

§ 159-111. Additional security for project development financing debt instruments.

(a) In order to provide additional security for debt instruments issued pursuant to this Article, the issuing unit of local government may pledge its faith and credit for the payment of the principal of and interest on the debt instruments. Before such a pledge may be given, the unit shall follow the procedures and meet the requirements for approval of general obligation bonds under Article 4 of this Chapter. The unit shall also follow the procedures and meet the requirements of this Article. If debt instruments are issued pursuant to this Article and are also secured by a pledge of the issuing unit's faith and credit, the debt instruments are subject to G.S. 159-112 rather than G.S. 159-65.

(b) In order to provide additional security for debt instruments issued pursuant to this Article, and in lieu of pledging its faith and credit for that purpose pursuant to subsection (a) of this section, a unit of local government may pledge or grant a security interest in any available sources of revenues of the unit, including special assessments against property within the development financing district made by the unit pursuant to Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, as long as doing so does not constitute a pledge of the unit's taxing power. In addition, to the extent the generation of the revenues is within the power of the unit, the unit may enter into covenants to take action in order to generate the revenues, as long as the covenant does not constitute a pledge of the unit's taxing power. In addition, the unit may pledge, mortgage, or grant a security interest in all or a portion of the real and personal property being financed or improved with the proceeds of the project development financing debt instrument. Property subject to a mortgage, deed of trust, security interest, or similar lien pursuant to this subsection may be sold at foreclosure in any manner permitted by the instrument creating the encumbrance, without compliance with any other provision of law regarding the disposition of publicly owned property.

(c) No agreement or covenant may contain a nonsubstitution clause that restricts the right of the issuing unit of local government to replace or provide a substitute for any project financed pursuant to this subsection.

(d) The obligation of a unit of local government with respect to the sources of payment shall be specifically identified in the proceedings of the governing body authorizing the unit to issue the debt instruments. The sources of payment so specifically identified and then held or thereafter received by the unit or any fiduciary of the unit are immediately subject to the lien of the proceedings without any physical delivery of the sources or further act. The lien is valid and binding as against all parties having claims of any kind against a unit without regard to whether the parties have notice of the lien. The proceedings or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in this Article.

(e) A unit of local government that issues project development financing debt instruments may agree in the proceedings relating to an issue of project development financing debt instruments to any one or more of the following:

- (1) That in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for the amount due on such debt instruments during the next budget year.
- (2) In the event any portion of a reserve fund relating to such debt instruments is less than any reserve requirement relating thereto, including as a result of a use of the reserve fund for the payment of amounts due on such debt instrument, that in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for the amount required to restore such reserve fund to its required level during the next budget year.

- (3) That if there is any surplus in any year in any fund or account of such unit of local government, it will consider appropriating such surplus for one or both of the uses set forth in subdivision (1) or (2) of this subsection.

In every instance, the unit of local government shall expressly state that its agreement under this provision is subject to a decision by its governing body to make such appropriation and that such an agreement does not create an obligation on such a governing body to make such appropriation.

(f) A unit of local government that enters into an increment agreement for the purposes described in G.S. 159-107(d)(2) may include in such increment agreement any one or more of the following:

- (1) That in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for that portion of the amount due on such debt instruments during the next budget year which represents the expected percentage of such amount that would come from the taxes levied by such unit of local government.
- (2) In the event any portion of a reserve fund relating to such debt instruments is less than any reserve requirement relating thereto, including as a result of a use of the reserve fund for the payment of amounts due on such debt instrument, that in preparing its budget for any fiscal year its finance officer shall include in the proposed budget an appropriation for some portion or all of the amount required to restore such reserve fund to its required level during the next budget year.
- (3) That if there is any surplus in any year in any fund or account of such unit of local government, it will consider appropriating such surplus for one or both of the uses set forth in subdivision (1) or (2) of this subsection.

In every instance, the unit of local government shall expressly state that its agreement under this provision is subject to a decision by its governing body to make such appropriation and that such an agreement does not create an obligation on such a governing body to make such appropriation. (2003-403, s. 2; 2005-238, s. 6; 2009-525, s. 3.)