other public improvements. E. DURAND, THE FINANCES OF NEW YORK CITY 33 (quoted in X CONVENTION COMMITTEE, TAXATION AND FINANCE 287 (1938) [hereinafter cited as TAXATION AND FINANCE]).

7. TAXATION AND FINANCE, *supra* note 6, at 287.

8. *Id.*

Until 1846, there were no express restrictions in the New York State Constitution concerning the issuance and regulation of municipal debt. The topic of debt limitation was raised at the 1846 Constitutional Convention, where a proposal to restrict municipal borrowing was submitted by the Committee on Municipal Corporations.⁹ The constitutional proposal stated that local governments were not to borrow, except to suppress insurrection or abate pestilence, unless specifically authorized by legislative act. Furthermore, the debt would have to be incurred for a single work project. To repay the liability, the legislature would have to provide for the imposition of a special tax which would meet the interest charges and amortize the loan principal within twenty years. Finally, the legislative authorization to borrow could take effect only if the borrowing was approved by a majority of the electors of the city or village issuing the debt.¹⁰

This proposal was rejected in debate.¹¹ Instead, the following amendment was enacted and subsequently ratified by the voters:

It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.¹²

This amendment was the first constitutional provision in New York to restrict local indebtedness. Unlike the Municipal Corporations Committee proposal, this amendment was vague; while it imposed a duty on the legislature to limit municipal debt incurrence and prevent borrowing abuses, it neither contained nor specifically authorized any methods of enforcing the duty.

In 1853, further restrictions on debt incurrence were added by the State Legislature when it enacted chapter 603 of the Laws of New

9. II C. LINCOLN, *THE CONSTITUTIONAL HISTORY OF NEW YORK* 198 (1906) [hereinafter cited as *HISTORY*].

10. *Id.*

11. Committee on Municipal Affairs of the Association of the Bar of the City of New York, *Proposals to Strengthen Local Finance Laws in New York State*, 34 *THE RECORD* 58, 71 (Jan./Feb. 1979, No. 1/2) [hereinafter cited as *Proposals*].

12. N.Y. CONST. of 1846, art. VIII, § 9. This local debt limitation was similar to the state debt limitation which read in part: "The credit of the State shall not, in any manner, be given or loaned to, or in aid of any individual, association, or corporation." N.Y. CONST. of 1846, art. VIII, § 9.

York.¹³ Chapter 603 not only prohibited loans to private corporations but also went so far as to declare any debt incurred void unless it conformed to the specifications set down in the chapter.¹⁴

Municipalities reacted to chapter 603 by resorting "to their old practice of having the legislature enact special bills authorizing them to incur debts for specific amounts, projects and lengths of term."¹⁵ These legislative acts circumvented the loan prohibitions of chapter 603 by giving municipalities special authorization to incur debt. For example, financing of railroads was accomplished through direct grants from the municipalities or by municipal bond issuance.¹⁶

Municipal debt liability escalated to serious proportions during the period following the Civil War.¹⁷ As a consequence, the problem of municipal debt limitation was again raised at the 1867 Constitutional Convention.¹⁸ Several proposals were advanced to treat the problem, as well as to alleviate future local government debt liability. The first proposal advanced would have expressly prohibited cities, counties and local subdivisions from giving or lending money or credit to individual corporations.¹⁹ This proposition was designed to curb the excessive abuses of town railroad bonding.²⁰ A second proposal would have permitted cities to lend money for public im-

13. 1853 N.Y. Laws ch. 603 was enacted "to restrict and regulate the power of municipal corporations to borrow money, contract debts and loan their credit." *Id.*

14. *Id.* §§ 1-2. Under Chapter 603, the amount of debt that could have been contracted was limited to five percent of the value of real property within the municipalities' borders if the debt was exclusive of pre-existing debt. If, however, it was inclusive of pre-existing debt, the limitation was raised to eight percent. *Id.*

15. *Proposals, supra* note 11, at 72.

16. The ineffectiveness of Chapter 603 to restrain debts is illustrated by the fact that between the years 1860 and 1876, New York City's debt increased from \$18 million to \$113 million. V CONVENTION COMMITTEE, NEW YORK CITY GOVERNMENT FUNCTIONS AND PROBLEMS 28 [hereinafter cited as FUNCTIONS AND PROBLEMS].

17. "During the Civil War municipal credit had to be exercised for another purpose—that of a payment of bounties to volunteers and their families. New York City alone had issued more than \$14,000,000 of bonds for these war purposes." TAXATION AND FINANCE, *supra* note 6, at 289. "During the post war boom, borrowing for municipal improvements was resumed and increased by leaps and bounds." P. STEDENSKI, PUBLIC BORROWING 11 (1930) (quoted in TAXATION AND FINANCE, *supra* note 6, at 289). In addition, municipalities were excessively financing railroads, which passed through their borders, through town bonding. II HISTORY, *supra* note 9, at 358.

18. II HISTORY, *supra* note 9, at 358.

19. FUNCTIONS AND PROBLEMS, *supra* note 16, at 28.

20. II HISTORY, *supra* note 9, at 358.

provements, including railroads within their borders, provided there was a voter referendum of the bond issue.²¹ This latter proposal was important because it was the first suggestion to limit indebtedness in proportion to assessed value of real property subject to tax.²² Nevertheless, both proposals were ultimately defeated.

Instead of curbing excessive municipal financing,²³ the New York State Legislature enacted the Town Bonding Act in 1869.²⁴ Chapter 907, as it was titled, gave municipalities broad authority to lend money to railroads.²⁵ Fully realizing the impact of this legislation, Governor Hoffman recommended its repeal in his 1872 annual address to the State Legislature.²⁶

In the same year, the Constitutional Commission obtained statements of indebtedness from municipalities throughout the state. Its findings revealed that the aggregate bonded indebtedness of counties, cities, towns and villages of New York State was \$214,344,676.58. This amount exceeded ten percent of the assessed value of property in New York State.²⁷ As a direct result of the investigation, a proposal was promulgated at the 1872 Constitutional Convention limiting municipal debt to ten percent of the assessed property value of the municipality issuing the debt. In addition, municipalities were to be prohibited from lending funds to individuals, associations, or corporations, and were not to own

21. FUNCTIONS AND PROBLEMS, *supra* note 16, at 28.

22. Under one proposal, the debt limitation was to be fifteen percent of the assessed value of real property; under another, ten percent. TAXATION AND FINANCE, *supra* note 6, at 290. These figures were chosen as they were considered to be reasonable. FUNCTIONS AND PROBLEMS, *supra* note 16, at 28.

23. New York City debt increased from \$36 million in 1868 to more than \$100 million in 1871 because of the excessive spending by Boss Tweed's Ring. TAXATION AND FINANCE, *supra* note 6, at 289.

24. 1869 N.Y. Laws ch. 907.

25. *Proposals*, *supra* note 11, at 72.

26. "Without discussing the policy of this law, I suggest that aid has already been given to railroads, upon the credit of municipalities, to quite as great an extent as is wise, and, in some instances, to the oppression of taxpaying communities. Its early repeal is, in my judgment, important to the general welfare of our people." VI STATE OF NEW YORK MESSAGES FROM THE GOVERNORS 369 (C. LINCOLN ed. 1909) [hereinafter cited as GOVERNORS].

any equity security of any corporation.²⁸

This proposal, absent the ten percent debt limit formula, was approved by the legislature and adopted by the voters in 1874.²⁹ The amendment was the first direct restriction on municipal lending. In effect, the amendment repealed all acts of the legislature relating to bonding of towns for railroad purposes, except insofar as they related to contracts then in force.³⁰

In 1875, Governor Tilden appointed a commission for the purpose of inquiring into the growth of municipal indebtedness.³¹ In his 1876 annual message to the legislature, the Governor urged both the commission and the legislature to consider municipal debt limitation a top priority.³² The legislature, responding to the Governor's suggestion, proposed an amendment in 1876 to limit municipal indebtedness to five percent of the assessed valuation of taxable real property.³³ The Tilden Commission rejected the legislature's plan to limit local indebtedness according to property valuations "on the ground that municipalities would be able to evade such limitations

27. The distribution of indebtedness was as follows:

TABLE 1

In aid of	Amount
railroads	\$26,946,662.09
public buildings (court houses, city and town halls, schools)	\$10,416,864.84
civil war debts	\$26,934,696.59
bonds for roads, boulevards, streets, avenues and bridges	\$36,658,144.59
water works and fire apparatus	\$29,335,383.79
parks, local improvements and miscellaneous purposes.	\$84,052,655.08

II HISTORY, *supra* note 9, at 558.

28. *Id.* at 559.

29. The Constitutional Commission did not approve the proposal to limit the aggregate indebtedness a municipality could incur to ten percent on the grounds that "[p]ublic opinion was not ready for a restriction of this sort." TAXATION AND FINANCE, *supra* note 6, at 292.

30. Buffalo & Jamestown R.R. Co. v. R.R. Comm'rs, 5 Hun 485, 487 (1875).

31. TAXATION AND FINANCE, *supra* note 6, at 293.

32. *Id.*

33. *Id.*

by raising their assessed valuations."³⁴ At the commission's suggestion, the legislature never acted on the amendment.³⁵

In 1884, an amendment to article VIII, section 11 applied the constitutional debt limitation of ten percent³⁶ of the assessed value of taxable real property to cities, and their respective counties, of over 100,000 in population.³⁷ The amendment provided that debt issued which exceeded the ten percent debt limit was void. No further liability could be incurred until municipal indebtedness dropped below the ten percent limitation. Excluded from the amendment were certificates of indebtedness or revenue bonds issued in anticipation of taxes of the year payable. Water bonds were also excluded.³⁸ These exclusions from the debt limitation were the first of many methods of circumventing the constitutional debt limit which were to become widely employed in later years.

By the time the article VIII amendment was adopted,³⁹ municipal indebtedness had decreased and finances had normalized. In New York City alone, debt had decreased from \$112 million in 1874 to \$85 million in 1886, while the assessed value of real property had risen in comparable years from \$882 million to \$1,204 million.⁴⁰

In 1886, Governor Hill forwarded a special message to the legislature indicating that New York City had already exceeded its debt

34. *Id.*

35. *Id.*

36. A tax limit was also imposed on all cities over 100,000 in population at two percent of the assessed real property value. N.Y. CONST. of 1894, art. VIII, § 11.

37. At the time of the amendment's adoption, the only cities in New York that had over 100,000 inhabitants were New York City, Buffalo, and Rochester. TAXATION AND FINANCE, *supra* note 6, at 293.

38. The term of such bonds was limited to 20 years. The bonds were amortized by establishing a sinking fund. At that time, it was felt that

debts incurred in anticipation of tax revenues, and debts incurred for water supply, were to be exempt from the debt limits . . . because they were considered to be a normal incident of tax collections and in no sense a burden on future tax payers. Water debt was exempted because water supply was generally a self-supporting undertaking and, moreover, was considered to be a necessity. It was felt . . . by students of municipal finance, that debt limits should be applied only to those debts that were a burden on the taxpayers. Water debts were not considered to be in this class.

Id. at 292.

39. In his annual message of 1885, Governor Hill commented on the vital significance of the amendment and warned that failure to adhere to it could have disastrous consequences. Furthermore, he suggested that the legislature should consider extending its provisions to other cities if the results were successful. VIII GOVERNORS, *supra* note 26, at 28.

40. TAXATION AND FINANCE, *supra* note 6, at 295.

limitation at the time the article VIII amendment was enacted.⁴¹ The Court of Common Pleas, in *Bank for Savings v. Grace*,⁴² interpreting the 1884 article VIII, section 11 amendment, agreed with the Governor that New York City had in fact exceeded its constitutional debt limitation at the time of adoption of the amendment.⁴³ Since the constitutional definition of debt is construed to mean gross debt, not net debt, the city could not deduct \$40 million held in its sinking bond fund from its gross debt of \$85 million, thereby causing the city to violate its debt limitation.⁴⁴ Under this construction, any further debt incurred by the city would be void.⁴⁵

The lower court was later reversed by the New York Court of Appeals, which held:

We think it plain that the indebtedness here referred to is an indebtedness to be met in the future by taxation, for (1) before its possible limit can be defined, the value of the real estate subject thereto must be ascertained. (2) By the express words of the provision, water bonds issued for a fixed term are not to be included, but a sinking fund must be created for their redemption. (3) So the issue of certificates of indebtedness or revenue bonds in anticipation of, and payable out of the taxes for the current year is permitted.⁴⁶

Thus, debt incurred by New York City and held by the commissioners of the bond sinking fund was not to be included in determining whether the city had reached its debt limit. Since under the Court of Appeals interpretation debt was considered to be net, and not gross debt, New York City was not in excess of its debt limit when the amendment was enacted. New York City was, therefore, free to incur additional debt liability for such things as public improvements.

Increased municipal indebtedness⁴⁷ during the late 1880's led to the proposal and adoption of a new constitutional debt limit amend-

41. II HISTORY, *supra* note 9, at 695.

42. 102 N.Y. 313, 7 N.E. 162 (1886).

43. *Id.* at 318, 7 N.E. at 163.

44. TAXATION AND FINANCE, *supra* note 6, at 296.

45. See text accompanying note 37 *supra*.

46. 102 N.Y. at 318, 7 N.E. at 163.

47. New York City debt increased from over \$88 million to \$137 million in the years from 1888 to 1897; Brooklyn increased its debt from over \$31 million to over \$70 million in the same years; Buffalo's debt rose from over \$8 million to over \$13 million during the decade from 1887 to 1897; and Rochester's debt rose from over \$6 million to over \$10 million from the years 1889 to 1895. TAXATION AND FINANCE, *supra* note 6, at 297.

ment at the 1894 Constitutional Convention.⁴⁸ This new amendment renumbered article VIII from section 11 to section 10.⁴⁹ The amendment extended the ten percent debt limitation to all cities and counties of the state regardless of population.⁵⁰ In addition, the amendment extended debt limitations to certificates of indebtedness and revenue bonds issued in anticipation of tax collections (which were not to be retired within five years after their issue date), water supply bonds (even though the provision for their exclusion was not dropped), and any debt incurred by any part or portion of a city. If the boundaries of a city became coterminous with that of a county, county indebtedness would cease. Any further indebtedness of a county was, however, to be included as part of the city debt.⁵¹

Since constitutional debt limitations were to be applied to all cities and counties of New York by article VIII, section 10,⁵² it was no longer considered necessary to have municipalities apply to the legislature for special acts to authorize the issuance of debt.⁵³ Thus, in 1897, New York City was authorized by the legislature to borrow for city or county purposes without having to apply to the legislature for special authorization, so long as city borrowing remained within the ten percent debt limitation mandated by the constitution.⁵⁴ This general authorization, however, was restricted by "procedure[s] of authorization of the loans, the forms of issue, and the methods of repayment of the loans to be followed by the city in the exercise of its credit."⁵⁵ Other municipalities were given similar authority.⁵⁶ The effect of these enactments was to facilitate borrowing and free

48. The amendment was an outgrowth of a proposal to limit city debt which read as follows: "In ascertaining the debt of any city its proportional part of the county debt shall be counted." III HISTORY, *supra* note 9, at 458.

An additional proposal, which was rejected, was suggested to amend article VIII, section 11 for a ten percent debt limitation less holdings in the sinking fund. Apparently, the committee felt the proposal was not necessary in light of the court's construction of section 11 in *Bank for Savings*. FUNCTIONS AND PROBLEMS, *supra* note 16, at 29. See text accompanying note 42 *supra*.

49. N.Y. CONST. of 1894, art. VIII, § 10.

50. This provision was suggested because of the consolidation of the towns in Kings County. FUNCTIONS AND PROBLEMS, *supra* note 16, at 29.

51. N.Y. CONST. of 1894, art. VIII, § 10.

52. See text accompanying note 50 *supra*.

53. TAXATION AND FINANCE, *supra* note 6, at 298.

54. 1897 N.Y. Laws ch. 378 §§ 169-88; TAXATION AND FINANCE, *supra* note 6, at 298.

55. TAXATION AND FINANCE, *supra* note 6, at 298.

56. *Id.*

the municipalities from the burdensome methods previously used to circumvent debt limits and issue debt.

In 1898, New York City enlarged its geographic boundaries by annexing parts or all of the surrounding counties.⁵⁷ Consequently, the enlarged city was found to be in excess of its debt limitation.⁵⁸ Pursuant to the constitutional amendment of 1894, once annexation occurred, New York City had to include within its debt-incurring power all future debt of the incorporated counties.⁵⁹ Furthermore, it had been held in *Sheehan v. Long Island City*⁶⁰ that contracts for public improvements made under a statute authorizing the issuance of city bonds for the project could not be impaired by a subsequent amendment to the constitution. Since the amendment of 1894 did not affect such existing contracts, their sums were to be included in the computation of debt subject to the limitation.⁶¹ Finally, statutes such as chapter 378 of the Laws of New York⁶² which accelerated the extension of local government credit led to increased borrowing by municipalities. As a result, city indebtedness was in excess of that which was previously anticipated.

At the Constitutional Convention of 1899, the constitution was amended to provide relief to New York City and other municipalities. The section reads in pertinent part:

Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county, heretofore existing, shall not, for the purposes of this section, be reckoned as a part of city debt.⁶³

The obvious effect of exempting existing county debt from the municipal debt limitation was that cities would be allowed to understate their true debt liabilities in meeting the constitutional strictures.

Further exemptions were provided to the cities under chapter 712 of the Laws of 1899.⁶⁴ Under chapter 712, the cities were allowed to

57. *Id.*

58. *Id.*

59. See text accompanying note 51 *supra*.

60. 11 Misc. 487, 33 N.Y.S. 428 (Sup. Ct. 1895).

61. *Id.* at 489, 33 N.Y.S. at 430.

62. See text accompanying note 54 *supra*.

63. N.Y. CONST. of 1899, art. VIII, § 10.

64. 1899 N.Y. Laws ch. 712.

add the assessed value of tangible property of any person, partnership, or corporation situated on any public way. The so-called "special franchise" was allowed to be added to the value of the real property for tax purposes.⁶⁵ In increasing the amount of the assessed value of real property subject to tax, the tax base for debt limitation purposes would also increase. Ultimately, the exclusion of existing county indebtedness and the expansion of assessed valuation of taxable real property allowed the cities to issue increasingly larger amounts of debt, and thus move forward with the public improvements mandated by city-county consolidation.

II. 1905 to 1938

Article VIII, section 10 of the New York State Constitution continued to be revised during the early 1900's, culminating in a major revision enacted at the 1938 Constitutional Convention. The amendments, both adopted as well as proposed, of 1905, 1907, 1909, 1917 and 1927, were the result of the continual struggle of cities to expand and develop their public facilities in the face of the constitutional debt limitation. As in 1899, these amendments were designed to provide adequate financing for each municipality's growing demand for public improvements.⁶⁶ These amendments, as had the 1898 amendment, authorized certain indebtedness to be excluded from the computation of the debt limitation for each municipality. Each amendment, in effect, permitted a portion of municipal debt to escape constitutional control. Thus, with a number of exclusions operating simultaneously, the amount of unbridled indebtedness could be substantial. In retrospect, it is apparent that this exclusionary practice continued without adequate regard to the severe consequences of increasing fiscal deficits of localities.

A 1905 amendment to article VIII, section 10 specifically excluded

65. The pertinent section of chapter 712 reads as follows:

A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

Id.

66. See *McCabe v. Gross*, 274 N.Y. 39, 8 N.E.2d 269 (1937).

from the debt limitation indebtedness incurred by New York City after January 1, 1904 for water supply development.⁶⁷ In a pre-election edition, the New York Times published an editorial urging New York City voters to support this amendment. The editorial briefly explained that this exclusion would result in a much needed increase in the debt limitation of New York City. The editorial further noted that the water debt was satisfied out of monies raised by water rates rather than from the taxation of assessed real estate, and therefore, the exclusion was proper.⁶⁸

Six additional amendments to this 1905 text were proposed but were never submitted to the voters.⁶⁹ Of these proposed amendments, one provided for additional indebtedness to be incurred by cities in order to incorporate public utilities into the municipal function.⁷⁰ This potential indebtedness would be in addition to the normal limit of ten percent of the assessed valuation of real estate subject to taxation,⁷¹ but would not exceed the indebtedness incurred for water supply or dock facilities. The following five alternate proposals applied directly to New York City: 1) an increase in the debt limitation from ten percent to fifteen percent of assessed real estate valuation;⁷² 2) an exclusion from the debt limitation of all bonds which by their terms would provide for the payment of interest and principal from specified reserve revenues;⁷³ 3) an exclu-

67. The text of the 1905 amendment stated: "[E]xcept that debts incurred by the city of New York after the first day of January, nineteen hundred and four, to provide for the supply of water shall not be so included." II N.Y.S. CONSTITUTIONAL CONVENTION COMMITTEE, AMENDMENTS PROPOSED TO NEW YORK CONSTITUTION 1895-1937, 657 (1938) [hereinafter cited as PROPOSED AMENDMENTS].

Although the 1894 text of article VIII, section 10 permitted the issuance of bonds for water supply, it explicitly required that such bonds be included in the debt limit computation. *Id.* at 654.

68. N.Y. Times, Nov. 4, 1905, at 8, col. 2.

69. PROPOSED AMENDMENTS, *supra* note 67, at 658-66.

70. *Id.* at 658.

71. The text of article VIII, section 10 contained a debt limitation provision which stated: No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten percentum of the assessed valuation of the real estate of such county or city subject to taxation, . . . and all indebtedness in excess of such limitation . . . shall be absolutely void. . . .

Id. at 654.

72. *Id.* at 658-60.

73. *Id.* at 660-61.

sion from the debt limitation of bonds issued for the construction of subways and dock improvements;⁷⁴ 4) an exception for bonds issued for the building of railroads and dock improvements;⁷⁵ and, 5) an exception for bonds issued for the construction of subways, with a caveat that the terms of such bonds, similar to those issued for water supply, would not exceed twenty years, and that a sinking fund would be created for their redemption.⁷⁶

The 1905 amendment, which permitted only New York City to exclude from the debt limit any indebtedness incurred for water supply, was broadened in 1907 to encompass any "city of the second class"⁷⁷ incurring a similar debt after January 1, 1908. A proposed amendment to the 1907 text, not submitted to the voters, provided for a further extension of this 1905 amendment to include "cities of the third class"—by definition, all other cities—incurring indebtedness for water supply after January 1, 1910.⁷⁸ The remaining amendments, which were not submitted to the voters, and thus were never enacted, concerned the exclusion from the debt limitation of indebtedness incurred by New York City for the acquisition or construction of docks, subways, railroads, and other municipal improvements. The language of these proposals ranged from a simple exclusionary provision⁷⁹ to an elaborate scheme which provided that the Appellate Division of the Supreme Court, First Department, would periodically determine which debts were to be excluded.⁸⁰

A significant amendment for New York City was adopted by the

74. *Id.* at 661-63.

75. *Id.* at 663-65.

76. *Id.* at 665-66.

77. *Id.* at 666-68. A "city of the second class" was defined in a contemporaneous amendment to article XII, section 2 as one containing a population of "fifty thousand and less than one hundred and seventy-five thousand." *Id.* at 835-36. *See also*, N.Y. Times, Nov. 6, 1907, at 4, col. 4. It is not clear whether or not these second class cities had provided for payment of their water indebtedness out of monies which were separate from the general taxation, as New York City had. Thus, the propriety of this exclusion was questionable.

78. PROPOSED AMENDMENTS, *supra* note 67, at 678-80, 835.

79. *Id.* at 671, 673.

80. *Id.* at 668-70, 673-78. To satisfy due process requirements, the proposed amendment provided that notice of such determination be served upon the governor, the attorney-general of the state and the mayor of the particular city. In addition, it provided that the court may prescribe other means for reasonable public notice. The proposed amendment required that the attorney-general, the mayor and any resident owner of real estate subject to taxation be entitled to appear and be heard at such determination. *Id.* at 669-70.

voters in 1909.⁸¹ The first revision permitted New York City to issue bonds which were redeemable from the monies of the tax levy for the year succeeding the year of issuance.⁸² The same revision, however, limited the amount of bonds New York City could issue in excess of the debt limitation to one-tenth of one percent of the assessed valuation of real estate subject to taxation by the city.⁸³ The second change excluded from the debt limitation any New York City indebtedness incurred for public improvements "owned or to be owned by the city" if the debt was self-sustaining and if a sinking fund was established.⁸⁴

The 1909 amendment also provided that any New York City indebtedness incurred for rapid transit or dock properties was to be excluded from the debt limitation in proportion to the current net

81. The pertinent text of the 1909 amendment stated:

This section shall not be construed . . . to prevent the city of New York from issuing bonds to be redeemed out of the tax levy for the year next succeeding the year of their issue, provided that the amount of such bonds which may be issued in any one year in excess of the limitations here contained shall not exceed one-tenth of one per centum of the assessed valuation of the real estate of said city subject to taxation. . . . [A]nd except further that any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current net revenue, after making any necessary allowance for repairs and maintenance for which the city is liable, in excess of the interest on said debt and of the annual instalments necessary for its amortization may be excluded in ascertaining the power of said city to become otherwise indebted, provided that a sinking fund for its amortization shall have been established and maintained and that the indebtedness shall not be so excluded during any period of time when the revenue aforesaid shall not be sufficient to equal the said interest and amortization instalments, and except further that any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by said city therefrom shall meet the interest and amortization instalments thereof, provided that any increase in the debt incurring power of the city of New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes.

PROPOSED AMENDMENTS, *supra* note 67, at 680-82.

82. *Id.* at 680. The constitution required (as stated in the preceding 1909 text) that the value of bonds to be issued must be equal to the amount "actually contained or to be contained in the taxes for the year when such . . . bonds are issued and payable out of such taxes." *Id.*

83. *Id.* at 680-81.

84. *Id.* at 681. The self-sustaining requirement is buttressed by an additional provision which prohibits exclusion of the indebtedness "during any period of time when the revenue . . . shall not be sufficient to equal the . . . interest and amortization. . . ." *Id.*

revenue derived therefrom.⁸⁵ A New York Times editorial advocated the defeat of this portion of the amendment. The editorial stated that New York City had a borrowing power of approximately \$100,000,000, which had already been exceeded. The *Times* cautioned that if the subways should begin to incur operating losses, the indebtedness would be included in the limitation, thereby causing an increase in the existing deficit. The editorial warned that such an amendment was a "dangerous departure" from the constitutional limitation of ten percent which acted as a safeguard to the city's credit stability.⁸⁶

In addition, the 1909 amendment vested the legislature with the power to establish criteria "under which the amount of any debt to be so excluded shall be determined."⁸⁷ The legislature also had discretion to delegate such determination to the Appellate Division, First Department. The amendment clarified the requirement that bonds issued for water supply have a maturity not to exceed twenty years. Prior to the 1909 amendment section 10 did not prohibit the issuance of bonds for water supply; nonetheless, it did require that the duration of such bonds was not to exceed twenty years.⁸⁸ The amendment apparently imposed this requirement only if the amount of such bonds was in excess of the debt limitation contained in section 10.⁸⁹ Finally, the 1909 amendment permitted any "city of the third class" after January 1, 1910 to exclude from the debt limitation any indebtedness incurred for water supply.⁹⁰ It also provided that any municipal indebtedness which was valid at inception would not become invalid by reason of any provision of section 10.⁹¹

Three proposed amendments to the 1909 text which were not submitted to the voters attempted, alternatively, to: 1) exclude from the debt limitation indebtedness incurred by any city for water supply, thus eliminating the classification of cities according to pop-

85. *Id.* at 680-82.

86. N.Y. Times, Nov. 1, 1909, at 10, col. 6.

87. PROPOSED AMENDMENTS, *supra* note 67, at 682. This provision seems to be applicable only to New York City. Indeed, a 1927 amendment makes this explicit. See note 110 *infra* and accompanying text.

88. PROPOSED AMENDMENTS, *supra* note 67, at 654.

89. *Id.* at 681.

90. *Id.* See note 78 *supra* and accompanying text.

91. PROPOSED AMENDMENTS, *supra* note 67, at 682.

ulation;⁹² 2) exclude from the debt limitation debts incurred by "first class cities" after January 1, 1904 for water supply;⁹³ and 3) decrease the amount to be raised by taxation from two percent to one and one-half percent of the assessed valuation of real and personal property in any county containing a city with a population in excess of 100,000 or in any such city.⁹⁴

The 1917 amendment merely provided that indebtedness incurred for water supply after January 1, 1904 by any "city of the first class", not only New York City, would be excluded from the debt limitation.⁹⁵ However, in subsequent years, eleven proposed amendments to the 1917 text were never submitted to popular vote; one proposal that was submitted was rejected. Three of these proposed amendments concerned the general exclusion from the debt limitation of local indebtedness for public improvements.⁹⁶ Another sought to revise the exclusion of New York City's indebtedness for water supply, rapid transit and self-sustaining improvements.⁹⁷ A few of the proposed amendments pertained to the exclusion from the debt limitation of debts incurred for educational purposes,⁹⁸ for veterans' organizations,⁹⁹ for housing,¹⁰⁰ and for sewerage.¹⁰¹ The remaining proposals sought to permit municipal ownership of securities via gift or devise,¹⁰² restrict municipal issuance of tax-exempt bonds,¹⁰³ and decrease the tax limitation of certain counties and cities to one and one-half percent.¹⁰⁴ The sole proposed amendment which was rejected by the voters attempted to change the system of taxation, but at the same time preserve the computation of the

92. *Id.* at 683-85.

93. *Id.* at 686. "First class" cities are defined in article XII, section 2 as containing a population of 175,000 or more.

94. *Id.* at 690. While the debt limitation is ten percent of the assessed valuation of real estate, the tax limitation is two percent.

95. *Id.* at 694. See note 93 *supra*.

96. PROPOSED AMENDMENTS, *supra* note 67, at 696-704.

97. *Id.* at 704-07.

98. *Id.* at 708-15.

99. *Id.* at 715-16.

100. *Id.* at 718-23.

101. *Id.* at 724-26.

102. *Id.* at 726.

103. *Id.* at 729.

104. *Id.* at 713-15. See note 94 *supra* and accompanying text.

debt limitation.¹⁰⁵

A number of minor revisions in article VIII, section 10 resulted from an amendment adopted in 1927. These revisions, as had their predecessors, continued to liberate portions of municipal debt from the debt limitation. In turn, municipalities were permitted to borrow an amount which, in essence, exceeded the constitutional safeguard of ten percent of assessed real estate valuation. Thus, under the guise of permitting increased public services and improvements, such circumventions of the debt limitation facilitated the accumulation of municipal deficits.

The 1927 amendment deleted a prior provision which permitted bonds to be issued for water supply only if their maturity did not exceed twenty years.¹⁰⁶ Bonds issued for water supply with a maturity in excess of five years were exempted from the determination of a municipality's power to incur debt.¹⁰⁷ The amendment permitted any city to exclude from the debt limitation and indebtedness incurred "heretofore or hereafter" for the purpose of water supply by eliminating the previous class designations.¹⁰⁸ Additionally, the 1927 amendment excluded from the debt limitation the expense of public improvements required by local ordinance or legislation, but imposed dollar limitations on the amount of exclusion¹⁰⁹ dependent upon the population of the locality. The amendment also clarified a 1909 revision which presumably vested the legislature with certain powers to ascertain the amount of debt exclusion by explicitly stating that such revision was applicable to New York City.¹¹⁰

The 1927 amendments, which were not submitted to the people, attempted, in the alternative, to repeal the two percent tax limitation,¹¹¹ to impose a "maximum aggregate indebtedness";¹¹² to re-

105. PROPOSED AMENDMENTS, *supra* note 67, at 731. See note 94 *supra* and accompanying text.

106. PROPOSED AMENDMENTS, *supra* note 67, at 734.

107. *Id.*

108. *Id.*

109. *Id.* The limitation on the amount of exclusion was dependent upon the population of the municipality. However, the provision addressed itself to only two categories of municipalities: (a) a city with a population between 250,000 and 1,000,000; and (b) a city with a population between 175,000 and 250,000.

110. *Id.* at 735. See note 87 *supra* and accompanying text.

111. PROPOSED AMENDMENTS, *supra* note 67, at 736-38.

112. *Id.* at 739-43.

quire a referendum on permanent improvements;¹¹³ to exclude from the debt limitation indebtedness incurred for slum clearance and housing;¹¹⁴ to permit the issuance of bonds for temporary emergencies even if they should exceed the tax or debt limitations;¹¹⁵ to require a financial statement of city indebtedness;¹¹⁶ and, to proportionately exclude from the debt limitation the indebtedness incurred by New York City for rapid transit construction and other improvements.¹¹⁷

In 1927, section 10-a was adopted and added to article VIII. It provided that debts, not exceeding \$300,000,000, incurred by New York City after January 1, 1928 for the construction or equipment of new rapid transit facilities, were not barred by section 10, nor were they to be included in the computation of the debt limitation.¹¹⁸ A reading of the New York Times during the November election period reveals the political fervor surrounding this new section. Special Counsel for the New York City Transit Association, Samuel Untermeyer, stated that the additional funds were needed to make physical changes in large stations such as Times Square and Grand Central.¹¹⁹ Yet, transit expert C.E. Smith stated that the proposal was unnecessary,¹²⁰ and that any additional funds could be raised by increasing the fare from five cents to six or seven cents.¹²¹ Republican candidate Ruth Barker Pratt,¹²² and the Chairman of the Chamber of Commerce's Executive Committee, James Brown,¹²³ advocated defeat of this \$300,000,000 proposal. Ms. Pratt informed the voters that New York City had four additional sources of income (apart from general taxation) which would amount to \$750,000,000,

113. *Id.*

114. *Id.* at 743-46.

115. *Id.* at 746-52. See note 94 *supra*.

116. PROPOSED AMENDMENTS, *supra* note 67, at 754-55. Note that this is the first time the legislature has considered imposing an accounting requirement on the municipalities.

117. *Id.* at 757. See notes 81-85 *supra* and accompanying text.

118. PROPOSED AMENDMENTS, *supra* note 67, at 764. This provision permitted New York City to finance the construction of the Independent Subway System. III N.Y.S. CONSTITUTIONAL CONVENTION 1938, REVISED RECORD, 1779 (1938) [hereinafter cited as REVISED RECORD].

119. N.Y. Times, Nov. 1, 1927, at 29, col. 7.

120. N.Y. Times, Nov. 2, 1927, at 1, col. 4.

121. N.Y. Times, Nov. 1, 1927, at 29, col. 7.

122. *Id.* at 3, col. 3.

123. *Id.* at 10, col. 5.

and therefore, increasing the city's debt was unnecessary.¹²⁴ Mr. Brown accused the city of manufacturing a need for this additional financing by operating the subways at a cost below that of providing service.¹²⁵

In 1934 and 1935, there were unsuccessful attempts to add a new section 10-b to the 1927 text which would have provided a detailed guide to the imposition of tax on real property by a municipality.¹²⁶ Similarly, in 1936 a new section 10-c proposed to exclude from the debt limitation indebtedness for general welfare purposes incurred by any municipality after January 1, 1938 was rejected.¹²⁷

It is evident that the amendments passed during the period between 1894 and 1938 spawned an encumbered local finance law. Indeed, after 1927, the text of section 10 contained a patchwork of once current and exigent needs which rendered the original mandate of the law inoperable.¹²⁸ Recognizing the need to simplify and fortify the local finance law, the delegates of the 1938 Constitutional Convention discarded section 10 of article VIII and developed a new article devoted entirely to local finance.¹²⁹

Section 1 of the new article restated prior law which prohibited municipalities from giving or loaning their money, credit, or property to individuals or other private enterprises.¹³⁰ In addition, section 1 prohibited municipalities from giving or loaning their credit to public and private corporations.¹³¹ The legislative reports reveal that the delegates intended the term "corporation" as used in connection with the giving or loaning of money to apply only to private corporations, but that insofar as the term was used in the context of the giving or loaning of credit, the term should mean both public and private corporations.¹³² Section 1 also included school

124. *Id.* at 3, col. 3. Two of these additional sources include \$40,000,000 from amortization and exemption from debt and \$125,000,000 from increased property assessments. *Id.*

125. *Id.* at 10, col. 5.

126. PROPOSED AMENDMENTS, *supra* note 67, at 766-74.

127. *Id.* at 774.

128. *Id.* at 653-55 (unburdened text of article VIII, section 10 as it appeared immediately after the 1894 Constitutional Convention).

129. N.Y. CONST. art. VIII.

130. N.Y.S. CONSTITUTIONAL CONVENTION 1938, JOURNALS AND DOCUMENTS, DOC. No. 16 at 90 (1938) [hereinafter cited as JOURNALS AND DOCUMENTS].

131. *Id.* The provision which limited the incurrence of municipal debt for municipal purposes has been transferred to article VIII, section 2. N.Y. CONST. art. VIII, § 2.

132. JOURNALS AND DOCUMENTS, *supra* note 130, Doc. No. 6, at 2.

districts among the municipalities in the "gift and loan" provision.¹³³ This change reflected the delegates' belief that school districts were governmental units and therefore should be accorded constitutional protections and prohibitions.¹³⁴ Additionally, section 1 recognized the obligation of counties, cities and towns to provide for their poor by stating that nothing in the constitution, "shall prevent the provision of aid, care and support of the needy."¹³⁵

Section 2 was new, except for the first sentence, which codified existing law requiring that municipal incurrence of debt should be for municipal purposes only.¹³⁶ The new provisions in the section contained three provisions which were analogous to those relating to state financing.¹³⁷ One of these provisions stated that municipal indebtedness should have a maturity not longer than the period of usefulness or purposefulness.¹³⁸ The second provision mandated that the "full faith and credit" of the municipal issuer support the indebtedness, that the debt be incurred via serial bonds, and that repayment be in annual installments.¹³⁹ An exception was provided for New York City indebtedness incurred for water supply, dock properties, and rapid transit facilities. This exception permitted New York City to finance such debt either by serial bonds or a sinking fund, both of which had a maximum maturity of fifty years.¹⁴⁰ The third provision required that at the insistence of any bondholder the municipal fiscal officer satisfy any debt service from the first revenues received from the indebted project.¹⁴¹

The new section 3 was intended to control the creation of public authorities which, because of their use as a device to circumvent the constitutional debt limitation, had caused much controversy.¹⁴² The

133. *Id.* Doc. No. 16, at 90.

134. *Id.* Doc. No. 6, at 1-2.

135. *Id.* Doc. No. 16, at 91.

136. *Id.* See note 131 *supra*.

137. JOURNALS AND DOCUMENTS, *supra* note 130, Doc. No. 16, at 91-92. It was the belief of the delegates that such analogous provisions would insure a similarly sound fiscal policy for municipalities as for the State. *Id.* Doc. No. 6, at 2-3.

138. *Id.* Doc. No. 16, at 91.

139. *Id.*

140. *Id.* at 92.

141. *Id.*

142. *Id.* at 92-93. Although public authorities were intended as a quick and convenient method of financing, their use soon developed into a circumvention of the debt limitation. REVISED RECORD, *supra* note 118, at 2263-75. See Comment, *The Constitutional Debt Limit and New York City*, *infra* at 185.

section specifically stated that "no municipal or other corporation [with enumerated exceptions] . . . possessing the power (a) to contract indebtedness and (b) to levy taxes or benefit assessments upon real estate . . . shall hereafter be established or created. . . ." ¹⁴³

The debates surrounding the passage of section 3 revealed a polarity of views toward these public benefit authorities.¹⁴⁴ A proponent of this section, Abbot Low Moffat, pointed out that public authorities had been in existence since the creation of the Port of New York Authority in 1921 and were increasingly multiplying.¹⁴⁵ Yet, unlike other municipal corporations, there were no legislative requirements or controls over these public authorities. Due to this lack of regulation, these authorities were being created to circumvent the debt and tax limitations of the constitution.¹⁴⁶ Mr. Moffat emphasized that these public authorities created an anomaly: the legislature had placed limitations on local indebtedness, but simultaneously allowed evasion of these limitations via the use of public authorities without legislative supervision.¹⁴⁷

A major advocate of public authorities, Robert Moses, stated that the creation of public authorities stemmed from sound business judgment, especially when they were self-sustaining as was, for example, the Triborough Bridge Authority.¹⁴⁸ Mr. Moses continued to emphasize that the inherent value of public authorities was derived from their ability to accomplish municipal functions by unconventional means.¹⁴⁹ Recognizing that such capability could be beneficial to municipalities, the framers were willing to exempt from section 3 the creation of public benefit corporations which were devoid of taxing powers.¹⁵⁰

143. JOURNALS AND DOCUMENTS, *supra* note 130, Doc. No. 16, at 92.

144. REVISED RECORD, *supra* note 118, at 2258-84.

145. *Id.* at 2258-59.

146. *Id.* at 2259.

147. *Id.* at 2260.

148. *Id.* at 2263-64.

149. *Id.*

150. The proposers of this provision were fearful of the extraordinary power an authority could wield if it were allowed to incur debt and raise taxes without being controlled by the legislature or subject to constitutional limitations. In effect, an authority could contract indebtedness for the same purposes as a municipality but would not be constrained by the legislature. *Id.* at 2258-63.

In conjunction with section 3, the delegates enacted a new section 5 to article X (Corporations). This section provided: (a) that public authorities were to be created only by special legislation; (b) that their accounts were to be supervised by the state comptroller; and (c) that neither the state nor the locality was to assume any liability for such authorities' indebtedness.¹⁵¹

Section 4 subjected towns and villages, as well as counties and cities, to the constitutional ten-percent debt limitation.¹⁵² The section provided for reductions in the debt limitation, but New York City was afforded an exemption from these reductions due to the fact that it provided for county as well as city functions.¹⁵³ Additionally, section 4 revised the computational base of the debt limitation from the assessed valuation of real estate subject to taxation for the preceding year, to a five-year average of such assessed valuations.¹⁵⁴

Section 5 contained four general exemptions from the debt limitation: indebtedness issued in anticipation of real estate taxes levied or to be levied in the same year of issuance and payable out of such taxes;¹⁵⁵ indebtedness to provide for water supply;¹⁵⁶ municipal indebtedness for self-sustaining public improvements or services;¹⁵⁷ and serial bonds issued by a municipality for the maintenance of a pension or retirement fund.¹⁵⁸

Section 6 contained existing additional debt limitation exemptions for the cities of Buffalo, Rochester, and Syracuse.¹⁵⁹

Section 7 contained three additional exclusions from the debt limitation for New York City: 1) indebtedness for other than capital improvements where such indebtedness would be redeemable from

151. JOURNALS AND DOCUMENTS, *supra* note 130, Doc. No. 16, at 108-09. This section reflected the delegates' concern over *Williamsburgh Savings Bank v. State*, 243 N.Y. 231, 153 N.E. 58 (1926), which held that the state had a "moral obligation" to pay the debts of an authority which it had previously created. The framers wanted to insure that potential creditors of the authority would know that the full faith and credit of the state or municipality was not supporting the authority's fiscal status. REVISED RECORD, *supra* note 118, at 2262-76.

152. JOURNALS AND DOCUMENTS, *supra* note 130, Doc. No. 16, at 93.

153. *Id.*

154. *Id.* The delegates believed that this would have a stabilizing effect on the amount of limitation. *Id.* at 93.

155. *Id.* at 94.

156. *Id.*

157. *Id.* at 94-95.

158. *Id.* at 95.

159. *Id.*

the tax levy for the year succeeding the year of issuance;¹⁶⁰ 2) indebtedness incurred prior to January 1, 1910 for dock properties to the extent current net revenues therefrom satisfied the annual debt service;¹⁶¹ and 3) aggregate indebtedness (not exceeding \$300,000,000 incurred after January 1, 1928 for the construction or equipment of new rapid transit facilities.¹⁶²

Section 7-a provided two new exemptions¹⁶³ from the debt limitation for New York City: 1) aggregate indebtedness (not exceeding \$315,000,000) for the acquisition of railroads and their attendant facilities;¹⁶⁴ and 2) indebtedness incurred for transit facilities to the extent that current net revenue from all railroad facilities and properties satisfied the annual debt service.¹⁶⁵

Section 8 merely continued the existing rule that indebtedness which was valid at inception, shall not be rendered invalid by the new constitutional article. It also extended this rule to indebtedness incurred by counties, towns, villages and school districts.¹⁶⁶

Section 9 also codified existing law by providing that the indebtedness of a county, which was either coterminous with or included within the boundaries of a city, shall cease; but any indebtedness of such county shall not be included as part of the city's indebtedness.¹⁶⁷

160. *Id.* at 96. This appears to be the authority for excluding TAN's (tax anticipation notes) from the debt limitation. See Lounsberry, *The Scope and Basis of the Local Finance Law Preface to N.Y. LOCAL FINANCE LAW*, at xiv (McKinney 1968). See also note 155 *supra* and accompanying text.

161. JOURNALS AND DOCUMENTS, *supra* note 130, Doc. No. 16, at 96.

162. *Id.*

163. *Id.* at 97. The provision permitted the legislature to prescribe the terms and conditions under which indebtedness may be excluded. It also permitted the legislature to grant authority to the appellate division of the supreme court in the first department to determine the amount of such excluded debt.

164. *Id.* The legislative record indicates an attempt to block this provision unless a self-sustaining clause was included. Apparently, the construction of the Independent Subway System caused financial difficulties for New York City which were remedied by the city increasing its assessed real estate valuation. A few delegates did not want this current provision for new rapid transit facilities to have a similar effect. Another attempt to restrict this provision required that bus and trolley car (subway "feeders") appropriations be specifically excluded. Both restricting clauses, however, were defeated. REVISED RECORD, *supra* note 118, at 1773-83.

165. JOURNALS AND DOCUMENTS, *supra* note 130, Doc. No. 16, at 97. The provision contained detailed guidelines to be used in determining which transit indebtedness was to be excluded.

166. *Id.* at 98.

167. *Id.*

Section 10 contained the existing constitutional two-percent tax limitation applicable to counties and cities with a population of 100,000 or more.¹⁶⁸ Nevertheless, the section amended the computational base of the tax limitation by deleting the assessed valuation of personal property subject to taxation and calculating the average assessed valuation of real estate subject to taxation on a five-year average basis.¹⁶⁹ Section 10 additionally provided that after January 1, 1944, the tax limitation would be imposed upon all cities and villages.¹⁷⁰

Section 10-a, which was previously enacted in 1927¹⁷¹ to exclude from the debt limitation New York City indebtedness incurred for rapid transit facilities, was repealed since such exclusion was now to be contained in section 7-a.

A new section 11 governed the potential exclusion from the tax limitation of taxes raised for the repayment of indebtedness incurred for the purpose of capital improvements.¹⁷² A new section 12 granted authority to the legislature to further restrict any locality from contracting indebtedness or levying taxes. However, the section provided that taxes on real estate levied for the payment of debt service were not to be subject to this restrictive legislative power.¹⁷³

Article 18 governed public housing and its financing.¹⁷⁴ Section 4 of this article permitted the legislature to authorize any city, town or village to incur indebtedness not exceeding two percent of the average assessed valuation of real estate¹⁷⁵ for purposes of article 18.¹⁷⁶

168. *Id.*

169. *Id.* See note 154 *supra* and accompanying text. This provision created the same computational base for the tax limitation as for the debt limitation—namely, a five-year average valuation of real estate subject to the taxation of the locality.

170. JOURNALS AND DOCUMENTS, *supra* note 130, Doc. No. 16, at 97. Similar statutory limitations on these cities and villages were already in existence. *Id.* Doc. No. 6, at 8.

171. *Id.* Doc. No. 16, at 99.

172. *Id.* at 99-100. The provision was applicable only to the major governmental units—counties, cities and villages.

173. *Id.* at 100.

174. *Id.* at 118-22.

175. *Id.* at 120.

176. The legislative record indicated a desire to exclude any indebtedness incurred for the provision of the needy. REVISED RECORD, *supra* note 118, at 1083-85.

Although the delegates did not want the state or any municipality to support the indebtedness of public authorities, they were willing to provide for an exception for public housing authorities. *Id.* at 2263.

III. 1938 to Present

Since World War II, changes in New York State's Constitution concerning local finance have been enacted in a piecemeal fashion. While major revisions have been proposed, none has been implemented. In 1947, when peace returned to a nation earlier preoccupied by World War II, New York State Comptroller Frank C. Moore appointed a 16-member committee to study and offer recommendations on constitutional debt and tax limitations and the fiscal relations between cities and their school administrations.

The Moore Committee report recommended adoption of a tax limit amendment to the constitution providing for the following:

- (1) Use of 100% valuation instead of assessed valuation as the base for limiting the power of local units of government to tax real estate;¹⁷⁷ (2) establishing a tax limit for counties;¹⁷⁸ (3) establishing a tax limit for school districts located completely or partly within cities with populations of less than 125,000 people;¹⁷⁹ (4) increasing from 100,000 to 125,000 the minimum population at which cities become subject to a single tax limit of two percent for combined city and education purposes;¹⁸⁰ and (5) requiring that revenues from public improvements or services (except the supply of water) for which bonds or capital notes were to be issued after January 1, 1950 be applied to the defraying of the repayment of principal, interest, and operating costs of such bonds and notes.¹⁸¹

177. STATE OF NEW YORK, SECOND REPORT OF THE STATE COMPTROLLER'S COMMITTEE ON CONSTITUTIONAL TAX AND DEBT LIMITATIONS AND CITY-SCHOOL FISCAL RELATIONS 7, 12-14 (March 30, 1949) [hereinafter cited as SECOND REPORT]. The power of governmental bodies in New York to tax or incur indebtedness was limited to a percentage of the value of taxable property as determined by the property's "assessed valuation." The Moore Committee recommended the use of full valuation as the base for the constitutional tax limit. "The full value of the taxable real estate in a municipality is computed by applying to the total of assessed valuation the percentage of full value at which the State finds property in the municipality to have been assessed." *Id.* at 12. Although required by law to assess at full value, municipalities were actually assessing real estate at widely varying percentages of full value. This practice produced wide variations in taxing powers among localities. For example, in a municipality which assessed real estate at 50 percent of full value, the tax limit for current operating expenses would have been 1% instead of 2%. The Committee stated, "[t]he use of full valuation as the tax limit base [would] eliminate artificial variations in taxing power among municipalities, resulting from variations in the rate of assessment, and, at the same time, [would] provide uniform protection to real estate against excessive taxation." *Id.* at 13. See also STATE OF NEW YORK, FIRST REPORT OF THE COMPTROLLER'S COMMITTEE ON CONSTITUTIONAL DEBT AND TAX LIMITATIONS AND CITY-SCHOOL FISCAL RELATIONS 4-5 (1948) [hereinafter cited as FIRST REPORT].

178. SECOND REPORT, *supra* note 177, at 7, 14; FIRST REPORT, *supra* note 177, at 6.

179. SECOND REPORT, *supra* note 177, at 7, 14-15; FIRST REPORT, *supra* note 177, at 11-12.

180. SECOND REPORT, *supra* note 177, at 7, 15; FIRST REPORT, *supra* note 177, at 7-11.

181. SECOND REPORT, *supra* note 177, at 7, 16; FIRST REPORT, *supra* note 177, at 5.

The Moore Committee also recommended a debt limitation amendment to the constitution which provided for:

(1) proportionate exclusion from the debt limit of borrowings for partially self-sustaining public improvements; (2) exclusion from the debt limit of the City of New York of \$150 million of new debt for city hospitals; (3) reduction from 50 to 40 years of the maximum period for which the City of New York may borrow for dock and transit purposes.¹⁸²

As a result of the Committee's efforts, the legislature, in 1948¹⁸³ and 1949,¹⁸⁴ enacted legislation embodying the Moore Committee's recommendations. On November 8, 1949, in two separate ballot propositions, New York State voters approved these constitutional amendments.¹⁸⁵

In essence, the 1949 amendment to article VIII, section 2 "reduced the maximum maturity of serial bonds and sinking fund bonds for the financing of, acquisition, construction, or equipment of rapid transit railroads or the construction of docks including the acquisition of land in connection with any such purposes, from fifty years to forty years."¹⁸⁶ Paragraph C of section 5 was also revised "to change the power of counties, cities, towns and villages to contract indebtedness."¹⁸⁷ The amendment to section 7 provided for the exclusion of \$150 million in hospital bonds from the indebtedness limit

182. SECOND REPORT, *supra* note 177, at 7, 19-20. See also FIRST REPORT, *supra* note 177, at 1-4.

183. N.Y.S. 2540, 171st Sess. (1948) (*amending* N.Y. CONST. art. VIII, § 10 and adding new § 10-a). N.Y.A. 2935, 171st Sess. (1948) (*amending* N.Y. CONST. art. VIII, §§ 2, 5, 7).

184. N.Y.A. 1034, 172d Sess. (1949) (same as N.Y.A. 2935, *supra* note 183); N.Y.A. 1035, 172d Sess. (1949) (same as N.Y.S. 2540, *supra* note 183).

185. 1975 N.Y. LEGIS. MANUAL 334.

For amendment of sections 2, 5, 7, article 8 (changing power of counties, cities, towns and villages to contract indebtedness; excluding from New York City debt limit \$150,000,000 for city hospitals) 1,435,575

Against 590,332

For amendment of sections 10, 10-a, 11, article 8 (changing limitations upon the amount of real estate taxes which may be levied by counties, cities, villages and certain school districts; providing for application and use of revenues of certain public improvements and services) 1,364,859

Against 602,855

Id. For text of the amendments, see 1949 N.Y. Laws 1961-68.

186. N.Y. CONST. art. VIII, § 2 (Historical Note).

187. Macchiarola, *Local Finances Under the New York State Constitution With an Emphasis on New York City*, 35 FORDHAM L. REV. 263, 264 n.2 (1966) [hereinafter cited as Macchiarola].

of New York City.¹⁸⁸ The amendment to section 10 changed the restrictions on the realty tax levied by counties, cities, towns, villages and certain school districts by implementing a complex formula of variable percentages for each taxing district.¹⁸⁹ Section 10-a provided that revenues from that portion of a public improvement or service for which bonds or capital notes were issued after January 1, 1950 were to be applied, after the payment of operating and maintenance costs, to the payment of the debt service on such obligations. This section made an exception for public improvements constructed to provide for the supply of water. The amendment to section 11 extended the tax exclusion provisions to apply to any school district coterminous with or within a city having less than 125,000 inhabitants.¹⁹⁰

The work of the Moore Committee, begun in 1947, continued to have effects in the early 1950's. In 1950 and 1951, the legislature approved bills providing for additional changes in the Local Finance Article of the constitution.¹⁹¹ On November 6, 1951, the electorate approved amendments to sections 4, 5, 7, and 11 of article VIII.¹⁹²

The amendment to section 4 was revised, generally restricting the powers of counties, cities, towns, villages and certain school districts to contract indebtedness and impose real estate taxes.¹⁹³ The restrictions imposed in section 4 had, up to then, prohibited the municipalities from contracting indebtedness for any purpose, present or future, exceeding an amount equal to the average full valuation of the taxable real estate of the municipality based upon specified percentages. The amendment to section 5 provided an exclusion for indebtedness contracted for specified public improvements, from the date of contracting through the first year of operation.¹⁹⁴ The

188. *Id.*

189. *Id.*

190. N.Y. CONST. art. VIII, § 11 (Historical Note).

191. N.Y.S. 2815, 173d Sess. (1950) (amending N.Y. CONST. art. VIII, §§ 4, 5, 7, 11); N.Y.S. 2787, 174th Sess. (1951) (same as N.Y.S. 2815, *supra*).

192. 1975 N.Y. LEGIS. MANUAL 335.

For amendment of sections 4, 5, 7, 11, article 8 (restrictions on the powers of counties, cities, towns, villages and certain school districts to contract indebtedness and to impose taxes upon real estate)	1,297,378
Against	461,611

193. 1951 N.Y. Laws 2099-104. See N.Y. CONST. art. VIII, § 4 (Historical Note). See also Macchiarola, *supra* note 187, at 264 n.2.

194. For text of specific amendment, see 1951 N.Y. Laws 2101. The 1951 amendment

amendment to section 7 added paragraphs (D) and (E)¹⁹⁵ which provided generally for the additional exclusion of aggregate debt for the construction of and equipment for rapid transit railroads in New York City after January 1, 1952, of not more than \$500 million, and debts for school purposes of not more than \$2,500,000.¹⁹⁶ The amendment of section 11 made subdivision (a) applicable only to the City of New York, and added subdivision (b).¹⁹⁷ These changes provided that taxes be excluded from the tax limitation of certain capital expenditures.¹⁹⁸ In sum, these amendments provided debt limit exclusions which failed to fully consider the impact on future fiscal stability.

Final legislative activity resulting from the Moore Committee's work occurred during the 1952 and 1953 legislative sessions. In the 1952 session eight bills were passed providing for amendments to article VIII;¹⁹⁹ however, only three of these proposals received the required second passage during the 1953 session of the legislature.²⁰⁰ On November 3, 1953, in three ballot proposals, New York State voters approved these amendments.²⁰¹

revised the third paragraph of section 5, paragraph C. See also N.Y. CONST. art. VIII § 5 (Historical Note). This amendment affected the constitutional debt incurring power of counties, cities, towns, and villages.

195. N.Y. CONST. art. VIII § 7 (Historical Note),

196. 1951 N.Y. LAWS 2102-03.

197. N.Y. CONST. art. VIII § 11 (Historical Note).

198. 1951 N.Y. LAWS 2103.

199. N.Y.S. 2948, 2949, 2950, 2967, 2968, 2969. 175th Sess. (1952); N.Y.A. 2969, 3333, 175th Sess. (1952). For descriptions of the specific bills, see 1952 N.Y. LEGIS. INDEX 244-46.

200. N.Y.S. 1981, 176th Sess. (1953) (adding N.Y. CONST. art. VIII, § 2-a); N.Y.S. 2600, 176th Sess. 1953) (amending N.Y. CONST. art. VIII, § 10); N.Y.A. 3186, 176th Sess. (1953) (amending N.Y. CONST. art. VIII, §§ 2, 5, 7, 10, 10-a).

201. 1975 N.Y. LEGIS. MANUAL 336-37.

For amendment of article 8, adding section 2-a (local indebtedness for water supply—powers granted by legislature to public corporations and improvement districts concerning excess supply of water) 1,056,798

Against 431,766

For amendment of sections 2, 5, 7, 10, 10-a, article 8 (power of counties, cities, towns, villages and certain school districts to contract indebtedness and to raise taxes on real estate) 989,741

Against 524,193

For amendment of section 10, article 8, adding subparagraph (f) (constitutional limitation on amount to be raised by City of New York, and counties therein by tax on real estate) 947,531

Against 560,023

Upon voter approval, section 2-a was added to article VIII, which in essence authorized the legislature to permit municipalities, on behalf of their respective improvement districts, to contract debt for water supply in excess of city needs for purposes of sale.²⁰² Thus, indebtedness contracted by a county, city, town or village for resale of water was excluded when determining the municipalities' debt limit.²⁰³ Section 10 was amended to fix the tax limit for New York City and its counties on real property to a combined total of two and one half percent of its taxable real estate.²⁰⁴ The final 1953 amendment provided for changes in sections 2, 5, 7, 10, and 10-a. Section 2 was amended to exclude budget anticipation notes from the constitutional debt limit of counties, cities, towns, villages and school districts.²⁰⁵ Section 5 was amended to exclude serial bonds having a maturity of more than two years issued for purposes other than the financing of capital improvements from the debt-incurring exclusion provision of section 5(a).²⁰⁶ The amendment to section 7 was purely a housekeeping measure.²⁰⁷ The amendment to section 10 permitted voters of a school district to increase the district's tax limit by one quarter of one percent not more than once annually, instead of not more than once in five years.²⁰⁸ Finally, the section 10-a amendment rephrased the section's language to make it clear that no contractual relationship was established between bondholders and municipalities regarding revenues derived from a public improvement.²⁰⁹ Furthermore, the tax limitation provisions were rendered inapplicable to towns.²¹⁰

Meanwhile, New York State, conscious of its financial future and

202. 1953 N.Y. Laws 2505-06.

203. *Id.*

204. *Id.* at 2513. The amendment provided for the adding of a new subparagraph (f).

205. N.Y. CONST. art. VIII, § 2 (Historical Note). See 1953 N.Y. Laws 2508-09 for the specific language of the amendment. The exclusion was for evidence of indebtedness issued in anticipation of the collection of taxes or other revenues.

206. N.Y. CONST. art. VIII, § 5 (Historical Note). See 1953 N.Y. Laws 2509 for the specific language of the amendment.

207. N.Y. CONST. art. VIII, § 7 (Historical Note). See 1953 N.Y. Laws 2510-11 for the effect of this amendment and the renumbering of paragraphs within § 7.

208. N.Y. CONST. art. VIII, § 10 (Historical Note). See 1953 N.Y. Laws 2513 for the specific language of the amendment.

209. N.Y. CONST. art. VIII, § 10-a (Historical Note). See 1953 N.Y. Laws 2513 for the specific language of the amendment.

210. N.Y. CONST. art. VIII, § 10-a.

equally cognizant of persistent debt exclusion amendments, formed a Temporary Commission to study the fiscal affairs of state government. In February 1955, the Commission issued a lengthy report entitled "A Program For Continued Progress in Fiscal Management."²¹¹ The Commission gave consideration to state-local relationships, noting the special needs of local government financial structures.²¹² However, no meaningful legislative activity resulted from the work of this Commission.

The fragmented amendment process of article VIII continued in 1955. The legislature sent two proposals to popular vote on November 8, 1955.²¹³ The first amendment, altering section 5, provided for an exclusion for indebtedness contracted for the collection or disposal of sewage.²¹⁴ The voters rejected this proposed amendment.²¹⁵ Instead, they approved an amendment to section 2-a in relation to the powers of public corporations and improvement districts to provide for the conveyance, treatment, drainage, and disposal of sewage, allowing such corporations to contract indebtedness for such purposes.²¹⁶

211. STATE OF NEW YORK, TEMPORARY COMMISSION ON THE FISCAL AFFAIRS OF STATE GOVERNMENT, PROGRAM FOR CONTINUED PROGRESS IN FISCAL MANAGEMENT (February 1955) (2 Vols.).

212. For a full discussion of the Commission's proposals see I *id.* at 111-46; II *id.* at 625-72.

213. 1975 N.Y. LEGIS. MANUAL 338.

For amendment of paragraph B, section 5, article 8 (in relation to indebtedness contracted for sewer purposes) 818,551
Against 1,175,343

For amendment of section 2-a, article 8 (in relation to the powers of public corporations and improvement districts to provide for the conveyance, treatment and disposal of sewage and for drainage purposes and to contract indebtedness for such purposes) 1,163,800
Against 803,884

214. 1955 N.Y. Laws 2113.

215. See note 213 *supra*.

216. The full text of the amendment is as follows:

The 1955 amendment to Section 2-a provided that the legislature may authorize any county, city, town or village or any county or town on behalf of an improvement district to contract indebtedness to provide facilities, in excess of its own needs, for the conveyance, treatment and disposal of sewage and for drainage purposes, from any other public corporation or improvement district; authorized two or more public corporations and improvement districts to provide for the common conveyance, treatment and disposal of sewage and for a common drainage system; and authorized any such corporation or any county or town on behalf of an improvement district, to contract joint indebtedness for such purposes or to contract for specific proportions of the cost thereof; such joint indebtedness shall be fairly apportioned and allocated to any

In 1956, the legislature adopted a bill providing for the creation of a temporary state commission to collect and compile data and to study and propose further constitutional revision.²¹⁷ The creation of the Temporary State Commission in 1956 was partly in anticipation of voter approval of a constitutional convention to follow the 1957 general election. In February 1957, the Temporary State Commission issued its first interim report outlining the group's principal objectives.²¹⁸ A second report followed in September of 1957 which summarized the suggestions and proposals which were offered at public hearings held by the Commission.²¹⁹ With the work of the Commission proceeding, lightning struck on November 5, 1957 when the voters of New York narrowly defeated the proposal calling for the constitutional convention.²²⁰

Despite the defeat of the Convention referendum in 1957, it became obvious that the work of constitutional revision and simplification should continue.²²¹ During the 1958 session of the legislature

county, city, town or village, and may be excluded to the extent to which such public improvement or service is self-supporting, in ascertaining the power of a municipality to contract indebtedness, as provided by the legislature.

N.Y. CONST. art. VIII, § 2-a (Historical Note).

217. The Temporary State Commission on the Constitutional Convention was created by 1956 N.Y. Laws ch. 814.

218. STATE OF NEW YORK, THE TEMPORARY STATE COMMISSION ON THE CONSTITUTIONAL CONVENTION, FIRST INTERIM REPORT, February 15, 1957 [hereinafter cited as FIRST INTERIM REPORT]. Among the stated objectives of the Commission were the following: to examine the feasibility of simplifying the state constitution, to identify potential areas for simplification, to state the advantages and disadvantages of such simplification and, in the event of approval at the 1957 election for the holding of a constitutional convention, to prepare plans for its organization and to prepare material for the use of delegates and the public. *Id.* at 14. The Commission stated that if the convention call was approved in 1957, then delegates to such convention would be elected at the next general election (1958), and the convention itself, according to law, would convene the first Tuesday in April of the year following the election of the delegates (April 1959). *Id.* at 7, 13.

219. See generally STATE OF NEW YORK, THE TEMPORARY STATE COMMISSION ON THE CONSTITUTIONAL CONVENTION, SECOND INTERIM REPORT, September 19, 1957.

220. 1975 N.Y. LEGIS. MANUAL 339.

For a convention to revise the Constitution and amend the same	1,242,568
Against	1,368,063

Id.

221. The Temporary State Commission on the Constitutional Convention established in 1956 under the terms of its enabling act was to be terminated on February 1, 1958 if the voters rejected a constitutional convention. Shortly after the rejection of the Convention, considerable public discussion took place concerning the advisability of continuing the constitutional study begun by the Commission. There was agreement that the constitution needed revision

various bills were introduced to insure the continued study of the constitution.²²² On March 21, 1958, the legislature adopted a concurrent resolution creating the Special Legislative Committee on the Revision and Simplification of the Constitution.²²³

The Special Legislative Committee recommended numerous constitutional changes; however, the Committee's focus was not the Local Finance Article.²²⁴ Another official agency to study the constitution was yet to be formed. The 1959 legislature, upon the Governor's recommendation, created the Temporary State Commission on the Revision and Simplification of the Constitution to continue the work of the Special Legislative Committee. The new Commission was established on January 29, 1959 by chapter 4 of the Laws of 1959, which provided for its operation until March 31, 1961.²²⁵ Renewing the spirit of the previous efforts of the 1956 Temporary State Commission and the Special Legislative Committee, chapter 4 directed the new 1959 Commission to make "a comprehensive study" of the constitution with the view of proposing "revision and simplification."²²⁶ This directive called for a serious study of article VIII, the 6500-word segment of the constitution dealing with local finance.²²⁷ It was the work of the 1959 Commission which was to finally result in a comprehensive revision program.

In its first report, issued in December 1959, the Commission noted that the New York Constitution was not a constitution in a "constitutional" sense, but was primarily a legislative document.²²⁸ The Commission recognized that lawmaking by referendum was an

and simplification. However, disagreement existed over the best vehicle for revision—the convention method or the legislative amendment process.

222. STATE OF NEW YORK, TEMPORARY COMMISSION ON THE REVISION AND SIMPLIFICATION OF THE CONSTITUTION, FIRST STEPS TOWARD A MODERN CONSTITUTION 8 (December 31, 1959) [hereinafter cited as 1959 REVISION COMM'N REPORT].

223. *Id.*

224. *Id.*

225. *Id.* at 10-11.

226. STATE OF NEW YORK, TEMPORARY STATE COMMISSION ON THE REVISION AND SIMPLIFICATION OF THE CONSTITUTION, SIMPLIFYING A COMPLEX CONSTITUTION 17 (February 27, 1961) [hereinafter cited as 1961 REVISION COMM'N REPORT].

227. *Id.*

228. 1959 REVISION COMM'N REPORT, *supra* note 222, at 1. Speaking of the constitution the commission said, "[i]t is a mass of legal texts, some truly fundamental and appropriate to a constitution, others a maze of statutory detail, and many obsolete or meaningless in present times." *Id.*

"unsuitable method of dealing with a plethora of problems and propositions,"²²⁹ especially those concerning local finance.

Meanwhile, the legislature was not deterred by the Commission's commitment to comprehensive revision; the piecemeal approach to constitutional change continued during the 1959 legislative session.

The legislature gave second passage to three bills amending article VIII.²³⁰ On November 3, 1959, the voters returned a mixed verdict on the three proposed amendments,²³¹ defeating a proposed amendment to section 7 which would have excluded from the New York City debt limitation as much as \$500 million for the acquisition, construction, reconstruction, alteration and conversion of, and acquisition of land for, public school buildings within New York City.²³² The voters, however, approved two amendments to section 1. The first amendment authorized two or more municipal corporations to engage in joint municipal undertakings, and to contract joint or several indebtedness for such undertakings.²³³ The second amendment authorized municipalities to increase pension benefits payable to retired members of a police or fire department.²³⁴

229. *Id.* at 1. The New York Constitution had expanded from 3,000 words in 1777 to over 45,000 words in 1959. In the 21 years between the 1938 revision and 1959, 75 amendments had been submitted to the voters resulting in the adoption of 66 amendments to New York State's Constitution. In contrast, only 12 amendments had been added to the United States Constitution in the 169 years since the adoption in 1791 of the Bill of Rights. From 18,000 words following the revision of 1894, the New York Constitution had increased to 28,000 words by the eve of the 1938 Constitutional Convention, and 17,000 more words had been added between 1938 and 1959. *Id.* at 3-4.

230. N.Y.A. 52, 2625, 3860, 182d Sess. (1959). For a brief description of the bills, see 1959 N.Y. LEGIS. INDEX 337, 556, 663.

231. 1975 N.Y. LEGIS. MANUAL 340-41.

For amendment to section 7, adding new paragraph F, article 8 (permitting New York City to issue \$500 million in bonds for school construction outside its debt limit)	1,248,208
Against	1,638,353
For amendment to section 1, article 8 (authorizing counties, cities and towns to increase pension benefits for certain members of police and fire departments or their dependents)	1,909,448
Against	829,642
For amendment to section 1, article 8 (authorizing municipalities to jointly provide municipal services)	1,648,447
Against	904,202

Id.

232. See 1959 N.Y. Laws 2262-63 for the text of the proposed amendment.

233. See *id.* at 2260-61 for the text of the amendment.

234. N.Y. CONST. art. VIII § 1 (Historical Note). See also 1959 N.Y. Laws 2261-62 for

The work of the 1959 Commission continued during 1960 and culminated in the issuance of its final report in February, 1961.²³⁵ While the Commission's 1959 report discussed the length and complexity of New York's constitution in general terms,²³⁶ its 1961 report addressed the same problem within the context of article VIII.²³⁷

The Commission's report on article VIII focused on finding acceptable ways to preserve important debt limit policies, with the hope that the article would become more intelligible, less subject to change, and, generally, a better expression of the state's local finance policy.²³⁸ The Commission suggested that the broad objective of a revised local finance article be stated in an introductory section with language such as the following:

The Legislature shall by law promote fiscal responsibility of all local governments and regulate their powers in respect of taxation and assessment, contracting indebtedness, and loan of credit; and shall provide fact finding and administrative facilities in aid of the formulation by local governments of sound fiscal policies.²³⁹

The Commission's review of the Local Finance Article then fo-

specific text of the amendment.

235. 1961 REVISION COMM'N REPORT, *supra* note 226, at 17-37.

236. See note 229 *supra* and accompanying text.

237. By 1961, article VIII had become longer than the entire Constitution of the United States, together with its first ten amendments. 1961 REVISION COMM'N REPORT, *supra* note 226, at 17.

The Commission, after analysis, observed that the New York State Constitution was not written to last for long periods of time, nor with the ability to withstand new generations and changed conditions. Instead, the constitution was actually a huge statute in constant process of reexamination and revision by the unsatisfactory process of submitting to the people highly technical and minute changes. *Id.* at 17-18. The Commission concluded that the cause of the continuing process of amendment could be attributed to two negative provisions of the constitution: one introduced in 1874, prohibiting the gift or loan or aid or credit to private persons or corporations; and one in 1884, fixing percentages of real estate value as limits upon local taxing and borrowing powers. *Id.* at 18.

238. 1961 REVISION COMM'N REPORT, *supra* note 226, at 19-20. The Commission's analysis of the Local Finance Article suggests it consists of three distinct types of provisions: (1) a group of prescriptions of a fundamental nature governing and limiting the use of local credit; (2) specific debt and tax limits expressed in terms of percentages of the value of real property assessed for taxation; and, (3) a great variety of provisions ancillary to the first two types. These are highly technical provisions and implement basic principles. The Commission generally recommended that the "implementing" provisions of the Local Finance Article be removed from the constitution and left to statutory and administrative action. *Id.* at 20.

239. *Id.* at 22.

cused on the principles which should form the core of a simplified local finance article. Six principles worthy of inclusion in a revised local finance article were stated as follows:²⁴⁰

- 1) A pledge of the full faith and credit of the localities for payment of principal and interests on debt.
- 2) Assurance to holders of local obligations that principal and interest will be paid on schedule.
- 3) Mandatory retirement of debt within the useful life of the project financed and debt repayment scheduled in a prudent manner.
- 4) A restriction of borrowing to a locality's own purposes, with a provision facilitating debt incurrence for common purposes.
- 5) A restriction on the gift or loan of money, property or credit.
- 6) A restriction on the creation of new over-lapping jurisdictions with power to incur debt and levy taxes on real estate.²⁴¹

The report paid close attention to the subject of constitutional debt limitation and the applicable portions of the Local Finance Article. The report noted that the constitutional treatment of debt limitation was evidenced by an elaborate structure of percentage debt limits for all counties, towns, cities, and villages, and some school districts, with numerous variations, exceptions, and detailed prescriptions regarding the application of these limits.²⁴² The Commission found that most counties, cities, towns and villages in the state were not using half their existing constitutional borrowing power²⁴³ and therefore concluded that realistic limitations on local

240. *Id.* at 23. The subjects of constitutional debt and tax limits for local governments were treated separately by the Commission. For a discussion of constitutional tax rate limits see *id.* at 33-36. For a detailed discussion of the Commission's work concerning debt limits see notes 232-41 *infra* and accompanying text.

241. 1961 REVISION COMM'N REPORT, *supra* note 226, at 23. For a description of these principles and the specific textual proposals for constitutional amendments, see *id.* at 23-28.

242. *Id.* at 29-30.

243. *Id.* at 29. As of 1958, all counties, other than Nassau and Westchester, excluding those in New York City, were using only five percent of their constitutional debt capacity; all towns were using only eight percent of their debt capacity; and all villages were using only eighteen percent. The Commission noted that if all the jurisdictions were permitted to incur debt they would pile up an intolerable mountain of debt. In cities of 125,000 population or more the combined city-county debt limit was 16% of the average full valuation of taxable real estate; in cities under 125,000 population the combined city-school district-county limit was 19%, which could be increased if the school district exercised the option to borrow in excess of its 5% limit with the approval of the voters, the Regents and the State Comptroller. In a village, the combined limit, including the 10% statutory limit for school districts, was 31% (34% in Nassau County). In a town having no village the combined county-town school debt limit was 24%, but persons living in improvement districts might have been called upon

borrowing throughout most of the state depended not on the constitution but on the soundness of local fiscal policies and the judgment of the investors.²⁴⁴

However, the Commission noted that the constitutional debt limit had a more immediate effect on New York City. As a result of the lack of overlapping jurisdictions, New York City's ten percent debt limitation covered purposes which in other municipalities would be covered by combined city, county, and, in the case of cities of less than 125,000 population, school district limits.²⁴⁵ The harbinger of New York City's later fiscal problems may be found in an analysis of the Annual Report of the New York City Comptroller for the years 1959-1960. For example, the report demonstrated that the enormous financing for water supply, docks, transit systems, schools, and city hospitals were all excluded from the constitutional debt limitation. The result of the study showed that of a total net bonded debt of \$3,223,000,000, almost half the debt was outside the constitutional limit.²⁴⁶

Faced with this problem, the Commission recommended retention of the percentage debt limit provisions in the constitution, but wisely suggested that too much reliance was placed on the limits and not enough on other means of regulation of local borrowing or on constructive improvements of local fiscal practices.²⁴⁷ The Commission noted that it would be impractical to write a constitutional formula for debt limits which account for such important factors as non-property revenue sources (*e.g.*, state aid), indices of local wealth other than real property values, and widely differing needs for capital expenditures of municipalities throughout the state.²⁴⁸

to support a larger debt burden, because the cost of financing an improvement district borrowing is charged against the district's taxpayers, even though it is backed by the faith and credit of the entire county or town. Finally, certain short-term debts, water debt, and debt for improvements to the extent supported by revenues from such improvements were all outside the constitutional debt limit. *Id.* at 29-30.

244. *Id.* at 30.

245. *Id.*

246. *Id.*, citing 1959-60 ANNUAL REPORT OF THE COMPTROLLER OF THE CITY OF NEW YORK, 380, 382.

247. 1961 REVISION COMM'N REPORT, *supra* note 226, at 30-31. The Commission stated, "[i]t must be recognized that restriction[s] based on a percentage of real property values is at best a method of limited attractiveness which considers only one of a number of relevant factors." *Id.* at 31.

248. *Id.* at 31.

Generally, the Commission concluded that to establish an effective system regulating local borrowing, constitutional debt limits should be supplemented by statutory and administrative regulation. Such implementation could be related to other economic and governmental factors relevant to sound levels of local borrowing.²⁴⁹

Finally, the Commission criticized the legislature's piecemeal approach to modernizing the Local Finance Article because the article no longer served the public interest.²⁵⁰ Hoping that its work would not be in vain, the Commission recommended that its proposed draft of article VIII be studied by the Office for Local Government, its Advisory Board, and other interested agencies, with a view to submission for first passage at the 1962 legislative session.²⁵¹ Unfortunately, the process of meaningful constitutional revision of article VIII did not begin in 1962. A number of bills²⁵² were introduced during the 1962 session of the legislature which would have amended article VIII. The Commission's hope for major reform never materialized.

Reaffirming its apparent commitment to piecemeal constitutional revision, the 1963 legislature gave second passage to three bills amending article VIII²⁵³ and sending them to the ballot for voter decision. On November 5, 1963, the public approved the three amendments.²⁵⁴ The first amendment provided villages with the

249. *Id.* For a draft of constitutional language embodying this policy, see *id.* at 31-33.

250. *Id.* at 37.

251. *Id.* at 20.

252. See 1962 N.Y. LEGIS. INDEX at 1020-21.

253. See 1963 N.Y. LEGIS. INDEX at 1316-17. (N.Y.A. 686, 5163, 186th Sess. (1963); N.Y.S. 445, 186th Sess. (1963)). Other bills providing for amendment to article 8 that had received first passage at the 1962 session of the legislature did not receive the necessary second passage in 1963.

254. 1975 N.Y. LEGIS. MANUAL 344.

For amendment to article 8, section 5 by adding thereto a new paragraph to be paragraph E permitting local governments to exclude from their debt limit the cost of sewage treatment and disposal facilities for an eleven year period	1,490,558
Against	874,313
For amendment to article 8, section 1 (permitting villages to increase pension benefits to retired members of police and fire departments and their widows and dependent children or parents)	1,867,020
Against	601,340
For amendment to article 9, . . . amending article 8, section 2 . . . (extends and expands home rule powers for counties, cities, towns and villages, repeals and amends other provisions of the constitution in respect of the relationship between the legisla-	

authority previously granted counties, cities and towns, to increase the pension benefits payable to retired members of police or fire departments or to widows, dependent children or dependent parents of former members.²⁵⁵ The second amendment permitted the constitutional exclusion of indebtedness contracted by a municipality during the eleven-year period commencing January 1, 1962 for construction or reconstruction of sewage facilities.²⁵⁶ The last amendment provided for major revisions to article IX dealing with local government financing²⁵⁷ and similar changes to section 12 of article VIII. Specifically, article VIII, section 12 was revised to reflect a longstanding principle that it is the duty of the legislature, subject to constitutional provision, to restrict the power of taxation, assessment, borrowing money, contracting indebtedness, and loaning the credit of municipalities. The purpose of this amendment was to prevent abuses in levying taxation and assessments and in the contracting of indebtedness.²⁵⁸

With the work of the 1959 Commission on the Revision and Simplification of the Constitution a distant memory, the 1964 legislative session adjourned without amending article VIII. In 1965, the legislature once again determined that New York's constitutional policy would best be served by further revision of the Local Finance Article. Legislation²⁵⁹ was passed amending article VIII, and was sent to the voters on November 2, 1965. The voters approved the amendment by a narrow margin.²⁶⁰ The amendment provided that despite restrictions on municipalities giving or loaning money to aid individuals (found in article VIII, section 1), New York City would not be prevented from increasing pension benefits payable to widows,

ture and local government) 1,719,074

Against 667,042

255. N.Y. CONST. art. VIII, § 1 (Historical Note). *See also* 1963 N.Y. Laws 3123-24 for the specific language of the amendment.

256. N.Y. CONST. art. VIII, § 5 (Historical Note). *See also* 1963 N.Y. Laws 3118 for specific text of the amendment adding paragraph E.

257. *See* N.Y. CONST. art. IX, § 1 (Historical Note).

258. *See* 1963 N.Y. Laws 3129-30 for the specific language of the amendment.

259. N.Y.S. 1399, 188th Sess. (1965). N.Y. State Senate (1965). *See* 1965 N.Y. LEGIS. RECORD AND INDEX 133 for a brief description of the bill.

260. 1975 N.Y. LEGIS. MANUAL 346. For amendment to article VIII, section 1 (permitting the City of New York to increase pension benefits to retired members of department of street cleaning and their widows and dependent children and parents)—1,617,270; Against—1,310,803.

dependent children or dependent parents of members or retired members of the city street cleaning department.²⁶¹

Although it was indicative of the legislature's mood regarding the scope of the constitution's gift and loan provisions, this amendment was not the most important item sent to the ballot in 1965. Along with this proposed amendment was this question: "Shall there be a convention to revise the constitution and amend the same?"²⁶² In 1957,²⁶³ the voters failed to approve a similar constitutional question; the question here was passed by a narrow margin.²⁶⁴ Simultaneously, the legislature approved a bill creating a temporary state commission to undertake a comprehensive study of the constitution in preparation for the convention and to make recommendations for constitutional revision and simplification.²⁶⁵

The Commission, in fulfilling its statutory mandate, issued no less than fifteen reports between December 1966 and March 1967.²⁶⁶ With the announced purpose of constitutional simplification guiding its work, the Commission focused its attention on specific issues to be studied. At the outset, local finance was identified as a subject in need of extensive review. In January 1967 the Commission issued its third report devoted entirely to the subject of local finance.²⁶⁷ Significant changes in the rural, urban, and suburban population distribution necessitated a fresh look at solutions to municipal problems. Uneven development, inadequate tax bases, rising budgets and the general problem of "urban sprawl" had become common features of suburban expansion.²⁶⁸ The strain of development and

261. See 1965 N.Y. Laws 2771-72 for text of the amendment.

262. 1965 N.Y. Laws ch. 371. The chapter provided for the submission to the electors of the state at the general election of 1965 the question "Shall there be a convention to revise the constitution and amend the same?" pursuant to section 2 of article 19 of the constitution, and to regulate the nomination and election of delegates if and when such question is decided in the affirmative.

263. See note 220 *supra* and accompanying text.

264. 1975 N.Y. LEGIS. MANUAL 345. For a convention to revise the constitution and amend the same—1,681,438; Against—1,468,431. With the passage of the question the provision of article 19, section 2 became operative. In essence, the section provided for the election of delegates at the November 1966 general election and the delegates so elected to convene in April 1967.

265. 1965 N.Y. Laws ch. 443.

266. STATE OF NEW YORK, TEMPORARY STATE COMMISSION ON THE CONSTITUTIONAL CONVENTION, REPORTS (Nos. 1-15, 1966-67) [hereinafter cited as CONVENTION REPORTS].

267. III CONVENTION REPORTS, *supra* note 266, at 11 *et seq.*

268. *Id.* at 12.

problems of housing, public health, traffic control, highway maintenance, crime prevention, land-use development and education were affecting all municipalities regardless of size.²⁶⁹ All these problems had one common element—finances. Adequate financial resources had become critically necessary in attempts to improve the quality of local governmental services and had made the subject of local finances one of the most important areas for consideration by the delegates to the Constitutional Convention.²⁷⁰ The Local Finance Report issued by the Commission dealt with five basic constitutional aspects relating to local finances: local real property tax, real property tax limits, real property tax exemptions, debt restrictions and non-property taxation.²⁷¹

The Commission, in analyzing the problem of debt restrictions, categorized constitutional restraints as basically of three types: 1) “regulations” on the purposes, methods, time period, terms, and conditions of borrowing, 2) “limitations” on the amount of indebtedness which may be incurred, and provisions for exemptions, and 3) “specifications” of procedures and details regarding each of the above.²⁷² The objectives of the debt “regulations” were generally to assure sound fiscal practices, to preserve credit, and to minimize interest costs.²⁷³ The objectives of the debt “limitations” were to restrict borrowing power, to preserve credit, and to curb added taxation due to debt service charges.²⁷⁴ Finally, the objectives of the “specifications” were to safeguard against misinterpretation and to prevent evasion by local administrative action or special state legislation.²⁷⁵

269. *Id.*

270. *Id.*

271. *Id.* at 16-17. A number of related aspects of local finance were not included in the Local Finance Report but were discussed in other reports by the Commission. Among these were: assessments, gifts and loans, educational finance, public authorities, local government, and local expenditures. See notes 290-97 *infra* and accompanying text for a discussion of the gift and loan provisions.

272. *Id.* at 93. It should be noted that while indebtedness is incurred primarily by borrowing, it also results from judgements, claims, and awards; from guarantees of debt of public authorities; and from liabilities under contract.

273. *Id.* at 103.

274. *Id.* The “limitations” specify the maximum debt-incurring capacity (or “ceiling” on non-excludable net debt) for different classes of local governments. The limits are stated as percentages of the most recent five-year average of taxable real estate at full value in the jurisdiction. *Id.* at 94.

275. *Id.* Among the detailed specifications set forth in the constitution are those regulat-

The Commission agreed that the basic principles of debt "regulation" as developed and defined in the constitution were a valuable starting point.²⁷⁶ The principle of debt "limitation", however, became the subject of much debate. Questions arose as to whether debt limits actually restricted the total amount of borrowing, and if so, to what degree. Borrowing limits were being avoided by the creation of public authorities for purposes which frustrated already hard-pressed debt limits.

The 1967 Commission essentially concurred with the conclusions announced in the 1961 report of the Temporary Commission on the Revision and Simplification of the constitution, namely, that some fundamental principles of debt regulation which had developed over the years were noncontroversial and should remain in the constitution.²⁷⁷ Most of the 1967 Commission's proposals for modification or elimination of restrictions were directed at the limitations on the amount of permissible debt and at the detailed specification provisions.²⁷⁸

The Commission concluded that there were five possible alternatives regarding debt limitation available for Convention consideration: 1) retain the existing limitations;²⁷⁹ 2) modify the exemptions;²⁸⁰ 3) change the percentage limits;²⁸¹ 4) change the debt limit base;²⁸² and 5) eliminate all limitations.²⁸³ These alternatives will be

ing the method of repaying bonds and defining the manner of exempting self-supporting projects. *Id.* at 95.

276. *Id.* at 103.

277. See text accompanying note 251 *supra*.

278. III CONVENTION REPORTS, *supra* note 266, at 110.

279. *Id.* at 112. The present constitutional debt limits and the procedure for amending the constitution would remain unchanged for all localities. For more detailed discussion of the arguments in favor of and against retention of the existing limitations, see *id.* at 113-14.

280. *Id.* at 112. The basic limitations would be retained in the constitution, but some method other than the present constitutional amendment procedure would be provided for changing exemptions. For more detailed discussion on modifying the exemptions, see *id.* at 115-17.

281. *Id.* at 112. The percentages in the constitution would be increased, or provision would be made for some other method for changing them than the present constitutional amendment procedure. For further discussion regarding changing the percentage limits, see *id.* at 117-20.

282. *Id.* at 112-13. The real property base to which the percentage debt limits are applied would be changed to increase the borrowing capacity. For further discussion concerning change of the debt limit base, see *id.* at 120-22.

283. *Id.* at 113. The limitations would be entirely removed from the constitution.

discussed below.²⁸⁴

While the Commission's work was in progress, other groups were studying New York's local finances. In April of 1967, the Special Committee on the Constitutional Convention of the Association of the Bar of the City of New York issued a series of reports offering recommendations for constitutional revision.²⁸⁵ Among the subjects studied was local finance.²⁸⁶ The Special Committee, after review of the constitutional provisions on local finance, recommended that a radical reduction in constitutional restrictions was advisable in order to permit local governments to respond with flexibility to changing fiscal needs and resources.²⁸⁷ The Special Committee recognized that while restrictive local finance provisions often gave the appearance of ensuring fiscal conservatism, such was not always the case.²⁸⁸ Reasoning that the constitutional restrictions failed to give recognition to legislative judgement in certain cases, the Special Committee concluded, perhaps erroneously, that trust in the legislature was the best guide for construction of a local finance provision.²⁸⁹

Related to the subject of constitutional debt restrictions are statutory restraints on the use of state and local monies, property and credit. This area, commonly referred to as the "gift and loan provisions," also received attention by the Commission in its report on state finances issued in March 1967.²⁹⁰ The gift and loan provisions generally prohibit the state and its political subdivisions from giving or loaning their money or property to or in aid of any private undertaking, and also prohibit giving or loaning their credit to or in aid of any private or public corporation.²⁹¹

284. See notes 302-11 *infra*.

285. ASS'N OF THE BAR OF THE CITY OF NEW YORK, REPORTS OF THE SPECIAL COMMITTEE ON THE CONSTITUTIONAL CONVENTION (1967). The Special Committee had been designated in the spring of 1966 by the Association to study the issues before the Constitutional Convention of 1967, to prepare reports analyzing the issues, and to make recommendations for constitutional revisions.

286. *Id.* (Special Committee Report on Local Government and Finance (April 1967)).

287. *Id.* at 21.

288. *Id.* The Committee concluded that the existing constitutional provisions pressed most heavily on New York's major cities, especially New York City.

289. *Id.* For a brief discussion of the specific recommendations of the Special Committee, see *id.* at 21-24.

290. VIII CONVENTION REPORTS, *supra* note 266, at 105-23. (State Finance).

291. *Id.* at 105. The prohibitions are inapplicable when public monies, property or credit

The gift and loan provisions were originally adopted for various reasons. First, they were enacted to curb financial practices which had jeopardized state and local credit and necessitated the levying of unforeseen taxes. Second, their aim was to end certain abuses in the manner in which public funds were being used, abuses which were partially due to log-rolling practices by which public funds came to be allocated in support of various private interests (often only marginally serving the public welfare). Finally, they were enacted to enforce the concept of what was then regarded as proper governmental activity, a concept which has subsequently been expanded.²⁹² "This was an outgrowth of the era of municipal debt defaults which occurred in the 1870's when municipal credit was used to aid railroad expansions and land speculations."²⁹³

The disposition of public funds must be for a "public purpose." "Public purpose," as an element of federal "due process," is a standard to which the states must adhere in their disposition of public funds.²⁹⁴ The fourteenth amendment sets an outer limit on the uses that a state or its subdivisions may make of public funds or property.²⁹⁵ However, the present viability of the fourteenth amendment "public purpose" test as a limitation on state action is doubtful because the Supreme Court has limited its scope of review in this area to a "plain case of departure from every public purpose which could be reasonably conceived."²⁹⁶

are used to further certain activities listed in article VII, section 8 (applicable to the state) and article VIII, section 1, (applicable to localities) as specific exemptions to the prohibitions. The exceptions include: aid or funds to needy or correctional institutions; children in foster homes, health and welfare services for children; increased pensions for certain firemen, policemen and street cleaners; county borrowing of money to aid school districts; joint undertakings of several governmental units; water, sewage, and drainage; and public housing corporations. These exceptions are found in scattered sections of N.Y. CONST. art. VIII. See Macchiarola, *supra* note 187, at 274.

292. VIII CONVENTION REPORTS, *supra* note 266, at 105-06. Over the years, the concept of proper governmental activity has grown broader. Governmental responsibility for social welfare services and health has grown. As a result, constitutional provisions have been amended to permit use of municipal monies to aid the undertakings of private organizations engaged in activities deemed worthy of support.

293. Macchiarola, *supra* note 187, at 273-74.

294. VIII CONVENTION REPORTS, *supra* note 266, at 106.

295. *Id.*

296. *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 515 (1937). Since some public purpose almost always may "reasonably be conceived" the effect of the judicial limitation is to nullify the public purpose test as a check against state action. VIII CONVENTION REPORTS, *supra* note 266, at 107.

Before adoption of the gift and loan restriction, "public purpose" was New York's sole constitutional limitation on the disposition of state and local funds. New York's current position is that the applicable restrictions prohibit expenditures for public purposes unless they fall within one of the specific constitutional exceptions.²⁹⁷ The 1967 Commission, after analysis of the gift and loan provision, concluded that the Constitutional Convention had two basic alternatives concerning these provisions, retention or excision. Without making specific recommendations, the Commission left the issue for convention consideration.

With the work of the Commission complete and the 186 delegates elected by popular vote, the convention convened on April 4, 1967. Approximately six months later, the convention adjourned,²⁹⁸ after long hours of debate, having adopted a new proposed constitution²⁹⁹ to be submitted to the voters for approval. Included in the proposed constitution was a revised and somewhat simplified³⁰⁰ article dealing with local finances.³⁰¹

The proposed new article reflected the historical validity and effectiveness of the provisions existing before the convention, but recognized a need for constructive change.³⁰² The principles contained in the proposed new article were those considered important

297. *People v. Westchester County Nat'l Bank*, 231 N.Y. 465, 132 N.E. 241 (1921). Even with the article VIII restrictions on gifts and loans, the 14th amendment public purpose test continues, in theory at least, to restrain the use of public funds in areas not covered by the specific provisions of article VIII. See 1966 N.Y. Laws 3567-73; 1975 N.Y. LEGIS. MANUAL 348.

298. V PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK, RESOLUTIONS OF THE CONSTITUTIONAL CONVENTION OF 1967, at 102 (Res. No. 122) (1967) [hereinafter cited as CONVENTION PROCEEDINGS, RESOLUTIONS]. On September 26, 1967 a resolution was adopted resolving that the Convention adjourn, *sine die*.

299. XII PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK 3-49 (1967) [hereinafter cited as CONVENTION PROCEEDINGS]. For a copy of the form of submission of the proposed new constitution to the voters on November 7, 1967, see V CONVENTION PROCEEDINGS, RESOLUTIONS, *supra* note 298, at 89-98.

300. IV CONVENTION PROCEEDINGS, *supra* note 299, at 14 (remarks of Alan R. Campbell, delegate at large). Mr. Campbell, speaking on the proposition (the proposed new local finance article), said it was "40% less in length than was the previous article covering the same information." *Id.*

301. See XII *id.* at 39-46 for the proposed text of the new article on Local Finances (to be renumbered Art. XII). The proposition (No. 1382-F) was finally passed after six amendments on September 24, 1967, only two days before adjournment of the convention (No. 1382-A, B, C, D, E, F). See X CONVENTION PROCEEDINGS, *supra* note 298, at 578-681; XII *id.* at 116.

302. XI CONVENTION PROCEEDINGS, *supra* note 299, Doc. No. 30 (Report of the Committee on Local Government and Home Rule).

for sound and successful municipal finance. Fundamentally, there were two themes to be found in the new local finance article: sound fiscal management and debt and tax limitations restricting the ability of local governments to raise additional revenue through either taxation or indebtedness.³⁰³ The article maintained the basic principles of debt regulation; that debts shall not be contracted for longer than the probable period of usefulness or purpose, that the full faith and credit of local governments and school districts shall be pledged for all their borrowing, that serial bonds shall be used for long term borrowing, and that provision must be made annually for appropriation by every local government or school district for payment of interest on all indebtedness and for the amortization and redemption of maturing debt, with precedence over other obligations.³⁰⁴

All these provisions were efforts to guarantee to the holders of local government debt that they would be repaid, thereby maintaining the credit positions of local governments.³⁰⁵ Special provisions were also made for cooperative financing of local enterprises by local governments with other public corporations. Simply, the constitution would permit municipalities, working together in accomplishing some public purpose, to divide the debt through a principle of joint indebtedness.³⁰⁶

The proposed article also retained the previous exclusion of certain types of debt from the debt limit to the extent that revenues supported the carrying charges. Tax anticipation notes, budget anticipation notes, and the water exclusion were also retained.³⁰⁷ In addition, the proposed article continued to permit the costs of capital projects, financed by current revenues, to be excluded from the debt and tax limits.

303. IV *id.* at 14 (remarks of Mr. Campbell with regard to Proposition No. 1382-B).

304. Official text of proposed constitution of the State of New York, XII *id.* at 39-46. See V CONVENTION PROCEEDINGS, RESOLUTIONS, *supra* note 298, RES. No. 113, at 97. For a discussion of the proposals, see IV CONVENTION PROCEEDINGS, *supra* note 299, at 14-16 (remarks of Mr. Campbell); 16-20 (remarks of Mr. Frank C. Moore, delegate at large, former New York State Lieutenant Governor and Comptroller).

305. IV CONVENTION PROCEEDINGS, *supra* note 299, at 15 (remarks of Mr. Campbell).

306. *Id.*

307. Official text of proposed constitution of the State of New York, XII *id.* at 39-46. See V CONVENTION PROCEEDINGS, RESOLUTIONS, *supra* note 298, RES. No. 113, at 97. For a discussion of the proposals see IV CONVENTION PROCEEDINGS, *supra* note 299, at 15 (remarks of Mr. Campbell).

Fundamental existing debt and tax limits were continued with certain changes. The two percent debt limit set forth for cities and villages over 5,000 in population in article XVIII (Housing Article) was transferred to the article VIII general debt limit of local governments. To provide for consistency, debt would be computed on full value rather than assessed value, as was true in article XVIII, thereby providing some additional debt power for cities and villages over 5,000 in population.³⁰⁸ Also in the proposed constitution was a provision with respect to shifting the base for debt and tax limits from the five-year average of full value, as determined by state equalization rates to the three-year average determined by statute and local referendum.³⁰⁹ In addition, the debt or tax limits of any local government could be changed in the same way. The procedure would be as follows: debt and tax limits could be increased on the basis of a home rule message to the State Legislature, which then must pass in one session of the legislature and be signed by the Governor, and then returned for local referendum.³¹⁰ The constitution also required the legislature to establish tax limits for towns by January 1, 1972.

Another important change was the deletion of existing article VIII, section 1 provisions from the proposed local finance article (article XII). These provisions were consolidated in a proposed article X which concerns taxation and finance.³¹¹

With a new constitution drafted, New York was one step away from adopting a revised constitution. On November 7, 1967, the voters would either approve or reject the constitution. The Convention had decided to submit its work to the people in one package rather than as several individual propositions. The proposed consti-

308. IV CONVENTION PROCEEDINGS, *supra* note 299, at 15.

309. Official text of proposed constitution of the State of New York, XII *id.* at 39-46. See V CONVENTION PROCEEDINGS, RESOLUTIONS, *supra* note 298, RES. No. 113, at 97. For a discussion of this proposal see IV CONVENTION PROCEEDINGS, *supra* note 299, at 16 (remarks of Mr. Campbell); 17-19 (remarks of Mr. Moore).

310. Official text of proposed constitution of the State of New York, XII CONVENTION PROCEEDINGS, *supra* note 299, at 39-46. For a discussion of this proposal, see IV *id.* at 15 (remarks of Mr. Campbell). The referendum would only be held in the jurisdiction affected and its passage by the legislature would be required only at one session, thereby speeding the process. In addition, this method would make any changes made applicable only to the jurisdiction which felt the need to increase either its debt or tax limits. This provision would provide a new flexibility to the procedure by which debt and tax limits could be changed.

311. Official text of proposed constitution of the State of New York, XII *id.* at 26-33 (proposed article X). For an explanation, see XI *id.* Doc. No. 54, at 11-12.

tution was, nonetheless, overwhelmingly defeated.³¹² One can only speculate as to what the result might have been if separate propositions had been put on the ballot.³¹³

The defeat of the proposed constitution in 1967 had a marked effect on the progress of future constitutional revision dealing with local finance. This position is clearly shown by the fact that it was not until four years later, in 1971, that the legislature sent an amendment dealing with article VIII to the ballot. The first proposed amendment provided that in ascertaining the power of a county, city, town, or village to contract indebtedness, indebtedness contracted before January 1, 1983 (instead of 1973) for construction of sewage facilities would be excluded.³¹⁴ The clear intent of this amendment was to extend for a period of ten years the debt exclusion provision in section 5 relating to sewage facilities. By a narrow margin, this amendment was defeated on November 2, 1971.³¹⁵

The second amendment provided for the enactment of a new Community Development article, replacing the former Housing Article (article XVIII) and made relevant changes concerning limitations on local indebtedness. Aside from extensive simplification, the proposed article XVIII was changed in several substantive areas.³¹⁶

312. 1975 N.Y. LEGIS. MANUAL 348. The vote totals on the proposed new constitution were as follows: For—1,327,999; Against—3,487,513. As one commentator discussing the 1967 Constitutional Convention has stated, "[t]he decisive vote against the constitution proposed by the 1967 convention was not surprising." The failure to meet Mayor Lindsay's demands for new municipal taxing powers assured the opposition of many. There was tremendous political controversy regarding reapportionment. In addition, the state was split along religious and ethnic lines over the issue of state aid to religious institutions. The convention had proposed repeal of section 3 of article XI (popularly referred to as the Blaine amendment) forbidding financial grants "directly or indirectly in aid or maintenance of any school under the control or direction of any religious denomination or in which any denominational tenet is taught." Kaden, *The People: No! Some Observations on the 1967 New York Constitutional Convention*, 5 HARV. J. LEGIS. 343, 369-70 (1968). It has been suggested that the controversy over state aid to religious institutions caused the defeat of the proposed constitution. *Proposals, supra* note 11, at 75.

313. *Proposals, supra* note 11, at 75.

314. 1971 N.Y. Laws 3146.

315. 1975 N.Y. LEGIS. MANUAL 349. For amendment of section 5, paragraph E, article 8 (relating to permitting a county, city, town, or village to exclude indebtedness contracted after January 1, 1962 and prior to January 1, 1983 (instead of January 1, 1973) for sewage facilities in ascertaining the constitutional debt limit of such county, city, town, or village)—1,801,271; Against—1,876,683.

316. See 1971 N.Y. Laws 3142-44 for the text of the proposed new article 18. For an excellent analysis of the proposed "Community Development Article" and explanation of the

The proposed amendment to article VIII, in effect, combined the special two percent debt limitations for housing and renewal purposes with the ordinary debt limit of localities. As a result, the amendment raised the ordinary debt limit for the municipalities listed in section 4 by two percent.³¹⁷ For example, New York City's debt limit would have been raised from ten to twelve percent. This amendment was treated less favorably than the other 1971 proposal; it was defeated by over one million votes.³¹⁸ For the advocates of patchwork constitutional revision, 1973 was a better year than the previous two. On November 6, 1973, the voters approved³¹⁹ an amendment to section 5 of article VIII identical to one that had been defeated two years prior.³²⁰ The amendment extended until 1983 the time in which localities could exclude indebtedness for sewage facilities.³²¹

Undeterred by the voice of the voters in 1973, in the following year the legislature gave first passage to several bills providing for amendments to article VIII.³²² However, only two bills among the group received the necessary second passage during the 1975 legislative session, thus enabling the amendments to go to the ballot. Perhaps affected by the mood of the time regarding New York City's financial problems, the voters rejected both proposed amendments to article VIII on November 4, 1975.³²³ First, an amendment (to

relationship between article 18 and articles 7 and 8, see Morris, *Housing Article XVIII May Become Community Development Article in N.Y.S. Constitution*, 43 N.Y. St. B. J. 411 (1971).

317. See 1971 N.Y. Laws 3144-46 for the proposed language amending article VIII, section 4.

318. 1975 N.Y. LEGIS. MANUAL 349. For amendment repealing article 18 and replacing it by a new article 18 (relating to providing community development); amending section 4, article 8 (relating to modifying the constitutional debt limits of counties, cities, towns, and villages, for any purpose including community development)—1,322,065; Against—2,414,805.

319. 1975 N.Y. LEGIS. MANUAL 349. For amendment of section 5, paragraph E, article 8 (permitting a county, city, town, or village to exclude indebtedness for sewage facilities in ascertaining the constitutional debt limit)—1,720,008; Against—1,414,813.

320. See notes 314 & 315 *supra* and accompanying text.

321. 1973 N.Y. Laws 3066.

322. 1974 N.Y. LEGIS. RECORD AND INDEX at 874-75. (Proposed Amendments to the Constitution.) One such bill even provided for a complete repeal of article VIII and replacement with a new local finance article. See A.12412, N.Y. State Assembly (1974).

323. For amendment of subdivisions C and D, section 2-a, article VIII (authorizing municipalities to construct storm water facilities in excess of their own needs for conveyance,

section 11) would have provided that whenever a county, city (other than New York City), village, or school district provides by direct budgetary appropriation for payment in the present or future of all or part of the cost of its employee's pension contributions or retirement and social security liabilities, that taxes required to meet the appropriations would be excluded from the tax limitations prescribed by section 10.³²⁴ The second amendment would have permitted municipalities, on behalf of improvement districts, to contract indebtedness to provide facilities, in excess of their own needs, for the conveyance, disposal, and treatment of sewage from any other public corporation or improvement district, including surface water from streets, highways, roadways and storm water facilities.³²⁵ Since 1975, no proposed constitutional amendments affecting local finance have passed both houses of the legislature. In 1977, however, in accordance with the mandate of article XIX, section 2 of the constitution, there was submitted to the voters the question whether there should be a convention to revise and amend the constitution. A weary electorate, not surprisingly, rejected the proposition.³²⁶

IV. Conclusion

The New York City Bar Association Committee on Municipal Affairs issued a report in November 1978 urging widespread changes in the local finance article.³²⁷ The Committee's recommendations can be summarized into three basic proposals: first, basic revisions to the Local Finance Article of the constitution; second, a

disposal and treatment of surface waters and to incur joint indebtedness for such facilities).....	1,307,681
Against.....	1,567,534
For amendment of subdivision (b), section 11, article VIII (excluding taxes required for the cost of employee's contribution for pension, retirement and social security liabilities from the article VIII, section 10, tax limitations on any county, city (other than the city of New York), village, or certain school districts).....	1,133,553
Against.....	1,730,389

(to be published in the next edition of N.Y. Legis. Manual at 354).

324. 1975 N.Y. Laws XCIX.

325. *Id.*

326. The following question was submitted to the voters in 1977: "Shall there be a convention to revise the constitution and amend the same?" The results were: For—1,126,902; Against—1,668,137. State Board of Elections News Release, Dec. 14, 1977, at 1.

327. *Proposals*, *supra* note 11.

new law to make full disclosure the policy of the State; and third, a new mechanism for state oversight and enforcement of balanced budget requirements.³²⁸

The new article VIII proposed by the Committee is significantly shorter than the existing article and is based on various fundamental principles.³²⁹ The proposed disclosure legislation would construct a comprehensive system of financial disclosure by local governments within the basic framework of existing State reporting mechanisms.³³⁰ The proposed fiscal monitor legislation is designed to implement the balanced budget requirement contained in the Committee's proposed article VIII, and provides for monitoring local finances by the State Comptroller.³³¹ Whether these proposals will become the law of New York State or be relegated to an obscure corner in the history of attempted constitutional revision in New York is presently an open question.

The New York State Legislature again finds itself at a crossroad in its history of dealing with local finances. The well travelled path of patchwork amendment and politically expedient compromise is clearly unacceptable for the future in light of New York City's recent fiscal problems. The alternative may be politically dangerous to members of the legislature hiding from this challenge, however, and may jeopardize the fiscal stability of New York City and its sister municipalities across New York State.

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328. *Id.* at 60.

329. *Id.* See *id.* at 82-92 for a detailed discussion of proposed local finance article.

330. *Id.* at 60. See *id.* at 92-101 for a detailed discussion of the proposed text of the disclosure legislation.

331. *Id.* at 60. See *id.* at 101-05 for a detailed discussion of the proposed fiscal monitor legislation. Texts of the Proposed Local Finance Article, Disclosure Legislation and Fiscal Monitor Legislation are reprinted in Appendices A, B and C, respectively.

