

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 41
WATER AND SEWER DISTRICT REVENUE BONDS

42-4101. SHORT TITLE. The following eighteen (18) sections may be cited as the "Water and Sewer District Revenue Bond Act."

[42-4101, added 1976, ch. 62, sec. 1, p. 211.]

42-4102. GRANT OF AUTHORITY. Any water and/or sewer district acquiring, constructing, reconstructing, improving, bettering or extending any works pursuant to this act, shall manage such works in the most efficient manner consistent with sound economy and public advantage, to the end that the services of such works shall be furnished at the lowest possible cost. No water and/or sewer district shall operate any works primarily as a source of revenue to the district, but shall operate all such works for the use and benefit of those served by such works and for the promotion of the welfare and for the improvement of the health, safety, comfort and convenience of the inhabitants of the water and/or sewer district.

[42-4102, added 1976, ch. 62, sec. 1, p. 211.]

42-4103. DEFINITIONS. For the purpose of this act, unless a different meaning clearly appears from the context, the following terms shall be ascribed the following meanings:

(a) The term "works" shall include water systems and sewerage systems;

(b) The term "water system" shall include reservoirs, storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery necessary or useful for obtaining, storing, treating, purifying or transporting water for domestic uses or purposes;

(c) The term "sewerage system" shall include intercepting sewers, outfall sewers, force mains, collecting sewers, pumping stations, ejector stations, treatment plants, structures, buildings, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, transportation, treatment, purification, and disposal of the sewage of any district;

(d) The term "district" shall mean water and/or sewer districts and/or water or sewer subdistricts.

[42-4103, added 1976, ch. 62, sec. 1, p. 212; am. 1996, ch. 73, sec. 2, p. 237.]

42-4104. POWERS. In addition to the powers which it may now have, any district shall have power under and subject to the following provisions:

(a) To acquire by gift or purchase and to construct, reconstruct, improve, better or extend any works within or without the district, or partially within or partially without the district, or within any part of the district, and acquire by gift or purchase lands or rights in lands or water rights in connection therewith, including easements, rights of way, contract rights, leases, franchises, approaches, dams and reservoirs; to lease any portion of the excess or surplus capacity of any such works to any party located within or without the district, subject to the following conditions: that such capacity shall be returned or replaced by the lessee when and as

needed by such district for the purposes set forth in section 42-4102, Idaho Code, as determined by the district; that the district shall not be made subject to any debt or liability thereby; and the district shall not pledge any of its faith or credit in aid to such lessee;

(b) To exercise the right of eminent domain for any of the works, purposes or use provided by this act, in like manner and to the same extent as provided in section 7-720, Idaho Code;

(c) To operate and maintain any works within or without the boundaries of the district, or partially within or without the boundaries of the district, or within any part of the district;

(d) To issue its revenue bonds hereunder to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of any works;

(e) To prescribe and collect rates, fees, tolls or charges, including the levy or assessment of such rates, fees, tolls or charges against governmental units, departments or agencies, including the state of Idaho and its subdivisions, for the services, facilities and commodities furnished by such works, and to provide methods of collections and penalties, including denial of service for nonpayment of such rates, fees, tolls or charges;

(f) To pledge an amount of revenue from such works (including improvement, betterment or extensions thereto, thereafter constructed or acquired) sufficient to pay said bonds and interest as the same shall become due, and to create and maintain reasonable reserves therefor.

Such amount may consist of all or any part or portion of such revenues. In determining such cost, there may be included all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal and legal expenses and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed pursuant to the water and sewer district revenue bond act.

(g) To issue bonds for the purpose of refunding any bonds theretofore issued under authority of the water and sewer district revenue bond act and to pay accrued interest and applicable redemption premiums on the bonds to be refunded, if the bonds to be refunded are due, callable or redeemable by their terms on or prior to the date that the refunding bonds are issued, or will become due, callable or redeemable by their terms within twelve (12) months thereafter, or if the bonds to be refunded, even though not becoming due, callable or redeemable within such period, are voluntarily surrendered by the holders thereof, for cancellation at the time of the issuance of the refunding bonds. All or part of any issue may be refunded and all or part of several issues may be refunded into a single issue of refunding bonds. There may be included with the refunding bonds, as part of a single issue, or in combination in one or more series, bonds for any other purpose or purposes for which bonds are authorized to be issued under the water and sewer district revenue bond act. Refunding bonds shall be issued and secured in such manner as may be provided in the proceedings authorizing their issuance and as otherwise provided in the water and sewer district revenue bond act, and such changes may be made in the security and revenue pledged to the payment of the bonds so refunded, as provided by the governing body in the proceedings authorizing such bonds. 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 or pledged revenues, the requirements of the constitution for an election shall become applicable, or if refunding bonds are combined into

a single issue with bonds authorized for nonrefunding purposes, then such bonds with changes in security or revenues, or such bonds in excess of the amount of bonds refunded, as the case may be, must have been approved at an election as otherwise provided in the water and sewer district revenue bond act and the constitution. Refunding bonds may be exchanged for not less than a like principal amount of bonds authorized to be refunded, may be sold, or may be exchanged in part and sold in part. If sold, the proceeds of the sale, not required for the payment of expenses, and in any event, in an amount sufficient to assure the retirement of the bonds refundable, when such bonds become available for retirement, if not applied to a simultaneous payment and cancelation of the bonds refunded shall be escrowed with a bank or trust company and may be invested in United States government obligations or in obligations unconditionally guaranteed by the United States of America in such manner as may be provided in the authorizing proceedings.

[42-4104, added 1976, ch. 62, sec. 1, p. 212]

42-4105. SUPERVISION OF WORKS. The construction, acquisition, improvement, equipment, custody, operation and maintenance of any works under the provisions of this act, and the collection of revenues therefrom for the service rendered thereby shall be under the supervision and control of the governing body of the district.

[42-4105, added 1976, ch. 62, sec. 1, p. 214.]

42-4106. WORKS TO BE SELF-SUPPORTING. The commissioners of the district issuing bonds pursuant to this act shall prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities furnished by such works, and shall revise such rates, fees, tolls or charges from time to time, to provide that all such works shall be and always remain self-supporting. The rates, fees, tolls or charges prescribed shall be such as will produce revenue at least sufficient, (a) to pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered including reserves therefor, and (b) to provide for all expenses of operation and maintenance of such works, including reserves therefor.

[42-4106, added 1976, ch. 62, sec. 1, p. 215.]

42-4107. USE OF WORKS -- REVENUE. Any district issuing bonds under this act for the acquisition, construction, reconstruction, improvement, betterment or extension of any works, shall have the right to appropriate, apply or expend the revenue of such works for the following purposes: (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor; (b) to provide for all expenses of operation, maintenance, replacement and depreciation of such works, including reserves therefor; (c) to pay and discharge notes, bonds or other obligations and interest thereon, not issued under this act for the payment of which the revenue of such works may have been pledged, charged or encumbered; (d) to pay and discharge notes, bonds or other obligations and interest thereon which do not constitute a lien, charge or encumbrance on the revenue of such works, which may have been issued for the purpose of financing the acquisition, construction, reconstruction, improvement, betterment or extension of such works; and (e) provide a reserve for improvements to such works. Unless and until full and adequate provision has been made for the foregoing purposes,

no district shall have the right to transfer the revenue of such works to its general fund.

[42-4107, added 1976, ch. 62, sec. 1, p. 215.]

42-4108. PRELIMINARY EXPENSES. The district may provide for the payment of all necessary preliminary expenses actually incurred in the making of surveys, estimates of costs and revenues, employment of engineers and other employees, making of notices, taking of options, legal and clerical help and all other expenses necessary to be made and paid prior to the authorization for the issuance of such revenue bonds, provided, that no such expenditures shall be made or paid unless an appropriation has been made therefor in the same manner as is required by law for district funds. Any funds so expended by the district shall be fully reimbursed and repaid to the district out of the sale of such revenue bonds before any other disbursements are made therefrom, and the amount so advanced by the district to pay such preliminary expenses shall be a first charge against the proceeds resulting from the sale of such revenue bonds until the same has been repaid as herein provided.

[42-4108, added 1976, ch. 62, sec. 1, p. 215.]

42-4109. RESOLUTION PRIOR TO CONSTRUCTION -- ELECTION. Before any district shall construct or acquire any works under this act, the commissioners of such district shall enact a resolution or resolutions which shall, (a) set forth a brief and general description of the works, and if the same are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared and filed by an engineer chosen for that purpose; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works; (d) direct that revenue bonds of the district shall be issued pursuant to this act in such amount as may be necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary in the proposal.

Such resolution shall be passed and approved as provided by law for the enactment of general resolutions, but such district shall not, without the assent of a majority of the qualified electors voting at an election to be held for such purpose, issue revenue bonds for the purpose of providing funds to own, purchase, construct, extend or equip, within and without the corporate limits of such district, water systems, sewerage systems, water treatment plants and sewerage treatment plants, the principal and interest of which to be paid solely from the revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities.

Said resolutions shall provide for the holding of said election in the manner set forth in chapter 14, title 34, Idaho Code. The notice of election shall set forth the purpose of said resolution, the amount of bonds authorized by it, the maturity dates of said bonds, the maximum rate of interest they shall draw, the voting places, the hours between which the polls will be open and the qualifications of voters who may vote thereat. Such election shall be conducted as are other district elections. The voting at such elections must be by ballot, and the ballots used shall be substantially as follows:

"In favor of issuing revenue bonds for the purposes provided by Resolution No."

"Against the issuance of revenue bonds for the purposes provided by Resolution No."

If, at such election, a majority of the qualified electors, voting at such election, vote in favor of issuing such revenue bonds, then such district may issue such bonds and create such indebtedness or liability in the manner and for the purpose specified in said resolution.

[42-4109, added 1976, ch. 62, sec. 1, p. 216; am. 1994, ch. 51, sec. 1, p. 89.]

42-4110. BONDS -- FORM -- CONDITIONS. Revenue bonds issued under authority of this act shall be sold, executed and delivered at public or private sale in the manner as provided by the municipal bond law. Revenue bonds may also be sold by electronic bidding as provided in section 57-233, Idaho Code. The resolution authorizing the issuance of said bonds shall prescribe the form of bonds. Said bonds shall bear interest at a rate or rates, payable annually, or at such lesser intervals as may be prescribed by resolution; may be in one (1) or more series, bear such date or dates, mature at such time or times, and be redeemable before maturity at the option of the district; may be payable in such medium of payment, at such place or places, may carry such registration privileges, may be subject to such terms of redemption, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution may provide. Said bonds shall be sold at not less than par with accrued interest. Pending preparation of the bonds, interim certificates, in such form and with such provisions as the commissioners may determine, may be issued. Said bonds and interim certificates shall be fully negotiable within the meaning of and for all the purposes of the negotiable instruments law.

Notwithstanding the provisions of the municipal bond law, the governing body in any proceedings authorizing bonds under this act may:

(a) Provide for the initial issuance of one (1) or more bonds, in this act called "bond," aggregating the amount of the entire issue;

(b) Make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

(c) Provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing or payments of interest on such bonds; and

(d) Further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both.

[42-4110, added 1976, ch. 62, sec. 1, p. 217; am. 2001, ch. 264, sec. 1, p. 967.]

42-4111. BONDS -- ISSUANCE -- TERMS -- CONDITIONS. Whenever revenue bonds are authorized to be issued, the district commissioners shall by resolution provide for the issuance thereof. The resolution authorizing the issuance of said revenue bonds, for the purpose authorized, shall contain covenants as to:

(a) The purpose or purposes to which the proceeds of the sale of said bonds may be applied and the use and disposition thereof;

(b) The use and disposition of the revenue of the works for which said bonds are to be issued, including the creation and maintenance of reserves;

(c) The issuance of other or additional bonds payable from the revenue of such works;

(d) The operation and maintenance of such works;

(e) The insurance to be carried thereon, the use and disposition of insurance moneys;

(f) Books of account and inspection and audit thereof;

(g) The terms and conditions upon which the holders thereof or any trustee therefor shall be entitled to the appointment of a receiver which receiver may enter and take possession of such works, operate and maintain the same, prescribe rates, fees, tolls or charges and collect, receive and apply all revenue thereafter arising therefrom in the same manner as the district itself might do. The provisions of this section and of any such resolution shall be a contract with the holder of said bonds and the duties of the district and its commissioners under this section and under such resolution, shall be enforceable by the holder by mandamus or other appropriate suit, action or proceedings at law or in equity.

[42-4111, added 1976, ch. 62, sec. 1, p. 218.]

42-4112. VALIDITY OF BONDS. Any resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to the water and sewer district revenue bond act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

[42-4112, added 1976, ch. 62, sec. 1, p. 218.]

42-4113. LIEN OF BONDS. All bonds of the same issue shall, subject to the prior and superior rights of outstanding bonds, claims or obligations, have prior and paramount lien on the revenue of the works for which said bonds have been issued, except that where provision is made in the resolution authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedures or restrictions provided in such resolution, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such resolution. All bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, date of sale, date of execution, or date of delivery, by a lien on said revenue in accordance with the provisions of the water and sewer revenue bond act and the resolution authorizing said bonds.

[42-4113, added 1976, ch. 62, sec. 1, p. 219.]

42-4114. DISTRICT NOT LIABLE ON BONDS. Bonds issued pursuant to the water and sewer district revenue bond act shall not be a debt of the district and the district shall not be liable thereon, nor shall they be payable out of any funds other than the revenue pledged to the payment thereof. Each bond issued under the water and sewer district revenue bond act shall recite, in substance, that said bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof. Bonds may be issued under the water and sewer district revenue bond act notwithstanding and without regard to any limitation or restriction on the amount or percentage of indebtedness, or of outstanding obligations of a district.

[42-4114, added 1976, ch. 62, sec. 1, p. 219.]

42-4115. WORKS AND BONDS EXEMPT FROM TAXATION. So long as a district shall own any works, the property and revenue of such works shall be exempt from taxation. Bonds issued under the water and sewer district revenue bond act and the income therefrom shall be exempt from taxation, except transfer and estate taxes.

[42-4115, added 1976, ch. 62, sec. 1, p. 219.]