

Part 4 Local Building Authority Lease Agreements

17D-2-401 Project lease agreements.

- (1) A local building authority and its creating local entity may enter into a lease agreement with respect to a project that the local building authority:
 - (a) has constructed, acquired, improved, or extended on behalf of the creating local entity; or
 - (b) will construct, acquire, improve, or extend on behalf of the creating local entity.
- (2)
 - (a) A local building authority and its creating local entity may enter into a lease agreement before the local building authority's acquisition of a site or construction of the project.
 - (b) Each lease agreement described in Subsection (2)(a) shall:
 - (i) provide that the creating local entity is not required to make a lease payment until acquisition or construction of the project is completed; and
 - (ii) require the local building authority to furnish or cause the construction contractor to furnish a bond satisfactory to the creating local entity, conditioned upon:
 - (A) final completion of the project as expeditiously as reasonably possible from the date of the execution of the lease agreement; and
 - (B) delivery of possession of the project to the creating local entity free and clear of all liens and encumbrances, except:
 - (I) taxes, liens, and encumbrances on the local building authority's interest in the leased property; and
 - (II) easements and restrictions that the creating local entity accepts.

Enacted by Chapter 360, 2008 General Session

17D-2-402 Requirements for lease agreements.

- (1) Each lease agreement between a local building authority and its creating local entity shall:
 - (a) provide for the payment of lease payments sufficient:
 - (i) to pay:
 - (A) the principal of and interest on local building authority bonds the proceeds of which were used to construct, acquire, improve, or extend the project;
 - (B) all fees and expenses of trustees and paying agents for bonds described in Subsection (1)(a)(i)(A); and
 - (C) all costs of maintaining and operating the project; and
 - (ii) to accumulate any reasonable reserve that the local building authority considers necessary;
 - (b) provide that the creating local entity, if not in default under the lease agreement, may:
 - (i) subject to Subsection (2), renew the lease for a fixed term beyond the initial term by giving specified notice before the expiration of the initial term; and
 - (ii) subject to Subsection (3) and the terms of the lease agreement, purchase the leased property on a date fixed in the agreement;
 - (c) provide that a creating local entity under the lease agreement is not under any obligation:
 - (i) to purchase the leased property; or
 - (ii) to a creditor, shareholder, or security holder of the local building authority; and
 - (d) require that:
 - (i) title to the project vest in the creating local entity upon payment in full of all outstanding local building authority bonds issued to construct, acquire, improve, or extend a project; and

- (ii) any remaining assets and net earnings of the local building authority be paid to the creating local entity upon dissolution of the local building authority, as provided in Section 17D-2-702.
- (2) The term of a lease agreement under this part, including any renewal of the lease agreement, may not exceed the lesser of:
 - (a) the estimated useful life of the project, as certified under Subsection 17D-2-302(1); and
 - (b) 40 years.
- (3) The purchase price of leased property under Subsection (1)(b)(ii) may not exceed the project costs that the local building authority actually invested in the project.

Enacted by Chapter 360, 2008 General Session

17D-2-403 Provisions that a lease agreement may contain.

- (1) A lease agreement between a local building authority and its creating local entity may:
 - (a) provide that the creating local entity, as part of the lease payments for the leased property:
 - (i) pay all taxes and assessments levied against or on account of the leased property or rentals from it;
 - (ii) maintain insurance on the leased property for the benefit of the local building authority and the holders of the local building authority's bonds; and
 - (iii) assume all responsibility for any repair, replacement, alteration, or improvement to the leased property during the term of the lease agreement; and
 - (b) authorize the local entity to sublease all or specified portions of a project to:
 - (i) the state;
 - (ii) another local entity; or
 - (iii) a private party, including a nonprofit corporation, if the local building authority or local entity:
 - (A) intends to own the project throughout the useful life of the project; and
 - (B) determines that the local building authority or local entity's ownership of the project furthers a legitimate public purpose.
- (2) A local entity that subleases some or all of a project under Subsection (1)(b) continues to be responsible for lease payments due under the lease agreement with the local building authority.

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17D-2-404 Lease of local entity's site to local building authority.

- (1) A local entity desiring to have a local building authority construct a project for the use of the local entity upon a site that the local entity owns may lease the site to the local building authority for a nominal rental.
- (2) Each lease under Subsection (1) shall grant the local building authority an option to renew the lease on the same terms and conditions if, by the time of the expiration of the lease, the local building authority has not been fully repaid the project costs it actually invested in the project.
- (3) A lease under this section, including any renewal of the lease under Subsection (2), may not exceed the period specified in Subsection 17D-2-402(2).
- (4)
 - (a) As used in this Subsection (4):
 - (i) "Project lease agreement" means a lease agreement between a local building authority and its creating local entity under which the local building authority leases to the creating local entity a project constructed on a site owned by the creating local entity.
 - (ii) "Site lease" means a creating local entity's lease of a site to a local building authority.

- (b) A local entity that has entered into a site lease with a local building authority may grant the local building authority an option to purchase the site within six months after the termination of the creating local entity's lease payment obligation under the project lease agreement, to be exercised if the creating local entity under the project lease agreement:
 - (i) defaults under the terms of the project lease agreement; and
 - (ii) does not exercise its option to purchase the project under the terms of the project lease agreement.

Enacted by Chapter 360, 2008 General Session

17D-2-405 Default under a lease agreement.

If a local entity fails to pay a lease payment due to a local building authority under a lease agreement:

- (1) the local entity shall immediately quit and vacate the project;
- (2) the local entity's lease payment obligation under the lease agreement terminates; and
- (3) the local building authority may immediately lease the project according to the provisions of:
 - (a) the proceeding under which bonds to fund the project were authorized; and
 - (b) any mortgage given to secure the bonds.

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