WEST VIRGINIA CODE: §8-38-17

§8-38-17. Security for bonds.

(a) General. -- Unless the municipality otherwise determines in the ordinance authorizing the issuance of the bonds or notes under the authority of this article, there is hereby created a statutory lien upon the subaccount created pursuant to section eight of this article and all special district excise tax revenues collected for the benefit of the district pursuant to section eleven-a, article ten, chapter eleven of this code for the purpose of securing the principal of the bonds or notes and the interest thereon.

(b) Security for debt service. -- The principal of and interest on any bonds or notes issued under the authority of this article shall be secured by a pledge of the special district excise tax revenues derived from the economic opportunity development district project by the municipality issuing the bonds or notes to the extent provided in the ordinance adopted by the municipality authorizing the issuance of the bonds or notes.

(c) Trust indenture. --

(1) In the discretion and at the option of the municipality, the bonds and notes may also be secured by a trust indenture by and between 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.

(2) The ordinance authorizing the bonds or notes and fixing the details thereof may provide that the trust indenture may contain provisions for the protection and enforcing the rights and remedies of the bondholders as are reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality in relation to the construction, acquisition or financing of an economic opportunity development district 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 economic opportunity development district project shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the municipality or, if directed by the municipality in the ordinance, by the district board, and satisfactory to the purchasers of the bonds or notes, their successors, assigns or nominees who may require the security given by any contractor or any depository of the proceeds of the bonds or notes or the revenues received from the district project be satisfactory to the purchasers, their successors, assigns or nominees.

(3) The indenture may set forth the rights and remedies of the bondholders, the municipality or trustee and the indenture may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders or the municipality issuing the bonds, upon default in the payment of the amounts due under the bonds.

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(4) The municipality may also provide by resolution and in the trust indenture for the payment of the proceeds of the sale of the bonds or notes and the revenues from the economic opportunity development district project to any depository it determines, for the custody and investment thereof and for the method of distribution thereof, with safeguards and restrictions it determines to be necessary or advisable for the protection thereof and upon the filing of a certified copy of the resolution or of the indenture for record with the clerk or recorder of the municipality in which the economic opportunity development project is located, the resolution has the same effect, as to notice, as the recordation of a deed of trust or other recordable instrument.

(5) In the event that more than one certified resolution or indenture is recorded, the security interest granted by the first recorded resolution or indenture has priority in the same manner as an earlier filed deed of trust except to the extent the earlier recorded resolution or indenture provides otherwise.

(d) Mortgage or deed of trust. --

(1) In addition to or in lieu of the indenture provided in subsection (c) of this section, the principal of and interest on the bonds or notes may, but need not, be secured by a mortgage or deed of trust covering all or any part of the economic opportunity development district project from which the revenues pledged are derived and the same may be secured by an assignment or pledge of the income received from the economic opportunity development district project.

(2) The proceedings under which bonds or notes are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided herein when an indenture is entered into between the municipality and a trustee and any mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds or notes, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of revenues from the economic opportunity development district project covered by the proceedings or mortgage, the terms to be incorporated in any lease, sale or financing agreement with respect to the economic opportunity development district project, the improvement, repair, maintenance and insurance of the economic opportunity development district project, the creation and maintenance of special funds from the revenues received from the economic opportunity development district project and the rights and remedies available in event of default to the bondholders or note holders, the municipality, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the municipality considers advisable and shall not be in conflict with the provisions of this article or any existing law: Provided, That in making any agreements or provisions, a municipality shall not have the power to incur original indebtedness by indenture, ordinance, resolution, mortgage or deed of trust except with respect to the economic opportunity development district 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 unless approved by the voters in accordance with article one, chapter thirteen of this code or as otherwise permitted by the

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Constitution of this state.

(e) Enforcement of obligations. --

(1) The proceedings authorizing any bonds and any indenture, mortgage or deed of trust securing the bonds may provide that, in the event of default in payment of the principal of or the interest on the bonds, or notes, or in the performance of any agreement contained in the proceedings, indenture, mortgage or deed of trust, 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 economic opportunity development district project in accordance with the proceedings or the provisions of the agreement, indenture, mortgage or deed of trust.

(2) Any agreement, indenture, mortgage or deed of trust may provide also that, in the event of default in 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 highest bidder therefor.

(f) No pecuniary liability. -– No breach of any agreement, indenture, mortgage or deed of trust may impose any pecuniary liability upon a municipality or any charge upon its general credit or against its taxing powers.

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