

IC 36-7.6-4

Chapter 4. Financing; Issuance of Bonds; Leases

IC 36-7.6-4-1

Development authority fund; accounts; debt service

Sec. 1. (a) A development board shall establish and administer a development authority fund.

(b) A development authority fund consists of the following:

- (1) Amounts transferred under section 2 of this chapter by each county and municipality that is a member of the development authority.
- (2) Appropriations, grants, or other distributions made to the fund by the state.
- (3) Money received from the federal government.
- (4) Gifts, contributions, donations, and private grants made to the fund.

(c) On the date a development authority issues bonds for any purpose under this article, which are secured in whole or in part by the development authority fund, the development board shall establish and administer two (2) accounts within the development authority fund. The accounts must be the general account and the lease rental account. After the accounts are established, all money transferred to the development authority fund under subsection (b)(1) shall be deposited in the lease rental account and used only for the payment of or to secure the payment of obligations of an eligible political subdivision under a lease entered into by the eligible political subdivision and the development authority under this chapter. However, any money deposited in the lease rental account and not used for the purposes of this subsection shall be returned by the secretary-treasurer of the development authority to the unit that contributed the money to the development authority.

(d) Notwithstanding subsection (c), if the amount of all money transferred to a development authority fund under subsection (b)(1) for deposit in the lease rental account in any one (1) calendar year is greater than an amount equal to the product of:

- (1) one and twenty-five hundredths (1.25); multiplied by
- (2) the total of the highest annual debt service on any bonds then outstanding to their final maturity date, which have been issued under this article and are not secured by a lease, plus the highest annual lease payments on any leases to their final maturity, which are then in effect under this article;

then all or a part of the excess may instead be deposited in the general account.

(e) All other money and revenue of a development authority may be deposited in the general account or the lease rental account at the discretion of the development board. Money on deposit in the lease rental account may be used only to make rental payments on leases entered into by the development authority under this article. Money on deposit in the general account may be used for any purpose authorized by this article.

(f) A development authority fund shall be administered by the development authority that established the development authority fund.

(g) Money in a development authority fund shall be used by the development authority to carry out this article and does not revert to any other fund.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-2

Revenue transfers to fund

Sec. 2. (a) Beginning January 1 of the year following the year in which a development authority is established, the fiscal officer of each county and each municipality that is a member of the development authority shall transfer the amount determined under subsection (b) to the development authority for deposit in the development authority fund.

(b) The amount of the transfer required each year by subsection (a) from each county and each municipality is equal to the following:

(1) Except as provided in subdivision (2), the amount that would be distributed to the county or the municipality as certified distributions of county economic development income tax revenue raised from a county economic development income tax rate of five-hundredths of one percent (0.05%) in the county.

(2) In the case of a county or municipality that becomes a member of a development authority after June 30, 2011, and before July 1, 2013, the amount that would be distributed to the county or municipality as certified distributions of county economic development income tax revenue raised from a county economic development income tax rate of twenty-five thousandths of one percent (0.025%) in the county.

(c) Notwithstanding subsection (b), if the additional county economic development income tax under IC 6-3.5-7-28 is in effect in a county, the obligations of the county and each municipality in the county under this section are satisfied by the transfer to the development fund of all county economic development income tax revenue derived from the additional tax and deposited in the county regional development authority fund.

(d) The following apply to the transfers required by this section:

(1) The transfers shall be made without appropriation by the fiscal body of the county or the fiscal body of the municipality.

(2) Except as provided in subdivision (3), the fiscal officer of each county and each municipality that is a member of the development authority shall transfer twenty-five percent (25%) of the total transfers due for the year before the last business day of January, April, July, and October of each year.

(3) County economic development income tax revenue derived from the additional county economic development income tax under IC 6-3.5-7-28 must be transferred to the development fund not more than thirty (30) days after being deposited in the

county regional development fund.

(4) This subdivision does not apply to a county in which the additional county economic development income tax under IC 6-3.5-7-28 has been imposed or to any municipality in the county. The transfers required by this section may be made from any local revenue (other than property tax revenue) of the county or municipality, including excise tax revenue, income tax revenue, local option tax revenue, riverboat tax revenue, distributions, incentive payments, or money deposited in the county's or municipality's local major moves construction fund under IC 8-14-16.

As added by P.L.232-2007, SEC.7. Amended by P.L.172-2011, SEC.158.

IC 36-7.6-4-3

Bond issues

Sec. 3. (a) Subject to subsection (h), a development authority may issue bonds for the purpose of obtaining money to pay the cost of:

- (1) acquiring real or personal property, including existing capital improvements;
- (2) acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects; or
- (3) funding or refunding bonds issued under this chapter, IC 8-5-15, IC 8-22-3, IC 36-9-3, or prior law.

(b) The bonds are payable solely from:

- (1) the lease rentals from the lease of the projects for which the bonds were issued, insurance proceeds, and any other funds pledged or available; and
- (2) except as otherwise provided by law, revenue received by the development authority and amounts deposited in the development authority fund.

(c) The bonds must be authorized by a resolution of the development board of the development authority that issues the bonds.

(d) The terms and form of the bonds must either be set out in the resolution or in a form of trust indenture approved by the resolution.

(e) The bonds must mature within forty (40) years.

(f) A development board shall sell the bonds only to the Indiana bond bank established by IC 5-1.5-2-1 upon the terms determined by the development board and the Indiana bond bank.

(g) All money received from any bonds issued under this chapter shall be applied solely to the payment of the cost of acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects, or the cost of refunding or refinancing outstanding bonds, for which the bonds are issued. The cost may include:

- (1) planning and development of equipment or a facility and all buildings, facilities, structures, equipment, and improvements related to the facility;
- (2) acquisition of a site and clearing and preparing the site for construction;

- (3) equipment, facilities, structures, and improvements that are necessary or desirable to make the project suitable for use and operations;
- (4) architectural, engineering, consultant, and attorney's fees;
- (5) incidental expenses in connection with the issuance and sale of bonds;
- (6) reserves for principal and interest;
- (7) interest during construction;
- (8) financial advisory fees;
- (9) insurance during construction;
- (10) municipal bond insurance, debt service reserve insurance, letters of credit, or other credit enhancement; and
- (11) in the case of refunding or refinancing, payment of the principal of, redemption premiums (if any) for, and interest on the bonds being refunded or refinanced.

(h) A development authority may not issue bonds under this article unless the development authority first finds that each contract for the construction of a facility and all buildings, facilities, structures, and improvements related to that facility to be financed in whole or in part through the issuance of the bonds requires payment of the common construction wage required by IC 5-16-7.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-4

Bonding; complete authority

Sec. 4. This chapter contains full and complete authority for the issuance of bonds. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by a development board or any other officer, department, agency, or instrumentality of the state or of any political subdivision is required to issue any bonds, except as prescribed in this article.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-5

Bonding; security; trust indenture

Sec. 5. (a) A development authority may secure bonds issued under this chapter by a trust indenture between the development authority and a corporate trustee, which may be any trust company or national or state bank in Indiana that has trust powers.

(b) The trust indenture may:

- (1) pledge or assign revenue received by the development authority, amounts deposited in the development authority fund, and lease rentals, receipts, and income from leased projects, but may not mortgage land or projects;
- (2) contain reasonable and proper provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the development authority and development board;
- (3) set forth the rights and remedies of bondholders and trustees; and

(4) restrict the individual right of action of bondholders.

(c) Any pledge or assignment made by the development authority under this section is valid and binding in accordance with IC 5-1-14-4 from the time that the pledge or assignment is made, against all persons whether they have notice of the lien or not. Any trust indenture by which a pledge is created or an assignment made need not be filed or recorded. The lien is perfected against third parties in accordance with IC 5-1-14-4.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-6

Bond refunding; leases

Sec. 6. (a) Bonds issued under IC 8-5-15, IC 8-22-3, IC 36-9-3, or prior law may be refunded as provided in this section.

(b) An eligible political subdivision may:

(1) lease all or a part of land or a project or projects to a development authority, which may be at a nominal lease rental with a lease back to the eligible political subdivision, conditioned upon the development authority assuming bonds issued under IC 8-5-15, IC 8-22-3, IC 36-9-3, or prior law and issuing its bonds to refund those bonds; and

(2) sell all or a part of land or a project or projects to a development authority for a price sufficient to provide for the refunding of those bonds and lease back the land or project or projects from the development authority.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-7

Leases; findings

Sec. 7. (a) Before a lease may be entered into by an eligible political subdivision under this chapter, the eligible political subdivision must find that the lease rental provided for is fair and reasonable.

(b) A lease of land or a project from a development authority to an eligible political subdivision:

(1) may not have a term exceeding forty (40) years;

(2) may not require payment of lease rentals for a newly constructed project or for improvements to an existing project until the project or improvements to the project have been completed and are ready for occupancy or use;

(3) may contain provisions:

(A) allowing the eligible political subdivision to continue to operate an existing project until completion of the acquisition, improvements, reconstruction, or renovation of that project or any other project; and

(B) requiring payment of lease rentals for land, for an existing project being used, reconstructed, or renovated, or for any other existing project;

(4) may contain an option to renew the lease for the same or a shorter term on the conditions provided in the lease;

(5) must contain an option for the eligible political subdivision to purchase the project upon the terms stated in the lease during the term of the lease for a price equal to the amount required to pay all indebtedness incurred on account of the project, including indebtedness incurred for the refunding of that indebtedness;

(6) may be entered into before acquisition or construction of a project;

(7) may provide that the eligible political subdivision shall agree to:

(A) pay any taxes and assessments on the project;

(B) maintain insurance on the project for the benefit of the development authority;

(C) assume responsibility for utilities, repairs, alterations, and any costs of operation; and

(D) pay a deposit or series of deposits to the development authority from any funds available to the eligible political subdivision before the commencement of the lease to secure the performance of the eligible political subdivision's obligations under the lease; and

(8) must provide that the lease rental payments by the eligible political subdivision shall be made from the development authority fund established under section 1 of this chapter and may provide that the lease rental payments by the eligible political subdivision shall be made from:

(A) net revenues of the project;

(B) any other funds available to the eligible political subdivision; or

(C) both sources described in clauses (A) and (B).

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-8

Leases; complete authority

Sec. 8. This chapter contains full and complete authority for leases between a development authority and an eligible political subdivision. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by a development authority or the eligible political subdivision or any other officer, department, agency, or instrumentality of the state or any political subdivision is required to enter into any lease, except as prescribed in this article.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-9

Plan approval

Sec. 9. If the lease provides for a project or improvements to a project to be constructed by a development authority, the plans and specifications shall be submitted to and approved by all agencies designated by law to pass on plans and specifications for public buildings.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-10

Agreements; common wall; easements; licenses

Sec. 10. A development authority and an eligible political subdivision may enter into common wall (party wall) agreements or other agreements concerning easements or licenses. These agreements shall be recorded with the recorder of the county in which the project is located.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-11

Leases or sale of projects or land to development authorities

Sec. 11. (a) An eligible political subdivision may lease for a nominal lease rental, or sell to a development authority, one (1) or more projects or parts of a project or land on which a project is located or is to be constructed.

(b) Any lease of all or a part of a project by an eligible political subdivision to a development authority must be for a term equal to the term of the lease of that project back to the eligible political subdivision.

(c) An eligible political subdivision may sell property to a development authority for the amount the eligible political subdivision determines to be in the best interest of the eligible political subdivision. The development authority may pay that amount from the proceeds of bonds of the development authority.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-12

Option to purchase property

Sec. 12. If an eligible political subdivision exercises its option to purchase leased property, the eligible political subdivision may issue its bonds as authorized by statute.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-13

Tax exemption

Sec. 13. (a) All:

- (1) property owned by a development authority;
- (2) revenue of a development authority; and
- (3) bonds issued by a development authority, the interest on the bonds, the proceeds received by a holder from the sale of bonds to the extent of the holder's cost of acquisition, proceeds received upon redemption before maturity, proceeds received at maturity, and the receipt of interest in proceeds;

are exempt from taxation in Indiana for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

(b) All securities issued under this chapter are exempt from the registration requirements of IC 23-19 and other securities registration statutes.

As added by P.L.232-2007, SEC.7. Amended by P.L.1-2009,

SEC.169.

IC 36-7.6-4-14

Bonds; legal investments

Sec. 14. Bonds issued under this chapter are legal investments for private trust funds and the funds of banks, trust companies, insurance companies, building and loan associates, credit unions, savings banks, private banks, loan and trust and safe deposit companies, rural loan and savings associations, guaranty loan and savings associations, mortgage guaranty companies, small loan companies, industrial loan and investment companies, and other financial institutions organized under Indiana law.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-15

Bonds; contesting validity

Sec. 15. An action to contest the validity of bonds to be issued under this chapter may not be brought after the time limitations set forth in IC 5-1-14-13.

As added by P.L.232-2007, SEC.7.

IC 36-7.6-4-16

Transfers; failure to make transfer; duty of state treasurer

Sec. 16. (a) This section applies if:

- (1) a county or municipality that is a member of a development authority fails to make a transfer or a part of a transfer required by section 2 of this chapter; and
- (2) the development authority has bonds or other debt or lease obligations outstanding.

(b) The treasurer of state shall do the following:

- (1) Withhold an amount equal to the amount of the transfer or part of the transfer under section 2 of this chapter that the county or municipality failed to make from money in the possession of the state that would otherwise be available for distribution to the county or municipality under any other law.
- (2) Pay the amount withheld under subdivision (1) to the development authority.

As added by P.L.232-2007, SEC.7. Amended by P.L.146-2008, SEC.775.

IC 36-7.6-4-17

Covenants

Sec. 17. (a) If there are bonds outstanding that have been issued under this article by a development authority and are not secured by a lease, or if there are leases in effect under this article, the general assembly covenants that it will not reduce the amount required to be transferred under section 2 of this chapter from a county or municipality that is a member of a development authority to the development authority below an amount that would produce one and twenty-five hundredths (1.25) multiplied by the total of the highest

annual debt service on the bonds to their final maturity plus the highest annual lease payments on the leases to their final termination date.

(b) The general assembly also covenants that it will not:

(1) repeal or amend this article in a manner that would adversely affect owners of outstanding bonds, or the payment of lease rentals, secured by the amounts pledged under this chapter; or

(2) in any way impair the rights of owners of bonds of a development authority, or the owners of bonds secured by lease rentals, secured by a pledge of revenues under this chapter;

except as otherwise set forth in subsection (a).

As added by P.L.232-2007, SEC.7.