

CHAPTER 61-35 WATER DISTRICTS

61-35-01. Definitions.

As used in this chapter:

1. "Auditor" means the county auditor.
2. "Benefit unit" means the fee each member pays, for each service that is planned to be connected to the water system, for the privilege of using the district's facilities.
3. "Board" means the board of directors of a district.
4. "Bond" means any revenue bond, refunding bond, or improvement bond, or other evidence of indebtedness of a district issued under this chapter.
5. "Director" means a member of the board of directors.
6. "District" means a water district organized under this chapter.
7. "Federal agency" includes the United States, the president of the United States, or any agency, instrumentality, or corporation of the United States which has been or may be designated or created by or pursuant to any act or acts or joint resolutions of the Congress of the United States or which may be owned or controlled, directly or indirectly, by the United States.
8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the registered owner of any outstanding revenue bond, improvement bond, or refunding bonds.
9. "Law" means any statute of this state.
10. "Member" means an owner of real property that is located within a district, the tenant of the real property, or another person acting for the owner with the owner's written consent.
11. "Participating member" means a member who has subscribed to and paid the established fee for at least one benefit unit in a district, in the manner provided by this chapter.
12. "Project" means any work, undertaking, enterprise, or any combination of two or more projects which a district is authorized to construct and from which the district has derived or may derive revenues. "Project" includes all improvements, betterments, extensions, and replacements of work, undertaking, or enterprises, and all appurtenances, facilities, easements, lands, rights in land, water rights, contract rights, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connections, other sewer and water mains, filtration works, pumping stations, equipment, franchises, and structures in connection with or incidental to any work, undertaking, or enterprise a district is authorized to construct.
13. "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds from the sale of refunding bonds, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improvement of a project and payable solely from all or any part of the revenue or interest on the revenue of the project in arrears or about to become due whether or not such interest is represented by interest certificates.
14. "Refunding bonds" means notes, bonds, certificates, or other obligations of a district issued under this chapter, the proceeds of which are to be used to pay the principal of or interest on any outstanding bonds or other obligations.
15. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by a district in connection with, and all other income and receipts of whatever kind or character derived by a district from, the operation of any project.
16. "State engineer" has the same meaning as provided in chapter 61-03.
17. "Warrant" means an order drawn by the proper official of a district on its treasury, the warrant of order to be so drawn that when signed by the district treasurer in an appropriate place it becomes a check on the depository of such district, and a warrant upon the treasury may not be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the district treasurer and entered on the district's books as a check drawn on a bank depository.

61-35-02. Petition.

A petition may at any time be filed with the state engineer requesting the state engineer to organize a district encompassing an area in one county or in two or more adjacent counties for the purpose of providing an adequate supply of water for the residents of the area. An area to be included in a district may not include property then included in any other district or included in the service area of a nonprofit corporation or cooperative association established under title 10 to operate a rural water system, except as otherwise permitted under section 61-35-25.

61-35-02.1. Conversion of water resource district water supply system to water district.

A water resource district that has developed a water supply system under chapter 61-16.1 may convert that system to a water district as provided in this section. The water resource district board operating a water supply system may petition the state engineer to organize a district in the manner provided by section 61-35-02. The signatures of the water resource district's board of directors on the petition and a resolution adopted by the water supply system's users approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the state engineer that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a water resource board of directors, the following procedures apply:

1. After final approval of the petition by the state engineer, the secretary of the water resource board shall file a notice with the secretary of state.
2. Upon filing of the notice, the assets and liabilities of the water supply system become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the water resource district are the officers and board of the district.
4. The applicable laws of the state governing the water resource district board control the initial size and the initial terms of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original water supply system and is responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a water resource district is binding for its term on a successor district organized by the water resource district, unless otherwise agreed in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

61-35-03. Petition contents.

The petition must be signed by the owners of at least fifty percent of all real property lying within the outside perimeter of the area designated for inclusion in the proposed district and must state:

1. The location of the area, describing the area to be served or specifying the area by an attached map.
2. The reasons a district is needed.

61-35-04. Hearing after filing.

When a petition for the organization of a district is filed with the state engineer, the state engineer shall fix a time for a hearing on the petition not less than fifteen nor more than forty-five days after the filing of the petition. The state engineer shall prepare a notice as required by section 61-35-05. At least seven days before the date fixed for the hearing on the petition, the notice must be published in the official county newspapers in the counties included within the district. The applicant shall pay all costs of the publication notice.

61-35-05. Contents of notice.

The notice prepared by the state engineer must set forth:

1. The location of the area designated by the petitioners to be included in the proposed district, as described or shown by the original petition.
2. The time and place fixed by the state engineer for the hearing on the petition.
3. That all owners or tenants of real property or other interested persons within the boundaries described may appear and be heard.
4. That the proposed district, if organized, has no power or authority to levy any taxes.

61-35-06. Appearances.

At the hearing on the petition, any owner or tenant of real property or other interested person within the boundaries of the area described in the petition may appear, in person or by a designated representative, and any representative of the state or a political subdivision or an interested person may appear, in favor of or in opposition to the organization of the proposed district. The appearances may also be filed in writing before the time set for the hearing.

61-35-07. Findings - Order.

After the hearing, the state engineer may strike off any part of the territory that testimony shows will not be benefited by the creation of the district. If the state engineer does not find that the district is reasonably necessary, the state engineer shall dismiss the petition. If the state engineer finds that required notice of the hearing has been given and that the proposed district is reasonably necessary for the public health, convenience, and comfort of the residents, the state engineer shall make an order establishing the district as a political subdivision, designating its boundary, and identifying it by name or number. The order shall be published in the same newspaper or newspapers that published the notice of hearing. The applicant shall pay all costs of the publication of the order. The state engineer shall prepare and preserve a complete record of the hearing on the petition and the state engineer's findings and action.

61-35-08. Meeting of members - Election of board.

As a part of the order organizing the district, the state engineer shall fix the time and place at which the members shall meet to select from their number a board of directors. Selection of the initial board may not be later than thirty days after the order is issued. The number of directors on the board, not to exceed nine, must be determined by a majority vote of those members present. Any member elected a director who fails to become a participating member, within thirty days after entry in the minutes of the board of a declaration of availability of benefit units for subscription, forfeits the office of director.

61-35-09. Bylaws submitted at special meeting.

Within thirty days after election of the original board, proposed bylaws must be submitted for adoption at a special meeting of members of the district, written notice of which must be mailed to each member. Members present at the special meeting may adopt or amend any of the proposed bylaws, and may propose and adopt alternative or additional bylaws by a majority vote. The bylaws may subsequently be amended at any annual or special meeting of the participating members of the district. However, the bylaws of each district must provide:

1. For an annual meeting of participating members each year after the year of organization of the district and for mailing of written notice of the time and place of each annual meeting to each participating member and publication of the notice in the

official newspaper of the county or counties served by the district not less than ten nor more than thirty days before each meeting.

2. That each participating member of the district is entitled to one vote at all annual and special meetings of the district for each benefit unit to which the member has subscribed.

61-35-10. Directors divided into classes - Terms - Vacancies.

The initial board of each district shall divide its members by lot into three classes of as nearly equal size as possible. The terms of the directors in the first, second, and third classes expire on dates of the annual meetings in the first, second, and third years, respectively, following the year in which the district is organized, or as soon thereafter as their successors are elected and have qualified. At the annual meeting in each year after the year in which the district is organized, a director must be elected to succeed each director whose term of office expires on that date, and each director so elected holds office for a term of three years and until a successor is elected and has qualified. Vacancies must be filled for the unexpired term by appointment by the remaining directors.

61-35-11. Board meetings.

The board shall meet annually on the same day as, and immediately following, the annual meeting of participating members, and may meet at other times it determines, or upon the call of the president or any two directors. At the first meeting of the initial board following its election, and at each succeeding annual board meeting, the board shall elect a president, vice president, secretary, and treasurer for the ensuing year. Board members are entitled to reasonable compensation to cover the expenses of serving on the board.

61-35-12. Powers of district board.

Each district board has the power to:

1. Sue and be sued in the name of the district.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities necessary to carry out the purposes of its organization.
3. Accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of projects within the district.
4. Cooperate and contract with the state, its agencies, or its political subdivisions or any federal agency in research and investigation or other activities promoting the establishment, construction, development, or operation of projects within the district.
5. Furnish assurances of cooperation, and as principal and guarantor, or either, to enter into contracts with any federal agency, and with public corporations and political subdivisions of this state for the performance of obligations for the construction, operation, or maintenance of the district or for the delivery of water to any such department, agency, or political subdivision.
6. Construct, lease, or purchase separately or in cooperation with any federal agency or the state, its agencies, or political subdivisions, and to equip, maintain, and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.
7. Appoint and fix the compensation and reimbursement of expenses of such employees as the board deems necessary to conduct the business and affairs of the district and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for it in its proceedings.

8. Sell or exchange any and all real property purchased or acquired by the district. All money received from any such sale or exchange must be deposited to the credit of the district and may be used to pay expenses of the district.
9. Borrow money as provided in this chapter.
10. Issue and sell bonds in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project.
11. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the district.
12. Pledge any and all income, profits, and revenues received by the district in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project.
13. Pledge all or any part of any assessments levied under this chapter to secure the payment or redemption of any bonds issued in anticipation of the levy and collection of the assessments.
14. Acquire by gift, purchase, or the exercise of the right of eminent domain, property required to construct, reconstruct, improve, better, or extend any project, whether completely or partially within or outside the district, and easements, rights in lands, and water rights in connection with the project.
15. Operate and maintain any project for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the district.
16. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the project, and in anticipation of the collection of the revenues of the project, issue revenue bonds to finance all or part of the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any project.
17. Pledge revenues of the project to the punctual payment of principal and interest on bonds. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the project which may be constructed or acquired after the issuance of bonds as well as the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the project improved, bettered, or extended.
18. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the district may not be created by any such contract or instrument.
19. Enter into and perform long-term or short-term contracts with any nongovernmental unit for the provision and operation by the district of sewerage facilities, when the board of the district determines such action to be in the public interest and necessary for the protection of the public health, in order to abate or reduce the pollution of waters caused by discharges of industrial wastes by the nongovernmental unit, and for the payment periodically by the nongovernmental unit to the district of amounts the board deems sufficient to compensate the district for all costs associated with providing, operating, and maintaining the sewerage facilities serving the nongovernmental unit.
20. Enter into and perform such contracts and agreements with other districts, political subdivisions, and state institutions as the board deems proper and feasible concerning the planning, construction, lease, or other acquisition and the financing, maintenance, and operation of sewerage facilities. Any districts contracting with each other may provide in any contract or agreement for a board, commission, or such other body as their boards deem proper to supervise, manage, and operate the sewerage facilities and may prescribe its powers and duties and compensation of its members.
21. Accept from any authorized federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of any project, and to enter into agreements with such agency respecting such loan or grants.

22. Contract debts and borrow money, pledge property of the district for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the district.
23. Notwithstanding any other law, exercise the powers granted to a municipality under subsection 5 of section 40-33-01 and section 40-34-19, pursuant to the limitations set forth therein. A district may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01, or of any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-19, solely from revenues to be derived by the district from the ownership, sale, lease disposition, and operation of the waterworks, mains, and water distribution system or sewage system; the funds or any other amounts invested by such district pursuant to section 21-06-07, or invested on such district's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the board of the district or received from federal or state sources.
24. Enter and perform long-term and short-term contracts for the purchase or sale of water and to pledge any and all income, profits, and revenues received by the district to secure payment of the district's obligations created by the contracts.

Property of the district may not be liable to be forfeited or taken in payment of any bonds issued under this chapter, and debt on the general credit of the district may not be incurred in any manner for payment of bonds under this chapter.

61-35-13. Contracts for construction or maintenance of a project.

If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section 48-01.2-02, the work may be done on a day work basis or a contract may be let without being advertised. If the cost of the construction or maintenance exceeds the amount provided for construction of a public improvement under section 48-01.2-02, the lowest and best bid must be accepted. The board must comply with the requirements of sections 61-35-88 through 61-35-103 when bidding a project.

The competitive bid requirement of this section may be waived if the board determines that an emergency exists requiring the prompt repair of a project and a contract may be made for the prompt repair of the project without seeking bids.

61-35-14. Financing project through improvement bonds or special assessments - Apportionment of benefits.

A board may acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project with funds raised by special assessments. A board may issue improvement bonds in anticipation of the levy and collection of special assessments. If a board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, the assessments must be apportioned to and spread in proportion to benefits accruing to lands or premises benefited by the project. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land bears in proportion to the benefits accruing to the property and any county, city, or township that is benefited.

61-35-15. Revenue bonds.

A district may issue revenue bonds, not exceeding an aggregate total outstanding of fifty million dollars, to finance construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of all of the members of the district board. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds

and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds may not be a general obligation of any political subdivision and may not be secured by property taxes.

61-35-16. Plans and specifications.

As soon as reasonably possible after organizing a district, the board shall file with the state engineer copies of the plans and specifications for, and estimates of the cost of, any improvements authorized by this chapter which the board proposes to construct or acquire. The board shall determine a reasonable fee that each member shall pay for the privilege of utilizing the district's facilities, which shall be known as a benefit unit. By publication in the official county newspaper of each county in which all or part of the district is located, the board shall generally describe the planned improvements, the area to be served, and the fee members will be required to pay for each service connected to the water system.

61-35-17. Selling water.

If the capacity of the district's facilities permits, the district may sell water by contract to any political subdivision, other district, or other person, public or private, not within the boundaries of the district.

61-35-18. Inclusion of property in district - Inclusion of municipality - Merger.

1. Owners of real property outside any district which can economically be served by the facilities of the district may petition to be attached to the district. The petition must be filed with the state engineer and the state engineer shall proceed in substantially the same manner as is provided by this chapter for filing of and proceeding on a petition for organization of a district.
2. All or part of an incorporated city may be included in the boundaries of any existing district or a district being newly organized, provided the governing body of the city by resolution or ordinance gives its consent.
3. Boards of two or more districts by concurrent action and by approval of the state engineer may merge their districts into one. In case of merger, the members of the boards of the merged districts may serve until the next annual meeting at which time the district shall comply with the requirements of section 61-35-08 regarding the number and eligibility of directors, adopt new bylaws, and set the terms of the new board according to section 61-35-10. The resulting district shall take over all the assets and legal liabilities of the districts joining in the merger. Obligations of any district secured by the revenue of the systems operated by the district must continue to be required, or a sinking fund must be established for that purpose created from revenue from the system operated over the same area by the resulting district in accordance with the laws under which the obligations were issued, until all obligations of the old district have been retired.
4. If there is a conflict between two or more districts concerning which district will serve an area, the state engineer, after a public hearing, shall determine which district can more adequately and economically provide service within the area.

61-35-19. Taxing prohibited.

A district has no power to levy any taxes. The facilities constructed or otherwise acquired by any district, including ponds, reservoirs, pipelines, wells, deck dams, and pumping installations, the revenues obtained by the district from the sale of water, and the revenue bonds or interest on the revenue bonds issued by any district are not taxable in any manner by the state or a political subdivision.

61-35-20. Exclusion of real property from district.

If it becomes apparent that any real property included within a district but contiguous to a border cannot economically or adequately be served by the facilities of the district, the owners

of the real property or the board may file with the state engineer a petition to the state engineer requesting that the real property be excluded from the district. The petition must:

1. Describe by full and partial section and by township and range, or by lot number and subdivision, as the case may be, the real property that it is proposed to exclude from the district.
2. State that the real property cannot economically or adequately be served by the facilities of the district and that it is not feasible for the district to enlarge or extend its facilities to economically and adequately serve the real property.
3. Be signed by the owners of all the real property that it is desired to exclude from the district or by all of the board.

61-35-21. Inactive district dissolved.

A petition may be filed with the state engineer requesting the state engineer to dissolve an inactive district. The petition must:

1. List all real and personal property of any kind exclusive of records, maps, plans, and files and state that all of its debts and obligations have been fully paid.
2. State that the district is not functioning and will probably continue to be inoperative.
3. Be signed by three-fourths of the members of the district.

61-35-22. Hearing.

Upon the filing with the state engineer of a petition under section 61-35-20 or 61-35-21, the state engineer shall fix a time for consideration of the petition. The state engineer may hold a hearing on the petition. After consideration of the petition, and after the hearing if one is held, the state engineer shall ascertain whether:

1. The petition meets all of the requirements prescribed by section 61-35-20 or 61-35-21.
2. It appears from all information available to the state engineer that each allegation included in the petition is factual.

If the state engineer's finding on each of the foregoing points is positive, the state engineer shall declare the real property described in the petition detached from the district or declare the district dissolved, as the case may be. The state engineer shall notify the secretary of the district of the state engineer's action and the secretary shall amend the records of the district to show that the real property described in the petition has been detached from the district. Within thirty days, the secretary shall deliver to the state engineer all records, maps, plans, and files of the dissolved district.

61-35-23. Disposition of assets.

If a district is dissolved, the state engineer shall provide for the disposition of any property owned by the district and for the apportionment of the proceeds and any other moneys belonging to the district to an adjoining district. If there is no adjoining district, the state engineer shall apportion and dispose of the property and proceeds to the general fund of each county in the district in proportion to the county's area in the district. Any pledge or lien given with respect to any outstanding bonds of the district remains and any property so encumbered must be handled in conformity with the bond resolution or trust indenture. Money, property, or the proceeds from property may not be distributed to any private interests.

61-35-24. Not exempt from other requirements.

This chapter does not exempt any district from the requirements of any other statute, whether enacted before or after August 1, 1995, under which the district is required to obtain the permission or approval of, or to notify, the water commission, or the state department of health, or any other agency of this state or of any of its political subdivisions before proceeding with construction, acquisition, operation, enlargement, extension, or alteration of any works or facilities that the district is authorized to undertake under this chapter.

(Contingent effective date - See note) Not exempt from other requirements. This chapter does not exempt any district from the requirements of any other statute under which the district is required to obtain the permission or approval of, or to notify, the state water

commission, or the department of environmental quality, or any other agency of this state or of any of its political subdivisions before proceeding with construction, acquisition, operation, enlargement, extension, or alteration of any works or facilities that the district is authorized to undertake under this chapter.

61-35-25. Alternate operation by nonprofit corporation or cooperative.

A nonprofit corporation or cooperative association established under title 10 for the specific purpose of operating a rural water system may petition the state engineer to organize a district, in the manner provided by section 61-35-02. The signatures of the corporation's or cooperative's officers on the petition and a resolution adopted by the members in the manner provided in section 10-15-37 for amendments to articles or in the manner provided in chapter 10-33 for dissolution, as the case may be, approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the state engineer that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a nonprofit corporation or cooperative association, the following procedures apply:

1. After final approval of the petition by the state engineer, the secretary of the corporation or cooperative shall file a notice with the secretary of state or attorney general, if applicable, in accordance with title 10.
2. Upon filing of the notice, the nonprofit corporation or cooperative ceases to exist as a title 10 entity and all assets and liabilities of the nonprofit corporation or cooperative become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the corporation or cooperative are the officers and board of the district.
4. The applicable laws of the state and the articles of incorporation and bylaws of the corporation or cooperative control the initial size and initial term of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original corporation or cooperative and is responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a nonprofit corporation or cooperative association is binding for its term on a successor district organized by the nonprofit corporation or cooperative association, unless otherwise agreed in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

61-35-26. Annexation of land by a municipality.

A district organized under this title or title 10 must be fairly compensated for losses resulting from annexation by a city under chapter 40-51.2. If a district has outstanding bonds, the annexation proceedings must be in accordance with the bond resolution or trust indenture. The governing body of a city and the board of directors of the district may agree to terms that provide that the facilities owned by the district and located within the city must be retained by the district for the purpose of transporting water to customers outside the municipality.

61-35-26.1. Statement of intent.

It is the intent of the legislative assembly that potable water should be available in sufficient quality and quantity to meet citizens' needs for a healthy and safe standard of living and to

promote economic growth and development. In order to meet this objective in the most economical way, water service districts and city water service systems shall coordinate their service plans. Competition for users and duplication of service must be avoided whenever possible.

61-35-26.2. Plans for water service by providers - Filing plans - Existing agreements.

1. A city planning to expand water service through annexation shall develop a city water service area plan. The city shall consult with any other water service provider, including a district, whose water service area is affected by the city's water service area plan of the establishment of the plan.
2. The city shall file the city water service area plan with the commission. Upon filing of the plan with the commission, the city may proceed with water service to the annexed area as provided in section 61-35-26. A city water service area plan is enforceable when there is a water service agreement among the water service providers, including a district, that are encompassed by or which abut the water service area boundary.
3. Sections 61-35-26.1 through 61-35-26.4 do not supersede an existing water service agreement between a city and a district.

61-35-26.3. State water commission funding.

Before providing a grant or loan to a district or city for a water service project in any area within the extraterritorial zoning jurisdiction of any affected city, the commission shall require that district and city to have a water service agreement. The absence of a water service agreement may not affect the funding by the commission of other projects for a district or city which are not related to potable water service and are not located within the extraterritorial zoning jurisdiction.

61-35-26.4. Water service agreement - Mediation - Administrative law judge.

1. If a water service agreement between the district and the city is not executed within sixty days after the city notifies the district that a city water service area plan has been developed, the matter must be submitted to a committee for mediation. The committee must be comprised of a mediator retained jointly by the city and the district, two members appointed by the governing body of the city, and two members appointed by the district. The retained mediator shall arrange and preside over the mediation proceedings.
2. If the mediation committee is unable to resolve the dispute to the satisfaction of the parties involved, either party may petition the office of administrative hearings to appoint an administrative law judge to determine the terms of the water service agreement. Before a hearing may be held, at least two weeks' written notice must be given to the parties involved in the dispute. At the hearing, the retained mediator who presided over the mediation proceedings may provide information to the administrative law judge on the dispute between the parties involved and any proposed resolutions or recommendations made by a majority of the members appointed to the committee. Any resident of or person owning property in a city or district involved in the dispute, or a representative of such a resident or property owner, and any representative of a city or district involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge must consider the following factors related to water service in the annexed area in making a decision under this subsection:
 - a. The recommendation of the mediation committee;
 - b. The firefighting flow capacity of the water system;
 - c. The anticipated growth patterns of the district and city involved in the dispute;
 - d. Special conditions or needs, including topographic or physical features influencing service;
 - e. The system capacity and trunk main delivery structure of each provider;
 - f. The age, condition, and worth of the affected existing infrastructure;
 - g. Outstanding debt attributable to current users;

- h. The impact on future revenues lost from existing and future customers;
- i. Whether development would have occurred without annexation; and
- j. Any other factor determined to be relevant by the administrative law judge.

61-35-27. Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or other personnel of the board are not liable for the district's debts or obligations and a director, officer, employee, or volunteer of the board is not personally liable in that capacity for a claim based upon an act or omission of the person in the discharge of the person's duties, except for any of the following:

1. A breach of the duty of loyalty to the district.
2. Acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law.
3. A transaction from which the person derives an improper personal benefit.

61-35-28. Proceedings to confirm contracts, special assessments, and other acts.

Any district board, before making any contract, levying special assessments, or issuing special assessment improvement bonds or revenue bonds, or before taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract, levying special assessments, issuing improvement bonds or revenue bonds, or leading up to any other special action, may be judicially examined, approved, and confirmed. Such judicial proceedings must substantially comply with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

61-35-29. Authorization to organize association of rural water systems.

A district, upon resolution of the district board, may organize and participate in an association of rural water systems organized under chapter 10-33.

61-35-30. Resolution authorizing project and the issuance of revenue bonds.

The acquisition, construction, reconstruction, improvement, betterment, or extension of any project and the issuance of bonds in anticipation of the collection of the revenues of such project to provide funds to pay the associated costs may be authorized by a resolution of the board adopted after appropriate notice by the affirmative vote of a majority of the board. The amount of such bonds may not exceed the amount authorized by the participating members of the district as provided in this chapter. Unless otherwise provided in the resolution, the resolution under this section takes effect immediately and need not be laid over, published, or posted.

61-35-31. Refunding bonds authorized by resolution - Adoption - Taking effect.

Refunding bonds must be authorized by resolution of the board. The resolution may be adopted at a regular or special meeting, including the meeting at which it is introduced, by the affirmative vote of a majority of the members of the board, and takes effect immediately upon adoption. Other proceedings or procedure are not required for the issuance of refunding bonds by the district.

61-35-32. Cost of project - How determined.

In determining the cost of a project, the board may include the estimated cost of bond issuance, all engineering, inspection, fiscal, and legal expenses, any bond reserves, and the estimated interest that will accrue during construction, and within six months after completion of construction.

61-35-33. Provisions governing bonds.

The resolution authorizing the issuance of revenue bonds or refunding bonds under this chapter or resolutions adopted after the adoption of the original resolution must prescribe:

1. The rate or rates of interest, payable semiannually.
2. Whether the bonds will be in one or more series.

3. The date or dates the bonds will bear.
4. The time or times, not exceeding forty years from their respective dates, when the bonds will mature.
5. The medium in which the bonds will be payable.
6. The place or places where the bonds will be payable.
7. Whether or not the bonds will carry registration privileges and what those privileges, if any, will be.
8. The terms of redemption, if any, to which the bonds will be subject.
9. The manner in which the bonds will be executed.
10. The terms, covenants, and conditions that the bonds will contain.
11. The form in which the bonds will be issued.

61-35-34. Sale of bonds - When private sale authorized - Public sale and notice.

Revenue bonds or refunding bonds must be sold at not less than ninety-eight percent of par. The bonds may be sold at private sale without notice or at public sale after notice of the sale has been published once at least five days before the sale in a newspaper circulating in the district. Bonds sold at private sale must bear interest at a rate and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum. There is no interest rate ceiling on issues sold at public sale or to the state or any of its agencies or instrumentalities. As to any series or issue of bonds for which a notice of sale was published but for which no bids were received or all bids received were rejected, the board, without readvertising the bonds for sale, may negotiate the sale of all of the bonds to any person upon terms complying with those specified in the published notice of sale and, if bids were rejected, more favorable to the district than those specified in the rejected bid.

61-35-35. Bonds and receipts or certificates issued pending preparation of bonds - Negotiability.

Pending the preparation of the definitive bonds, bond anticipation notes may be issued and sold in the form and with the provisions determined by the board.

61-35-36. Validity of bonds.

Revenue bonds or refunding bonds bearing the signatures of the appropriate officers who are in office on the date of signing are valid and binding obligations notwithstanding that before the delivery and payment any or all of the persons whose signatures appear on the bonds have ceased to be officers of the issuing district. The validity of the bonds is not dependent upon or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the project for which the bonds are issued. The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued under this chapter and the recital is conclusive evidence of their validity and of the regularity of their issuance.

61-35-37. Bonds exempt from taxation.

Bonds issued under this chapter and their income are exempt from taxation by the state or by any political subdivision.

61-35-38. Covenants that may be inserted in resolution authorizing bonds.

Any resolution authorizing the issuance of bonds under this chapter to completely or partially finance or refinance the acquisition, construction, reconstruction, improvement, betterment, or extension of a project may contain covenants that limit the exercise of powers conferred by this chapter as to:

1. The rates, fees, tolls, or charges to be charged for the services, facilities, and commodities of the project.
2. The use and disposition of the revenues of the project.
3. The creation, maintenance, regulation, use, and disposition of reserves or sinking funds.

4. The purpose to which the proceeds of the sale of bonds may be applied and the use and disposition of the proceeds.
5. The events of default and the rights and liabilities arising upon default and the terms and conditions upon which the holders of bonds issued under this chapter may bring any suit or action on said bonds.
6. The payment by the district to the account of the project of a fair and reasonable amount for the services, facilities, or commodities furnished the district or any of its departments by the project.
7. The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of the project.
8. The insurance to be carried upon the project and the use and disposition of insurance moneys.
9. The keeping, inspection, and audit of books of account.
10. The terms and conditions upon which any or all of the bonds become or may be declared due before maturity and the terms and conditions upon which the declaration and its consequences may be waived.
11. The rights, liabilities, powers, and duties arising upon the breach by the district of any covenants, conditions, or obligations.
12. The vesting in a trustee of the right to enforce any covenants made to secure, to pay, or in relation to, the bonds, the powers and duties of such trustee, and the limitations of liabilities thereof.
13. The terms and conditions upon which the holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made or any duties imposed under this chapter.
14. A procedure by which the terms of any resolution authorizing bonds or of any other contract with bondholders, including an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds that holders of which must consent to the resolution or contract, and the manner in which such consent may be given.
15. The subordination of the security of any bonds issued under this chapter and the payment of principal and interest on those bonds, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the district issued to finance or refinance the project or that may be outstanding when the bonds thus subordinated are issued and delivered.

Nothing in this section authorizes any district to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a debt or indebtedness within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt or indebtedness.

61-35-39. Liability of district for bonds - Taxing power prohibited - Bond not a lien.

Revenue and refunding bonds issued under this chapter may not be payable from or charged upon any funds other than the revenue pledged to their payment and the district issuing the bonds may not be subject to any pecuniary liability. The holder of any such bonds may not enforce payment of the bonds against any property of the district. Bonds issued under this chapter do not constitute a charge, lien, or encumbrance upon any property of the district. Each bond issued under this chapter must recite in substance that the bond, and interest on the bond, is payable solely from the revenue pledged to the payment and that the bond does not constitute a debt of the district within the meaning of any constitutional or statutory limitation.

61-35-40. Duties of district and officers.

To adequately secure the payment of bonds and interest on the bonds, any district issuing bonds under this chapter, and the district's officers, agents, and employees shall:

1. Pay or cause to be paid punctually the principal and interest of every bond on the dates, at the places, in the manner, and out of the funds provided in the refunding bond and in accordance with the resolution authorizing its issuance.

2. Operate the project in an efficient and economical manner and establish, levy, maintain, and collect related necessary or proper fees, tolls, rentals, rates, and other charges. Such fees, tolls, rentals, rates, and other charges must be sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates, at least:
 - a. To pay all current expenses of operation and maintenance of the project;
 - b. To pay the interest and principal on the bonds as they become due;
 - c. To comply with the terms of the resolution authorizing the issuance of the bonds or any other contract or agreement with the holders of the refunding bonds; and
 - d. To meet any other obligations of the district which are charges, liens, or encumbrances upon the revenues of the project.
3. Operate, maintain, preserve, and keep every part of the project in good repair, working order, and condition.
4. Preserve and protect the security of the bonds and the rights of the bondholders and warrant and defend such rights against all claims and demands.
5. Pay and discharge all lawful claims for labor, materials, and supplies, which, if unpaid, might become by law a lien or charge upon the revenues, or any part of the revenues, superior to the lien of the bonds or which might impair the security of the bonds.
6. Hold in trust the revenues pledged to the payment of the bonds for the benefit of the holders of the bonds and apply the revenues only as provided by the resolution authorizing the issuance of the bonds, or, if the resolution is modified, as provided in the modified resolution.
7. Keep proper separate books of record and accounts of the project in which complete and correct entries must be made of all transactions relating to any part of the project. All books and papers of the district are subject to inspection by the holders of ten percent or more of the outstanding bonds or of their representatives authorized in writing.

None of the duties contained in this section require any expenditure by the district of any funds other than revenue received from the project. The performance of the duties enumerated in this section is of the essence of the contract of the district with the bondholders.

61-35-41. Remedies of bondholders in general.

Subject to any contractual limitations binding upon the holders of any issue of bonds, or a trustee for the holders, including the restriction of the exercise of any remedy to a specified proportion or percentage of the holders, any holder of bonds or trustee, for the equal benefit and protection of all bondholders similarly situated, may:

1. By mandamus or other suit, action, or proceeding at law or in equity, enforce the holder's rights against the district and its board and any of its officers, agents, and employees and may require the district or the board or any officers, agents, or employees of the district or board to perform their duties and obligations under this chapter and their covenants and agreements with bondholders.
2. By action or suit in equity, require the district and the board to account as if they were the trustees of an express trust.
3. By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the bondholders.
4. Bring suit upon the bond.

A right or remedy conferred by this chapter upon any bondholder, or upon any trustee for a bondholder, is not intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter or by any other law of this state.

61-35-42. Receiver of project - When appointed.

If the district defaults in the payment of the principal or interest on any of the bonds when due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or if the district or the board, or officers, agents, or employees of the district fail or

refuse to comply with the provisions of this chapter, or default in any agreement made under this chapter, or default in any agreement made with the holders of the bonds, any bondholder, or the trustee for any bondholder, may apply to the district court of the county in which all or any part of the project is located for the appointment of a receiver of the project whether or not all of the bonds have been declared due and payable and whether or not the holder or trustee is seeking or has sought to enforce any other right or to exercise any other remedy in connection with the bonds. Upon such application, the court may appoint a receiver of the project. If the application is made by the holders of twenty-five percent in principal amount of the outstanding bonds, or by any trustee for holders of the bonds in that principal amount, the court shall appoint a receiver of the project.

61-35-43. Powers and duties of receiver of project.

A receiver appointed under section 61-35-42, directly or by agents and attorneys, shall immediately enter into and upon and take possession of the entire project and may exclude from the project the district, its board, officers, agents, and employees, and all persons claiming under them. The receiver shall have, hold, use, operate, manage, and control the entire project in the name of the district or otherwise as determined by the receiver. The receiver shall exercise all the rights and powers of the district with respect to the project. The receiver shall maintain the project and restore and keep it insured and make all repairs the receiver deems necessary, proper, or expedient. The receiver shall establish, levy, maintain, and collect such fees, tolls, rentals, and other charges in connection with the project as the receiver deems necessary, proper, and reasonable. The receiver shall collect all revenues, deposit them in a separate account, and apply them as the court directs.

61-35-44. Court may direct receiver to surrender possession of project.

After payment of all that is due upon the bonds and any other obligations that are a charge, lien, or encumbrance on the revenues of the project under any of the terms of any covenants or agreements with bondholders, and after all defaults have been made good, the court, after notice and hearing as it deems proper, may direct the receiver to surrender the possession of the project to the district. The holders of the bonds have the same right to secure the appointment of a receiver upon any subsequent default as is provided in this chapter in the case of an original default.

61-35-45. Receiver subject to jurisdiction of court - Jurisdiction of court.

A receiver under this chapter acts under the direction and supervision of the appointing court and is subject to the orders of that court and may be removed by it. This chapter does not limit the jurisdiction of the court to enter orders it deems necessary for the receiver to exercise any functions set forth in this chapter.

61-35-46. Construction.

Powers under this chapter are in addition and supplemental to and not in substitution for, and the limitations imposed by this chapter do not affect the powers conferred by, any other law. Bonds may be issued under this chapter without regard to any other laws of this state, except as provided in section 61-35-39. The project may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this chapter for those purposes, notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like project or for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. If this chapter is inconsistent with any other law of this state, the provisions of this chapter are controlling with reference to the issuance of bonds.

61-35-47. Limitations on authorizations contained in chapter - Effect of chapter on bonds issued before August 1, 1995.

Nothing in this chapter may be deemed in any way to:

1. Alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the district, before August 1, 1995;
2. Authorize the district to alter the terms of any such agreements, or to impair, or to authorize the district to impair, the rights and remedies of any creditors of the district; or
3. To authorize any district to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument that would constitute a debt or indebtedness within the meaning of any provision, limitation, or restriction of the Constitution of North Dakota relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt or indebtedness.

61-35-48. Power of district to defray expense of improvements by special assessments.

Upon complying with this chapter, a district may defray the expense of any or all of the improvements by special assessments, including the construction of all or part of a water supply system or a sewerage system, or both, or any improvement, extension, or replacement of such systems, including the construction and erection of wells, intakes, pumping stations, settling basins, filtration plants, standpipes, water towers, reservoirs, water mains, sanitary and storm sewer mains and outlets, facilities for the treatment and disposal of sewage and other district, industrial, and domestic wastes, and all other appurtenances, contrivances, and structures used or useful for a complete water supply and sewerage system. In planning an improvement project, the board may include in the plans any and all items of work and materials which in its judgment are necessary or reasonably incidental to the completion of an improvement project of that type.

61-35-49. Waterworks and water mains - Acquisition of waterworks, sewage treatment and disposal plants, and sewer systems.

The provisions of this chapter relating to water mains and waterworks apply only to districts that own or contemplate owning a system of waterworks and water mains. In the purchase of a waterworks system or of a sewage treatment or disposal plant or of a system of sewers, either by eminent domain in accordance with chapter 32-15, or otherwise, a district may create improvement districts, direct the preparation of plans and specifications, adopt a resolution declaring the purchase of the facilities necessary, and take all other proceedings prescribed by this chapter which would be taken in case of the construction of such facilities by the district itself for the purpose of defraying the cost by special assessment of the benefited property. The benefited property may be specially assessed for the purchase of such facilities, either separately or as a part of a new system, the same as if the facilities were constructed entirely anew.

61-35-50. Acquiring property for sewers, water mains, and water supply beyond district limits.

When it is necessary to conduct the sewage of a district or to acquire a supply of water beyond the district limits and to construct mains or aqueducts to conduct water or sewage to the district limits, the board by grant, purchase, or condemnation proceedings may acquire private property over which to construct the sewer, or upon and over which to establish facilities for obtaining and storing such water supply and aqueducts or mains for conducting water to the corporate limits. Public property may be acquired for those purposes by grant or purchase from the government or public corporation owning the property. The cost of acquiring such property and building such sewer or other facilities upon or over the property may be included in the cost of construction or acquisition of a district waterworks or sewerage system and in the district's special assessments levied, or the entirety of such a project may be completed as an

improvement to an existing waterworks or sewage system and special assessments may be levied for that purpose in accordance with the provisions of this title.

61-35-51. Condemnation of land and rights of way for special improvements - Taking of possession - Trial - Appeal - Vacation of judgment.

When property required to make any improvement authorized by this chapter is to be taken by condemnation proceedings, the court, upon request by resolution of the board of the district making the improvement, shall call a special term of court for the trial of the proceedings and may summon a jury for the trial. The proceedings must be instituted and prosecuted in accordance with chapter 32-15, except that when the interest sought to be acquired is a right of way for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water, storm water, or sewage, whether within or without the district, the district may make an offer to purchase the right of way and may deposit the amount of the offer with the clerk of the district court of the county in which the right of way is located, and may then take possession of the right of way. The offer must be made by resolution of the board of the district, and a copy of the resolution must be attached to the complaint filed with the clerk of court in accordance with section 32-15-18. The clerk shall immediately notify the owners of the land on which the right of way is located of the deposit by causing a notice to be appended to the summons when served and published in the proceedings as provided in the North Dakota Rules of Civil Procedure, stating the amount deposited or agreed in the resolution to be deposited. The owner may then appeal to the court by filing an answer to the complaint in the manner provided in the North Dakota Rules of Civil Procedure, and may have a jury trial, unless a jury is waived, to determine the damages. However, upon due proof of the service of the notice and summons and upon deposit of the aggregate sum agreed in the resolution, the court may without further notice make and enter an order determining the district to be entitled to take immediate possession of the right of way. If under laws of the United States proceedings for the acquisition of any right of way are required to be instituted in or removed to a federal court, the proceedings may be taken in that court in the same manner and with the same effect as provided in this section and the clerk of the district court of the county in which the right of way is located shall perform any and all of the duties set forth in this section, if the clerk is directed to do so by the federal court. The proceedings must be determined as speedily as practicable. An appeal from a judgment in the condemnation proceedings must be taken within sixty days after the entry of the judgment and appeal must be given preference by the supreme court over all other civil cases except election contests. No final judgment in the condemnation proceedings awarding damages to property used by a district for sewer or other purposes may be vacated or set aside if the district pays to the defendant, or into court for the defendant, the amount awarded in cash. The district may levy special assessments within the district to pay all or part of the judgment. To provide funds for the payment of the judgment or for the deposit of the amount offered for purchase of a right of way, the district may issue bonds on the fund of the improvement district as provided in section 61-35-84, in anticipation of the levy and collection of special assessments or revenues to be appropriated to the fund in accordance with this chapter. The bonds may be issued upon or after the commencement of the condemnation proceedings. Upon the failure of the district to make payment in accordance with this section, the judgment in the condemnation proceedings may be vacated.

61-35-52. Improvement districts to be created.

For an improvement project under section 61-35-48 and defraying the cost of the project by special assessments, a district may create water districts, sewer districts, and water and sewer districts, and may extend any such district when necessary. The appropriate special improvement district must be created by resolution. The district must be designated by a name appropriate to the type of improvement for which it is created and by a number distinguishing it from other improvement districts. Nothing in this chapter prevents a district from making and financing any improvement and levying special assessments for the improvement under any alternate procedure in this title. For examinations or surveys, the board or its employees, after written notice to each landowner, may enter upon any land on which the proposed project is located or any other lands necessary to gain access.

61-35-53. Size and form of improvement districts - Regulations governing.

Any improvement district created by a district may embrace two or more separate property areas. Each improvement district must be of such size and form as to include all properties which in the judgment of the board, after consultation with the engineer planning the improvement, will be benefited by the construction of the improvement project which is proposed to be made in or for the district, or by any portion of the project. A single district may be created for an improvement of the type specified in section 61-35-48, notwithstanding any lack of uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the improvement district. The jurisdiction of a district to make, finance, and assess the cost of any improvement project may not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the improvement district is subsequently determined not to be benefited by the improvement, or by a particular portion of the improvement project, and is not assessed for that purpose. The board may omit from a water or sewer district properties within the district limits which are benefited by the improvement but do not abut upon a water or sewer main, without prejudice to the right and power of the district subsequently to assess such properties to the extent and the manner permitted by law. The board may by resolution enlarge an improvement district in which an improvement is proposed or under construction upon receipt of a petition signed by the owners of three-fourths of the area to be added to the district.

61-35-54. Engineer's report required - Contents.

After a special improvement district has been created, the board, if it deems it necessary to make any of the improvements set out in section 61-35-48 in the manner provided in this chapter, shall direct the engineer for the district, or some other competent engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement. The engineer shall prepare profiles, plans, and specifications of the proposed project and estimates of the total cost. The estimate of costs prepared by the engineer must include acquisition of right of way and must be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed assessment district.

61-35-55. Approval of plans, specifications, and estimates.

After receiving the engineer's report required by section 61-35-54, the board may direct the engineer to prepare detailed plans and specifications for construction of the improvement. The plans and specifications must be approved by a resolution of the board.

61-35-56. District engineer to retain copy of plans, specifications, and estimates - Sale of copies.

The engineer acting for the district shall retain a copy of the plans, specifications, and estimates that have been prepared for any improvement. The engineer shall furnish copies at the request of any person at a reasonable cost.

61-35-57. Plans, specifications, and estimates filed in office of district.

The plans, specifications, and estimates prepared as directed under section 61-35-55 are the property of the district, must be filed in the district office, and must remain on file subject to inspection by any interested person.

61-35-58. Hearing - Notice - Contents.

Upon the filing of the engineer's report provided for in section 61-35-54, and after satisfying the requirements of section 61-35-55, the district board shall fix a date and place for public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made,

setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement, and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county in which the project is or will be located the list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. Notice of the filing must be included in the notice of hearing. Notices of the hearing must contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing must specify when and where votes concerning the proposed project may be filed and contain an assessment list showing the percentage assessment and approximate assessment in dollars against each parcel of land benefited by the proposed project. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The date set for the hearing may not be fewer than twenty days after the mailing of the notice. A record of the hearing must be made by the board, including a list of affected landowners present in person or by agent, and the record must be preserved in the minutes of the meeting. Affected landowners and the governing body of any county, township, or city to be assessed must be informed at the hearing of the probable total cost of the project and their individual share of the cost and the portion of their property, if any, to be condemned for the project.

61-35-59. Voting on proposed projects.

At the hearing, the affected landowners and any county, township, or city to be assessed must be informed when and where votes concerning the proposed project may be filed. Affected landowners and the governing body of any county, township, or city to be assessed have thirty days after the date of the hearing to file their votes with the secretary of the district. Once the deadline for filing votes has been reached, no more votes may be filed and no person may withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When the votes have been filed and the deadline for filing votes has passed, the board shall immediately determine whether the project is approved. If the board finds that fifty percent or more of the total votes filed are against the proposed project, then the vote constitutes a bar against proceeding further with the project. If the board finds that the number of votes filed against the proposed project is less than fifty percent of the votes filed, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-35-62 and 61-35-63, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in sections 61-35-88 through 61-35-103. The board may enter into any agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of sections 61-35-88 through 61-35-103. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal begins to run on the date of publication of the notice.

61-35-60. Voting right or powers of landowners.

In order that there may be a fair relationship between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project are as provided in this section. The landowner of land affected by the project has one vote for each dollar of assessment to which the land is subject or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed has one vote for each dollar of assessment against such county, township, or city. There may be only one vote for each dollar of assessment, regardless of the number of owners of a tract of land. If more than one owner of a tract of land

exists, the votes must be prorated among them in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest a project on behalf of any affected landowner or landowners.

61-35-61. Assessment of cost of project.

When the district board proposes to make any special assessment under this chapter, the board, prior to the hearing required under section 61-35-58 shall inspect any and all lots and parcels of land that may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be especially benefited by the construction of the work for which the assessment is made and shall assess the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement in accordance with benefits received but not exceeding such benefits, against:

1. Any county, township, or city, in its corporate capacity, which may be directly or indirectly benefited by the improvement.
2. Any lot, piece, or parcel of land that is directly benefited by the improvement.

In determining benefits, the board shall consider, among other factors, property values, degree of improvement of properties, and productivity. Property belonging to the United States is exempt from assessment unless the United States has provided for the payment of any assessment that may be levied against its property for benefits received. Benefited property belonging to the state, a county, a city, a school district, a park district, or a township is not exempt from assessment and political subdivisions that own assessed property shall provide for the payment of such assessments, including installments and interest, by the levy of taxes according to law. Any county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of those assessments, installments, and interest from its general fund or by levy of a general property tax against all the taxable property in the political subdivision in accordance with law. No tax limitation provided by any statute of this state applies to tax levies made by any political subdivision for paying any special assessments made under this chapter. There must be attached to the list of assessments a certificate signed by a majority of the members of the board certifying that it is a true and correct assessment of the benefit described to the best of their judgment and stating the several items of expense included in the assessment.

61-35-62. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing.

After entering an order establishing the project, the district board shall cause the assessment list to be published once each week for two successive weeks in the newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located. The publication must include a notice of the time and place the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The date set for the hearing must be not less than twenty days after the first publication of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which the assessments are made or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board shall then confirm the assessment list and the secretary shall attach to the list a certificate that it is correct as confirmed by the board. The secretary shall file the list in the office of the district secretary.

61-35-63. Appeal to state engineer.

Within ten days after the hearing under section 61-35-62, affected landowners and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes as determined under section 61-35-60, who believe that the assessment has not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, to review the assessments and examine the location and

design of the proposed project. Upon receipt of a petition, the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, the state engineer may proceed to correct the assessments, and the state engineer's correction and adjustment of assessments is final. If it appears to the state engineer that the project has been improperly located or designed, the state engineer may order a relocation and redesign, which must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter, any landowner or political subdivision claiming to receive no benefit from the project may appeal to the state engineer the question of whether there is any benefit. The appeal must be filed with the state engineer within ten days after the hearing on assessments in section 61-35-62. The state engineer may not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision and may determine only if there is any benefit to the landowner or political subdivision. The determination of the state engineer upon the appeal is final.

61-35-64. When assessments may be made.

After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the district board, the board may direct special assessments to be levied for the payment of appropriate costs and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as they have been ascertained. The certificate must include the estimated construction cost under the terms of any contract, a reasonable allowance for cost of extra work that may be authorized under the plans and specifications, acquisition of right of way, engineering, fiscal agents' and attorney's fees for any services in connection with the authorization and financing of the improvement, cost of publication of required notices, printing of improvement bonds, cost necessarily paid for damages caused by such improvement, interest during the construction period, and all expenses incurred in making the improvement and levy of assessments.

A contract or contracts may not be awarded which exceed, by forty percent or more, the estimated cost of the project as presented to and approved by the affected landowners.

61-35-65. Reassessment of benefits.

The district board may hold at any time or, upon petition of any affected landowner or political subdivision which has been assessed after a project has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of the project to each tract of land affected. At least ten days' notice of the hearing must be given by publication in the newspaper or newspapers having general circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing notice by ordinary mail to each owner of land whose assessment is proposed to be raised as determined by the records of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make a reassessment more than once every ten years. Any assessment or balance of an assessment supporting a project fund may not be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance must be prorated in accordance with any plan for reassessment of benefits that has been adopted.

61-35-66. Correction of errors and mistakes in special assessments - Requirements governing.

If mathematical errors or other mistakes occur in making any assessment resulting in a deficiency in that assessment, the district board shall cause additional assessments to be made in a manner substantially complying with chapter 40-26 as it relates to special assessments.

61-35-67. Lien of special assessment.

A special assessment imposed by a district, with accrued interest and penalties, is a lien upon the property on which the assessment is levied from the time the assessment list is approved by the district board until the assessment is fully paid. The liens have precedence over all other liens except general tax liens and may not be divested by any judicial sale. Mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property does not defeat the lien if the assessed property can be identified by the description in the assessment list. This chapter must be considered notice to all subsequent encumbrances of the priority of special assessments imposed under this chapter.

61-35-68. Sewer or water improvements in districts may be paid for by service charges.

A district constructing a sewer or water improvement under the special assessment method may resolve in the resolution or ordinance required by section 61-35-52, that a portion of the cost of the improvement must be raised by service charges for the use of the improvement and of the utility of which it forms a part. If the district so resolves, it may determine in its resolutions, ordinances, and other proceedings relating to the levying of special assessments and the issuing of bonds to pay the cost of such improvement, that a specified portion or all of such cost must be assessed specially against any property specially benefited and may cause to be assessed only the portion so determined. In that event the entire remainder of the cost, including interest as well as principal of any bonds issued, over and above the amount of special assessments actually collected and received from time to time in the fund of the improvement district, must be paid from the net revenues derived from the service charges. All of the applicable provisions of this chapter relating to special assessments are applicable to such improvements except as to the portion of the cost of improvements resolved or ordained to be paid by service charges. The board of the district shall provide for the establishment, imposition, and collection of service charges for the services furnished by the improvement and the utility of which it forms a part, and in that connection it has all the rights and powers respecting such service charges as it would have with respect to like matters if the improvement were made in accordance with chapter 40-35. The net revenues derived from the imposition and collection of the service charges or any portion of the service charges as are determined by the board in the resolutions and ordinances must be paid into the appropriate improvement district funds created under section 61-35-83. The revenues when collected must be used and applied in the same manner as moneys paid into such funds from the collection of special assessments. The board of any district issuing bonds to finance any such improvement, in its resolutions and ordinances, may establish an assessment reserve in the fund of the improvement district, to which it may appropriate net revenues of the utility or system from time to time received in excess of amounts required, with special assessments then on hand, to meet the principal and interest next due on the bonds. Before November first of any year the district may by resolution determine the proportion which the amount then on hand in the assessment reserve, and irrevocably appropriated to the payment of the bond, bears to the aggregate amount of the installment of the special assessments levied for the improvement which is payable in the following year, including interest. The district may direct the auditor to reduce, by not more than a proportionate amount, the total of that installment and interest which would otherwise be placed upon the tax list of the district for the current year, against each lot and tract of land assessed or taxed for improvement. If the installment of the special assessment on any property has been prepaid, the board may direct the district to refund, out of the assessment reserve, to the owner of the property at the time of the refund as indicated in the records of the recorder of the county, a sum not exceeding a similar proportion of the principal amount of such installment, excluding interest.

61-35-69. Abbreviations, letters, or figures may be used in proceedings for levy and collection of special assessments.

In all proceedings for the levy and collection of special assessments, abbreviations, letters, and figures may be used to denote all or parts of additions, lots, lands, blocks, sections, townships, ranges, years, days of the month, and amounts of money.

61-35-70. District office to keep complete record of improvements - Record as evidence.

The district office shall keep a complete record of all the proceedings taken in the matter of making any improvements under this chapter. The record must include all reports and confirmations, all petitions, orders, notices and proofs of publication, and resolutions of the board. The record, a certified transcript of the record, or the original papers, proofs of publications, orders, or resolutions on file in the office must be admitted in evidence in any court or place in this state without further proof as evidence of the facts in those documents.

61-35-71. Defects and irregularities in improvement proceedings are not fatal.

Defects and irregularities in any proceedings had or to be had under this chapter relating to district improvements by the special assessment method, if the proceedings are for a lawful purpose and are unaffected by fraud and do not violate any constitutional limitation or restriction, do not invalidate the proceedings, and no action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any such defects or irregularities in the proceedings, unless commenced within thirty days of the adoption of the resolution of the board awarding the sale of bonds to finance the improvement.

61-35-72. Payment of special assessments - Interest.

All special assessments levied under this title may be paid without interest within ten days after they have been approved by the board and thereafter bear interest at an annual rate not exceeding one and one-half percentage points above the average net annual interest rate on any bonds for the payment of which they are pledged on the total amount remaining unpaid.

61-35-73. Lien between vendor and vendee of special assessments.

As between a vendor and vendee of real property, unless the purchase contract otherwise provides, the installments of all special assessments for local improvements which are required to be certified and returned to the county auditor in each year become a lien upon the real property upon which they are assessed from and after the first day of December in that year.

61-35-74. Sewer special assessments extended over a period of not more than thirty years.

Special assessments for the payment of the cost of constructing any sewer are payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not exceeding thirty years as the board may fix by ordinance or resolution.

61-35-75. Water main and waterworks special assessments extended over a period of not more than thirty years.

Special assessments for the payment of the cost of constructing or laying any water mains or constructing any waterworks are payable in equal annual amounts, or in such annual amounts as will permit the annual increase in payment of principal to approximate the annual decrease in the interest on amounts remaining unpaid, extending over a period of not more than thirty years as the board may fix by ordinance or resolution.

61-35-76. Payments in full of assessments - Payments to county treasurer or district treasurer - Receipts.

The owner of any property against which an assessment has been made under this title for the cost of any improvement may pay in full or in part the amount remaining unpaid and the unpaid accumulated interest. The payment in full discharges the lien of the assessment upon that property. The payment may be made to the county treasurer upon all installments of the assessments which have been certified to the county auditor, and may be made to the district treasurer upon all portions of the assessment which have not been certified. Any person

desiring to pay any portion of the assessment to the district treasurer shall obtain from the district treasurer a certificate of the amount due upon the assessment which has not been certified to the county auditor and shall present the certificate to the district treasurer. The district treasurer shall receive and collect that amount and issue a receipt to the person paying the assessment. The district treasurer shall note upon the treasurer's records the payment of the assessment.

61-35-77. Certification of assessments to county auditor.

When a district board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments are to bear, which rate may not exceed one and one-half percent above the bond rate. Interest on unpaid special assessments commences on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which must be due and payable not more than thirty years after date of the bonds to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to such special assessments are situated, the total amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district shall also file with the county auditor of each county in which district lands lie a statement showing the cost of the project and the part of the project to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the district board shall prorate the cost of construction or, if a reassessment of benefits has been adopted, the costs must be prorated in accordance with the reassessment of benefits as authorized by section 61-35-65. The district treasurer shall annually certify to the county auditor all uncertified installments of assessments which are to be extended upon the tax lists of the district for the current year, in the manner provided in this section. The annual certification must continue until the amount of moneys on deposit in the fund established under section 61-35-83 is sufficient to cover outstanding principal of and interest on any obligations issued to fund the projects, and in addition, to repay the district for any payments made by the district to fund deficiencies in the fund established under section 61-35-83.

61-35-78. District treasurer to insert amount of improvements in county real estate book or other forms - Regulations governing.

The district treasurer shall notify the county auditor not later than August twentieth in each year of any special assessments that were made in the district in addition to those reported in the previous year. The county auditor shall make and deliver to the district treasurer on or before September twentieth each year a copy of the real estate assessment book or other forms for the current year covering all additions in which any special assessments have existed and where any will appear for the current year as advised by the district treasurer. The district treasurer shall insert in the proper columns under the appropriate headings the amount of each of the installments of the assessments on the lots or subdivisions of lots or tracts of land which are to be extended upon the tax lists of the district for the current year. The district treasurer shall show the total amount of special assessments certified to the county auditor for the current year. If a division of property has been made since the original assessment, the district treasurer shall make or cause to be made the proper division of the special assessments on the lots or tracts of land in the same manner as general taxes are divided and assessed as furnished by the county auditor. The district treasurer shall certify the special assessments to the county auditor by November first of each year.

61-35-79. Extension of special assessments on tax lists - Collection - Payment over to district.

The county auditor shall extend the special assessments upon the tax lists of the district for the current year and the assessments with interest and penalties must be collected as general

taxes are collected and paid over to the district treasurer and shall be placed by the district treasurer in the respective funds for which they were collected.

61-35-80. Special assessment record book kept by county auditor - Assessments certified for more than one year.

The county auditor shall keep a special assessment record. When any district causes the installments of special assessments for a period of more than one year to be certified, the county auditor shall cause the certified special assessments to be recorded for the respective years and in the amounts shown in the certificate of the district treasurer. The certificate of the district treasurer must include a list of all lots and tracts of land upon which such assessments are levied, designating the purpose of the assessment, the fund to which it belongs, and the installment of such assessment for each year against each lot or tract, including interest.

61-35-81. County treasurer to certify and receipt for amount of special assessments collected - Contents of certificate - Procedure for abatement.

Special assessments of any kind certified to the county auditor by the district treasurer must be paid to the county treasurer and included in the receipt required by section 57-20-08. If the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, the county treasurer shall allocate the amount of such payment between taxes and special assessments in proportion to the respective amounts of taxes and special assessments which are then due. When prorating any tax payment received before October fifteenth, the term "due", as it pertains to real estate taxes, includes only the first installment of real estate taxes. Special assessments are not subject to abatement or refund by proceedings under chapter 57-32 but may be reviewed and corrected only in the manner and upon the conditions provided in chapter 40-26. The county treasurer, at the time set by law for the payment to the district treasurer of all the taxes and special assessments collected during the preceding month, shall certify the amounts of special assessments collected. The certificate must state specifically the lot or known subdivision as it appears on the tax books of the county treasurer, and the block, addition, amount collected, and amount credited to each lot or known subdivision, and the year for which the sum was collected. The certificate must be furnished to the district treasurer.

61-35-82. Interest and penalties added to special assessments - County treasurer to collect and pay over.

The county treasurer shall add to all special assessments the same interest and penalties that are added in the case of general taxes and at the same time. The county treasurer shall collect the interest and penalties with the special assessments and shall pay all such interest and penalties collected over to the district treasurer.

61-35-83. Special improvement moneys to be kept separate - Designation and numbering of funds - Diversion of moneys prohibited.

All special assessments and taxes levied and other revenues pledged under the provisions of this chapter to pay the cost of an improvement constitute a fund for the payment of that cost, including all principal of and interest on bonds and other obligations issued by the district to finance the improvement, and may be diverted to no other purpose. The district treasurer shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement. Each fund must be designated by the name and number of the improvement district in or for which the special assessments, taxes, and revenues are collected. When all principal and interest on bonds and other obligations of the fund have been fully paid, all moneys remaining in a fund may be transferred into the general fund of the district.

61-35-84. Bonds - When payable - Amounts - Interest.

At any time after entering into a contract for a project to be financed in whole or in part by special assessments, a district may issue temporary and definitive bonds on the project fund, created for that purpose, in the manner and subject to the limitations prescribed in section

40-24-19. If the bonds are issued to finance a sewer or water project, the net revenues derived from the imposition of service charges to be imposed and collected with respect to the project as provided in section 61-35-68 may be pledged to payment of those bonds, except that the first maturity date of any such bond may not be less than two years from the date of issuance. Bonds issued under this section must be in amounts as in the judgment of the board will be necessary for the project. The bonds must bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on bond issues sold at public sale or to the state or any of its agencies or instrumentalities. The bonds must state upon their face the purpose for which they are issued and the project fund from which they are payable and must be signed by the chairman of the board and countersigned by the secretary of the district. The bonds must be payable serially in such amounts as the board determines, extending over a period of not more than thirty years.

61-35-85. Bonds may be used in making payments on contract - Bonds payable out of fund on which drawn - May be used to pay special assessments.

Improvement bonds may be used in making payments on contracts for construction of the project for which the special assessment fund was created, or may be sold for cash at not less than ninety-eight percent of par and accrued interest, and the proceeds, less accrued interest, must be credited to the construction account of the fund and must be used exclusively to pay those contracts and construction costs. Any balance remaining in any construction account after completion of any project must be transferred to the sinking fund account of the assessment fund. The treasurer of the district shall pay special assessment bonds as they mature and are presented for payment out of the fund on which they are drawn and shall cancel the bonds when paid.

61-35-86. Refunding special assessment bonds - Purposes for which such bonds may be issued - Payment of bonds.

Any district having outstanding special assessment bonds, payable in whole or in part out of collections from special assessments, which are past due or which are redeemable, either at the option of the district or with the consent of the bondholders, may issue refunding special assessment bonds if there is not sufficient money in the project fund against which such bonds are drawn to pay the same. The issuance of refunding bonds must be authorized by resolution of the district board. The resolution must describe the bonds to be refunded and their amount and maturity. Refunding bonds may be issued for any of the following purposes:

1. To extend the maturities of bonds payable in whole or in part by special assessments.
2. To reduce the interest on the bonds.

Refunding bonds must bear such date, be in such date, be in such denominations, and mature serially within such time, not exceeding thirty years from date of issuance, as the board determines. The average rate of interest on the bonds may not exceed the average rate of interest on refunded bonds.

The treasurer of the district shall pay special assessment bonds as they mature and are presented for payment out of the fund against which they are drawn and shall cancel the bonds when paid. Any deficiency in any fund created for the payment of district bonds payable in whole or in part out of collections of special assessment taxes must be the general obligation of the district.

61-35-87. Foreclosure of tax lien on property when general and special assessment taxes are delinquent.

Special assessments imposed under this chapter become due and delinquent and are subject to penalties for nonpayment at the same date and rates as first installments of real estate taxes at the same time and in the same manner as provided in title 57.

If there is no delinquent general property tax against a tract or parcel of land and it is foreclosed for special assessments alone, the notice of foreclosure of tax lien must state that

the foreclosure is for special assessments and a tax deed in such case must be issued in the usual course of procedure.

61-35-88. Call for bids - Contents - Advertising.

Proposals for the work of making improvements provided for in this chapter that exceed the amount provided for construction of a public improvement under section 48-01.2-02 must be advertised for by the board in the official newspaper of the county where the district office is located once each week for two consecutive weeks. The board may cause the work on two or more improvements to be combined in one advertisement and one contract awarded pursuant to that advertisement. The advertisement for bids must:

1. Specify the work to be done according to the plans and specifications on file in the office of the district;
2. Call for bids upon the basis of cash payment for the work;
3. State the time within which the bids will be received; and
4. State the time within which the work on the improvement is to be completed.

The board may require bidders to state also the rate of interest, not exceeding seven percent per annum, which the bonds to be received and accepted by the bidder at par in payment for the work are to bear.

61-35-89. Bid to be accompanied by a bond - Bond retained upon failure of bidder to contract - Amount of bond.

Each bid for any work to be done under this chapter must be accompanied by a separate envelope containing a bidder's bond in the amount of five percent of the amount of the bid, executed as provided in this chapter and running to the district that the bidder will enter into a contract for performance of the work in case a contract is awarded to the bidder. If any bidder to whom a contract is awarded fails or refuses to enter into the contract when requested to do so, the bond accompanying the bidder's bid must be retained by the district as liquidated damages for the failure. The bond must be delivered to the district office and credited to the fund from which the consideration for the work is payable. The sufficiency of any bond filed by a bidder must be determined by the board at the time of considering bids.

61-35-90. Execution of bidder's bond.

The bidder's bond must be executed by the bidder as principal and may be provided by a surety company authorized to do business in this state as surety or by a bank letter of credit, a cash bond, or a certified check.

61-35-91. Conditions of bidder's bond.

A bidder's bond must be made payable to the district and conditioned that if the principal's bid is accepted and the contract for the work of improvement awarded to the bidder, the bidder, within ten days after the acceptance of the bid, or within such further time as the board grants, will enter into and execute a contract bond in a sum equal to the amount of the bid, and a contract in writing to and with the district well and faithfully to perform and complete the work for which the bid was accepted, in accordance with the plans and specifications and the terms of the bid and within the time required by the terms of the contract, and that the bidder will pay for all the labor and materials used in such work. The bond must be for the benefit of the district.

61-35-92. Bids - Filing - Sealing - Endorsing - Opening - Considering.

Bids for the work to be let under this chapter must be forwarded to the district office and must be sealed securely to prevent opening without detection. There must be endorsed upon the outside of the envelope containing the bid a statement of what work the proposal is for. The bids must be opened by the board at the expiration of the time limited in the advertisement for receiving the same, which may not be less than fifteen days after the first publication of the advertisement, or at such other time as the board may appoint. Only bids that are accompanied by the bond provided for in section 61-35-89 may be considered by the board.

61-35-93. Opening of bids - Bids to be entered on minutes.

After the bids have been opened and made public, they must be entered upon the minutes of the meeting of the board of the district at which they are considered, and they must be preserved carefully by the district secretary.

61-35-94. Rejection of bids - Re-advertising for bids or construction by district without contract - Re-evaluation of project.

If in its opinion the best interests of the district require, the board may reject any and all bids filed under this chapter. If all bids are rejected, the board may:

1. Readvertise for new bids;
2. Cause the work described in the plans, specifications, and estimates to be done directly by the district by the employment of labor and the purchase of materials required, or in any other manner the board considers proper, and payment for the work may be provided through special assessments in the same manner as though the work had been performed under contract, provided this work amounts to no more than the amount provided for construction of a public improvement under section 48-01.2-02; or
3. Cause the work described in the plans, specifications, and estimates to be reviewed and re-evaluated by the engineer for the district so that the board may determine whether the entire project or only a portion of the project is feasible.

61-35-95. Engineer's statement of estimated cost required - Board to enter into contracts.

Before adopting or rejecting any bid filed under this chapter, the board shall require the engineer for the district to make a careful and detailed statement of the estimated cost of the work. The board may not award the contract to any bidder if the engineer's estimate prepared under this section exceeds the engineer's estimate prepared under section 61-35-54 by forty percent or more. If all bids are not rejected, the board shall award the contract to the lowest responsible bidder, upon the basis of cash payment for the work, if the bidder has furnished the certified check or bidder's bond required under the provisions of this chapter.

61-35-96. Contractor's bond - Execution.

Within the time fixed by the board for executing the contract, the successful bidder shall file with the district a contract bond in a sum equal to the full amount of the contract. The bond must be executed by the bidder or contractor as principal and by a surety company authorized to do business in this state as surety.

61-35-97. Conditions for contractor's bond.

The contractor's bond must be made payable to the district and must be conditioned:

1. That the contractor well and faithfully will perform the work bid for in accordance with the terms of and within the time provided for in the contract, and pursuant to the plans and specifications for the work on file in the district office;
2. That the contractor will pay for all labor and material used in that work; and
3. That in case of a default on the part of the bidder or contractor in the performance of the work as provided in the contract, the sum named in the bond must be taken and held to cover the amount necessary to compensate the district for the correction, repair, or replacement caused by the default, and that the full amount may be recovered from the bidder and the bidder's sureties in an action by the district against them on the bond only in the event of a complete failure of performance on the part of the contractor. Nothing in this section may be construed to prevent the district from receiving the amount, not in excess of the amount of the bond, necessary to compensate the district for correction, repair, or replacement caused by default of the contractor which does not constitute complete failure of performance by the contractor.

61-35-98. Approval of bonds - Return of bidder's bond.

The contractor's bond must be approved by the governing body, and thereupon it is and remains in full force and effect. Upon the execution of the contract and the approval of the contract bond, the bidder's bond must be returned.

61-35-99. Failure to execute contractor's bond.

If the successful bidder, within ten days after the acceptance of the bid or such further time as the board may grant, does not execute a contractor's bond and a contract for the completion of the work described in the bid, the board may cause the work to be done, or it may contract with some other contractor to do or complete the work. In that case, the district may recover in a suit on the defaulting bidder's bond the difference between the actual cost to the district of the improvements and the sum that it would have cost if the defaulting bidder had complied with the bidder's bid.

61-35-100. Insufficiency of bonds - New bonds required - Failure to furnish.

If the board, at any time, deems the bond of a contractor insufficient either in form or as to sureties, it may require the successful bidder or contractor to furnish, within such reasonable time as the board may fix, a new bond to be approved by the board. If the contractor fails, after notice, to furnish the new bond within the time required, the contractor's contract may be canceled, and in that event the contractor's bond will be liable as if the contractor had failed to perform the contract.

61-35-101. Execution and filing of contract.

All contracts entered into for any work provided for in this chapter must be entered into in the name of the district and must be executed on the part of the district by the president and countersigned by the secretary. After the contract is signed by the contractor, it must be filed in the office of the district.

61-35-102. Conditions and terms.

A contract let under this chapter requires the work to be done pursuant to the plans and specifications on file in the office of the district, subject to the approval of the engineer acting for the district, and must provide:

1. That the board has the right to suspend the work at any time for improper construction and to relet the contract or to order a reconstruction of the work as to any part improperly done.
2. The time within which the work must be completed.
3. The period of time for which the work must be guaranteed as to workmanship and materials.
4. The fund from which the contract price is to be paid by the district.
5. That the consideration expressed in the contract is payable only in bonds drawn on the fund described in the contract.
6. That the district assumes and incurs no general liability under the contract.
7. That failure of the engineer to reject work and materials that are not up to specifications and acceptance of the job by the engineer does not release the contractor from liability for any failure on the contractor's part to perform work or furnish materials in accordance with the plans and specifications.

The engineer acting for the district shall provide construction administration and observation of the work during its progress. In addition to any rights a district may have under its contract for construction of part or all of an improvement after a contract has been awarded and before work under the contract has been completed, a district, with the consent of the contractor and without advertising for bids, may order additional work done by that contractor of the same character as the work that was contracted for, whether within or without the improvement district for which the original contract was made, and upon the same terms and conditions specified in the original contract except as to time of performance, and at the same prices for the additional work; provided, that the total price payable to the contractor for the additional work may not exceed

twenty percent of the amount estimated by the engineer for the district to be payable for that character of work under the original contract.

61-35-103. Contractor to be paid during progress of work - Retainage - Failure to pay - Rate of interest - Investment of retainage.

If the contractor to whom a contract is let properly performs the work designated in the contract, the board, at least once in each calendar month during the continuance of the contract work, shall meet and receive and consider estimates furnished by the agent, engineer, or architect acting for the district or if not so furnished, then by the contractor, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon the contract, and of the material then upon the ground for use in the contract, subject to retentions as follows: ten percent of each estimate presented until such time as the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. Upon completion of ninety-five percent of the contract according to the estimates, the board may pay to the contractor ninety-five percent of the amount retained from previous estimates. Any amount retained after ninety-five percent completion of the contract must be paid to the contractor in such amounts and at such times as are approved by the district, upon estimates by its agent, engineer, or architect or the contractor, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. Immediately after considering and allowing any such estimate, the board shall certify and forward the same to the district treasurer or other official having the power to draw bonds, who forthwith shall draw a warrant upon the proper fund and transmit the same promptly to the contractor. If the board fails or neglects to receive and allow such estimate or certify any estimate or final payment upon completion and acceptance or the proper officer required to issue such warrant fails or neglects to issue a warrant as provided in this section, for a period of more than thirty days from the date of such estimate or completion date, then the estimate or final payment, together with any retainage properly payable, draws interest from its date at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of such estimate or completion date until the issuance of a proper warrant. Interest must be computed and added to the face of the estimate, final payment, or retainage by the officer required to issue the warrant, must be included in the warrant when drawn, and must be charged to the fund from which payment for the improvement is to be made. On the amounts of estimates retained, as provided in this section, the board, authorized committee, or public body in charge of the work may invest or deposit the retained amounts in any financial association or institution in this state earning interest or dividends for the benefit of the contractor. Any amounts so invested or deposited must remain in the name of the board, authorized committee, or public body in charge of the work until final payment of all money due to the contractor is to be made. Further, a contractor may not use or pledge such amount in any manner until released and received by the contractor upon completion of the contract.