

CHAPTER 61-37 IRRIGATION DISTRICT FINANCE PROGRAM

61-37-01. Definitions.

In this chapter, unless the context or subject matter requires otherwise:

1. "Bond" means an evidence of indebtedness of the program issued by the commission.
2. "Bondholder" or any similar term, when used with reference to a bond of the program, means any person who is the bearer of any outstanding bond of the program.
3. "Commission" means the state water commission.
4. "Fully marketable form" means a municipal security duly executed and accompanied by an approving legal opinion of a counsel whose opinions are generally accepted by the purchasers of municipal securities.
5. "Municipal security" means an evidence of indebtedness issued by an irrigation district.
6. "Program" means the North Dakota irrigation district finance program established by the commission under this chapter.
7. "Required debt service reserve" means the amount required to be on deposit in the reserve fund.
8. "Reserve fund" means the program reserve fund or funds.
9. "Revenues" means any or all fees, charges, moneys, profits, payments of principal or interest on municipal securities, investment income, revenues, appropriations, liquidation of security, and all other income derived or to be derived by the commission under the program.

61-37-02. Creation of program.

The North Dakota irrigation district finance program is established under the operation, management, and control of the commission. The program is constituted as an instrumentality of the state exercising public and governmental functions.

61-37-03. Participation voluntary - Agreement to participate.

Participation in the program by an irrigation district is voluntary and no irrigation district may be required to sell its municipal security issues to the program. Notwithstanding any other law, an irrigation district that wishes to participate in the program may enter into an agreement with the program for the purchase by the program of a municipal security issue of the irrigation district, including the purchase by the program of an issue of refunding municipal securities, which may be required by agreement with the program to be issued at a rate of interest higher or lower than that of the municipal security issue to be refunded.

61-37-04. Guarantee, lending, and borrowing powers.

The program may guarantee municipal securities issued by an irrigation district. The program may lend money to irrigation districts through the purchase and holding of municipal securities which are eligible for purchase by the program, under this chapter, according to the terms of a guarantee by the program for the payment of debt service on a municipal security of an irrigation district. However, the program may lend money to irrigation districts through the purchase and holding of municipal securities issued by the irrigation district, without regard to the initial issuance of a guarantee of the principal amount and interest payable on the municipal securities issued, if the commission approves a resolution that authorizes the program to purchase and hold those municipal securities. The authorizing resolution must state that the commission has determined that private bond markets will not be responsive to the needs of the issuing irrigation district concerning the municipal securities or that the municipal securities cannot be sold through private bond markets without the guarantee of the program. The program may hold municipal securities acquired under this chapter for any length of time necessary. The program, for the purposes authorized by this chapter, may issue its bonds payable solely from the revenues available to the program which are authorized or pledged for payment of program bonds and obligations, and assist irrigation districts as provided in this

chapter. Bonds or guarantees of the program issued under this chapter are not a debt or liability of the state and do not constitute a loan of the credit of the state, create any debt or liability on behalf of the state, or constitute a pledge of the faith and credit of the state. The bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the program is obligated to pay the principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bonds. Specific funds pledged to fulfill the program's obligations are obligations of the program. All expenses incurred in carrying out this chapter are payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter may be construed to authorize the program to incur any indebtedness or liability on behalf of or payable by the state. Guarantees or bonds issued under this chapter are in the public interest and are not subject to the limitation contained in subsection 2 of section 61-02-46.

61-37-05. How bonds or guarantees may be secured.

A bond or guarantee issued by the program may be secured by works or lands and the income derived from those works or lands.

61-37-06. Powers.

The program has the following powers:

1. To sue and be sued.
2. To make and enforce bylaws and rules for the conduct of its affairs and business and for use of its services.
3. To acquire, hold, use, and dispose of its income, revenue, funds, and moneys in accordance with law.
4. To acquire, rent, lease, hold, use, and dispose of other personal property for its purposes.
5. To borrow money and to issue its negotiable bonds or notes and to provide for and secure their payment and to provide for the rights of the holders, and to purchase, hold, and dispose of any of its bonds and obligations.
6. To fix, revise, charge, and collect fees and charges for the use of its services or facilities.
7. To perform any acts and do all things authorized by this chapter, through its officers, agents, or employees, or by contracts with any person.
8. To make and enforce all contracts necessary or desirable for the program or pertaining to any loan to a political subdivision or any purchase or sale of municipal securities or other investments or to the performance of its duties and execution of its powers under this chapter.
9. To purchase or hold municipal securities of irrigation districts at the prices and in the manner deemed advisable by the program and to sell municipal securities acquired or held by it in the manner deemed advisable by the program.
10. To invest any funds or moneys of the program not then required for loans to irrigation districts and for the purchase of municipal securities in the same manner as permitted for the investment of funds belonging to the state or the Bank of North Dakota.
11. To fix and prescribe any form of application or procedure to be required of an irrigation district for the purpose of any guarantee, loan, or the purchase of its municipal securities, and to fix the terms and conditions of any guarantee, loan, or purchase and to enter into agreement with irrigation districts with respect to any such guarantee, loan, or purchase.
12. To consider the need, desirability, or eligibility of a guarantee or loan, the ability of an irrigation district to secure borrowed money from other sources, and the costs of that borrowing without program involvement.
13. To impose and collect charges from an irrigation district for its costs and services in review or consideration of any proposed guarantee or loan to an irrigation district or purchase of municipal securities of an irrigation district, and to impose and collect

charges whether or not a guarantee or loan has been made or municipal securities have been guaranteed or purchased.

14. To fix and establish any and all terms and provisions with respect to any guarantee or purchase of municipal securities by the program, including dates and maturities of bonds, provisions as to redemption or payment prior to maturity, and any and all other matters necessary or advisable in the judgment of the program.
15. To procure insurance against any losses in connection with its property, operations, or assets in the amounts and from the insurers as necessary to pay the premiums on the insurance.
16. To the extent permitted under its contracts with the holders of bonds of the program, to consent to any modification with respect to rates of interest, time, and payment of any installment of principal or interest, security, or any other term of bond, contract, or agreement of any kind to which the program is a party.
17. To do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter.

61-37-07. Guarantee of the program.

A guarantee by the program of municipal securities of an irrigation district must be authorized by resolution of the commission and must be evidenced by a written agreement approved by the commission.

61-37-08. Bonds of the program.

Bonds of the program must be authorized by resolution of the commission and may be issued in the form, with dates, interest rates, denominations, rights of conversion, registration, priority of payment, manner, location, and form of payment, terms of redemption, at public or private sale, and at the time and price determined by the commission to be in the best interest of the program.

61-37-09. Pledges.

Any pledge of revenue made by the commission as security for a program guarantee or program bonds is valid and binding from the time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the program are immediately subject to the lien of the pledge, without any physical delivery or further act, and the lien of any pledge is valid and binding against all parties having claims of any kind against the program, regardless of whether the parties have notice. Neither the resolution nor any other instrument by which a pledge is created must be filed or recorded, except in the records of the program.

61-37-10. Reserve fund.

1. The program shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited by terms of any contract between the program and its bondholders or any resolution of the program with respect to the proceeds of bonds, any other moneys or funds of the program which are deposited by the program, any contractual right to the receipt of moneys by the program for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the program only for the purposes of the fund from any other source. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as they become due and payable and for the retirement of bonds, including payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity, and for the payment of principal and interest on municipal securities guaranteed by the program. Moneys in the reserve fund may not be withdrawn if the withdrawal would reduce the amount in the reserve fund to less than the required debt service reserve, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable, sinking fund payments, the

retirement of bonds in accordance with the terms of any contract between the program and its bondholders, the payment of principal and interest on municipal securities of an irrigation district for which a guarantee has been issued by the program, and for the payments on account of which interest or principal or sinking fund payments or retirement of bonds or execution of a guarantee, other moneys of the program are not then available in accordance with the terms of the contract. The reserve fund may not be used for the payment of a guarantee by the program unless the commission has determined that bonds of the program cannot be issued under acceptable terms for the payment of the guarantee, or the payment of the guarantee will not reduce the reserve fund to an amount less than the required debt service reserve. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the program and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds, and sinking fund payments required by the terms of any contracts to sinking funds established for the payment or redemption of the bonds.

2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because not restricting the yield may cause the bonds to be taxable under the Internal Revenue Code, then, at the discretion of the program, no reserve fund need be established prior to the issuance of bonds, the reserve fund need not be funded to the levels required by this section, or an existing reserve fund may be reduced.
3. No bonds may be issued by the program unless there is in the reserve fund the required debt service reserve for all bonds then issued and outstanding and for the bonds to be issued. Nothing in this chapter prevents the program from satisfying this requirement by depositing upon issuance so much of the proceeds of the bonds to be issued, as is needed to achieve the required debt service reserve. The program may, at any time, issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet higher or additional reserves as may be fixed by the program.
4. In order to ensure maintenance of the required debt service reserve, the legislative assembly shall appropriate and deposit in the reserve fund the amount certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve, or maintain a reserve fund established by the commission under this chapter and required according to the terms of a guarantee issued by the program. However, the commission may approve a resolution for the issuance of bonds, as provided by this chapter, which states in substance that this subsection is not applicable to the required debt service reserve for bonds issued under the resolution.
5. If the maturity of a series of bonds of the program is three years or less from the date of issuance of the bonds, the program may determine that no reserve fund need be established for that respective series of bonds, or that it may be established in an amount less than the required debt service reserve. If such a determination is made, holders of the respective series of bonds may have no interest in or claim on existing reserve funds established for the security of the holders of previously issued program bonds and may have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the program.

61-37-11. Additional reserves and funds.

The program may establish additional reserves, funds, or accounts as it deems necessary to further the program or to comply with any agreement made by, or any resolution of, the program.

61-37-12. Personal liability - Purchase of bonds - Bonds as legal investments - Security.

1. Neither a member of the commission nor any person executing bonds issued under this chapter is liable personally on any bonds by reason of the issuance of those bonds.
2. The program has the power to purchase bonds of the program out of any available funds or moneys of the program. The program may hold, cancel, or resell bonds or notes, subject to any agreements with holders of its bonds.
3. Notwithstanding any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, 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 bonds issued by the program pursuant to this chapter.
4. The bonds are authorized security for any and all public deposits.

61-37-13. Tax exemptions - Exemption of property from execution sale.

1. All property of the program and all bonds issued under this chapter are deemed to be serving essential public and governmental purposes and the property and the bonds issued, their transfer and their income, including any profits made on their sale, are exempt from all state, county, and municipal taxes.
2. All property of the program is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the property, nor may any judgment against the program be a charge or lien upon its property; provided, that nothing contained in this chapter applies to or limits the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the program on its revenues. Any action or proceeding in any court to set aside a resolution authorizing the issuance of bonds by the program under this chapter or to obtain any relief upon the ground that a resolution is invalid must be commenced within ten days after the adoption of that resolution by the commission. After the expiration of that period of limitation, no claim for relief or defense founded upon the invalidity of the resolution or any of its provisions may be asserted, nor may the validity of the resolution or any of its provisions be open to question in any court on any ground whatsoever.

61-37-14. Insurance or guaranty.

The program is authorized and empowered to obtain from any department or agency of the United States or from nongovernmental insurer any insurance or guaranty, or from a financial institution a letter of credit to the extent the insurance, guaranty, or letter of credit available now or in the future for the payment or repayment of, interest or principal in whole or in part, on any bonds issued by the program, or on any municipal securities purchased or held by the program, or on any guarantee issued by the program, pursuant to this chapter; and to enter into any agreement or contract with respect to any insurance or guaranty, or letter of credit, and pay any required fee, unless doing so would impair or interfere with the ability of the program to fulfill the terms of any agreement made with the holders of its bonds or guarantees.

61-37-15. Remedies on default of municipal securities.

In the event of a default by an irrigation district in the payment of interest on or principal of any municipal securities owned or held by the program, the program may proceed to enforce payment, pursuant to law, of the interest or principal or other amount then due and payable.

61-37-16. Form of municipal securities and investments.

All municipal securities held by the program as permitted or provided for under this chapter must at all times be purchased and held in fully marketable form, subject to provision for any

registration in the name of the program. All municipal securities at any time purchased, held, or owned by the program must, upon delivery to the program, be in fully marketable form and accompanied by the documentation required from time to time by the program.

61-37-17. Presumption of validity.

After issuance, all bonds of the program are conclusively presumed to be fully authorized and issued under the laws of this state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the program.

61-37-18. Protection of service during term of guarantee or loan.

1. The service provided or made available by an irrigation district through the construction or acquisition of an improvement, or the improvement revenues, financed in whole or in part with a guarantee or loan to the irrigation district from the program or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the irrigation district within the boundaries of any other irrigation district, or by the granting of any private franchise for similar service within the area served by the irrigation district during the term of the guarantee or loan. The irrigation district providing the service may not be required to obtain or secure any franchise, license, or permit, as a condition of continuing to serve the area if it is included within the boundaries of another irrigation district during the term of the guarantee or loan.
2. Under the circumstances described in subsection 1, nothing prevents the two irrigation districts and the program or other state agency or enterprise from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the program or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the program issued to fund the loan.