

Part 7 Guaranty and Reserve Funds

11-42-701 Guaranty fund.

- (1) Except as provided in Section 11-42-702, each local entity that issues assessment bonds shall:
 - (a) create a guaranty fund, as provided in this section, to secure bonds, to the extent of the money in the fund; and
 - (b) fund the guaranty fund by:
 - (i) appropriations from the local entity's general fund;
 - (ii) a property tax levy of not to exceed .0002 per dollar of taxable value of taxable property within the local entity's jurisdictional boundaries;
 - (iii) issuing general obligation bonds; or
 - (iv) appropriations from other sources as determined by the local entity's governing body.
- (2) A tax levied by a local entity under Subsection (1)(b)(ii) to fund a guaranty fund is not included for purposes of calculating the maximum levy limitation applicable to the local entity.
- (3) A local entity may covenant for the benefit of bond holders that, as long as the bonds are outstanding and unpaid, the local entity will:
 - (a) create a guaranty fund as provided in this section;
 - (b)
 - (i) to the extent legally permissible and by any of the methods described in Subsection (1)(b), transfer each year to the guaranty fund an amount of money up to the amount the local entity would collect by levying a tax of .0002 per dollar of taxable value of taxable property within the local entity until the balance in the guaranty fund equals 10% of the amount of all outstanding bonds; and
 - (ii) in subsequent years transfer to the guaranty fund the amount necessary to replenish or maintain the guaranty fund at 10% of the amount of all outstanding bonds; and
 - (c) invest the funds on deposit in the guaranty fund as provided in Title 51, Chapter 7, State Money Management Act.
- (4) A local entity may create subaccounts within a guaranty fund for each issue of outstanding assessment bonds and refunding assessment bonds in a manner that the local entity's governing body considers appropriate to allocate among the bond issues the securities held in and interest earnings on the guaranty fund for purposes of complying with federal law.
- (5) A local entity may transfer to its general fund any money in its guaranty fund that exceeds 10% of the amount of all of the local entity's outstanding assessment bonds and refunding assessment bonds that are secured by the guaranty fund.
- (6) For purposes of Subsections (3)(b) and (5), refunding assessment bonds may not be considered outstanding until the principal of and interest and any redemption premiums on the prior bonds that are refunded by the refunding assessment bonds are fully paid or legally considered to be paid.

Enacted by Chapter 329, 2007 General Session

11-42-702 Reserve fund.

- (1) In lieu of creating and funding a guaranty fund under Section 11-42-701 for an issue of assessment bonds or refunding assessment bonds, a local entity may establish a reserve fund to secure the issue.
- (2) If a local entity establishes a reserve fund under this section:

- (a) the bonds secured by the reserve fund are not secured by a guaranty fund under Section 11-42-701;
 - (b) the local entity is not required to fund a guaranty fund under Section 11-42-701 for those bonds; and
 - (c) unless otherwise provided in this part or in the proceedings authorizing the issuance of bonds, the provisions of this part regarding a guaranty fund have no application to the bonds that are secured by the reserve fund.
- (3) Each local entity that establishes a reserve fund shall:
- (a) fund and replenish the reserve fund in the amounts and manner provided in the proceedings authorizing the issuance of the bonds that are secured by the reserve fund; and
 - (b) invest the funds on deposit in the reserve fund as provided in Title 51, Chapter 7, State Money Management Act.
- (4)
- (a) Subject to Subsection (4)(b), a local entity may replenish a reserve fund under this section by any of the methods described in Subsection 11-42-701(1)(b).
 - (b) The proceedings authorizing the issuance of assessment bonds or refunding assessment bonds shall provide that if a local entity uses any of the methods described in Subsection 11-42-701(1)(b) to replenish a reserve fund, the local entity shall be reimbursed, with interest at a rate that the local entity determines, with money that the local entity receives from foreclosing on delinquent property.
- (5) Upon the retirement of bonds secured by a reserve fund, the local entity shall:
- (a) terminate the reserve fund; and
 - (b) disburse all remaining money in the fund as provided in the proceedings authorizing the issuance of the bonds.

Amended by Chapter 246, 2009 General Session

11-42-703 Payment from guaranty fund or reserve fund if insufficient funds available in the assessment fund -- Payment by warrant from guaranty fund or reserve fund -- Subrogation.

- (1) If a bond is presented to the local entity for payment at a time when there is insufficient money in the assessment fund to pay the amount due, the local entity shall pay the amount due from the guaranty fund or, if applicable, reserve fund.
- (2) If there is insufficient money in the guaranty fund or, if applicable, the reserve fund to pay the amount due under Subsection (1), the local entity may pay by a warrant drawn against the guaranty fund or, if applicable, reserve fund.
- (3) If a local entity pays from its guaranty fund or reserve fund any principal or interest owing under a bond:
 - (a) the local entity is subrogated to the rights of the bond holders; and
 - (b) the proceeds from the bond shall become part of the guaranty fund or reserve fund, as the case may be.

Enacted by Chapter 329, 2007 General Session

11-42-704 Transfers from local entity funds to replenish guaranty fund or reserve fund.

If the guaranty fund or, if applicable, the reserve fund has insufficient money for the local entity to purchase property on which it bids at a sale under Part 5, Assessment Liens, for delinquent assessments, the local entity may transfer or appropriate money from its general fund or other

available sources, as the governing body determines, to replenish the guaranty fund or reserve fund.

Enacted by Chapter 329, 2007 General Session

11-42-705 Warrants to meet guaranty fund and reserve fund liabilities -- Levy to pay warrants authorized -- Limit on the levy.

(1) A local entity may issue warrants, bearing interest at a rate determined by the governing body, against a guaranty fund or reserve fund to meet any financial liabilities accruing against the fund.

- (2)
- (a) If a local entity issues warrants under Subsection (1), the local entity shall, subject to Subsection (2)(b), include in its next annual tax levy an amount sufficient, with other guaranty fund or reserve fund resources, to pay all issued and outstanding warrants under Subsection (1) for all assessment areas within the local entity.
 - (b) A levy under Subsection (2)(a):
 - (i) may not exceed .0002 per dollar of taxable value of taxable property in the local entity; and
 - (ii) is exempt from the statutory limit applicable to the local entity's property tax levy.

Enacted by Chapter 329, 2007 General Session

11-42-706 Validation of prior guaranty fund or reserve fund proceedings.

- (1) Subject to Subsection (2), all proceedings before April 30, 2007 related to the creation, maintenance, and use of a guaranty fund or reserve fund are validated, ratified, and confirmed.
- (2) Nothing in this section may be construed to affect the validity of a guaranty fund or reserve fund whose legality is being contested on April 30, 2007.

Enacted by Chapter 329, 2007 General Session