WEST VIRGINIA CODE: §13-2C-8

§13-2C-8. Security for bonds.

Unless the governmental body shall otherwise determine in the resolution authorizing the issuance of the revenue bonds under the authority of this article, there is hereby created a statutory mortgage lien upon all real estate, buildings, structures, improvements and personal property included as a part of an industrial project or commercial project which was acquired, purchased, constructed, or built or improved, or financed with the proceeds of said bonds, for the purpose of securing the principal of said bonds and the interest thereon. The principal of and interest on any bonds issued under the authority of this article shall be secured by a pledge of the income and revenues derived from the lease, sale, financing or other disposition of the industrial project or commercial project, by the governmental body issuing such bonds. In the discretion and at the option of the county commission or municipality, such revenue bonds may also be secured by a trust indenture by and between the county commission or the municipality and a corporate trustee, which may be a trust company or bank having trust powers, within or without the State of West Virginia. The governing body may authorize the issuance of such revenue bonds by resolution. The resolution authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for the protection and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the county commission or the municipality in relation to the construction, acquisition or financing of an industrial project or commercial project, or part thereof, or an addition thereto, and the improvement, repair, maintenance and insurance thereof, and for the custody, safeguarding and application of all moneys, and may provide that the industrial project or commercial project shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the governing body and satisfactory to the purchasers of the bonds, their successors, assigns or nominees, and the entity which leases, purchases or will own the project or either thereof, who may require the security given by any contractor or any depository of the proceeds of the bonds or the revenues received from the lease, sale, financing or other disposition of the industrial project or commercial project be satisfactory to such purchasers, their successors, assigns or nominees, or be satisfactory to the entity which leases, purchases or will own the industrial project or commercial project. Such indenture may set forth the rights and remedies of the bondholders, the county or municipality or such trustee, and said indenture may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders or the governmental body issuing the same, upon default in the payment of rentals, or amounts due from the entity which leases, purchases, or will own the project or for other cause. The governing body may also provide by resolution and in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues from the industrial project or commercial project to such depository as it may determine, for the custody and investment thereof and for the method of distribution thereof, with such safeguards and restrictions as it may determine to be

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necessary or advisable for the protection thereof and upon the filing of a certified copy of such resolution or of the indenture for record in the office of the clerk of the county commission of the county in which an industrial project or commercial project is located, the same shall have the same effect, as to notice, as the recordation of a deed of trust or other recordable instrument.

In lieu of the indenture provided for hereinabove the principal of and interest on said bonds may be secured by a mortgage or deed of trust covering all or any part of the industrial project or commercial project from which the revenues so pledged may be derived, and the same may be secured by an assignment of the lease on or sale or financing agreement with respect to said industrial project or commercial project and by assignment or pledge of the income received by virtue of said lease, sale or financing agreement. The proceedings under which such bonds are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture is entered into between the governing body and a trustee and any such mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of rental, purchase or other payments for any industrial project or commercial project covered by such proceedings or mortgage, the terms to be incorporated in the lease, sale or financing agreement with respect to such industrial project or commercial project, the improvement, repair, maintenance and insurance of such industrial project or commercial project, the creation and maintenance of special funds from the revenues received from the lease, sale or financing of such industrial project or commercial project and the rights and remedies available in event of default to the bondholders, the governmental body, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this article or any existing law: Provided, That in making any such agreements or provisions a county or municipality shall not have the power to obligate itself by indenture, ordinance, resolution, mortgage or deed of trust, except with respect to the industrial project or commercial project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds hereunder and any indenture, mortgage or deed of trust securing such bonds may provide that, in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings, indenture, mortgage or deed of trust, such payment and performance may be enforced by the appointment of a receiver in equity with power to charge and collect rents or other amounts and to apply the revenues from the industrial project or commercial project in accordance with such proceedings or the provisions of such agreement, indenture, mortgage or deed of trust. Any such agreement, indenture, mortgage or deed of trust may provide also that in the event of default in such payment or the violation of any agreement contained in the mortgage or deed of trust, the agreement, indenture, mortgage or deed of trust may be foreclosed either by sale at public outcry or by proceedings in equity and may provide that the holder or holders of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if the

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highest bidder therefor. No breach of any such agreement, indenture, mortgage or deed of trust shall impose any pecuniary liability upon a county or municipality or any charge upon its general credit or against its taxing powers.

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