

TITLE 43
IRRIGATION DISTRICTS

CHAPTER 23
RECONSTRUCTION OF DAMS AND RELATED APPURTENANCES -- HYDROELECTRIC
FACILITIES CONSTRUCTION

43-2301. RECONSTRUCTION OF DAMS, CANALS AND OTHER IRRIGATION DISTRICT WORKS AND RELATED APPURTENANCES -- HYDROELECTRIC FACILITIES -- EXECUTION OF CONTRACTS -- REVENUES -- TRUSTS. 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 provide for or to reconstruct, rehabilitate, replace, modify or improve dams, canals and other irrigation district works, including the construction, enlargement and replacement of outlet and intake tunnels and structures, 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, modification or improvement, or the construction of hydroelectric generating facilities as authorized in subsection (b) of this section, and in connection therewith the acquisition of 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 provide for or to construct hydroelectric generating facilities, properties and related structures in connection with and as a part of the reconstruction, rehabilitation, replacement, modification or improvement of a dam, a canal or other irrigation district works pursuant to subsection (a) of this section, together with all necessary equipment and appurtenances related thereto, used in or useful for the generation of electricity, including power plants, turbine generators, penstocks, transformers, electrical equipment and other facilities related to hydroelectric production plants;

(c) To enter into all necessary agreements, contracts and other legal arrangements with the United States and its agencies, other irrigation districts organized and existing under the provisions of [title 43](#), Idaho Code, and other public and private persons, firms, corporations and associations, and irrigation districts similar to those existing under [title 43](#), Idaho Code, but organized and existing under the laws of another state of the United States, in order to carry out or provide for the reconstruction, rehabilitation, replacement, modification or improvement of any such dam, canal or other irrigation district works and other related structures and works and appurtenances and the construction of any such hydroelectric generating facilities, the financing thereof pursuant to the provisions of this chapter, including provisions relating to the issuance of bonds or contracting indebtedness with a money-lending institution to pay the costs thereof by an irrigation district which is a party to a contract or

agreement, the sale of surplus electric energy or the sale or use of rights to falling water in such manner as shall be necessary and desirable and in the best interests of the district, and the operation and maintenance of all or any part of such dam, canal or other irrigation district works so reconstructed, rehabilitated, replaced, modified and improved and of such hydroelectric generating facilities so constructed, which agreements or contracts may provide for the reconstruction, rehabilitation, replacement, modification or improvement of any such dam, canal or other irrigation district works and other related structures and works and appurtenances, the construction of hydroelectric generation facilities, the terms governing the disposition and sale of surplus electric energy or the sale or use of rights to falling water in relation to such dam, canal or other irrigation district works and generating facilities, which terms may include a provision requiring any purchaser of the surplus electric energy or falling water to purchase all the surplus energy generated or all the rights to or use of falling water associated with such dam, canal or other irrigation district works and hydroelectric generating facilities, the conditions under which the purchaser of the surplus electric energy or rights to use of falling water 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 purchaser of the surplus electric energy or rights to or use of falling water to make the required payments thereunder and the securing of all necessary permits and licenses required in connection therewith; the creation of a committee of representatives of the parties to the agreement or contract, which committee shall have such powers not inconsistent with the provisions of this chapter;

(d) To issue bonds of the district or to contract indebtedness with a money-lending institution in the manner provided in this chapter, or to consent to the issuance of such bonds or the contracting of indebtedness with a money-lending institution by another contracting irrigation district pursuant to the provisions of subsection (c) of this section, for the purpose of paying all or part of the cost of the reconstruction, rehabilitation, replacement, modification or improvement of any such dam, canal or other irrigation district works and other related structures and works and appurtenances and the construction of hydroelectric generating facilities as further described in subsections (a), (b) and (c) above, and for the purpose of paying all expenses preliminary and incidental thereto, including all engineering, fiscal and legal expenses and costs of issuance or contracting, printing, advertising, establishment of necessary reserves and payment of interest during construction;

(e) To provide that any bond issued and sold or any indebtedness contracted pursuant to the provisions of this chapter shall be payable out of a special fund into which the district issuing the bonds shall be obligated to deposit, as from time to time received, all or a designated portion of the proceeds from the sale of electric energy generated by hydroelectric generating facilities to be so constructed or from the sale or use of rights to falling water from the dam, canal or other irrigation district works to be so reconstructed, rehabilitated, replaced, modified or improved, all pursuant to contracts to be entered into as authorized in subsection (c) of this section; and

(f) In addition to the sources of payment for bonds or indebtedness set forth in subsection (e) of this section, the district may also:

(i) Pay such bonds or indebtedness from, or pledge for the payment of such bonds or indebtedness, any other assets, revenue or income of the district; or

(ii) Enter into agreements with financial, banking, insurance and other institutions for bond insurance, letters of credit, standby letters of credit, reimbursement agreements and remarketing, indexing and tender agent agreements to secure such bonds or indebtedness, including payment from any legally available source of fees, charges or other amounts coming due under such agreements entered into in connection with the issuance of the bonds or indebtedness.

(g) 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 subsection (e) of this section to such bank or trust company as trustee for and on behalf of the bondholders.

[43-2301, added 1978, ch. 367, sec. 1, p. 959; am. 1979, ch. 294, sec. 1, p. 773; am. 1985, ch. 119, sec. 1, p. 288; am. 1993, ch. 212, sec. 1, p. 575.]

43-2302. ISSUANCE OF BONDS -- 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 only or as to both principal and interest. 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 semiannually 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 the board.

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

Any resolution or indenture providing for the issuance of bonds hereunder shall provide for the creation of a sinking fund into which shall be paid from the revenues pledged to such payment sums fully sufficient to pay the principal of and interest on the bonds and to create such reserves as may be required therein. Any resolution or indenture may contain such covenants with the future holders of the bonds as to the disposition of such revenues, the issuance of future bonds and the creation of future liens and encumbrances against the revenues 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.

It may be provided in any such resolution or indenture 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 or indenture. 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 pledged to the repayment of the bonds pursuant to the provisions and requirements of the resolution or indenture 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.

[43-2302, added 1978, ch. 367, sec. 1, p. 961.]

43-2303. INTERIM NOTES. In addition to the permanent financing contemplated in this chapter 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. The board may from time to time and pursuant to appropriate resolution borrow money and issue interim notes to evidence borrowing for the purpose of obtaining funds for any of the purposes authorized in section [43-2301](#), Idaho Code. Any resolution authorizing the issuance of 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 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 provided in subsection (e) of section [43-2301](#), Idaho Code, and shall be payable solely from such revenues 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 issuance 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.

[43-2303, added 1978, ch. 367, sec. 1, p. 962.]

43-2304. PUBLICATION -- LEGAL REMEDIES. The resolution authorizing the issuance of any bonds or interim notes hereunder or any resolution autho-

rizing the execution of any contract hereunder may be published one 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.

[43-2304, added 1978, ch. 367, sec. 1, p. 963.]

43-2305. ELECTION ON CONTRACTS. Whenever the board of an irrigation district shall by resolution determine that the interest of said district and the public interest or necessity demand the reconstruction, rehabilitation, replacement, modification or improvement of any dam, canal or other irrigation district works and the construction of hydroelectric generating facilities, properties and related structures in connection and as an improvement to such dam, canal or other irrigation district works and the entering into of a contract as authorized in section [43-2301\(c\)](#), Idaho Code, making provision therefor, said board shall be required to order the submission of the proposition of entering into a contract as provided in section [43-2301\(c\)](#), Idaho Code, 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. The resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the contract is proposed to be entered into by the irrigation district; the estimated cost of the reconstruction, rehabilitation, replacement, modification or improvement of the dam, canal or other irrigation district works and/or construction of hydroelectric generating facilities as the case may be; the method of financing the reconstruction, rehabilitation, replacement, modification or improvement of the dam, canal or other irrigation district works and construction of hydroelectric generating facilities, including the maximum amount of bonds which may be issued or of indebtedness which may be contracted by a contracting irrigation district pursuant to such election and pursuant to the provisions of section [43-2301\(d\)](#), Idaho Code.

Any 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 execution of the contract. 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. 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. 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 in 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 notice of election shall state that a copy or copies of the contract or contracts, in substantially the form contemplated to be entered into by the district are on file in the office of the secretary of the district for public inspection by any interested person during regular business hours.

The respective election boards shall conduct the election in their respective precincts in a 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.

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 enter into such contracts, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder or in the resolution therefor. Submission of the proposition of entering into such contract 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.

[43-2305, added 1978, ch. 367, sec. 1, p. 963; am. 1979, ch. 294, sec. 2, p. 775; am. 1985, ch. 119, sec. 2, p. 290; am. 1993, ch. 212, sec. 2, p. 577.]

43-2306. ACTS REQUIRED. In the event that any official required to participate in any act leading to 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 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 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.

[43-2306, added 1978, ch. 367, sec. 1, p. 965.]

43-2307. BONDS TAX EXEMPT. 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.

[43-2307, added 1978, ch. 367, sec. 1, p. 965.]

43-2308. CONSTRUCTION. Any restrictions, limitations or regulations relative to the issuance of such bond 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, it being intended that this chapter is full authority for the issuance of such bonds and the execution of such contracts. The provisions of sections [43-314](#), [43-406](#), [43-407](#) and [43-408](#), Idaho Code, shall not apply to any contract or agreement entered into by an irrigation district pursuant to the provisions of section [43-2301](#), Idaho Code, nor to the issuance of any bonds by an irrigation district pursuant to the provisions of section [43-2301](#), Idaho Code. 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.

[43-2308, added 1978, ch. 367, sec. 1, p. 965; am. 1979, ch. 294, sec. 3, p. 777.]