

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 89
IDAHO ENERGY RESOURCES AUTHORITY ACT

67-8901. SHORT TITLE. This act may be referred to and cited as the "Idaho Energy Resources Authority Act."

[67-8901, added 2005, ch. 53, sec. 1, p. 192.]

67-8902. DECLARATION OF NECESSITY AND PURPOSE. (1) It is hereby determined and declared that:

(a) Industrial, irrigation, commercial and residential consumers in the state of Idaho receive electric service from various investor-owned, cooperative and municipal utilities and the ability of these utilities to provide reliable and economic electric services at stable prices is essential to the economy and the economic development of the state of Idaho and to the health, safety and welfare of its people;

(b) The regional interconnection of electric utilities causes events and conditions in other western states to have a significant impact of the operations of utilities in the state of Idaho and the restructuring of the electric industry in recent years by the federal government and in other states has exposed all utilities in Idaho, and the consumers served by them, to volatile market prices, reliability concerns and other adverse conditions;

(c) It is in the best interest of the state of Idaho and its people that sufficient and reliable electric generation and transmission resources are developed and made available at cost-based rates in order to enable these utilities to meet existing and future demands for electric services, to provide adequate reserves and to promote reliability at the most stable rates practicable;

(d) The electric utility and energy industries are and will continue to be capital-intensive industries and the availability of cost-effective financing to investor-owned, cooperative and municipal utilities will enhance the ability of these utilities to provide and promote economic electric services to consumers in the state;

(e) Coordination, cooperation and joint ventures between and among such utilities with one another and with the private, cooperative, federal, state and municipal utilities and agencies that provide wholesale and retail electric services in the western states will promote regional electric reliability and stability and will provide economies of scale;

(f) It is the intent of the legislature to create the Idaho energy resources authority to promote the development and financing of facilities for the benefit of participating utilities and to accomplish the purposes stated above, and to authorize the authority to exercise all such powers as are necessary to enable it to achieve such purposes and to thereby promote and protect the economy of the state of Idaho and the health, safety and welfare of its people; and

(g) It is in the best interest of the state of Idaho and its people to encourage and promote the development of renewable energy resources in order to develop sustainable sources of energy supply, reduce ineffi-

ciencies in the use of electric energy and enhance the long-term stability of the energy resources and requirements of the state.

(2) Nothing contained herein is intended or shall be construed to limit or restrict the authority of the Idaho public utilities commission with respect to the regulation of electric corporations and public utilities pursuant to [title 61](#), Idaho Code.

[67-8902, added 2005, ch. 53, sec. 1, p. 192; am. 2005, ch. 311, sec. 1, p. 964.]

67-8903. DEFINITIONS. When used in this chapter, the following terms shall have the following meanings:

(1) "Authority" means the Idaho energy resources authority created pursuant to section [67-8904](#), Idaho Code.

(2) "Board" means the board of directors of the authority.

(3) "Bonds" means any bonds, notes, certificates or other obligations or evidences of indebtedness issued by the authority.

(4) "Commission" means the Idaho public utilities commission created pursuant to section [61-201](#), Idaho Code.

(5) "Electric cooperative" means a cooperative corporation or association that is:

(a) Organized under the provisions of section 501(c)(12) or 1381 of the Internal Revenue Code;

(b) An Idaho nonprofit corporation pursuant to [chapter 30, title 30](#), Idaho Code; and

(c) An operating entity or successor entity thereof that owns facilities and provides electric service to customers in Idaho as of the effective date of this chapter.

(6) "Facility" means any facility necessary, used or useful in connection with the generation, transmission or distribution of electric power and energy and any renewable energy generation project, in each case including, but not limited to, all real and personal property, fuel supplies and transportation facilities, pollution control facilities, and all equipment and improvements necessary or desirable in connection with a facility. "Facility" shall include facilities owned in whole or in part by the authority or a participating utility, including undivided ownership interests in facilities, leasehold interests in facilities and other estates, but excludes a generating facility that sells any portion of its output as a qualifying facility to a participating utility under provisions of the public utility regulatory policies act of 1978, 16 U.S.C. section 2601 et seq.

(7) "Independent power producer" means any public or private corporation that is not itself a participating utility, but which may be an affiliate of a participating utility, that develops any renewable energy generation project undertaken by the authority pursuant to this chapter.

(8) "Participating utility" means, with respect to any facilities undertaken by the authority pursuant to this chapter, any public or private corporation, electric cooperative or other cooperative corporation or association, municipal corporation, political subdivision of this state or another state, state or federal agency, joint operating entity or other entity that:

(a) Owns and operates an electric utility system that provides electric services to consumers of electricity located in an existing service area within the boundaries of this state;

(b) Provides electric generation, power supply, transmission and/or ancillary and related services at wholesale to one (1) or more participating utilities described in paragraph (a) of this subsection; or

(c) Is organized or operates as a regional transmission organization covering all or any part of the state of Idaho and one (1) or more other states.

(9) "Renewable energy" means a source of energy that occurs naturally, is regenerated naturally or uses as a fuel source, a waste product or byproduct from a manufacturing process including, but not limited to, open or closed-loop biomass, fuel cells, geothermal energy, waste heat, cogeneration, solar energy, waterpower and wind.

(10) "Renewable energy generation project" means an electric generating facility or system that uses renewable energy as its primary source of energy to generate electricity.

(11) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, rents, fees and charges, and all other income or receipts derived by the authority from a participating utility.

[67-8903, added 2005, ch. 53, sec. 1, p. 193; am. 2005, ch. 311, sec. 2, p. 965; am. 2007, ch. 107, sec. 1, p. 310; am. 2017, ch. 58, sec. 36, p. 132.]

67-8904. CREATION OF IDAHO ENERGY RESOURCES AUTHORITY. There is hereby created and established an independent public body politic and corporate to be known as the "Idaho Energy Resources Authority." The authority is a public instrumentality of the state and its exercise of the powers conferred by this chapter is and shall be deemed to be the performance of essential public functions and purposes.

[67-8904, added 2005, ch. 53, sec. 1, p. 194.]

67-8905. DIRECTORS -- TERMS OF OFFICE -- APPOINTMENT -- FILLING VACANCIES AND REMOVAL. (1) The powers of the authority shall be vested in a board of seven (7) directors to be appointed by the governor and confirmed by the senate.

(2) In making appointments, the governor shall endeavor to appoint individuals with direct professional experience and demonstrated knowledge in the electric utility industry. In addition to representatives of investor-owned, electric cooperative or municipal utilities, the governor may also appoint individuals with expertise in fields related to the functions of the authority such as engineering, banking, finance, economics and law.

(3) The directors of the authority first appointed by the governor shall serve for terms to be designated by the governor expiring on June 30, as follows: two (2) in 2006, one (1) in 2007, two (2) in 2008 and one (1) in each of 2009 and 2010. After the expiration of these initial terms, directors shall serve for five (5) year terms. Each director shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any director shall be eligible for reappointment but no director may serve more than two (2) consecutive terms.

(4) The governor shall fill any vacancy for the remainder of any unexpired term.

(5) Any director may be removed by the governor for malfeasance or willful neglect of duty or other cause.

[67-8905, added 2005, ch. 53, sec. 1, p. 194.]

67-8906. QUORUM -- MODE OF ACTION -- COMPENSATION. (1) Four (4) directors of the authority shall constitute a quorum for the purpose of conducting business and exercising its powers.

(2) Action may be taken by the authority upon the affirmative vote of at least four (4) directors. No vacancy on the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(3) Notice of meetings shall be given as provided in [chapter 2, title 74](#), Idaho Code, and the bylaws of the authority.

(4) The board may hold any of its meetings by telephone, teleconference or other electronic means, as and to the extent provided in its bylaws.

(5) The board shall act by resolution or order which shall be recorded in its official minutes but need not be published or posted.

(6) Directors shall be compensated for services as provided by section [59-509\(o\)](#), Idaho Code.

[67-8906, added 2005, ch. 53, sec. 1, p. 194; am. 2015, ch. 141, sec. 189, p. 528.]

67-8907. ORGANIZATIONAL MEETING -- CHAIRMAN -- SECRETARY AND TREASURER -- EXECUTIVE DIRECTOR -- DELEGATION OF POWER -- SURETY BOND AND CONFLICT OF INTEREST. (1) A director designated by the governor shall call and convene the initial organizational meeting of the authority and shall serve as its chairman pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for the election or appointment of officers and the delegation of certain powers and duties and such other matters as the authority deems proper. At such meeting and annually thereafter the board shall elect one (1) of the directors as chairman and one (1) as vice chairman.

(2) The board shall appoint a secretary and a treasurer and may appoint one (1) or more assistant secretaries and assistant treasurers, any of whom may be, but not required to be, a director of the authority, and who shall serve at the pleasure of the board. A single individual may be appointed as secretary-treasurer. They shall receive such compensation for their services as shall be fixed by the board. The secretary or an assistant secretary designated by the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the authority, the minute books or journal thereof and its official seal. The secretary or any assistant secretary shall cause necessary copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates. The treasurer shall have custody of and responsibility for the safekeeping of the funds and investments of the authority.

(3) The board may employ an executive officer and one (1) or more additional employees as it shall deem necessary and expedient to carry out its purposes. The executive officer may be, but is not required to be, a director of the authority. The executive officer shall serve at the pleasure of the board and shall receive such compensation as shall be fixed by the board.

(4) The board may delegate by resolution such powers and duties as it may deem proper to one (1) or more of its directors or to its secretary, executive officer or any assistant officers.

(5) The secretary, the treasurer and any executive officer shall execute a surety bond in the penal sum of five hundred thousand dollars (\$500,000) or, in lieu thereof, the chairman of the authority shall execute a blanket bond covering each director, the secretary, the treasurer, the executive officer and any other employees or officers of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office or offices covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(6) Notwithstanding any other law to the contrary, it shall not constitute a conflict of interest for a trustee, director, officer, or employee of any electric corporation, electric utility, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architecture firm, insurance company, or any other firm, person or corporation to serve as a director of the authority, provided such trustee, director, officer, or employee shall abstain from deliberation, action and vote by the authority in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

[67-8907, added 2005, ch. 53, sec. 1, p. 195; am. 2012, ch. 150, sec. 1, p. 420.]

67-8908. POWERS. (1) The authority shall have the following powers, which are hereby declared to be necessary to enable the authority to carry out and effectuate the purposes and provisions of this chapter, together with all powers incidental thereto or necessary for the performance thereof:

- (a) To have perpetual succession as a body politic and corporate;
- (b) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (c) To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
- (d) To have and to use a corporate seal and to alter the same at pleasure;
- (e) To maintain an office at such place or places as it may designate;
- (f) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (g) To acquire, whether by purchase, gift, grant, bequest, devise, exchange, eminent domain or otherwise, own, hold, improve, lease, transfer, assign, pledge and dispose of, any real or personal property or any interest therein necessary or convenient in connection with any facility or its purposes under this chapter; provided however, that the power of eminent domain is limited to only those purposes and participating utilities as authorized by section [7-701](#), Idaho Code;
- (h) To acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, manage, operate, lease as lessee or lessor, and regulate any facility; to enter into contracts for any and all of such purposes and for the acquisition and management of fuel supplies, provided such is reasonably necessary for the operation and maintenance of any facility; to enter into contracts and agreements to manage risks associated with the purchase and sale of energy and energy commodities, provided such is reasonably necessary for the operation and maintenance of any facility; and shall designate one (1) or more qualified participat-

ing utilities as agent or agents of the authority, as agreed to among the participating utilities, with respect to the foregoing;

(i) To sell, lease or otherwise provide by contract to one (1) or more participating utilities the services, output or product provided by any or all of the facilities undertaken by the authority upon such terms and conditions as the authority and the participating utilities shall deem proper, and to establish, charge, collect and revise from time to time such rents, fees and charges for such services, output or product as provided for in this chapter;

(j) To borrow money and to issue bonds for any of the purposes described in this chapter, to issue refunding bonds and to enter into contracts and agreements determined by the authority to be necessary or desirable to manage its debt service and interest costs;

(k) To establish rules and regulations for the use of facilities and to designate a participating utility as its agent, to establish rules and regulations for the use of the facilities undertaken or operated by such participating utility;

(l) To employ or contract for consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment and to fix their compensation;

(m) To enter into contracts, agreements or other transactions with and accept grants and the cooperation of the United States or any agency thereof or any state or any agency or governmental subdivision thereof, in furtherance of the purposes of this chapter including, but not limited to, the development, maintenance, operation, and financing of any facility and to do any and all things necessary in order to avail itself of such aid and cooperation;

(n) To receive and accept aid or contributions from any source of money, property, labor, or other things of value, to be held, used, and applied to carry out the purposes of this chapter subject to such conditions upon which such grants and contributions may be made, including, but not limited to, gifts or grants from any department or agency of the United States or any state for any purpose consistent with this chapter;

(o) To assign and pledge all or any part of its revenues and income and to mortgage or otherwise encumber any or all of its facilities and the site or sites thereof, whether then owned or thereafter acquired, for the benefit and security of the holders of bonds issued to finance such facilities or any portion thereof;

(p) To make loans to any participating utility to finance the cost of any facilities in accordance with an agreement between the authority and such participating utility;

(q) To make secured or unsecured loans to a participating utility to refinance obligations and indebtedness incurred for facilities undertaken and completed prior to or after the enactment of this chapter when the authority finds that such financing is in the public interest and either alleviates the financial hardship upon the participating utility or is in connection with other financing by the authority for such participating utility or may be expected to result in a cost-effective delivery of electricity to the consumers served by the participating utility, or any combination thereof;

(r) To charge to and equitably apportion its administrative costs and expenses incurred in the exercise of the powers and duties conferred by

this chapter among the participating utilities that have entered into contracts with the authority;

(s) To procure insurance against any loss in connection with its property and other assets in such amounts and from such insurers as it deems desirable and to self-insure against such risks as it shall deem to be reasonable;

(t) To invest any funds not needed for immediate use or disbursement, including any funds held in reserve, in:

(i) Bonds, notes and other obligations of the United States or any agency or instrumentality thereof and other securities secured by such bonds, notes or other obligations;

(ii) Money market funds which are insured or the assets of which are limited to obligations of the United States or any agency or instrumentality thereof;

(iii) Time certificates of deposit and savings accounts;

(iv) Commercial paper which, at the time of its purchase, is rated in the highest category by a nationally recognized rating service;

(v) Property or securities in which the state treasurer may invest funds in the state treasury pursuant to section [67-1210](#), Idaho Code; and

(vi) With respect to any funds representing bond proceeds or amounts pledged to the payment of bonds, such other investments as may be specified in a bond resolution or trust indenture securing bonds of the authority;

(u) To participate in cooperative ventures with any agencies or organizations in order to provide affordable and reliable energy to the residents of the state;

(v) To undertake and finance renewable energy generation projects developed by an independent power producer;

(w) To finance or refinance the cost of conservation measures as provided in section [67-8926](#), Idaho Code; and

(x) To do all things necessary and convenient to carry out the purposes of this chapter.

(2) Notwithstanding any other provision of this chapter, the authority shall have no power to:

(a) Acquire the operating property of any investor-owned, private, cooperative, municipal or other utility by the exercise of the power of eminent domain;

(b) Provide financing for the acquisition of the operating property of any such utility by or under threat of eminent domain, in either case unless such utility consents in writing to the acquisition; or

(c) Deliver retail electricity or related retail products or services to any ultimate consumer, whether in violation of the Idaho electric supplier stabilization act or otherwise.

(3) The authority is not a "taxing district," as defined in section [67-3901](#), Idaho Code, and, for so long as any bonds are outstanding or any contract, agreement or transaction between the authority and a participating utility is in effect, the authority shall not have the power and shall not be authorized to be a debtor under the U.S. bankruptcy code, [title 11](#) U.S.C., or any other bankruptcy, insolvency, moratorium, liquidation, dissolution or wind-down law.

67-8909. DEVELOPMENT, ACQUISITION AND CONSTRUCTION OF FACILITIES. (1) The authority will endeavor to achieve efficiencies and economies of scale by pursuing the development of facilities with multiple participating utilities on a joint and cooperative basis and shall, to the fullest extent practicable, offer all potential participating utilities the opportunity to participate in the development of a facility and the electricity, service or product to be provided by the facility.

(2) The authority shall not commence the development or financing for any facility until it shall have entered into contractual arrangements with one (1) or more participating utilities that contain provisions acceptable to both the authority and the participating utility or utilities and which are determined by the authority to provide adequate assurance that all capital, operating and related costs of the facility will be paid by or provided for by one (1) or more participating utilities.

(3) The authority may acquire, construct and own any facility undertaken by it, may cause such facility to be acquired and constructed on its behalf by one (1) or more participating utilities as its agent, may enter into joint ownership arrangements with respect to any facility, and may enter into contractual arrangements with third parties for the acquisition and construction of a facility.

(4) Upon the payment in full of all bonds issued by the authority to finance or refinance the cost of a facility and upon the discharge of all other obligations of the authority with respect to a facility, the authority will convey title to the facility to the participating utility or utilities with respect to such facility, unless a participating utility requests in writing to the authority that it continue to retain title of the facility on behalf of the participating utility. Any such conveyance shall be in proportion to the funds provided or paid by the participating utility in respect of the debt service and operating costs of the facility. The authority may, in its agreements with a participating utility, pledge and assign its interest in a facility to secure its obligation to convey title to the facility as provided in this section. Any such pledge shall be made in the same manner and with the same effect as provided in section [67-8915](#), Idaho Code, and shall be subordinate only to any pledge or assignment to secure the payment of the bonds issued by the authority to finance the development, acquisition or construction of the facility.

[67-8909, added 2005, ch. 53, sec. 1, p. 198; am. 2015, ch. 59, sec. 2, p. 162.]

67-8910. MANAGEMENT AND OPERATION OF FACILITIES. The authority shall cause any facilities undertaken by it to be managed and operated on its behalf by one (1) or more qualified participating utilities, or if no participating utility is qualified, willing or able to manage and operate such facility, by the authority or by an agent so designated by the authority capable and skilled in the management and operation of such a facility. The authority shall enter into joint operating arrangements with participating utilities, designated agents of the authority or others and may enter into any and all contractual arrangements determined by the authority to promote the effective and efficient management and operation of its facilities. The authority shall not commence the management or operation for any facility until it shall have entered into contractual arrangements with one (1) or more participating utilities that contain provisions acceptable to both the authority and the participating utility or utilities and which are deter-

mined by the authority to provide adequate assurance that all management, operating, maintenance and related costs of the facility will be paid by or provided for by one (1) or more participating utilities.

[67-8910, added 2005, ch. 53, sec. 1, p. 199; am. 2007, ch. 107, sec. 2, p. 312.]

67-8911. SALE OF ELECTRICITY, PRODUCT OR SERVICE FROM FACILITIES -- CHARGES. (1) The authority shall operate on a not-for-profit basis and shall sell the electricity, product or service provided by its facilities to participating utilities at cost, as provided in subsections (2) and (3) of this section. The authority shall contract with one (1) or more participating utilities for the sale of the electricity, product or service provided or to be provided by each facility upon such terms and conditions as the authority shall deem proper and to provide reasonable assurances that the authority will recover all of its costs associated with each of its facilities. Such contracts may contain the agreement of each participating utility to purchase a specified quantity of the output or service provided by a facility, to purchase all or a portion of its requirements for electric generation, transmission or other services from the authority and to make payments to the authority regardless of whether any particular facility is completed, operable, operating, damaged or destroyed, in whole or in part.

(2) The authority shall establish and collect rents, fees and charges for the electricity, product or service from its facilities that it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenues, income and receipts of the authority, will be sufficient:

(a) To pay, as the same become due, the principal of and interest on the bonds issued to finance or refinance its facilities and to make, create and maintain deposits, reserves and margins required or provided for in any resolution authorizing, or trust agreement securing, bonds of the authority;

(b) To pay its costs, including its organizational, operational and management costs; and

(c) To pay for the operation, maintenance, renewal, replacement and repair of its facilities, including necessary reserves and allowances for depreciation and decommissioning costs.

The authority is hereby authorized to fix, revise, charge and collect rents, fees and charges for the use of and for the electricity, products or services furnished or to be furnished by each facility and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof.

(3) Rents, fees and charges for the electricity, product or service from a facility shall be revised and adjusted by the authority from time to time as necessary so as to provide funds sufficient, together with any other revenues or moneys available therefor, to pay the cost of maintaining, repairing and operating the facility and each and every portion thereof; and, to the extent that the payment of such cost has not otherwise been adequately provided for, to pay the principal of and the interest on outstanding bonds of the authority issued in respect of such facility as the same shall become due and payable.

(4) Notwithstanding the language, terms or definitions contained in sections [61-119](#) and [61-129](#), Idaho Code, the authority shall not be considered to be an electrical corporation as provided by section [61-119](#), Idaho

Code, or a public utility as provided by section [61-129](#), Idaho Code, and the rents, fees and charges established by contract between the authority and one (1) or more participating utilities for the purchase and sale of the output or services provided by any facility shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this state other than the authority provided that any participating utility regulated pursuant to [title 61](#), Idaho Code, shall be required to submit such contract to the commission to the extent required by [title 61](#), Idaho Code.

[67-8911, added 2005, ch. 53, sec. 1, p. 199.]

67-8912. COST RECOVERY AND RATE STABILIZATION CHARGES OF PARTICIPATING UTILITIES. (1) A participating utility contracting with the authority for the electricity, service or product provided by a facility may establish one (1) or more rate stabilization charges, cost recovery charges or power cost adjustment charges as it deems necessary to provide for the payment of all amounts owed by the participating utility to the authority with respect to the facility and otherwise enable the participating utility to stabilize its rates, to protect its consumers from volatile market prices and to insure against market and other risks. Such rate stabilization charges, cost recovery charges or power cost adjustment charges may be established by the participating utility as a separate component of its existing rates and charges or as a new charge.

(2) A participating utility that is subject to rate regulation by the commission shall submit each of its proposed rate stabilization charges, cost recovery charges or power cost adjustment charges to the commission for approval.

(3) Each other participating utility that serves electric consumers in the state but which is not subject to rate regulation by the commission, may establish a rate stabilization charge, cost recovery charge or power cost adjustment charge only after it has provided adequate notice of and a public meeting or hearing on such charge to the members or consumers served by it. A notice shall be deemed to be adequate if:

(a) It is given at least fifteen (15) days prior to the public meeting or hearing in the manner usually employed by the participating utility to give notice of its hearings or meetings, by mail, publication or otherwise; and

(b) It provides a brief description of the proposed rate stabilization, cost recovery or power cost adjustment charges and a summary of the purposes for which it is being established.

After the meeting or hearing has been held, the participating utility may proceed to establish and fix the rate stabilization, cost recovery or power cost adjustment charge.

(4) Each participating utility may agree in its contractual arrangements with the authority as to the use and disposition of all or any part of the revenues from any rate stabilization, cost recovery or power cost adjustment charges established by the participating utility. Each participating utility may pledge, and may create and grant a security interest in, all or a portion of such revenues to secure its payment obligations to the authority in respect of any facility. Any such agreement or pledge by a participating utility that is a municipal corporation of the state shall not be deemed to create an indebtedness or liability of such municipal corporation

or a loan or donation of its credit within the meaning of any constitutional or statutory provision.

[67-8912, added 2005, ch. 53, sec. 1, p. 200.]

67-8913. COOPERATION WITH OTHER AGENCIES AND SUBDIVISIONS. The authority may enter into agreements with any other state body or agency, any other political subdivision of the state and any other public agency, as defined in section [67-2327](#), Idaho Code, for the joint exercise of powers and the authority and all other public agencies may join or cooperate with each other, either jointly or otherwise, in the exercise of any of their powers for the purpose of planning, undertaking, owning, constructing, or contracting with respect to, a facility.

[67-8913, added 2005, ch. 53, sec. 1, p. 201.]

67-8914. EXEMPTION FROM INCOME TAXATION. All bonds issued by the authority and the interest thereon and all revenues, fees, charges, gifts, grants, receipts and other moneys of the authority pledged to the payment of its bonds shall at all times be free from the taxes imposed under the Idaho income tax act.

[67-8914, added 2005, ch. 53, sec. 1, p. 201.]

67-8915. ISSUANCE OF BONDS TO FINANCE FACILITIES. (1) The authority shall have power and is hereby authorized to issue, from time to time, its bonds in such principal amount as it shall determine to be necessary to provide sufficient funds to pay, finance or refinance the cost of any facility, and all other expenditures of the authority incidental and necessary or convenient to carry out its corporate purposes and powers. The cost of any facility shall include all amounts determined by the authority to be necessary or desirable in connection with the acquisition, construction, development, improvement and equipping of a facility including, but not limited to:

- (a) The cost of acquiring all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests necessary, used or useful for or in connection with the facility;
- (b) The cost of all machinery and equipment necessary, used or useful in connection with the facility;
- (c) The cost of architectural, engineering and legal services, including studies, surveys, plans and specifications, and related services;
- (d) The cost of interest on bonds prior to and during construction, and if judged advisable by the authority, for a period after completion of such construction, and all other costs incidental to the issuance of bonds by the authority;
- (e) The cost of reserves for future repairs, replacements and additions to a facility, insurance policies and premiums and related costs and expenses; and
- (f) All other costs and expenses determined by the authority to be necessary and incidental to the acquisition, construction, financing and placing in operation of a facility.

The proceeds of the bonds may also be used to provide for the payment of any financial fees and charges, including underwriting discounts, financial advisory, legal and trustee fees and expenses, the premiums for or costs of

bond insurance, surety bonds or other forms of credit or liquidity enhancement, and to provide for any necessary debt service reserves associated with such bonds.

(2) The bonds shall be authorized by resolution or resolutions of the authority, shall be dated, shall mature, shall bear interest, shall be in such form and shall otherwise have such terms and provisions as such resolution or resolutions may provide, except that no bond shall mature more than forty (40) years from the date of its issue. The bonds shall bear interest at such rate or rates, shall be executed in such manner, shall be payable in such medium at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The authority may sell its bonds at public or private sale, at such price or prices as it shall determine.

(3) Any resolution or resolutions authorizing bonds, or any trust indenture or other instrument securing bonds, may contain provisions which shall be a part of the contract or contracts with the holders thereof, as to:

(a) Pledging and assigning all or any part of the revenues of the authority to secure the payment of the bonds, and the use and disposition of such revenues pending the payment of the bonds;

(b) Pledging and assigning all or any part of the assets of the authority including mortgages and obligations securing the same, to secure the payment of the bonds;

(c) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of bonds may be applied and limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(e) The procedure, if any, by which the terms of any contract with bondholders may be amended, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(f) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this chapter;

(g) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority to the holders of the bonds and providing for the rights and remedies of the holders of the bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(h) Any other matters, of like or different character, deemed necessary, desirable or appropriate by the authority in connection with the issuance of its bonds.

(4) Any pledge made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(5) Neither the directors of the authority nor any other person executing such bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

(6) The authority may from time to time purchase any of its outstanding bonds out of any moneys available to it for such purpose at such price or prices as the authority shall deem reasonable or necessary.

(7) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any bank or trust company organized under the laws of the United States or any state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be determined by the authority to be reasonable and necessary, including covenants setting forth the duties of the authority in relation to the exercise of its corporate powers, the custody, the safeguarding and application of all moneys, the events of default and the rights and remedies of the bondholders and the corporate trustee upon the occurrence of an event of default. The authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the authority. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(8) Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

[67-8915, added 2005, ch. 53, sec. 1, p. 201.]

67-8916. REFUNDING BONDS. (1) The authority may provide for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium thereon, any interest accrued or to accrue to the date of redemption of such bonds and for any additional corporate purpose of the authority. The issuance of such bonds, the maturities, and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor.

(2) Refunding bonds may be sold or exchanged for outstanding bonds issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Pending the application of the proceeds of any such refunding bonds, with any other available funds, to the payment of the principal, accrued interest, and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding bonds or in the trust agreement securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in such obligations as may be permitted for the defeasance of the outstanding bonds in the resolution or indenture under which they were issued.

[67-8916, added 2005, ch. 53, sec. 1, p. 203.]

67-8917. PAYMENT OF BONDS -- NONLIABILITY OF STATE. (1) Bonds issued by the authority shall not constitute or become an indebtedness, or a debt or liability of the state or any agency or subdivision of the state and neither the state nor any of its agencies or subdivisions shall be liable on such bonds nor shall the bonds constitute the giving, pledging or loaning of the faith and credit of the state or any agency or subdivision of the state, but shall be payable solely from the funds provided for their payment. The issuance of bonds under the provisions of this chapter shall not, directly, indirectly or contingently, obligate the state or any agency or subdivision of the state to levy or collect any form of taxes or assessments for their payment or to create any indebtedness payable out of taxes or assessments. Nothing in this chapter shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of the state of Idaho or authorize the authority to levy or collect taxes or assessments and all bonds issued by the authority pursuant to the provisions of this chapter are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor and are not a debt or liability of the state of Idaho.

(2) The state shall not in any event be liable for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

(3) All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter.

[67-8917, added 2005, ch. 53, sec. 1, p. 204.]

67-8918. STATE'S PLEDGE. (1) The state pledges to and agrees with the holders of any bonds issued under this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter, that the state will not limit, alter, restrict or impair the rights hereby vested in the authority to acquire, construct, reconstruct, maintain and operate any facility as defined in this chapter or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized and issued under this chapter, and with the parties who may enter into contracts with the authority pursuant to this chapter, or in any way impair the rights or remedies of the holders of such bonds or of such parties until the bonds, together with the interest thereon, are fully paid and discharged and such contracts are fully performed on the part of the authority.

(2) Nothing in this chapter precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds or those entering into such contracts with the authority.

(3) The authority is authorized to include this pledge and undertaking for the state in such bonds and in such contracts.

[67-8918, added 2005, ch. 53, sec. 1, p. 204.]

67-8919. FEES. All expenses of the authority incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter by participating utilities to the authority in the form of application fees, annual service, loan or administrative fees and other negotiated fees as between the authority and the participating utilities and no liability shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter, except that for the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided hereunder, the authority shall be empowered to borrow moneys as may be required for such necessary expenses of organization and operation. Such borrowed moneys shall be repaid within a reasonable time after the authority receives funds provided for under this chapter.

[67-8919, added 2005, ch. 53, sec. 1, p. 205.]

67-8920. EXEMPTION OF REAL PROPERTY OF AUTHORITY FROM LEVY AND SALE BY EXECUTION. All real property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the authority be a charge or lien upon its real property; provided however, that the provisions of this section shall not apply to or limit the right of bondholders to foreclose or otherwise enforce any mortgage or other security of the authority or the right of obligees and bondholders to pursue any remedies for the enforcement of any pledge or lien given by the authority on its rents, fees or revenues or the right of obligees or bondholders to pursue any remedies conferred upon the same pursuant to this chapter.

[67-8920, added 2005, ch. 53, sec. 1, p. 205.]

67-8921. ANNUAL REPORT. The authority shall submit to the governor and to the legislature within ninety (90) days after the end of its fiscal year a complete and detailed report setting forth:

- (1) Its operations and accomplishments;
- (2) An accounting of its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the authority for its operating and capital outlay purposes;
- (3) Its assets and liabilities at the end of its fiscal year, including the status of reserve, special or other funds;
- (4) A schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year; and
- (5) Any new or additional facility management and operation activities.

[67-8921, added 2005, ch. 53, sec. 1, p. 205; am. 2007, ch. 107, sec. 3, p. 312.]

67-8922. AUTHORITY OBLIGATIONS ARE LEGAL INVESTMENTS. (1) The bonds of the authority shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

(2) In addition to the investments permitted under [chapter 12, title 67](#), Idaho Code, and notwithstanding any limitations on investments contained in that chapter, the state treasurer is authorized and empowered to invest state funds or any other funds in his hands in fixed or variable rate bonds of the authority and to enter into agreements with the authority in connection with any such investment, so long as the term of the investment does not exceed thirty (30) years and the quality of the underlying credit, or the underlying credit as enhanced, is not less than investment grade.

[67-8922, added 2005, ch. 53, sec. 1, p. 206; am. 2007, ch. 107, sec. 4, p. 312.]

67-8923. CHAPTER NOT A LIMITATION OF POWERS. Neither this chapter nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state, and this chapter is cumulative to any such powers. This chapter does and shall be construed to provide a complete additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. This chapter is intended to provide full and exclusive authority for the issuance of bonds and the authority shall not be subject to any other state law applicable to the issuance of bonds, notes and other obligations by the state or its agencies or instrumentalities. Contracts for the construction and acquisition of any facilities undertaken pursuant to this chapter need not comply with the provisions of any other state law applicable to contracts for the construction and acquisition of state owned property. No proceedings, notice or approval shall be required for the issuance of any bonds by the authority or any instrument as security therefor, except as is provided in this chapter.

[67-8923, added 2005, ch. 53, sec. 1, p. 206.]

67-8924. CONSTITUTIONALITY. (1) Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent, that if any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and

the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(2) If any section, subdivision, paragraph, sentence, clause or provision of this chapter shall be unconstitutional or ineffective, in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid or ineffective.

[67-8924, added 2005, ch. 53, sec. 1, p. 206.]

67-8925. RENEWABLE ENERGY GENERATION PROJECTS. The authority may undertake any renewable energy generation project for the benefit of one (1) or more independent power producers and may issue its bonds to finance the cost thereof, all to the same extent and subject to the same provisions applicable to the undertaking and financing of other facilities for the benefit of one (1) or more participating utilities. In furtherance of the foregoing, an independent power producer shall be deemed to be a participating utility with respect to a renewable energy generation project for purposes of sections [67-8909](#), [67-8910](#) and [67-8911](#), Idaho Code.

[67-8925, added 2005, ch. 311, sec. 4, p. 969.]

67-8926. CONSERVATION MEASURES. (1) For purposes of this section:

(a) "Conservation" means a reduction in electric power consumption as a result of increases in the efficiency of energy use, production or distribution;

(b) "Conservation measure" means an action, property, facility, equipment, improvement, system or measure to promote conservation that provides a conservation resource that is acquired by a participating utility pursuant to the pacific northwest electric power planning and conservation act, 16 U.S.C. section 839 et seq., including, but not limited to, loans and grants to consumers for insulation, weatherization, increased system efficiency and waste energy recovery by direct application;

(c) "Conservation resource" means actual or planned reductions in electric demand or consumption as a result of one (1) or more conservation measures; and

(d) "Participating utility" means only a federal agency that is a participating utility described in section [67-8903](#)(8)(b), Idaho Code.

(2) The authority may, under such terms and conditions as are approved by the authority:

(a) Issue bonds to finance or refinance the cost of conservation measures, thereby giving rise to conservation resources that are acquired by a participating utility;

(b) Pledge as security for the bonds payments to be made by a participating utility for its acquisition of conservation resources or other payments to be received in connection with the conservation resources or the associated conservation measures; and

(c) Enter into contracts and agreements, including grant agreements, between or among the authority, a participating utility, any of the customers served by the participating utility and other persons or entities in connection with the acquisition of conservation resources by a participating utility, the financing or refinancing of conservation

measures, the funding, implementation, management or administration of conservation measures, or the administration of funds, including the proceeds of bonds and other moneys relating to conservation resources and conservation measures.

(3) Bonds issued pursuant to this section shall be issued in accordance with sections [67-8915](#) through [67-8918](#), Idaho Code, and shall be subject to all provisions of this act applicable to bonds issued by the authority; provided that:

(a) Conservation resources and conservation measures shall not be considered to be a facility, other than for purposes of section [67-8903](#)(8), Idaho Code; and

(b) The authority shall not own conservation measures, which may be owned by or on behalf of any other person or entity.

(4) It is hereby determined and declared that all actions taken by the authority pursuant to this section are in furtherance of the purposes of this act, and will promote and achieve conservation of natural resources, efficiencies and economies of scale. This section is supplemental to the other provisions of this act and shall be liberally construed to effectuate the financing of conservation measures by the authority.

[67-8926, added 2015, ch. 59, sec. 3, p. 163.]