

Chairman Wiggam, Vice Chair Stephens, Ranking Member Kelly and Members of the House State and Local Government Committee:

My name is Greg Daniels and I appreciate the opportunity to present proponent testimony in support of Senate Bill 259 and specifically the portion of the bill that addresses minimum service payments in Ohio law.

Senate Bill 259 contains language that would amend the Ohio statute specifying that any agreement between a property owner and a governmental entity with respect to tax increment financing (TIF) service payments and minimum service payments (payments in lieu of taxes) is to be considered a covenant running with the land and enforceable against subsequent property owners and their successors and assigns.

- The statute already specifies that these payments are to be considered taxes for all purposes, including lien priority and collection.
- The bill clarifies that the agreement between a property owner and a governmental entity to the tax lien treatment of all minimum service payment obligations is a covenant running with the land, binding on all future property owners without the need for additional covenants or agreements.
- Without this clarification, bond lawyers in Ohio have required mortgage language in service payment agreements (as a form of belt and suspenders) which creates issues with lenders who provide private financing for projects that are subject to the minimum service payments.
- By adding this clarifying language, the apparent need for mortgage language in service payment agreements goes away.

Examples:

#### Current Statute

- Tax parcel has a hotel constructed on it which is paid for with private construction financing secured by a mortgage.
- Tax parcel is subject to a form of real estate tax referred to as a minimum service payment (the “Minimum Service Payment”) that acts as a floor for real estate taxes to ensure the repayment of the bonds issued to pay for public improvements surrounding the hotel parcel.
- Since the Minimum Service Payment is effectively a real estate tax, it is considered a tax lien by statute, but due to some uncertainty within the Minimum Service Payment statute, lawyers for bond buyers and/or municipalities are requiring a first lien mortgage be filed to further secure the Minimum Service Payment.
- Hotel lender is prohibited from making second lien mortgages and won’t make the loan unless the Minimum Service Payment mortgage is subordinated
- If bond counsel or counsel to the municipality refuses to subordinate the mortgage lien, the hotel cannot get financed.

#### Passage of Senate Bill 259

- A hotel is constructed on a tax parcel with private construction financing secured by a first lien mortgage.

- The tax parcel is subject to the Minimum Service Payment that ensures the repayment of the bonds issued to pay for public improvements surrounding the hotel parcel
- The Minimum Service Payment is considered a tax lien by statute and the new language satisfies bond lawyers and lawyers for municipalities that no additional mortgage is required.
- Hotel lender can make its first lien mortgage loan without having to deal with the Minimum Service Payment mortgage.

Chair Wiggam, thank you again for the opportunity to testify today and we encourage favorable consideration of Senate Bill 259