

WEST VIRGINIA CODE: §17-27-11

§17-27-11. Material default; remedies.

(a) Except upon written agreement of the developer and any other parties identified in the comprehensive agreement, the division may exercise any or all of the following remedies provided in this section or elsewhere in this article to remedy any material default that has occurred or may continue to occur.

(1) To elect to take over the transportation facility or facilities and in that case, it shall succeed to all of the rights, title and interest in the transportation facility or facilities, subject to any liens on revenues previously granted by the developer to any person providing financing for the facility or facilities and the provisions of this section;

(2) To exercise the power of condemnation to acquire the qualifying transportation facility or facilities;

(3) To terminate the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity, subject only to the express limitations of the terms of the comprehensive agreement; and

(4) To make or cause to be made any appropriate claims under the performance or payment bonds required by this article.

(b) If the division elects to take over a qualifying transportation facility pursuant to subdivision (1), subsection (a) of this section, the division may acquire, construct, or improve the transportation facility, impose user fees for the use of the transportation facility and comply with any service contracts as if it were the developer. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the developer's obligations to secured parties, including the maintenance of reserves and the liens shall be correspondingly reduced and, when paid off, released. The full faith and credit of the division may not be pledged to secure any financing of the developer by the election to take over the qualifying transportation facility. Assumption of development of the qualifying transportation facility does not obligate the division to pay any obligation of the developer from sources other than revenues.