

## **Chapter 32**

### **Utah Interlocal Financing Authority Act**

#### **11-32-1 Short title.**

- (1) This chapter shall be known as the "Utah Interlocal Financing Authority Act."
- (2) All bonds issued pursuant to authority of this chapter shall contain on their face a recital to that effect.

Enacted by Chapter 143, 1987 General Session

#### **11-32-2 Definitions.**

As used in this chapter:

- (1) "Assignment agreement" means the agreement, security agreement, indenture, or other documentation by which the county transfers the delinquent tax receivables to the authority in consideration of the amounts paid by the authority under the assignment agreement, as provided in this chapter.
- (2) "Bonds" means any bonds, notes, or other evidence of indebtedness of the financing authority issued under this chapter.
- (3) "Delinquent tax receivables" means those ad valorem tangible property taxes levied within any county, for any year, which remain unpaid and owing the participant members within the county, as of January 15 of the following year, plus any interest and penalties accruing or assessed to them.
- (4) "Financing authority" or "authority" means a nonprofit corporation organized under this chapter by a county on behalf of the participant members within the county as the financing authority for the participant members solely for the purpose of financing the assignment of the delinquent tax receivables of the participant members for which it was created.
- (5) "Governing body" means the council, commission, county legislative body, board of education, board of trustees, or any other governing entity of a public body in which the legislative powers of the public body are vested.
- (6) "Participant members" means those public bodies, including the county, the governing bodies of which approve the creation of an authority as provided in Section 11-32-3 and on whose behalf the authority acts.
- (7) "Public body" means any city, town, county, school district, special service district, special district, community reinvestment agency, or any other entity entitled to receive ad valorem property taxes, existing under the laws of the state.

Amended by Chapter 16, 2023 General Session

#### **11-32-3 Creation of county interlocal finance authority as nonprofit corporation -- Organization -- Acquisition of delinquent tax receivables -- Personnel -- Duties of elected attorney and treasurer.**

- (1) The governing body of any county within the state may, by resolution, organize a nonprofit corporation as the financing authority for the county on behalf of public bodies within the county under this chapter, following the procedures set out in Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, solely for the purpose of accomplishing the public purposes for which the public bodies exist by financing the sale or assignment of the delinquent tax

receivables within the county to the financing authority. The authority shall be known as the "Interlocal Finance Authority of (name of county)."

- (2) If the governing body of any county creates an authority on behalf of any other public body within the county, the resolution shall further state the name or names of the other public bodies. A certified copy of the resolution creating the authority shall be delivered to the governing body of the other public bodies. The governing bodies of each of the other public bodies shall either approve or reject the creation of the authority, but if no action has been taken within 30 days of delivery of the certified copy of the resolution to the governing body it shall be considered rejected.
- (3) Following the approval, rejection, or considered rejection of the resolution by the governing bodies of each of the public bodies listed in the initial resolution, the county shall then amend the resolution to delete the public bodies rejecting the resolution and shall list the participant members of the authority.
- (4) The governing bodies of the participant members shall approve the articles of incorporation and bylaws of the authority. Members of governing bodies of each of the participant members, or a paid employee of the governing body designated by the member, shall be selected to form and shall act as the board of trustees of the authority. The powers of the board of trustees may be vested in an executive committee to be selected from among the board of trustees by the members of the board of trustees. The articles of incorporation and bylaws shall provide that the members of the board of trustees of the authority may be removed and replaced by the governing body from which such member was selected at any time in its discretion. A majority of the governing bodies of the participant members, based upon a percentage of the property taxes levied for the year preceding the then current year, within the county may, alter or change the structure, organization, programs, or activities of the financing authority, subject to the rights of the holders of the authority's bonds and parties to its other obligations.
- (5) Each financing authority may acquire by assignment the delinquent tax receivables of the participant members creating the financing authority, in accordance with the procedures and subject to the limitations of this chapter, in order to accomplish the public purposes for which the participant members exist.
- (6) Except as limited by Subsection (7), a financing authority may contract for or employ all staff and other personnel necessary for the purpose of performing its functions and activities, including contracting with the participant members within the county that created it to utilize any of the personnel, property, or facilities of any of the participant members for that purpose. The authority may be reimbursed for such costs by the participant member as provided in its articles of incorporation or bylaws.
- (7)
  - (a) With respect to any county that creates a financing authority and which has an elected attorney or treasurer, or both, the elected attorney shall be the legal advisor to and provide all legal services for the authority, and the elected treasurer shall provide all accounting services for the authority. The authority shall reimburse the county for legal and accounting services so furnished by the county, based upon the actual cost of the services, including reasonable amounts allocated by the county for overhead, employee fringe benefits, and general and administrative expenses.
  - (b) The provisions of Subsection (7) may not prevent the financing authority from obtaining the accounting or auditing services from outside accountants or auditors with the consent of the elected treasurer and the governing bodies or from obtaining legal services from outside attorneys with the consent of the elected attorney and the governing bodies. The provisions of this subsection may not prevent the authority from obtaining the opinions of

outside attorneys or accountants which are necessary for the issuance of the bonds of the authority.

- (c) If 50% or more of the governing bodies of the participant members, based upon property taxes charged for the preceding year as a percentage of all of the property taxes charged within the county for that year, find it advisable that the authority retain legal or accounting services other than as described in Subsection (7)(a) they may direct the board of trustees to do so.

Amended by Chapter 300, 2000 General Session

**11-32-3.5 Entry into an established interlocal finance authority -- Withdrawal from an interlocal finance authority -- Effect of outstanding debt -- Effect on organization.**

- (1) The governing body of any public body, which is not at that time a member of a financing authority established in the county in which the public body is located, may, by resolution, elect to join the authority.
- (2) The resolution shall state the name of the public body and that the public body thereby petitions for membership in the authority. A certified copy of the resolution shall be delivered to the authority.
- (3) The public body shall become a participant member of the authority, upon receipt by the authority of the resolution, but only with respect to any financing initiated after the public body has become a member of the authority.
- (4) A participant member may elect to withdraw from an authority by resolution adopted by the governing body of the participant member following:
  - (a) the payment of all outstanding bonds for which a participant member's delinquent tax receivables have been assigned;
  - (b) the distribution of remaining amounts as provided in Section 11-32-15; and
  - (c) satisfactory completion of any independent accounting audits requested by the authority or the county.
- (5) The resolution of the governing body of the public body which is withdrawing its membership shall state the name of the public body it represents and that the public body thereby petitions for withdrawal from the authority. A certified copy of the resolution shall be delivered to the authority. The membership of the public body in the authority shall terminate upon receipt of the resolution by the authority.
- (6) A public body which has withdrawn from membership in an authority may elect to join such authority to participate in future financings by the authority.
- (7)
  - (a) By resolution of its governing body, a participant member may elect not to participate in future financings of the authority. Such election shall be effective upon delivery of a certified copy of the resolution to the authority.
  - (b) In addition to the method outlined in Subsection (7)(a), a participant member may be considered to have elected not to participate in future financings in any reasonable manner selected by the authority.
- (8) For purposes of determining the presence of a quorum of the board of trustees or for other purposes, the board of trustees of an authority may treat participant members which have elected or are considered to have elected not to participate in a financing as not being participant members.
- (9) The composition organization of the authority shall change upon the entrance, election to participate, election not to participate, or withdrawal of a participant member.

Amended by Chapter 324, 2010 General Session

**11-32-4 Assignment of rights to receive delinquent tax receivables to financing authority -- Documentation -- Agreement.**

- (1) At any time following the date of delinquency for property in Title 59, Chapter 2, Part 13, Collection of Taxes, the governing body of any county desiring to implement the provisions of this chapter by assigning the delinquent tax receivables of the participant members to its authority shall ascertain the amount of delinquent taxes owed to the participant members within the county. After ascertaining the amount of delinquent tax receivables owed, the governing body of the county may, as agent for the other participant members, assign the rights of the participant members to receive the delinquent tax receivables, in whole or in part, as designated by the governing body of the county, to the financing authority. The assignment of rights described above shall take the form of an assignment of an account receivables. The purchase price paid by the authority may be equal to, greater than, or less than the amount of the delinquent tax receivables sold to the authority. The documentation by which the transfer of the delinquent tax receivables are made shall contain the following:
  - (a) the tax year or years for which the delinquent taxes owing were levied;
  - (b) the amount of taxes, interest, and penalties due to the participant members with respect to the tax years as of the date the accounts are assigned;
  - (c) the tax identification numbers or other descriptions of the specific properties with respect to which the delinquent tax receivables are being assigned;
  - (d) the interest rate at which the delinquent taxes subject to the assignment bear interest pursuant to Section 59-2-1331;
  - (e) the discount or premium, if any, at which the account is assigned;
  - (f) a certificate representing the transfer of the rights of the county and the other participant members to receive the amounts due and owing the county and the other participant members with respect to the delinquent tax receivables transferred; and
  - (g) certification by the governing body of the county that all amounts received by the county with respect to the delinquent taxes, interest, and penalties assigned to the authority and owed to the county and the other participant members, for the tax years specified, upon the specified property, and the additional interest and penalties to accrue on the delinquent amounts, shall be deposited upon receipt into a special fund of the county created for this purpose and shall be used solely to pay the amounts falling due to the financing authority as specified in the assignment agreement.
- (2) The assignment agreement shall contain a statement to the effect that any amounts falling due under it are payable solely from a special fund into which the county shall pay the amounts collected with respect to the delinquent tax receivables pledged and shall state that under no circumstances may the county or any of the other participant members be required to use any other funds, property, or money of the county or the other participant members or to levy any tax to satisfy amounts due under the agreement.

Amended by Chapter 189, 2014 General Session

**11-32-5 Bonds authorized to pay costs of purchase of delinquent tax receivables.**

- (1) A financing authority may issue and sell its bonds on behalf of the participant members for the purpose of:
  - (a) paying the costs of purchasing the delinquent tax receivables of the participant members;

- (b) paying the costs associated with the issuance of the bonds, including fees and premiums for letters of credit, bond insurance, or other forms of credit enhancement; and
  - (c) funding any reserve funds with respect to the bonds.
- (2) The aggregate principal amount of any bonds issued pursuant to this section may not exceed 90% of the delinquent tax receivables to be purchased with the proceeds of the bonds.
  - (3) Bonds shall be fully negotiable for all purposes, shall bear such date or dates, shall be issued in such denominations and in such form, shall be serial bonds or term bonds, or both, shall mature at such times not exceeding 4-1/2 years from date of issue, shall bear such interest rate or rates, shall have such registration privileges, shall be executed in such manner, and shall be payable at such places and in such medium of payment as specified by the board of trustees of the financing authority in the proceedings authorizing the bonds.
  - (4) The bonds may bear interest at a variable interest rate as the board of trustees may authorize. The board of trustees may establish a method, formula, or index pursuant to which the interest rate on the bonds may be determined from time to time.
  - (5) The board of trustees of the financing authority may provide for an option to redeem all or a part of the bonds issued prior to maturity upon terms established by it. The bonds shall be sold at public or private sale upon the terms, in the manner, and at such prices, either at, in excess of, or below their face value, as determined by the board of trustees of the financing authority. Bonds may be issued in one or more series. No person executing any bond or assignment agreement under this chapter is subject to personal liability or accountability by reason of this. Bonds shall be authorized, executed, and issued in accordance with this chapter, the articles of incorporation, and the bylaws of the financing authority. No bonds may be issued by a financing authority unless the issuance of the bonds and the terms of the bonds have been approved by the governing body of the county.

Enacted by Chapter 143, 1987 General Session

**11-32-6 Payment of bonds.**

- (1) Except as secured as provided in Subsection 11-32-7(1)(c), all bonds issued by a financing authority and the interest and premium, if any, on them, shall be payable solely out of amounts received by the authority under the assignment agreement with respect to the delinquent tax receivables acquired with the proceeds of that issue of bonds and from the proceeds of the bonds. All bonds shall so state on their face.
- (2) The amounts payable by the county or the participant members under the assignment agreement shall be payable solely from a special fund into which the county shall pay all of the amounts received with respect to the delinquent tax receivables covered by the assignment agreement. All bonds shall so state on their face.
- (3) Nothing in this chapter may be construed as requiring the state of Utah or any political subdivision of the state to pay any amounts due on any bond issued under this chapter, or, except for the county and the other participant members, to pay any amount due to a financing authority under the terms of any assignment agreement.
- (4) Except with respect to the delinquent tax receivables pledged, nothing in this chapter may be construed as requiring the county or any participant member to appropriate any money to pay principal of or interest on the bonds or the amounts due under any assignment agreement.
- (5) If a county or any participant member fails to pay any amounts due to an authority under any assignment agreement, the authority may compel the county to take the necessary legal action to collect the delinquent tax receivables covered by the assignment agreement and to use any or all of the statutory means it has to collect the delinquent taxes.

Enacted by Chapter 143, 1987 General Session

**11-32-7 Bond principal and interest -- Security agreements -- Trustee.**

- (1) The principal of and interest on any bonds issued under this chapter:
  - (a) shall be secured by a pledge and assignment of the revenues received by the financing authority under the assignment agreement with respect to the delinquent tax receivables purchased with the proceeds of the sale of these bonds;
  - (b) may be secured by a pledge and security interest in the assignment agreement; and
  - (c) may be secured by amounts held in reserve funds, letters of credit, bond insurance, surety bonds, or by such other security devices with respect to the delinquent tax receivables deemed most advantageous by the authority.
- (2) The proceedings under which the bonds are authorized to be issued under this chapter and any security agreement given to secure the bonds may contain any agreements and provisions customarily contained in instruments securing bonds, including provisions respecting:
  - (a) the collection of the delinquent taxes covered by these proceedings or any security agreement;
  - (b) the terms to be incorporated in the assignment agreement with respect to the delinquent tax receivables;
  - (c) the creation and maintenance of reserve funds from the proceeds of sale of bonds or from the collection of the delinquent taxes;
  - (d) the rights and remedies available to the holders of bonds or to the trustee in the event of a default, as the board of trustees of the authority may determine in accordance with this chapter.
- (3) The security agreements, trust indentures, or other security devices shall provide that following the exhaustion of all legal means of collection of the delinquent tax receivables no judgment may be entered against the authority or the county or any participant members or the state of Utah or any of its political subdivisions.
- (4) The proceedings authorizing bonds under this chapter, and any security agreement securing these bonds, may provide that upon default in the payment of the principal of or interest on the bonds or in the performance of any covenant or agreement contained in the proceedings or security agreement, the payment or performance may be enforced by the appointment of a receiver for the delinquent tax receivables with power to compel the county to use the statutory means it has to collect the delinquent tax receivables and apply the revenues in accordance with these proceedings or the security agreement.
- (5) No breach of a security agreement, covenant, or other agreement may impose any general obligation or liability upon, nor a charge against, the county or any participant member, nor the general credit or taxing power of this state or any of its political subdivisions.
- (6) The proceedings authorizing the issuance of bonds may provide for the appointment of a trustee, which may be a trust company or bank having trust powers located in or outside of this state.

Amended by Chapter 378, 2010 General Session

**11-32-8 Dissolution of financing authority.**

- (1) The governing body of a county may at any time dissolve a financing authority created by the county in the manner then provided in Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, subject to the limitations of this chapter.

- (2) A financing authority may not be dissolved unless all outstanding bonds and other obligations of the authority are paid in full as to principal, interest, and redemption premiums, if any, or unless provision for the payment of them when due has been made.
- (3) Upon the dissolution of a financing authority all assets and money of the authority remaining after a provision has been made for the payment of all outstanding bonds and obligations of the authority shall be transferred to the participant members as described in Section 11-32-15 or as agreed upon between the county and the other participant members.

Amended by Chapter 300, 2000 General Session

**11-32-9 Tax exemption.**

All amounts becoming due under assignment agreements and all bonds issued by a financing authority and the interest accruing on them shall be exempt from all taxation in this state, except for the corporate franchise tax.

Enacted by Chapter 143, 1987 General Session

**11-32-10 Application to other laws and proceedings -- Notice.**

- (1) This chapter is supplemental to all existing laws relating to the collection of delinquent taxes by participant members.
- (2)
  - (a) No ordinance, resolution, or proceeding in respect to any transaction authorized by this chapter is necessary except as specifically required in this chapter nor is the publication of any resolution, proceeding, or notice relating to any transaction authorized by this chapter necessary except as required by this chapter.
  - (b) A publication made under this chapter may be made:
    - (i) for the public body's jurisdiction, as a class A notice under Section 63G-30-102, for at least seven days; and
    - (ii) as required in Section 45-1-101.
  - (c) No resolution adopted or proceeding taken under this chapter may be subject to referendum petition or to an election other than as permitted in this chapter.
  - (d) All proceedings adopted under this chapter may be adopted on a single reading at any legally convened meeting of the governing body or bodies or the board of trustees of the authority as appropriate.
- (3) Any formal action or proceeding taken by the governing body of a county or other public body or the board of trustees of an authority under the authority of this chapter may be taken by resolution of the governing body or the board of trustees as appropriate.
- (4) This chapter shall apply to all authorities created, assignment agreements executed, and bonds issued after this chapter takes effect.
- (5) All proceedings taken before the effective date of this chapter by a county or other public body in connection with the creation and operation of a financing authority are validated, ratified, approved, and confirmed.

Amended by Chapter 435, 2023 General Session

**11-32-11 Publication of resolutions -- Notice -- Content.**

- (1) The governing body of any county, or the board of trustees of any financing authority, may provide for the publication of any resolution or other proceeding adopted by it under this chapter:
  - (a) for the county, as a class A notice under Section 63G-30-102, for at least seven days; and
  - (b) as required in Section 45-1-101.
- (2) In case of a resolution or other proceeding providing for the issuance of bonds, the board of trustees of a financing authority may, in lieu of publishing the entire resolution or other proceeding, publish a notice of bonds to be issued, titled as such, containing:
  - (a) the name of the financing authority and the participant members;
  - (b) the purposes of the issue;
  - (c) the maximum principal amount which may be issued;
  - (d) the maximum number of years over which the bonds may mature;
  - (e) the maximum interest rate which the bonds may bear;
  - (f) the maximum discount from par, expressed as a percentage of principal amount, at which the bonds may be sold; and
  - (g) the time and place where a copy of the resolution or other proceedings authorizing the issuance of the bonds may be examined, which shall be at an office of the financing authority, identified in the notice, during regular business hours of the financing authority as described in the notice and for a period of at least 30 days after the publication of the notice.
- (3) For a period of 30 days after the publication, any person in interest may contest the legality of the resolution or proceeding or any bonds or assignment agreements which may be authorized by them or any provisions made for the security and payment of the bonds or for the security and payment of the assignment agreement. After such time no person has any cause of action to contest the regularity, formality, or legality of same for any cause.

Amended by Chapter 435, 2023 General Session

**11-32-12 Investment in and deposit of bonds.**

Bonds issued under this chapter shall be securities in which all persons and organizations authorized to invest in any obligations of political subdivisions of this state, may properly and legally invest any funds, including capital belonging to them or within their control. Bonds are also declared to be securities which may properly and legally be deposited with, and received by, any state, county, or municipal officer, or agency of the state for any purpose for which the deposit of any obligations of political subdivisions of this state is authorized by law.

Enacted by Chapter 143, 1987 General Session

**11-32-13 Financing authority as public entity -- Liberal construction of chapter.**

A financing authority is a public entity and an instrumentality of the state performing essential governmental functions on behalf of participant members. To better enable financing authorities to perform these functions, this chapter shall be liberally construed.

Enacted by Chapter 143, 1987 General Session

**11-32-14 Provisions of chapter control when conflict occurs.**

To the extent that any one or more provisions of this chapter are in conflict with any other law or laws, the provisions of this chapter are controlling.



Enacted by Chapter 143, 1987 General Session

**11-32-15 Special fund -- Apportionment of excess amounts.**

- (1) The provisions of Title 59, Revenue and Taxation, otherwise notwithstanding, delinquent taxes paid to the county on behalf of the participant members shall be paid into the special fund created with respect to the bonds issued by any authority.
- (2) Following the payment of all bonds issued with respect to any delinquent tax receivables and all other amounts due and owing under any assignment agreement, amounts remaining on deposit with the authority or in the special fund created with respect to the issuance of the bonds shall be apportioned and distributed as follows:
  - (a) Any amounts which represent the amount by which the delinquent taxes recovered exceed the amount originally paid by the authority at the time of transfer of the delinquent tax receivables to the authority shall be distributed to the respective participant members, including the county, in the proportion of their respective taxes.
  - (b) Any amounts remaining following the distribution directed in Subsection (2)(a) shall be paid to the county.

Amended by Chapter 324, 2010 General Session

**11-32-16 Deferral or abatement of taxes unaffected.**

The provisions of this chapter may not be construed to prevent the county from exercising any of its powers to defer or abate taxes as provided by statute.

Enacted by Chapter 143, 1987 General Session

**11-32-17 Anticipation of taxes to be considered in fixing tax rate.**

To the extent that a participant member uses the provisions of this chapter to anticipate the collection of delinquent taxes in any given year, such participant member shall take such anticipation into account in fixing its tax rate for the following year.

Enacted by Chapter 143, 1987 General Session