

**73-10-26 Definitions -- Construction of a project by board -- Ownership and operation -- Transfer of a water right -- Purchase of a bond from an Indian tribe.**

- (1) As used in this section:
  - (a) "Board" means the Board of Water Resources created in Section 73-10-1.5.
  - (b) "Bond" means:
    - (i) a written obligation to repay borrowed money, whether denominated a bond, note, warrant, certificate of indebtedness, or otherwise; and
    - (ii) a lease agreement, installment purchase agreement, or other agreement that includes an obligation to pay money.
  - (c) "Division" means the Division of Water Resources created in Section 73-10-18.
  - (d) "Project" means a facility, works, or other real or personal property that:
    - (i) conserves or develops the water or hydroelectric power resources of the state; or
    - (ii) controls flooding.
- (2)
  - (a) The board, through the division, may construct a project.
  - (b) An electric public utility or a municipality of the state may construct an electrical facility incidental to a project.
  - (c) If the state constructs the electrical facility, the state must first offer the power and energy derived from the hydroelectric generating project to an electric public utility or municipality in the state for distribution to electric consumers.
- (3)
  - (a) The board, through the division, may consider a flood control project in the same manner and apply the same procedures and rules as the board would consider or apply to another project within its statutory authority.
  - (b) If funds controlled by the board are to be used for the flood control project, the planning of the project is subject to the review of the board.
  - (c) If the flood control project is authorized for construction, the plans, specifications, and construction supervision shall be undertaken as prescribed by the board.
- (4) The board may enter into an agreement for the construction or financing of a project financed with money from the Water Resources Conservation and Development Fund with another state, the federal government, a political subdivision of the state, an Indian tribe, or a private corporation.
- (5)
  - (a)
    - (i) Except as provided by Subsections (5)(a)(ii) and (b), title to a project, including a water right, constructed or acquired with money from the Water Resources Conservation and Development Fund is vested in the state.
    - (ii) The board may take a bond legally issued by the project sponsor in lieu of or in addition to taking title to the project and water right.
  - (b) If an Indian tribe sponsors a project, the board may take a bond legally issued by the tribe, to the extent that federal law allows the tribe to issue a bond, in lieu of taking title to the project and water right, if the tribe:
    - (i) waives the defense of sovereign immunity regarding the bond issue in an action arising out of the issuance or default under the bond; and
    - (ii) agrees in writing that it will not challenge state court jurisdiction over any litigation resulting from default on its obligation in the transaction.
  - (c) Before entering into an agreement with or purchasing a bond from a tribe, the board shall:

- (i) require that the tribe obtain the written approval of the Secretary of the United States Department of the Interior or the secretary's designee to all aspects of the agreement or bond;
  - (ii) obtain a legal opinion from a recognized bond counsel certifying:
    - (A) that the tribe has legal authority to:
      - (I) enter into the agreement; or
      - (II) issue the bond;
    - (B) that the pledge of an asset or revenue by the tribe as security for the payments under the agreement or bond is a valid and legally enforceable pledge; and
    - (C) that the agreement or bond may be enforced in a court of general jurisdiction in the state; and
  - (iii) determine whether it has sufficient legal recourse against the tribe and against a security pledged by the tribe in the event of default.
- (6)
- (a) The board may own and operate a project if:
    - (i) the project is consistent with the plan adopted by the board; and
    - (ii) in the opinion of the board the ownership and operation of the project by the board is in the best interest of the state.
  - (b) In the ownership and operation of a project referred to in Subsection (6)(a), the board shall use a water right held in its name under authority of Section 73-10-19.
  - (c)
    - (i) The board may enter into a contract with another state, the federal government, a political subdivision of the state, an Indian tribe, or a private corporation for operation, maintenance, and administration of the project.
    - (ii) The board may pay the contracting agency a reasonable sum for operation, maintenance, and administration of the project.
- (7)
- (a) The board may also:
    - (i) enter into an agreement in which title to a project is conveyed to a cooperating project sponsor after charges assessed against the project have been paid to the state in accordance with the terms of the construction agreement or amendment to the agreement;
    - (ii) make the water and power available to the state's citizens who are, in the board's opinion, best able to use the water and power:
      - (A) that is conserved by the project; and
      - (B) to which the state has title;
    - (iii) enter into a contract for the use of the water and power with an individual or an organization composed of the state's citizens; and
    - (iv) assess a reasonable fee against a person using water and power from a project.
  - (b) The amount collected over the amount to be returned to the state for payment of the principal, interest, and maintenance of the project shall be deposited in the Water Resources Conservation and Development Fund as established by Section 73-10-24.
- (8) The board shall retain ownership of a water right used for a project owned and operated by the board unless:
- (a) the water right originally held by a cooperating project sponsor is conveyed to the project sponsor upon payment to the state of charges assessed against the project in accordance with the terms of the construction agreement or an amendment to the agreement; or

- (b) the board transfers an unperfected water right held by the board that is not being used in a state-owned project to a political subdivision of the state, an agency of the federal government, or a nonprofit water company.
- (9) A transfer of the board's water right shall be made to the entity that is best able to use the water right for the benefit of the state's citizens.

Amended by Chapter 267, 2008 General Session