

§ 142-65. Security; other requirements.

(a) In order to secure the performance by the State of its obligations under a financing contract or any other related documentation, the State may grant a lien on, or security interest in, all or any part of the energy conservation property or the land upon which the energy conservation property is or will be located.

(b) No deficiency judgment may be rendered against the State or any State governmental unit in any action for breach of any obligation contained in a financing contract or any other related documentation, and the taxing power of the State is not and may not be pledged directly or indirectly to secure any moneys due under a financing contract or any other related documentation. In the event that the General Assembly does not appropriate funds sufficient to make payments required under a financing contract or any other related documentation, the net proceeds received from the sale, lease, or other disposition of the property subject to the lien or security interest created pursuant to subsection (a) of this section shall be applied to satisfy these payment obligations in accordance with the deed of trust, security agreement, or other documentation creating the lien or security interest. These net proceeds are hereby appropriated for the purpose of making these payments. Any net proceeds in excess of the amount required to satisfy the obligations of the State under the financing contract or any other related documentation shall be paid to the State Treasurer for deposit to the General Fund of the State.

(c) Neither a financing contract nor any other related documentation shall contain a nonsubstitution clause that restricts the right of the State to (i) continue to provide a service or conduct an activity or (ii) replace or provide a substitute for any State property that is the subject of an energy conservation measure.

(d) A financing contract may include provisions requesting the Governor to submit in the Governor's budget proposal, or any amendments or supplements to it, appropriations necessary to make the payments required under the financing contract.

(e) A financing contract may contain any provisions for protecting and enforcing the rights and remedies of the person advancing moneys or providing funds under the financing contract that are reasonable and not in violation of law, including covenants setting forth the duties of the State in respect of the purposes to which the funds advanced under a financing contract may be applied, and the duties of the State with respect to the property subject to the lien or security interest created pursuant to subsection (a) of this section, including, without limitation, provisions relating to insuring and maintaining any property and the custody, safeguarding, investment, and application of moneys.

(f) The interest component of the installment payments to be made under a financing contract may be calculated based upon a fixed or variable interest rate or rates as determined by the State Treasurer.

(g) If the State Treasurer determines that it is in the best interest of the State, the State may enter into, or arrange for the delivery of, a credit facility to secure payment of the payments due under a financing contract or to secure payment of the purchase price of any certificates of participation delivered as provided in this Article. (2002-161, s. 9.)