

TITLE 70
WATERCOURSES AND PORT DISTRICTS

CHAPTER 21
IDAHO PORT DISTRICT ECONOMIC DEVELOPMENT FINANCING ACT

70-2101. SHORT TITLE. This act may be referred to and cited as the "Idaho Port District Economic Development Financing Act."

[70-2101, added 1981, ch. 228, sec. 1, p. 458.]

70-2102. DECLARATION OF NECESSITY AND PURPOSE -- LIBERAL CONSTRUCTION. (1) The legislature of the state of Idaho hereby finds:

(a) That lack of sufficient employment opportunities in port districts seriously endangers the public health and welfare;

(b) That there is a need to encourage the acquisition, construction, installation or equipping of economic development facilities which will increase or maintain employment opportunities in port districts;

(c) That it is desirable to provide methods of financing the costs of acquiring, constructing, installing and equipping of economic development facilities which will increase or maintain employment opportunities in port districts; and

(d) That the method of financing provided in this act is therefore in the public interest and serves a public purpose in protecting and promoting the health and welfare of the citizens of this state by encouraging the acquisition, construction, installation or equipping of economic development facilities to increase or maintain employment opportunities in port districts.

(2) It is the purpose of this act to authorize port districts to finance, acquire, construct, install, equip, own, lease and sell economic development facilities located in port districts to be financed for, or to be sold, leased or otherwise disposed of to persons other than municipal corporations or other political subdivisions, to the end that port districts may be able to promote the health and welfare of the people of this state; it is not intended by this act that any port district shall itself be authorized to operate any industrial or commercial enterprise or any such economic development facilities.

(3) This act shall be liberally construed to accomplish the intentions expressed herein.

[70-2102, added 1981, ch. 228, sec. 1, p. 458.]

70-2103. DEFINITIONS. In this act, unless the context otherwise clearly requires, the terms used herein shall have the meanings ascribed to them as follows:

(1) "Commission" means the port commission of any port district.

(2) "Person" means any individual, partnership, copartnership, firm, company, corporation (including public utilities), association, joint stock company, trust, estate, or any other legal entity, or their legal representatives, agents or assigns, other than municipal corporations or other political subdivisions.

(3) "Port district" means any port district of the state of Idaho.

(4) "Finance" or "financing" means the issuing of revenue bonds pursuant to authority herein contained by a port district for the purpose of us-

ing substantially all of the proceeds to pay all or any part of project costs or to reimburse any person for all or any part of project costs; provided, that title to or in any project so financed may at all times remain in a person other than the port district and in such case the revenue bonds of the port district shall be secured by a pledge of one or more notes, debentures, bonds or other obligations of such person.

(5) "Project" includes economic development facilities consisting of any properties, real or personal including, without limitation, any land, interest in land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment or any combination thereof, and all real and personal property deemed necessary therewith, located within the port district, used or useful in connection with a revenue-producing enterprise, having to do with or the end purpose of which is increasing or maintaining employment in the port district, and compatible with the purposes for which the port district was established.

(6) "Project costs" as applied to any project financed under the provisions of this act mean and include all or any part of the sum total of all reasonable or necessary costs incidental to the acquisition, construction, installation and equipping of such project including, without limitation, the cost of studies and surveys; plans, specifications, architectural and engineering services; legal, organization, marketing or other special services; financing, acquisition, demolition, construction, equipment and site development of new and rehabilitated buildings; rehabilitation, reconstruction, repair or remodeling of existing buildings and all other necessary and incidental expenses including an initial principal and interest reserve together with interest on revenue bonds issued to finance such project to a date six (6) months subsequent to the estimated date of completion.

[70-2103, added 1981, ch. 228, sec. 1, p. 458.]

70-2104. POWERS. Each port district shall have the following powers together with all powers incidental thereto or necessary for the performance thereof:

(1) To determine the location of any project, whether upon real estate owned by the port district or by any person, and the manner of construction of any project to be financed under the provisions of this act, and to acquire, construct, install, equip, own, finance, lease, sell, mortgage and dispose of the same, to enter into contracts for any and all of such purposes, to designate a person as its agent to determine the location and manner of construction of a project undertaken by such person under the provisions of this act and as agent of the port district, to acquire, construct, install, equip, own, lease, sell, mortgage and dispose of the same and to enter into contracts for any and all of such purposes;

(2) To lease or sell a project to any person upon such terms and conditions as the commission shall deem proper, and to charge and collect rent or other payments therefor and to terminate any such lease or sales agreement upon the failure of the lessee or other contracting party to comply with any of the obligations thereof; and to include in any such lease, if desired, provisions that the lessee thereof shall have options to renew the term of the lease for such period or periods and at such rent as shall be determined by the commission and/or to purchase such project for a nominal amount or otherwise or that at or prior to the payment of all of the revenue bonds issued by the port district for the financing of such project the port district

may convey all or any portion of such project to the lessee or lessees thereof with or without consideration;

(3) To issue revenue bonds to finance the acquisition, construction, installation and equipping of a project and to refund such bonds, all as provided for in this act;

(4) Generally to fix and revise from time to time and charge and collect rates, rents, fees and charges for the use of and services furnished or to be furnished by any project or any portion thereof and to contract with any person or other body public or private in respect thereof;

(5) To employ 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;

(6) To refund outstanding obligations incurred by any person to finance the cost of a project including obligations incurred for projects undertaken and completed prior to or after the enactment of this act when the commission finds that such financing is in the public interest;

(7) To receive and to pledge as security for the payment of any bonds issued hereunder, any lease, purchase agreement, financing agreement, note, debenture, bond or other obligation by or on behalf of any person, and any revenues and receipts payable to the port district thereunder;

(8) To make loans to any person for the purpose of paying or reimbursing project costs in accordance with an agreement between the port district and such person; and

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

No port district shall have power under the provisions of this act to operate any project as a business other than as a lessor or vendor.

[70-2104, added 1981, ch. 228, sec. 1, p. 459.]

70-2105. CONFLICT OF INTEREST. In the event a member of a commission is the person or is an officer, partner, employee, stockholder or beneficiary, in the case of a trust, of the person with whom the port district proposes to contract under the provisions of this act with respect to the acquisition and financing of a project and the issuance of revenue bonds, such member shall disclose such status and interest to the commission at a public meeting and shall abstain from voting on all matters before the commission related thereto.

[70-2105, added 1981, ch. 228, sec. 1, p. 460.]

70-2106. BONDS. All revenue bonds authorized to be issued hereunder may be issued as serial bonds or as term bonds or a combination of both types. All revenue bonds so issued shall be payable solely out of the revenues and receipts derived by the port district from the project provided with the proceeds thereof as may be designated in the proceedings of the commission under which the revenue bonds shall be authorized to be issued, provided that such revenue bonds shall not be secured by the full faith and credit or the taxing power of the state of Idaho, any port district or any other political subdivision of the state of Idaho, and such limitation shall be plainly printed on the face of each such revenue bond. Such revenue bonds may be executed and delivered by the port district at any time and from time to time in such amounts, may be in such form and denominations and of such terms and

maturities, may be in fully registered form or in bearer form registrable either as to principal or interest or both, may bear such conversion privileges and be payable in such installments and at such time or times not exceeding forty (40) years from the date thereof, may be payable at such time or times and at such place or places whether within or without the state of Idaho and evidenced in such manner, may bear interest at such rate or rates per annum without regard to any interest rate limitation appearing in any other law, may be executed by the manual or facsimile signatures of such officers of the port district, and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the commission under which the revenue bonds shall be authorized to be issued. If deemed advisable by the commission there may be retained in the proceedings under which any such revenue bonds are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings, but nothing herein contained shall be construed to confer on any port district the right or option to redeem any such revenue bonds except as may be provided in the proceedings under which they shall be issued. Any revenue bonds issued hereunder may be sold at public or private sale for such price and in such manner and from time to time as may be determined by the commission, and the port district may pay, but solely and only from the proceeds of any such revenue bonds, all expenses, premiums, and commissions which the commission may deem necessary or advantageous in connection with the issuance thereof. Issuance by any port district of one or more series of revenue bonds for one or more purposes under this act shall not preclude it from issuing other revenue bonds in connection with the same project or any other project or for any other purpose hereunder, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge made for any prior issue of revenue bonds. Any revenue bonds issued hereunder at any time outstanding may at any time and from time to time be refunded by the issuance of refunding bonds in such amount as the commission may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any premiums, commissions, service fees and other expenses necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same project or separate projects or for any other purpose hereunder, and regardless of whether or not the revenue bonds proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise. All such revenue bonds and the interest coupons applicable thereto, if any, are hereby made and shall be construed to be negotiable instruments.

[70-2106, added 1981, ch. 228, sec. 1, p. 460.]

70-2107. PUBLICATION OF PROCEEDINGS -- CONTEST PERIOD. The resolution authorizing the issuance of any revenue bonds hereunder and the execution of an indenture as security therefor shall be published one (1) time in a newspaper of general circulation in the port district. Any such indenture, or other instrument authorized in such resolution to be executed, may be incor-

porated as an exhibit to such resolution but need not be published as part of the resolution. 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 revenue bonds, or the legality of such resolution and its provisions or of the revenue bonds to be issued pursuant thereto and the provisions securing the revenue bonds. After the expiration of such thirty (30) day period no one shall have any right of action to contest the validity of the revenue bonds or of such proceedings or of such resolution or the validity of the pledges and covenants made in such proceedings and resolution and the revenue bonds 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.

[70-2107, added 1981, ch. 228, sec. 1, p. 462.]

70-2108. SECURITY FOR REVENUE BONDS. The principal, interest and premium, if any, on any revenue bonds issued hereunder shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable and may also be payable out of proceeds from the sale of the project acquired with proceeds of such revenue bonds, but shall not be secured by the full faith and credit or the taxing power of the state of Idaho, any port district or any other political subdivision of the state of Idaho. The resolution under which the revenue bonds are authorized to be issued and any indenture executed as security for the revenue bonds may contain any agreements and provisions respecting the maintenance of the properties covered thereby, the fixing and collection of rents for any portions thereof leased by the port district to others, the creation and maintenance of special funds, and the rights and remedies available in the event of default, including the designation of a trustee, which may be a bank or trust company, the principal place of business of which may be within or without the state of Idaho, all as the commission shall deem advisable and not in conflict with the provisions hereof. The pledge of the revenues and receipts to pay the principal, interest and premium, if any, on revenue bonds issued hereunder shall be valid and binding from the time when the agreement or the proceedings creating such pledge became binding upon the port district. The revenues and receipts so pledged and thereafter received by the port district shall immediately be subject to the lien of such pledge without any physical delivery of any lease, purchase agreement, financing agreement, note, debenture, bond or other obligation pursuant to which such revenues and receipts are payable to the port district, or any other act except that the proceedings or agreement by which such pledge is created shall be recorded in the records of the port district. The proceedings or agreement by which such pledge is created or a financing statement need not be filed or recorded under the uniform commercial code, or otherwise, except in the records of the port district as provided above. The lien of any such pledge shall be valid and binding and shall have priority as against all parties having claims of any kind in tort, contract or otherwise against the port district, irrespective of whether such parties have notice thereof. Each pledge and agreement made for the benefit or security of any of the revenue bonds issued hereunder shall continue effective until the principal, interest and premium, if any, on the revenue bonds for the benefit of which the same were made shall have been fully paid or provision for such payment duly made. In the event of default in such payment or in any agreement of the port

district made as a part of the contract under which the revenue bonds were issued, whether contained in the proceedings authorizing the revenue bonds or in any indenture executed as security therefor, said payment or agreement may be enforced by suit, mandamus or the appointment of a receiver in equity, or any one or more of said remedies.

[70-2108, added 1981, ch. 228, sec. 1, p. 462.]

70-2109. PAYMENT OF REVENUE BONDS -- NONLIABILITY OF STATE AND POLITICAL SUBDIVISIONS. Revenue bonds passed under the provisions of this act shall not be deemed to constitute a debt or liability of the state of Idaho, any port district or any other political subdivision of the state of Idaho, but shall be payable solely from the funds herein provided therefor. The issuance of revenue bonds under the provisions of this act shall not, directly or indirectly or contingently, obligate the state of Idaho, any port district or any other political subdivision of the state of Idaho to levy any form of taxation therefor or to make any appropriation for their payment. Nothing in this act shall be construed to authorize the creation of a debt of the state of Idaho or of the port district authorizing the issuance of such revenue bonds within the meaning of the constitution or statutes of the state of Idaho. All revenue bonds issued pursuant to the provisions of this act 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 indenture executed as security therefor, and that such revenue bonds are not secured by the full faith and credit or the taxing power of the state of Idaho, any port district or any other political subdivision of the state of Idaho. Neither the state nor the port district authorizing the issuance thereof shall in any event be liable for the payment of the principal, interest or premium, if any, on any such revenue bonds. No breach of any such pledge, obligation or agreement may impose any pecuniary liability upon the state or the port district authorizing the issuance thereof or any charge upon their general credit or against their taxing power.

[70-2109, added 1981, ch. 228, sec. 1, p. 463.]

70-2110. TAXATION. To the extent permitted by the constitution, the property acquired by any port district pursuant to this act is exempt from taxation, except that during any period that such property is leased by a port district under a lease, or title thereto is retained by a port district under an installment purchase contract, taxes shall be payable to the same extent as if it were owned by such lessee or installment purchaser and such taxes shall be paid by such lessee or installment purchaser.

[70-2110, added 1981, ch. 228, sec. 1, p. 464.]

70-2111. CONVEYANCE OF TITLE TO LESSEE. At or prior to the time the principal, interest and premium, if any, on any revenue bonds issued hereunder to provide a particular project have been fully paid, the port district may execute such deeds and conveyances as are necessary and required to convey its right, title and interest in such project to any person, provided that if such conveyance is made prior to when the revenue bonds are fully paid, the port district has determined that adequate provision has been made

for the payment of the principal, interest and premium, if any, on the bonds as they become due.

[70-2111, added 1981, ch. 228, sec. 1, p. 464.]

70-2112. POWERS NOT RESTRICTED -- LAW COMPLETE IN ITSELF. Neither this act nor anything herein contained shall be construed as a restriction or limitation upon any powers which any port district might otherwise have under any laws of the state of Idaho, but shall be construed as cumulative of any such powers. No proceedings, notice or approval shall be required for the issuance of any revenue bonds or any instrument as security therefor, except that no revenue bonds shall be issued hereunder until the commission shall by resolution adopted by a majority of the commission determine that the project to be financed with the proceeds of said revenue bonds will increase or maintain employment opportunities in the port district issuing said revenue bonds. The resolution containing the declaration of public interest or necessity herein required, shall recite the objects and purposes for which the revenue bonds are proposed to be issued, the amount of principal of the revenue bonds, and the source of revenues pledged to the payment of said bonds.

[70-2112. added 1981, ch. 228, sec. 1, p. 464.]

70-2113. INVESTMENT OF FUNDS. Each port district issuing revenue bonds hereunder may invest any funds received in connection therewith in bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of the United States of America; in certificates of deposit or time deposits constituting direct obligations of any bank as defined by the Idaho bank act, provided, however, that investments may be made only in those certificates of deposit or time deposits in banks which are insured by the federal deposit insurance corporation, if then in existence; or in short term discount obligations of the federal national mortgage association. Any such securities may be purchased at the offering or market price thereof at the time of such purchase.

[70-2113, added 1981, ch. 228, sec. 1, p. 464.]

70-2114. BONDS ELIGIBLE FOR INVESTMENT. The state of Idaho and all counties, cities, port districts and other municipal corporations, political subdivisions and public bodies, and public officers of any thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any revenue bonds issued pursuant to this act.

[70-2114, added 1981, ch. 228, sec. 1, p. 464.]

70-2115. EXEMPTION FROM PUBLIC BUILDINGS CONSTRUCTION AND BIDDING REQUIREMENTS. A project is not subject to any requirements relating to public buildings, structures, grounds, works, or improvements imposed by the Idaho Code, or any other similar requirements which may be lawfully waived by this section, and any requirement of competitive bidding or other restriction im-

posed on the procedure for award of contracts for such purpose or the lease, sale, or other disposition of property of any port district is not applicable to any action taken under authority of this act.

[70-2115, added 1981, ch. 228, sec. 1, p. 465.]

70-2116. TAX EXEMPTION. Any bonds issued under the provisions of this act, their transfer, and income therefrom, including any interest paid or payable thereon and profit made on the sale thereof, shall be exempt at all times from all taxation in the state of Idaho.

[70-2116, added 1981, ch. 228, sec. 1, p. 465.]

70-2117. SEVERABILITY. If any one or more sections or provisions of this act, or the application thereof to any person (including municipal corporations and political subdivisions) or circumstance, shall ever be held by any court of competent jurisdiction to be invalid, the remaining provisions of this act and the application thereof to persons (including municipal corporations and political subdivisions) or circumstances other than those to which it is held to be invalid shall not be affected thereby, it being the intention of the legislature to enact the remaining provisions of this act notwithstanding such invalidity.

[70-2117, added 1981, ch. 228, sec. 1, p. 465.]