

TITLE 43
IRRIGATION DISTRICTS

CHAPTER 22
RECONSTRUCTION, REHABILITATION, REPLACEMENT AND IMPROVEMENT OF DAMS BY
IRRIGATION DISTRICTS -- FINANCIAL AND OTHER ARRANGEMENTS

43-2201. RECONSTRUCTION OF DAMS AND RELATED APPURTENANCES -- EXECUTION OF CONTRACTS -- ASSESSMENTS -- TERMS AND CONDITIONS. Any irrigation district organized and existing under the provisions of [title 43](#), Idaho Code, in addition to any other powers which it might enjoy, for the purpose of preserving, restoring, protecting and maintaining rights of storage, diversion and delivery of water necessary and appurtenant to the purposes for which such district and other like similarly situated districts were organized, is hereby granted the following additional powers:

(A) To reconstruct, rehabilitate, replace and improve dams and other related structures and works together with all necessary appurtenances related thereto, whether located within or without the boundaries of the district and whether or not legal title thereto is owned by the district, including without limitation as a part thereof the reconstruction and relocation of all roads, bridges and highways made necessary by reason of such reconstruction, rehabilitation, replacement and improvement, the construction of penstocks and other facilities related to hydroelectric production plant and made necessary pursuant to falling water contracts entered into pursuant to the provisions of paragraph (4) of subsection (D) hereof, and related facilities for flood control, public recreation and fish and wildlife mitigation and enhancement purposes made necessary in order to comply with applicable state and federal requirements;

(B) To enter into all necessary agreements, contracts and other legal arrangements with the United States of America and its agencies and departments, the state of Idaho and its agencies, departments and political subdivisions, and public and private persons, firms, corporations and associations in order to carry out the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances and the financing thereof pursuant to the provisions of this chapter;

(C) To issue bonds of the district in the manner provided in this chapter for the purpose of paying all or part of the cost of the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances as further described in subsections (A) and (B) above, and for the purpose of paying all expenses preliminary and incidental thereto, including all engineering, fiscal and legal expenses and costs of issuance, printing, advertising, establishment of necessary reserves and payment of interest during construction;

(D) To provide that any bonds issued and sold pursuant to the provisions of this chapter shall be payable solely out of a special fund into which the district shall be obligated to deposit as from time to time received the following:

(1) The proceeds of the collection of assessments to be levied by the irrigation district issuing the bonds, pursuant to the provisions of section [43-404](#), Idaho Code, representing the amount of benefits to accrue to each tract or subdivision in such district based upon the cost allocation to such district pursuant to subsection (E) hereof, from the

reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances, in the proportion that the right to the storage, diversion and delivery of water appurtenant to each such tract or subdivision bears to the total right to the storage, diversion and delivery of water appurtenant to such dam and other related structures and works and appurtenances, but only when there shall have been held in such irrigation district an election on the right of the district to impose such assessments and which assessments shall have been approved at said election, and which election shall have been called, held and conducted in the manner now or hereafter provided in [chapter 4, title 43](#), Idaho Code, the authority for the calling and holding of said election and the levying of such assessments being hereby given.

(2) Payments, pursuant to contracts entered into by such district with other irrigation districts, constituting the proceeds of the collection of assessments to be levied by such other districts, pursuant to the provisions of section [43-404](#), Idaho Code, representing the amount of benefits to accrue to each tract or subdivision in each such district based upon the cost allocation to each such district pursuant to subsection (E) hereof, from the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances, in the proportion that the right to the storage, diversion and delivery of water appurtenant to each such tract or subdivision bears to the total right to the storage, diversion and delivery of water appurtenant to such dam and other related structures and works and appurtenances, but only when there shall have been held in each such irrigation district contracting with the irrigation district issuing such bonds, an election on the right of the district to impose such assessments and to enter into an obligation or contract with the irrigation district issuing the bonds for such purpose, and which assessments and which obligation or contract shall have been approved at said election, and which election shall have been called, held and conducted in the manner now or hereafter provided in [chapter 4, title 43](#), Idaho Code, the authority for the calling and holding of said election and the levying of such assessments and the entering into of such obligation or contract with such irrigation district being hereby given; and

(3) Payments pursuant to contracts with other public or private persons, firms, corporations and associations representing the portion of the cost of reconstructing, rehabilitating, replacing and improving any such dam and other related structures and works and appurtenances and allocated to each such public or private person, firm, corporation or association pursuant to subsection (E) hereof, in the proportion that the right to the storage, diversion and delivery of water appurtenant to each tract or subdivision represented by the contracting public or private person, firm, corporation or association bears to the total right to the storage, diversion and delivery of water appurtenant to such dam and other related structures and works and appurtenances;

(4) When so authorized by act of congress, the proceeds from the sale or use of falling water appurtenant to the dam and other related structures and works and appurtenances to be so reconstructed, rehabilitated, replaced and improved with the proceeds of bonds of the district, pursuant to falling water contracts for power generation to be entered into by the irrigation district issuing the bonds with a public or

private person, firm, corporation or association, and which falling water contracts may contain such provisions as contemplated in the act of congress providing for the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances, the coordination of the construction of hydro-electric power facilities, the conditions under which the contracting party shall make payments to the district issuing the bonds, the rights and remedies of the parties thereto in the event of the failure of the contracting party to make the required payments thereunder and the securing of all necessary permits and licenses required in connection therewith;

(E) To make a determination of the proportion of the cost of the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances which will be repaid pursuant to such falling water contracts entered into pursuant to the provisions of paragraph (4) of subsection (D) hereof, and to determine that only the balance of the cost shall be repaid from the proceeds of assessments and contracts pursuant to the provisions of paragraphs (1), (2) and (3) of subsection (D) hereof and to allocate the balance of the cost so determined in the proportion that the various rights to the storage, diversion and delivery of water bear to the total rights to the storage, diversion and delivery of water appurtenant to such dam and other related structures and works and appurtenances, and in the event that any public or private person, firm, corporation or association shall fail to execute a contract or to levy assessments as contemplated in paragraphs (2) and (3) of subsection (D) hereof, to reallocate the balance of the original cost as in this subsection determined, provided, however, that if the result of any such reallocation increases the obligation of any irrigation district under any contract or increases any assessment, any such increase must be approved in the same manner as hereinabove required for the approval of the original contract or assessment, or both; and

(F) To enter into a trust indenture securing the bonds issued pursuant to the provisions hereof with a bank or trust company doing business either within or without the state of Idaho, and to assign the rights of the district to receive the payments provided for in paragraphs (1), (2), (3) and (4) subsection (D) hereof to such bank or trust company as trustee for and on behalf of the bondholders.

[43-2201, as added by 1974, ch. 1, sec. 1, p. 3.]

43-2202. ISSUANCE OF BONDS OR INTERIM NOTES -- TERMS AND CONDITIONS. The board of directors is authorized to issue the bonds of the district in the manner for which provision is made in this chapter, which bonds shall be fully negotiable for all purposes of the Uniform Commercial Code of the state of Idaho as the same may be in force from time to time.

Bonds issued hereunder shall be authorized by resolution or resolutions of the board. They shall be in coupon form but may be made registrable as to principal if so provided in the resolution authorizing their issuance. Such bonds shall be in denominations of one hundred dollars (\$100) or a multiple thereof, shall bear interest at such rate or rates, payable annually or semi-annually as the board shall elect, shall mature serially or otherwise at any time or times, shall be payable at such place or places within or without the state, may be made redeemable prior to maturity in such manner and at such

premiums, shall be executed in such manner, and shall be sold in such manner and at such price or prices as may be determined by resolution of the board.

Bonds may be issued hereunder at one (1) time or from time to time. If more than one (1) issue or series of bonds is delivered hereunder the bonds of the respective issues or series shall have such priorities of payment as may be provided in the proceedings authorizing the bonds.

Any resolution authorizing the issuance of bonds hereunder shall provide for the creation of a sinking fund into which shall be paid from the revenues and assessments pledged to such payment in the authorizing resolution sums fully sufficient to pay the principal of and interest on the bonds and to create such reserve for contingencies as may be required by the resolution. Any resolution so authorizing bonds may contain such covenants with the future holders of the bonds as to the disposition of such revenues and assessments, the issuance of future bonds and the creation of future liens and encumbrances against the revenues and assessments and other pertinent matters deemed necessary or proper by the board to assure the merchantability of the bonds, provided such covenants and agreements are not inconsistent with the provisions of this chapter.

Any resolution, or any contract with another irrigation district, may adopt the provisions of section [43-413](#), Idaho Code, with respect to the providing of a safety fund with respect to any assessments levied for the repayment of the bonds or the payment of any contract obligation.

It may be provided in any such resolution that any holder of the bonds or of any of the coupons thereto attached may by appropriate legal action compel performance of all duties required of the board and the officials of the district by the provisions of [title 43](#), Idaho Code, and the provisions of the resolution authorizing the bonds. If any bond issued hereunder is permitted to go into default, as to principal or interest, any court of competent jurisdiction may, pursuant to the application of the holder of any bond, or if applicable the trustee pursuant to a trust indenture, appoint a receiver to collect and distribute the revenues and assessments pledged to the repayment of the bonds pursuant to the provisions and requirements of the resolution and of this act and as the court may direct.

The board of any district which shall have issued any bonds under the provisions of this chapter may authorize the issuance of bonds hereunder for the purpose of refunding all or any part of such outstanding bonds. Refunding bonds may be either sold and the proceeds thereof applied to or deposited in an escrow for the retirement of the outstanding bonds or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized and secured in the manner herein provided for the issuance and securing of other bonds and may but shall not be required to have the same source of security and payment as the bonds refunded. No election on the issuance of refunding bonds shall be required, but if by an increase in the amount of bonds or by changes in the security, the requirements of the constitution for an election become applicable, then any such refunding bonds shall be approved at an election held and conducted pursuant to the provisions of section [43-2203](#), Idaho Code.

In addition to the permanent financing contemplated in this section, the board of any district may borrow money and issue interim notes in evidence thereof whenever it is deemed advisable and in the interests of the district to borrow funds temporarily for any of the purposes herein provided in advance of permanent financing. No election shall be required upon the issuance of interim notes. The board may from time to time and

pursuant to appropriate resolution borrow money and issue interim notes to evidence borrowings for the purpose of obtaining funds for any of the purposes authorized in subsection (D) of section [43-2201](#), Idaho Code. Any resolution authorizing the issuance of such interim notes shall describe generally the purpose for which such notes are to be issued and shall specify the principal amount, rate of interest and maturity date, which shall be the same for all interim notes and which shall be not to exceed five (5) years from the date of issue of such notes, and such other pertinent terms as may be specified in such resolution. The interim notes shall be issued from time to time by the board as funds are borrowed, in the manner the board may determine. Interest on the interim notes may be made payable semiannually, annually or at maturity. The interim notes may be made redeemable prior to maturity at the option of the board in the manner and upon the terms fixed by the resolution authorizing their issuance. Such interim notes shall be in such denominations, shall be executed in such manner, and shall be sold at such price or prices as may be determined by resolution of the board. All such interim notes and the interest thereon may be secured by a pledge of the proceeds of the revenues and assessments provided in subsection (D) of section [43-2201](#), Idaho Code, and shall be payable solely from such revenues and assessments and from the proceeds to be derived from the sale of any bonds for permanent financing authorized to be issued pursuant to this chapter. Contemporaneously with the issue of the bonds as provided by this chapter, all interim notes, even though they may not have then matured, shall be paid, both principal and interest and applicable premium, if any, to date of payment, from the funds derived from the sale of bonds authorized hereunder for the permanent financing, and such interim notes shall thereupon be surrendered and canceled.

The resolution authorizing the issuance of any bonds or interim notes hereunder shall, and any resolution authorizing the execution of any contract hereunder may, be published one (1) time in a newspaper of general circulation in the district. For a period of thirty (30) days from the date of such publication any person in interest may file suit in any court of competent jurisdiction to contest the regularity, formality or legality of the proceedings authorizing the bonds, the interim notes, the execution of such contract or the legality of such resolution and its provisions or of the contract or of the bonds or interim notes to be issued pursuant thereto and the provisions securing the bonds or interim notes. After the expiration of such thirty (30) day period no one shall have any right of action to contest the validity of the contract or of the bonds or interim notes or of such proceedings or of such resolution or the validity of the pledges and covenants made in such proceedings and resolution and the contract and the bonds and interim notes and the provisions for their payment shall be conclusively presumed to be legal and no court shall thereafter have authority to inquire into such matters.

[43-2202, as added by 1974, ch. 1, sec. 1, p. 3.]

43-2203. ELECTION FOR ISSUING BONDS -- REFERENDUM PETITION. Whenever the board shall by resolution adopted by a four-fifths (4/5) majority of the said board, determine that the interest of said district and the public interest or necessity demand the reconstruction, rehabilitation, replacement and improvement of any dam and other related structures and works together with all necessary appurtenances related thereto, in order to preserve, restore, protect and maintain rights of storage, diversion and delivery of wa-

ter necessary and appurtenant to the purposes for which such district and other like similarly situated districts were organized and shall set forth the amount of obligation or bonded or other indebtedness proposed to be issued by the district under the provisions of this chapter, said board shall be required to order the submission of the proposition of issuing such obligation or bonded or other indebtedness for the purposes set forth in said resolution to the vote of the qualified electors of the district as defined in section [34-104](#), Idaho Code, at an election to be held for that purpose only if within fifteen (15) days after the passage of such resolution a referendum petition signed by legal voters equal in number to not less than ten percent (10%) of the electors of the district, based upon the aggregate vote cast at the general election of directors of the district next preceding the filing of such referendum petition, shall be filed with the secretary of the district requesting that an election upon the issuance of such obligation or bonded or other indebtedness be held and conducted under the provisions of this section. Any election required to be held pursuant to a referendum petition filed in accordance with this section for the purpose of submitting any proposition or propositions of incurring such obligation or indebtedness may be held separately, or may be consolidated or held concurrently with any other election authorized by law. The resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the reconstruction, rehabilitation, replacement or improvement as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the sources of the revenues and assessments pledged to the payment of said bonds, as enumerated in section [43-2201](#)(D) (1), (2), (3) and (4), Idaho Code. The separate election upon the assessments provided for in section [43-2201](#)(D) (1), Idaho Code, shall be held at the same time as and shall be combined with any such election required to be held upon the issuance of the bonds pursuant to a referendum petition.

Any such election required to be held hereunder shall be called by resolution, which resolution shall also fix the date upon which such election shall be held, the manner of holding the same and the method of voting for or against the incurring of the indebtedness or issuance of the bonds. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places and shall appoint for each polling place, from each precinct from the electors thereof, the officers of such election, which officers shall consist of three (3) judges, one (1) of whom shall act as clerk, who shall constitute a board of election for each polling place. The description of precincts may be made by reference to any order or orders of the board of county commissioners of the county or counties in which the district or any part thereof is situated, or by reference to any previous order, or resolution of the board or by detailed description of such precincts. Precincts established by the boards of the various counties may be consolidated for special elections held hereunder. In the event any such election shall be called to be held concurrently with any other election or shall be consolidated therewith, the resolution calling the election hereunder need not designate precincts or polling places or the names of officers of election, but shall contain reference to the act or order calling such other election and fixing the precincts and polling places and appointing election officers therefrom. The resolution calling the election shall prescribe an official notice of election, which notice shall be published once a week for two (2) consecutive weeks, the last

publication of which shall be at least ten (10) days prior to the date set for said election, in a newspaper of general circulation printed and published within the district, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of district elections to the extent the same shall apply and shall make their returns to the secretary of the district. At any regular or special meeting of the board held not earlier than five (5) days following the date of such election, the returns thereof shall be canvassed and the results thereof declared.

In the event that no referendum petition is filed, or if so filed, if it shall appear from said returns that a two-thirds (2/3) majority of the qualified electors of the district who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contracts or issue and sell such bonds of the district, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder or in the resolution therefor, and in the amount so provided. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent election or elections called for such purpose.

[43-2203, added 1974, ch. 1, sec. 1, p. 3; am. 1975, ch. 48, sec. 1, p. 90; am. 2014, ch. 71, sec. 8, p. 181.]

43-2204. JUDICIAL EXAMINATION. Except in the instance of bonds issued and sold to refund other bonds for which a confirmation proceeding pursuant to this section has already been held, the board shall file a petition in the district court of the county in which the office of the board is located, pursuant to the provisions of sections [43-406](#) through [43-408](#), Idaho Code, prior to the sale and issuance of any bonds under this chapter. Whenever any district which is required to file a petition hereunder has or proposes to enter into a contract or contracts with one or more irrigation districts pursuant to section [43-2201](#)(D)(2), Idaho Code, and such other irrigation district or districts is authorized or required to bring a confirmation proceeding or proceedings pursuant to the provisions of section [43-406](#) or of section [43-1808](#), Idaho Code, with respect to such contracts or the levy of assessments or the apportionment of costs, the boards of each of such other irrigation districts shall join in the filing of such petition, and the district court in which such petition is filed shall have jurisdiction to hear the petition and to grant the relief prayed for therein. Each such petition shall pray for a judicial examination and determination of any power conferred hereby or by any amendment hereto or of any assessment levied or of any apportionment of costs or of any act, proceeding or contract of the district or districts, whether or not said contracts shall have been executed, including proposed contracts for the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances, falling water contracts pursuant to section [43-2201](#)(D)(4), Idaho Code, contracts with other irrigation districts pursuant to section [43-2201](#)(D)(2), Idaho Code, and contracts with other public and private persons, firms, corporations and associations pur-

suant to section [43-2201](#)(D)(3), Idaho Code. Such petition shall set forth the facts whereon the validity of such powers, assessments, apportionments, acts, proceedings or contracts is founded. Notice of the filing of said petition shall be given by the clerk of the court by mailing, and by publication in at least one (1) newspaper published and of general circulation within the boundaries of each irrigation district joining in the petition, or if no newspaper is so published within any district, then in a newspaper published in the same county in which any part of such irrigation district is located which is of general circulation in such irrigation district, pursuant to and in accordance with the requirements of section [43-407](#), Idaho Code, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract or contracts, therein mentioned, may be examined.

Any owner of property in any district joining in the petition or any other person interested in the contracts or proposed contracts may appear and answer said petition at any time prior to the date fixed for said hearing or within such further time as may be allowed by the court; and the petition shall be taken as confessed by all persons who fail so to appear. The said petition and notice shall be sufficient to give the court jurisdiction and, upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, shall examine all of the proceedings of all of the irrigation districts as set forth in the petition, shall hear all objections either filed in said proceeding or brought up from the hearings before any of the boards, shall correct all errors in the assessments and apportionments of costs, shall ratify, approve and confirm all apportionments of costs and assessments levied, shall make such findings with reference thereto and render a judgment and decree thereon approving and confirming all of the powers, assessments, apportionments, acts, proceedings and contracts of each of the irrigation districts as set forth in the petition as the case warrants. Costs may be divided or apportioned among the contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases, except that such review must be applied for within thirty (30) days after the time of the rendition of such judgment, or within such additional time as may be allowed by the court within thirty (30) days. The Idaho Rules of Civil Procedure shall govern in matters of pleading and practice where not otherwise specified herein. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties. Except as provided herein, the provisions of sections [43-406](#) through [43-408](#), Idaho Code, shall apply to the proceeding herein authorized.

Except as expressly provided in this section, the provisions of sections [43-406](#) through [43-408](#), Idaho Code, shall be inapplicable to refunding bonds issued under this chapter.

[43-2204, as added by 1974, ch. 1, sec. 1, p. 3; am. 1975, ch. 48, sec. 2, p. 90; am. 1990, ch. 11, sec. 1, p. 21.]

43-2205. JUDICIAL PROCEEDINGS TO TEST VALIDITY. In the event that any official required to participate in any act leading to the calling or holding of the required election, the execution of any required contract or the issuance of such bonds shall refuse to perform such act alleging as his reason illegality of the proposed election, the proposed contract or the bonds proposed to be issued, the board may institute judicial proceedings to compel such steps to be taken and legality of the election, contract or bonds to be

determined. All cases in which there may arise a question of the validity of any proceeding under this act shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this act.

[43-2205, as added by 1974, ch. 1, sec. 1, p. 3.]

43-2206. TAX EXEMPTION. Bonds and interim notes, and the interest thereon, issued pursuant to the authority contained in this chapter shall be exempt from taxation under the Idaho Income Tax law.

[43-2206, as added by 1974, ch. 1, sec. 1, p. 3.]

43-2207. LIBERAL CONSTRUCTION. Any restrictions, limitations or regulations relative to the issuance of such bonds or the execution of such contracts pursuant to the authority herein contained in any other act shall not apply to the bonds issued under this chapter or the execution of such contracts pursuant to the authority herein contained. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. This chapter being necessary to secure and preserve the public health, safety, convenience and welfare, and for the security of public and private property, it shall be liberally construed to effect the purposes of this chapter.

[43-2207, as added by 1974, ch. 1, sec. 1, p. 3.]