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Constitutional Expansion of Local Government Financing Alternatives: *Wayne County Citizens Association v. Wayne County Board of Commissioners*

“The most significant feature of [North Carolina] local government finance is that most of the funds spent by local governments . . . [are] raised by other governments.”¹ The combination of decreases in federal governmental support² and restrictions on local governmental financing³ may generate a quandary for local government officials attempting to satisfy tasks allocated to them by the state.⁴

Tension exists between providing allocated services and facilities and staying within restrictions on local borrowing. Although North Carolina requires city and county governments to perform certain tasks,⁵ the financing arrangements lie within the discretion of local government officials.⁶ Historically, local governments in North Carolina faced constraints on incurring certain financial obligations. Notably, local governments could not incur obligations that pledged their “faith and credit” without a vote of the taxpayers.⁷ As a result of the uncertainty surrounding taxpayer approval, the necessity of providing adequate facilities, and diminished federal government support, new forms of financing have emerged. North Carolina and other states have turned to lease

1. Warren J. Wicker, *Relationships Between Counties and Municipalities*, in STATE-LOCAL RELATIONS IN NORTH CAROLINA 30, 32 (Charles D. Liner ed., 1985).

2. Raymond A. Rosenfeld, *Federal Grants and Local Capital Improvements: The Impact of Reagan Budgets*, PUB. BUDGETING & FIN., Spring 1989, at 74, 74-75.

3. The North Carolina Constitution requires a taxpayer vote on certain financings undertaken by local governments. See *infra* note 27. Nationally, taxpayers failed to approve 42% and 39% of state and municipal bond elections in 1981 and 1983 respectively. TAX FOUNDATION, FACTS AND FIGURES ON GOVERNMENT FINANCE 205 (25th ed. 1990). These rejection rates, especially if tied to a recessionary economy, could dramatically impact a state or local government's financing activity and ability to perform necessary services.

4. “[U]nits of local government derive their authority from the state. . . .” Charles D. Liner, *Issues in State-Local Relations*, in STATE-LOCAL RELATIONS IN NORTH CAROLINA 1, 1 (Charles D. Liner ed., 1985). “In North Carolina . . . counties are the primary agents for administering statewide services” *Id.*

5. For example, the operation of jails is an activity allocated to counties, and this operation illustrates the tension between providing state-mandated facilities and staying within restrictions on local borrowing. See *infra* note 11.

6. Wicker, *supra* note 1, at 32. For a summary of the financing techniques available to city and county governments, see A. Fleming Bell, II, *Installment Financing Under G.S. 160A-20: New Opportunities and Procedures*, POPULAR GOV'T, Summer 1990, at 16, 18-19.

7. See *infra* notes 44-45 and accompanying text. The North Carolina Constitution defines the term “pledge of faith and credit” as “a pledge of the taxing power.” N.C. CONST. art. V, § 4, cl. 5.

purchase financing⁸ as one method of avoiding traditional debt limitations.⁹

In *Wayne County Citizens Ass'n for Better Tax Control v. Wayne County Board of Commissioners*,¹⁰ Wayne County entered into an installment purchase contract to fund construction of a jail.¹¹ As permit-

8. In the context of a purchase of property, lease purchase contracts (or installment purchase contracts) create a security interest in the property and "[t]he local government agrees to pay the purchase price plus interest in a series of installments." A. FLEMING BELL, II, A MODEL EQUIPMENT LEASE-PURCHASE AND SECURITY AGREEMENT FOR NORTH CAROLINA LOCAL GOVERNMENTS 1 (1985). Likewise, installment purchase contracts may be utilized to finance the construction of improvements upon real property. Bell, *supra* note 6, at 17. The primary advantages to the local government in using such contracts include the avoidance of a taxpayer vote and "flexibility of cost and technique." *Id.* at 16. The local governments, however, often incur higher interest costs. See Reuven M. Bisk, Note, *State and Municipal Lease-Purchase Agreements: A Reassessment*, 7 HARV. J.L. & PUB. POL'Y 521, 527 (1984). If certain Internal Revenue Code requirements are met, the interest paid on such contracts incurs no tax, thus benefitting the lender. See BELL, *supra* note 6, at 16.

9. See DAVID M. LAWRENCE, FINANCING CAPITAL PROJECTS IN NORTH CAROLINA 92 (1979).

Section 160A-20 of the North Carolina General Statutes permits local governments to enter into installment purchase contracts without a taxpayer vote. Section 160A-20 provides in pertinent part:

(a) Units of local government . . . may purchase or finance the purchase of real or personal property by installment contracts that create in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) Units of local government . . . may finance the construction or repair of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property . . . a security interest to secure repayment of moneys advanced

. . . .

(e) A contract entered into under this section is subject to approval by the Local Government Commission

(f) No deficiency judgment may be rendered against any unit of local government . . . and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

N.C. GEN. STAT. § 160A-20 (Supp. 1991). Cf. N.C. GEN. STAT. § 159-49 (Supp. 1991) (requiring a taxpayer vote for local government bond financings).

In other jurisdictions, lease-purchase financing circumvents debt limits. See *infra* note 63. 10. 328 N.C. 24, 399 S.E.2d 311 (1991).

11. *Id.* at 27, 399 S.E.2d at 313. North Carolina has allocated the task of providing adequate local jail space to counties and cities. Jails are included in the list of "Chief Functions and Services Authorized for City and County Governments in North Carolina." Wicker, *supra* note 1, at 31. "Local jails, supervised by the sheriff and paid for by the county, house[] defendants confined awaiting trial or convicted inmates with short jail sentences . . ." James C. Drennan, *Administration of Justice*, in STATE-LOCAL RELATIONS IN NORTH CAROLINA 41, 45 (Charles D. Liner ed., 1985). North Carolina has set minimum standards for county jails. N.C. GEN. STAT. § 153A-221 (Supp. 1991). Section 153A authorizes the Secretary of Human Resources to "order corrective action or close the [jail]" for failure to meet the minimum standards. *Id.* § 153A-223. Additionally, "federal courts are increasingly willing to protect

ted under section 160A-20 of the North Carolina General Statutes, the county took this action without submitting the issue to the taxpayers.¹² The installment contract stated that the taxing power of the county was not pledged and employed a nonappropriation clause.¹³ In the context of the suit's challenge to the installment purchase contract, the North Carolina Supreme Court addressed two issues of first impression. First, the court evaluated the constitutionality of section 160A-20.¹⁴ Second, the court considered the plaintiff's assertion that the nonappropriation mechanism effected a disguised pledge of the county's taxing power.¹⁵

This Note reviews the history and present status of North Carolina local government finance provisions as presented in the North Carolina Constitution.¹⁶ The Note determines that section 160A-20 accurately embodies North Carolina constitutional design and concludes that the North Carolina Supreme Court correctly decided in favor of the constitutionality of section 160A-20.¹⁷ Additionally, this Note considers the propriety of nonappropriation terms in lease-purchase financings.¹⁸ Although the court overlooked some practical implications of the financing in *Wayne*, this Note concludes that the court correctly permitted Wayne County to execute the nonappropriation scheme in its installment purchase contract.

In 1989, the Wayne County Board of Commissioners (the Board)¹⁹ identified a need for certain public facilities including a court and administrative building, and a 44,000 square-foot jail.²⁰ Pursuant to section 160A-20(g),²¹ the Board provided notice and conducted a public hearing

the constitutional rights of jail inmates." Michael R. Smith, *History of Jails in North Carolina*, JAIL L. BULL., July 1985, at 1, 5.

12. *Wayne*, 328 N.C. at 27, 399 S.E.2d at 313. For the text of § 160A-20, see *supra* note 9.

13. *Wayne*, 328 N.C. at 27, 399 S.E.2d at 313-14. The nonappropriation provision stated that payments were subject to sufficient annual appropriations by the county in its sole discretion. *Id.*; see Bisk, *supra* note 8, at 527.

14. *Wayne*, 328 N.C. at 29-33, 399 S.E.2d at 314-17.

15. *Id.* at 31, 399 S.E.2d at 316. If the second prong of the Association's claim were valid, a vote of the taxpayers would be required pursuant to article V of the North Carolina Constitution. See *infra* note 27.

16. See *infra* notes 44-57 and accompanying text.

17. See *infra* notes 58-63 and accompanying text.

18. See *infra* notes 64-67 and accompanying text.

19. See N.C. GEN. STAT. § 153A-34 (1991) (establishing the board of commissioners as the governing unit for North Carolina counties).

20. *Wayne*, 328 N.C. at 27, 399 S.E.2d at 313; see *supra* note 11.

21. Section 160A-20(g) provides: "Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract." N.C. GEN. STAT. § 160A-20(g) (Supp. 1991).

regarding the proposed construction.²² The Board subsequently financed its plan with a \$7.5 million "installment purchase contract" (the contract) with First Union Securities, Inc.²³ Next, the Local Government Commission of North Carolina approved the contract.²⁴ The installment purchase contract conferred discretion upon the county to determine the amount of annual appropriations, if any, to meet payment obligations.²⁵

Wayne County Citizens Association for Better Tax Control (the Tax Association) sought to invalidate the contract by petitioning the court to rule that section 160A-20²⁶ transgresses Article V, sections 4²⁷ and 7,²⁸ of the North Carolina Constitution, and, alternatively, that the nonappropriation provision of the installment purchase contract failed to comply with the terms of section 160A-20.²⁹ The trial court, in dismissing the action, ruled that the statute complies with the North Carolina Constitution, and that the Board, in executing the contract with First Union, fully satisfied the statutory requirements.³⁰

The North Carolina Supreme Court,³¹ in an opinion written by Jus-

22. *Wayne*, 328 N.C. at 27, 399 S.E.2d at 313. The Board, however, did not conduct a vote of the citizens of Wayne County to garner their endorsement for the project. *Id.*

23. *Id.* The terms of the contract required Wayne County to furnish First Union with a security interest in the real property underlying the proposed project. *Id.* The contract noted that Wayne County's taxing power was "not pledged directly or indirectly to secure any monies due." *Id.* at 27, 399 S.E.2d at 314. The contract limited First Union's remedy to repossession of the real property. *Id.* Furthermore, the instrument expressly protected the county against deficiency judgment. *Id.* For a general description of the functioning of lease purchase contracts, see *supra* note 8.

24. *Wayne*, 328 N.C. at 27, 399 S.E.2d at 313. Section 160A-20 states that "a contract entered into under this section is subject to approval by the Local Government Commission," N.C. GEN. STAT. § 160A-20(e) (Supp. 1991). Section 159-3 establishes the Local Government Commission. *Id.* § 159-3 (1987). Local governments must secure Local Government Commission approval prior to borrowing money. *Id.* § 160A-20(e). The Local Government Commission "examines whether the amount being borrowed, when added to the existing debt of the unit and at the rate of interest that the unit will probably have to pay, is an amount the unit can afford." LAWRENCE, *supra* note 9, at 18.

25. *Wayne*, 328 N.C. at 28, 399 S.E.2d at 314.

26. See *supra* note 9.

27. Article V, § 4 of the North Carolina Constitution permits the General Assembly to regulate the borrowing activities of local governments. N.C. CONST. art. V, § 4, cl. 1. Specifically, the constitution authorizes the legislature to prohibit a local government's "contract[ing] debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon." *Id.* art. V, § 4, cl. 2. "A pledge of faith and credit within the meaning of this Section is a pledge of the taxing power." *Id.* art. V, § 4, cl. 5.

28. Article V, § 7 of the North Carolina Constitution provides: "No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law." N.C. CONST. art. V, § 7, cl. 2.

29. *Wayne*, 328 N.C. at 26, 399 S.E.2d at 313.

30. *Id.*

31. Because of the potentially significant impact on local government financing, the North Carolina Supreme Court allowed the case to bypass the court of appeals and expeditiously

tice Meyer, affirmed the trial court's decision upholding section 160A-20 as constitutional.³² Viewing the plain language of the statute, and relying on a presumption of constitutionality,³³ the court swiftly dismissed the contention that the statute violates the constitutional prohibition on incurring debt "secured by a pledge of [the county's] faith and credit" without a vote of the citizens.³⁴ The supreme court concluded that "[t]he statute could hardly be clearer in barring the pledging of the taxing power to secure moneys due under a contract covered by the statute."³⁵

The court next considered the plaintiff's contention that the installment contract disguised a pledge of Wayne County's taxing power and wrongfully circumvented a taxpayer vote.³⁶ According to the Tax Association, fulfilling future contract obligations out of tax revenues, notwithstanding the county's discretion not to appropriate funds, effectively rendered the agreement to pay a pledge of the county's taxing power.³⁷ Rejecting this assertion, the court embraced the nonappropriation concept and stressed that "the annual events of appropriation are subject to the *sole discretion* of the Board."³⁸ Furthermore, the court noted the distinction between a pledge of the power to tax and a pledge of the underlying real property as security.³⁹ The fact that the county's obligation could be satisfied out of future tax revenues raised no constitutional issue.⁴⁰ According to the supreme court, section 160A-20 "implicitly" enables a local government to utilize tax revenues for contract debt repayment.⁴¹ Thus, the court concluded that the installment purchase contract, with its nonappropriation mechanism, constituted a proper application of section 160A-20.⁴²

Moreover, the court found reassurance in the statutory demand for

considered the constitutionality of § 160A-20 and the proper boundaries of its application. *Id.*; see Appellants' and Appellees' Joint Petition for Discretionary Review at 5-6, *Wayne* (No. 252PA90).

32. *Wayne*, 328 N.C. at 36, 399 S.E.2d at 319.

33. *Id.* at 29, 399 S.E.2d at 315 ("A statute will not be declared unconstitutional unless . . . the statute cannot be upheld on any reasonable ground.") (citing *Poor Richard's, Inc. v. Stone*, 322 N.C. 61, 63, 366 S.E.2d 697, 698 (1988)).

34. *Id.* at 31, 399 S.E.2d at 316; see *supra* note 27.

35. *Wayne*, 328 N.C. at 31, 399 S.E.2d at 316.

36. *Id.*

37. *Id.*

38. *Id.* at 28, 399 S.E.2d at 314.

39. *Id.* at 31, 399 S.E.2d at 316.

40. *Id.*

41. *Id.* at 33, 399 S.E.2d at 317.

42. *Id.* at 36, 399 S.E.2d at 319. To further strengthen its position, the court cited a lengthy list of cases from other jurisdictions which have upheld local governments' installment contracts. *Id.* at 31-32, 399 S.E.2d at 316; see *infra* note 63.

Local Government Commission approval of contract debt incurred under section 160A-20. The rigorous analysis prepared by the Local Government Commission and its effectiveness in ensuring the quality of North Carolina financing issues relieved any judicial apprehension arising out of the denial of a taxpayer vote.⁴³

The *Wayne* decision continues a trend toward broadened alternatives and decreased judicial involvement in local government financing activities in North Carolina. Prior to its 1971 revision, the North Carolina Constitution granted local governments the capacity to contract debts, pledge their faith, or levy taxes without a vote of the people only to fund "necessary expenses."⁴⁴ Hence, debate under the pre-1971 provisions centered on the meaning of the term "necessary expenses."⁴⁵ In 1967, the decision in *Vance County v. Royster*⁴⁶ coupled with the formation of the North Carolina State Constitution Study Commission (the Commission), induced alteration of the financing scheme in the North Carolina Constitution.

In *Vance County*, the Township Authority of Henderson, wishing to complete a proposed airport, executed a twenty-five year lease agreement with the federal government in exchange for a grant agreement whereby

43. *Wayne*, 328 N.C. at 33-36, 399 S.E.2d at 317-19.

44. Article VII, § 6 of the North Carolina Constitution provided:

No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless approved by a majority of those who shall vote thereon in any election held for such purpose.

N.C. CONST. of 1868, art. VII, § 6 (repealed 1971). See generally William V. McPherson, Jr., *Local Government—Airport Not a "Necessary Expense" Within Meaning of Article VII, Section 6, of North Carolina Constitution*, 46 N.C. L. REV. 188, 190 (1967) (explaining that article VII, § 6 was introduced into the state constitution to alleviate financial turmoil from unrestrained borrowing and taxing).

Furthermore, the constitution gave the General Assembly the power to:

authorize counties and municipalities to contract debts and pledge their faith and credit for the following purposes: To fund or refund a valid existing debt; To borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty per centum of such taxes; To supply a casual deficit; To suppress riots or insurrections, or to repel invasions.

N.C. CONST. of 1868, art. V, § 4 (repealed 1971).

45. "The court, not the General Assembly, was the final arbiter of what was a 'necessary expense,' and the State Supreme Court took a rather restrictive view of the embrace of that concept." John L. Sanders, *Our Constitutions: A Historical Perspective*, in THE CONSTITUTION OF NORTH CAROLINA: ITS HISTORY AND CONTENT 12 (1989); see also McPherson, *supra* note 44, at 191-92 (enumerating certain necessary expenses within the view of the supreme court); cf. *Wilson v. City of High Point*, 238 N.C. 14, 22, 76 S.E.2d 546, 551 (1953) (interpreting necessary expenses to include courthouse and jail construction).

46. 271 N.C. 53, 155 S.E.2d 790 (1967).

the government agreed to pay one-half of the construction costs.⁴⁷ The court decided that the county "b[ound] itself to pay rent throughout the 25 year term of the lease."⁴⁸ Accordingly, the court declared that the lease fit within the confines of Article VII, section 6 of the North Carolina Constitution and that an airport was not a necessary expense; therefore, the court condemned the transaction for the Township Authority's failure to submit the lease agreement to a vote.⁴⁹

Contemporaneous with the *Vance* decision and pursuant to the general assembly's authorization, Governor Luther Hodges formed the North Carolina State Constitution Study Commission.⁵⁰ In its evaluation of the finance provisions of the constitution, the Commission criticized the *Vance* decision: "[*Vance*] raises substantial questions as to the feasibility of constitutionally required voter approval of all 'enforceable contractual obligations.'" ⁵¹ The Commission further suggested that Article VII, section 6 of the North Carolina Constitution as it existed at the time of the *Vance* decision was intended to require a taxpayer vote only when the faith and credit of the local government were pledged.⁵²

The 1968 Commission study culminated in the overhaul of the local government finance provisions in Article V of the North Carolina Constitution that took effect on July 1, 1973.⁵³ Article V permits the North Carolina General Assembly to enact laws that allow local governments to contract debts not secured by a pledge of the faith and credit of the local government without a vote of the taxpayers.⁵⁴

Implementing the grant of authority found in article V, the North Carolina General Assembly enacted section 160A-20 in 1979.⁵⁵ As originally codified, the statute applied only to installment purchase contracts for the acquisition of real and personal property.⁵⁶ Subsequent amendments, however, expanded its reach to include contracts to finance con-

47. *Id.* at 56-57, 155 S.E.2d at 793.

48. *Id.* at 62, 155 S.E.2d at 797. The court specifically excluded revenue bonds from the scope of article VII, § 6. *Id.* at 64, 155 S.E.2d at 798-99.

49. *Id.* at 62-64, 155 S.E.2d at 797-98.

50. Sanders, *supra* note 45, at 6.

51. REPORT OF THE NORTH CAROLINA STATE CONSTITUTION STUDY COMMISSION 116 (1968). In its proposed revision, the Commission recommended "voter approval of State debt only when the faith and credit of the State is pledged—in other words, for general obligation bonds or notes." *Id.*

52. *Id.*

53. Sanders, *supra* note 45, at 9.

54. *See supra* note 27.

55. Act of July 1, 1979, ch. 743, 1979 N.C. Sess. Laws 814 (codified as amended at N.C. GEN. STAT. § 160A-20 (1991)).

56. *Id.*

struction upon real property.⁵⁷

The language and intent of the North Carolina Constitution delineate the boundaries of acceptable local government financing. Analysis of section 160A-20 in light of constitutional intent reveals that the statute passes constitutional scrutiny. Furthermore, public policy concerns provide justification for the installment purchase contract at issue in *Wayne*.

The validity of section 160A-20 hinges upon its adherence to the constitutional guidelines for local government financing found in the North Carolina Constitution. The intent of the local government finance provisions in the constitution can be gleaned from the language of the document itself.⁵⁸ Article V, section 4 clearly authorizes creation of a subcategory of local government financing, involving no pledge of the faith and credit, which is free from the requirement of a taxpayer vote.⁵⁹ Moreover, the 1968 Constitutional Study Commission manifested a similar intent to expand local government's financing ability.⁶⁰ Indeed, a published history of the North Carolina Constitution explains that the legislature intended to usurp the courts' historical power to mandate voter approval by labelling an expense as unnecessary.⁶¹

In *Wayne*, the supreme court utilized the proper standard for review: North Carolina courts employ a presumption of constitutionality when entertaining challenges to statutes.⁶² By its explicit terms, section 160A-20 adheres to constitutional guidelines, requiring a taxpayer vote only when the taxing power of a local jurisdiction is pledged.⁶³

57. See *supra* note 9.

58. In ascertaining the meaning of the North Carolina Constitution, general constructional principles apply. *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478-79 (1989). "The will of the people as expressed in the Constitution is the supreme law of the land. In searching for this will or intent all cognate provisions are to be brought into view in their entirety and so interpreted as to effectuate the manifest purposes of the instrument." *State v. Emery*, 224 N.C. 581, 583, 31 S.E.2d 858, 860 (1944) (citations omitted).

59. See *supra* note 27. The United States District Court for the Eastern District of North Carolina reached a similar conclusion when it decided that the purpose of the 1973 constitutional amendments was "to narrow . . . [constitutional] restriction[s] on the local government's contracting powers." *United States v. 30.60 Acres of Land*, 535 F. Supp. 33, 36 (E.D.N.C. 1981).

60. See *supra* notes 50-54 and accompanying text.

61. See *Sanders*, *supra* note 45, at 12. "The determination of what types of public expenditures should require voter approval and what types should be made by a governing board on its own authority was found by the General Assembly to be a legislative and not a judicial matter." *Id.*

62. See *supra* note 33. "North Carolina's courts were among the first to recognize the doctrine of judicial review." *Preston*, 325 N.C. at 448, 385 S.E.2d at 478. "Since our earliest cases applying the power of judicial review under the Constitution of North Carolina, however, we have indicated that great deference will be paid to acts of the legislature—the agent of the people for enacting laws." *Id.*

63. See *supra* note 9. Jurisdictions other than North Carolina have followed the trend of

In practical terms, to hold section 160A-20 unconstitutional could unduly hinder local governments in their operation by requiring a taxpayer vote on a wide range of everyday expenditures. If one were to adopt the Tax Association's interpretation of the phrase "a pledge of the taxing power" and include any instance in which tax revenues are utilized, the 1973 constitutional amendments would be effectively negated. Only revenue bonds would be excluded from a taxpayer vote, similar to the result wholeheartedly rejected by the legislature after *Vance*.

Additionally, allowing North Carolina local governments to avoid a taxpayer vote where there is a nonappropriation mechanism under section 160A-20 comports with public policy concerns. Generally, a taxpayer vote is taken to ensure the expediency in incurring an obligation.⁶⁴

authorizing wider latitude in local government financing, and have permitted local governments to enter into lease purchase contracts. These states impose debt limitations that vary by jurisdiction.

One form of limitation involves the restriction of pledges of the taxing power in connection with financing. See *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872, 878 (Colo. 1983); *State v. School Bd.*, 561 So. 2d 549, 552 (Fla. 1990). For example, a South Carolina case relied upon by the *Wayne* court approved lease-purchase financing based on facts analogous to those in *Wayne*. See *Caddell v. Lexington County Sch. Dist.*, 296 S.C. 397, 400, 373 S.E.2d 598, 599 (1988). The *Caddell* court opined that a lease purchase agreement did not contain a pledge of the school district's full faith, credit, and taxing power because it did not require the district to assess property taxes for repayment. *Id.* North Carolina has expressed the view that revenue bonds do not pledge the taxing power. *Vance County v. Royster*, 271 N.C. 53, 64, 155 S.E.2d 790, 798 (1967).

Prohibitions in other jurisdictions limit the amount of debt that may be incurred to obligations which do not exceed current revenues. *E.g.*, *Edgerly v. Honeywell Info. Sys.*, 377 A.2d 104, 106 (Me. 1977); *Saint Charles City-County Library Dist. v. Saint Charles Library Bldg. Corp.*, 627 S.W.2d 64, 66 (Mo. Ct. App. 1981); *U.C. Leasing, Inc. v. State ex rel. State Bd. of Pub. Affairs*, 737 P.2d 1191, 1195 (Okla. 1987); see *Bisk, supra* note 8, at 525. These jurisdictions restrict a county's ability to incur any commitment that requires payment in future years. Lease-purchase agreements conform to these criteria only if they contain a nonappropriation mechanism.

In some instances, the use of lease-purchase financing also allows a jurisdiction to avoid a taxpayer vote. In order to avoid a vote, a jurisdiction first defines restricted debt. Perhaps to mitigate the harsh effects of an absolute prohibition, governmental units are permitted to incur the forbidden financing with taxpayer approval. See *Gude v. City of Lakewood*, 636 P.2d 691, 697 (Colo. 1981); *School Bd.*, 561 So. 2d at 552-53. "The clear purpose of these provisions is to protect the fiscal integrity of the State by prohibiting creation of any present indebtedness that would obligate subsequent legislatures to make appropriations." *State ex rel. West Virginia Resource Recovery-Solid Waste Disposal Auth.*, 323 S.E.2d 590, 592-93 (W. Va. 1984); accord *Glennon Heights*, 658 P.2d at 878; *Edgerly*, 377 A.2d at 107.

In sum, jurisdictions can reconcile lease purchase transactions with debt limitations by use of a nonappropriation mechanism. "By including a nonappropriation provision into the leasing agreement, the governmental unit reserves the right to terminate its legal liability under the lease if for any reason it chooses not to make the necessary appropriations for lease payments in a future fiscal term." *Bisk, supra* note 8, at 527.

64. *Wayne*, 328 N.C. at 33, 399 S.E.2d at 317. The purpose of debt limitations is to "protect[] . . . present and future taxpayers." *Bisk, supra* note 8, at 526.

The requirement of Local Government Commission approval effectively counteracts criticism that contracts undertaken pursuant to section 160A-20 circumvent the purpose of a taxpayer vote. Local Government Commission review ensures that the undertaking "is necessary or expedient [and] . . . preferable to a bond issue."⁶⁵ Commission approval, therefore, ensures the sagacity of the transaction.

Section 160A-20 also addresses the necessity of financing state or federally mandated projects. The statute grants local governments latitude in financing nondiscretionary expenses, such as jails, which are disfavored by voters.⁶⁶ In this way, local jurisdictions may avoid the draconian effects of state or federal intervention that could result, for example, if an underfunded jail fell below minimum standards.⁶⁷

In reality, a county likely will continue to appropriate the necessary funds to the installment contract. Once local officials determine that their jurisdiction requires a facility, organize its financing, and initiate its construction, they are unlikely to abandon it. "Because of the special design of these structures and their location, it is unrealistic to believe that anyone else would lease them, or that the state would permit such to happen."⁶⁸ The *option* to abandon, however, distinguishes lease purchase contracts which contain discretionary appropriation terms from financings that pledge the jurisdiction's taxing power. Where the taxing power is pledged, the governmental entity cannot abandon the project. Notwithstanding the fact that a nonappropriation clause is unlikely to change a local government's actual appropriations, it is a useful tool to facilitate the completion of state-mandated projects in the face of federal government cutbacks and unpredictable voter opinion.

STACEY L. JOSEPH CARDENAS

65. N.C. GEN. STAT. § 159-151(b) (1987).

66. Bond referenda for jails are unlikely to succeed. Telephone Interview with James B. Blackburn, Counsel for the Association of County Commissioners (Feb. 10, 1992).

67. See *supra* note 11.

68. *McFarland v. Barron*, 83 S.D. 639, 649, 164 N.W.2d 607, 612 (1969) (Rentto, J., dissenting).