

LEGISLATIVE BILL 132

Approved by the Governor April 30, 1981

Introduced by DeCamp, 40; Remmers, 1

AN ACT to adopt the Municipal Cooperative Financing Act; to provide severability; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Municipal Cooperative Financing Act.

Sec. 2. It is declared that cooperative action by cities and villages of this state in the fields of the supplying, treatment, and distribution of water, the generation, transmission, and distribution of electric power and energy, and the collection, treatment, and disposal of sewerage and solid waste is in the public interest; that there is a need in order to insure the stability and continued viability of such systems to provide for a means by which municipalities may cooperate with one another in the financing, acquisition, and operation of such facilities and interests therein and rights thereto in all ways possible; that the creation of agencies through which the municipalities of this state may act cooperatively is in the best interest of this state and the inhabitants thereof; and that the necessity in the public interest for the provisions included in this act is declared as a matter of legislative determination. It is further declared that the intent of this act is to replace competition between participating municipalities in connection with the projects described in this act by allowing such municipalities to combine and cooperate in connection with the acquisition, construction, operation, financing, and all other functions authorized by this act with respect to such projects.

Sec. 3. For purposes of this act, unless the context otherwise requires, the definitions found in sections 4 to 13 of this act shall be used.

Sec. 4. Act shall mean the Municipal Cooperative Financing Act.

Sec. 5. Agency shall mean any of the public corporations created pursuant to this act.

Sec. 6. Board shall mean the board of directors of an agency.

Sec. 7. Bonds shall mean any bonds, interim certificates, notes, debentures, or other evidences of indebtedness of an agency.

Sec. 8. Director shall mean a member of a board.

Sec. 9. Governing body shall mean the council in the case of a city and the board of trustees in the case of a village.

Sec. 10. Municipality shall mean any city or village incorporated under the laws of this state.

Sec. 11. Participating municipality shall mean with respect to an agency, any one of the municipalities which is entitled to appoint a director or directors of such agency pursuant to this act.

Sec. 12. Person shall mean a natural person, or a public authority, or a private corporation, association, firm, partnership, or business trust of any nature whatsoever, organized and existing under the laws of this state or of the United States or any other state thereof.

Sec. 13. Power project shall mean any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, conservation, transformation, distribution, purchase, sale, exchange, or interchange of electric power and energy, or any interest therein or right to capacity thereof, any energy conservation system or device for reducing the energy demands or any interest therein, and the acquisition of energy sources or fuel of any kind, for any such purposes, including, without limitation, facilities for the acquisition, transformation, collection, utilization, and disposition of nuclear fuel or solar, geothermal, or wind energy and the acquisition or construction and operation of facilities for extracting fuel including agricultural ethyl alcohol from natural deposits or agricultural products, for converting it for use in another form, for burning it in place, or for transportation and storage.

Sec. 14. Project shall mean any power project, sewerage project, solid waste disposal project, waterworks project, or any combination of two or more thereof or any interest therein or right to capacity thereof.

Sec. 15. Public authority shall mean the state, any county, any municipality or other municipal corporation, political subdivision, governmental unit, or public corporation created by or pursuant to the laws of this state, of another state, or of the United States, and any state or the United States, and any person, board, commission, district, authority, instrumentality, subdivision, or other body of any of the foregoing.

Sec. 16. Sewerage project shall mean any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts and appurtenances thereto, or any interest therein or right to capacity thereof, used or useful in the removal, discharge, conduction, collection, carrying, treatment, recycling, purification, or disposal of gaseous, liquid, or solid sewage and wastes.

Sec. 17. Solid waste disposal project shall mean any plant, works, systems, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, or any interest therein or right to capacity thereof, used or useful in the collection, transporting, conveying, treatment, transformation, or disposal of solid wastes.

Sec. 18. Waterworks project shall mean any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, or any interest therein or right to capacity thereof, used or useful in the supplying, transporting, conveying, collection, distribution, storing, purification, or treatment of water.

Sec. 19. Any combination of two or more municipalities of this state is hereby granted power and authority to create one or more agencies to exercise the powers and authority prescribed by this act.

Sec. 20. The governing body of each of the municipalities participating in the creation of such agency shall adopt an ordinance determining that there is a need for such agency and setting forth the names of the proposed participating municipalities of the agency. Such an ordinance may be adopted by a municipality's governing body on its own motion upon determining, in its discretion, that a need exists for an agency. In determining whether such a need exists, a governing body may take into consideration the present and future needs of the municipality with respect to the commodities and services which an agency may provide, the adequacy and suitability of the supplies of such commodities and

services to meet such needs, and economic or other advantages or efficiencies which may be realized by cooperative action through an agency. Upon the adoption of an ordinance as provided in this section, the mayor, in the case of a city, or chairperson of the board of trustees, in the case of a village, of each of the proposed participating municipalities, with the approval of the respective governing body, shall appoint a director who shall be an elector of the municipality for which he or she acts as director. The directors shall constitute the board in which shall be vested all powers of the agency.

Sec. 21. If the agency does not intend to engage in the operation of power projects or the generation or supply of electric energy, sections 22 to 25 of this act shall apply.

Sec. 22. The directors shall file with the Secretary of State a certificate signed by them setting forth (1) the names of all the proposed participating municipalities, (2) the name and residence of each of the directors so far as known to them, (3) a certified copy of each of the ordinances of the participating municipalities determining the need for such an agency, (4) a certified copy of the proceedings of each municipality evidencing the director's right to office, and (5) the name of the agency. The certificate shall be subscribed and sworn to by such directors before an officer or officers authorized by the laws of the state to administer and certify oaths.

Sec. 23. The Secretary of State shall examine the certificate and, if he or she finds that the name proposed for the agency is not identical with that of any other corporation or public authority of this state, or so nearly similar as to lead to confusion and uncertainty, and that such certificate conforms to the requirements of sections 19 to 24 of this act, the Secretary of State shall record it and issue and record a certificate of incorporation. The certificate shall state the name of the agency, the fact and date of incorporation, and the names of the participating municipalities. Upon the issuance of the certificate of incorporation, the existence of the agency as a public body corporate and politic of this state shall commence. Notice of the issuance of such certificate shall be given to all of the proposed participating municipalities by the Secretary of State. If a director of any such municipality has not signed the certificate to the Secretary of State and such municipality does not notify the Secretary of State of the appointment of a director within thirty days after receipt of notice of the

issuance of a certificate of incorporation, such municipality shall be deemed to have elected not to be a participating municipality. As soon as practicable after the expiration of such thirty-day period, the Secretary of State shall issue an amended certificate of incorporation, if necessary, setting forth the names of those municipalities which have elected to become participating municipalities. The failure of any proposed municipality to become a participating municipality shall not affect the validity of the corporate existence of the agency.

Sec. 24. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the agency, the agency shall be conclusively deemed to have been established, except as against the state, in accordance with this act upon proof of the issuance of the certificate of incorporation by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

Sec. 25. After the creation of an agency, any other municipality may become a participating municipality therein upon (1) application to such agency, (2) the adoption of an ordinance by the governing body of the municipality setting forth the determination prescribed in section 20 of this act and authorizing such municipality to become a participating municipality, and (3) at least a majority vote of the directors, except that an agency's by-laws may require a greater percentage of approval for such authorization. Thereupon such municipality shall become a participating municipality entitled to appoint a director or directors of such agency in the manner prescribed by section 20 of this act and to otherwise participate in such agency to the same extent as if such municipality had participated in the creation of the agency. Upon the filing with the Secretary of State of certified copies of the ordinances described in this section, the Secretary of State shall issue an amended certificate of incorporation setting forth the names of the participating municipalities.

Sec. 26. If the agency intends to engage in the operation of power projects, or the generation or supply of electric energy, the provisions of sections 26 to 34 of this act shall apply.

Sec. 27. Upon adoption of ordinances in accordance with section 20 of this act, a petition shall be addressed to the Department of Water Resources stating

that it is the intent and purpose to create an agency pursuant to sections 26 to 34 of this act, subject to approval by the department. The petition shall state the name of the proposed agency, the names of the proposed participating municipalities, the percentage of each participating municipality's total annual firm power requirements provided from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8 during each of the five calendar years preceding the effective date of this act, the name and residence of each of the directors so far as known, a certified copy of each of the ordinances of the participating municipalities determining the need for such an agency, a certified copy of the proceedings of each municipality evidencing the director's right to office, a general description of the operation in which the agency intends to engage, and the location and method of operation of the proposed plants and systems of the agency.

Sec. 28. Nothing in this act shall be construed to prevent the organization of an agency whose participating municipalities operate within, or partly within, the territorial boundaries of a district or corporation organized under the provisions of Chapter 70, article 6, 7, or 8, so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities of, or on the part of, such agency do not nullify, conflict with, or materially affect those of a district or corporation organized under the provisions of Chapter 70, article 6, 7, or 8.

Sec. 29. If each of the participating municipalities in an agency required to file a petition with the Department of Water Resources pursuant to sections 26 to 34 of this act has, for any one year during the five calendar years preceding the effective date of this act, received at least fifty per cent of its total annual firm power requirements from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8, the department shall, upon receipt of such petition, review the allegations of the petition. If the department determines that the statements in the petition are true, the department or its successor shall, within thirty days after the receipt of such petition, execute a certificate in duplicate setting forth a true copy of the petition and declaring that the petition has been approved.

Sec. 30. If any of the participating municipalities in the agency has not received at least fifty per cent of its total annual firm power

requirements for any one of the five years preceding the effective date of this act from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8, the Department of Water Resources, upon receipt of such petition, shall make an investigation of the proposed agency and its proposed plants and systems. If the department determines that the statements in the petition are true and conform to public convenience and welfare and, so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities of, or on the part of, such agency, do not nullify, conflict with, or materially affect those of a district or corporation organized under the provisions of Chapter 70, article 6, 7, or 8, the department or its successor shall, within thirty days after the receipt of such petition, execute a certificate in duplicate setting forth a true copy of the petition and declaring that the petition has been approved. The Director of Water Resources may request the Nebraska Power Review Board to conduct any investigation or hearing that might be required under this section.

Sec. 31. Upon final approval the Department of Water Resources shall immediately cause one copy of the certificate to be forwarded to and filed in the office of the Secretary of State and the other one to be forwarded to and filed in the office of the county clerk of the county in which the principal place of business of the agency is located. Thereupon such agency under its designated name shall be and constitute a body politic and corporate, and the agency and its directors shall possess the powers provided by law.

Sec. 32. An appeal of any final action taken by the Department of Water Resources pursuant to this act may be taken to the Supreme Court in the same manner as appeals are taken from decisions of the Public Service Commission.

Sec. 33. (1) A petition for the creation of an agency which intends to engage in the operation of power projects or the generation or supply of electrical energy may be amended as provided in this section. Upon a majority vote of the directors, an agency may amend its petition for creation or may amend its charter to provide for a change in the general description of the nature of the business in which the agency is engaged, upon petition to the Department of Water Resources and approval by the Department of Water Resources in accordance with the procedure established in sections 26 to 34 of this act.

(2) With respect to the formation, organization, or operation of power projects or the generation or supply of electric energy, the amendments shall be approved if each new proposed participating municipality has for any one year during the five calendar years preceding the effective date of this act received at least fifty per cent of its total annual firm power requirements from a source other than a district or a corporation organized pursuant to Chapter 70, article 6, 7, or 8, and the statements in the petition are deemed by the department to be true.

(3) If any new proposed municipality has not received at least fifty per cent of its total annual firm power requirements for any one of the five calendar years preceding the effective date of this act from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8, such amendments shall be approved if the department, after notice to interested parties and a public hearing, determines that the statements in the petition are true and conform to public convenience and welfare, and so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumptions of duties and responsibilities of, or on the part of, such agency, do not nullify, conflict with, or materially affect those of any other district or a corporation organized under the provisions of Chapter 70, article 6, 7, or 8 or those of any part of such district or corporation.

Sec. 34. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the agency, the agency shall be conclusively deemed to have been established, except as against the state, in accordance with this act upon proof of the issuance of the certificate issued by the Department of Water Resources. A copy of such certificate duly certified by the Department of Water Resources shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

Sec. 35. A director may be removed for any cause at any time by the governing body of the municipality for which such director acts. A certificate of the appointment or reappointment of any director shall be filed with the clerk of the municipality for which such director acts and such certificate shall be conclusive evidence of the due and proper appointment of such director. Each director shall serve for a term of three years, or until his or her successor has been appointed and has qualified in the same manner as the original appointment. A director is eligible for

reappointment upon the expiration of his or her term. A vacancy shall be filled for the balance of the unexpired term of the person who has ceased to hold office in the same manner as the original appointment. A director shall receive no compensation for his or her services but shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of his or her official duties as provided in sections 84-306.01 to 84-306.05 for state employees.

Sec. 36. Each participating municipality shall be entitled to appoint one director, but with the approval of each of the participating municipalities as evidenced by an ordinance of the governing body thereof, an agency's by-laws may contain a provision entitling any of the participating municipalities to appoint more than one director and specifying the number of directors to be appointed by each of the participating municipalities of the agency. The number of directors may be increased or decreased from time to time by an amendment to the by-laws approved by each of the participating municipalities as evidenced by an ordinance of the governing body thereof. Each participating municipality shall at all times be entitled to appoint at least one director. Each director shall be entitled to one vote, but with the approval of each of the participating municipalities as evidenced by an ordinance of the governing body thereof, an agency's by-laws may contain a provision entitling any director or directors to cast more than one vote and specifying the number or numbers of votes such director or directors may cast. Unless the by-laws of the agency shall require a larger number, a quorum of the board shall be constituted for the purpose of conducting the business and exercising the powers of the agency and for all other purposes when directors are present who are entitled to cast a majority of the total votes which may be cast by all of the board's directors. Action may be taken upon a vote of a majority of the votes which the directors present are entitled to cast unless the by-laws of the agency shall require a larger number. The manner of scheduling regular board meetings and the method of calling special board meetings, including the giving or waiving notice thereof, shall be as provided in the by-laws.

Sec. 37. The directors shall elect a chairperson and vice-chairperson of the board from among the directors. The agency shall have power to employ an executive director. The directors shall elect a secretary who shall either be from among the directors or the executive director. The agency may employ legal counsel for such legal services as it may require. The agency may also employ technical experts and such other

officers, agents, and employees as it may require and shall determine their qualifications, duties, compensation, and term of office. The board may delegate to one or more of the agency's employees or agents such powers and duties as the board may deem proper.

Sec. 38. The board may create one or more project committees to which the board may delegate such powers and duties with respect to a project as the board shall specify, but in no event shall a project committee be empowered to authorize the issuance of bonds. The membership and voting requirements for action by a project committee shall be specified by the board taking into account the municipalities serviced by such project.

Sec. 39. An agency shall be dissolved upon the adoption, by the governing bodies of at least half of the participating municipalities, of an ordinance setting forth the determination that the need for such municipality to act cooperatively through an agency no longer exists. An agency shall not be dissolved so long as the agency has bonds outstanding, unless provision for full payment of such bonds and interest thereon, by escrow or otherwise, has been made pursuant to the terms of such bonds or the ordinance, resolution, trust indenture, or security instrument securing such bonds. If the governing bodies of one or more, but less than a majority, of the participating municipalities adopt such an ordinance, such municipalities shall be permitted to withdraw from participation in the agency, but such withdrawal shall not affect the obligations of such municipality pursuant to any contracts or other agreements with such agency. Such withdrawal shall not impair the payment of any outstanding bonds or interest thereon. In the event of the dissolution of an agency, its board shall provide for the disposition, division, or distribution of the agency's assets among the participating municipalities by such means as such board shall determine, in its sole discretion, to be fair and equitable.

Sec. 40. An agency established pursuant to this act shall constitute a political subdivision and a public body corporate and politic of this state exercising public powers separate from the participating municipalities. An agency shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a political subdivision and a public body corporate and politic, but shall not have taxing power. An agency shall have power (1) to sue and be sued, (2) to have a seal and alter the same at pleasure, or to dispense with the necessity thereof, (3) to make and execute contracts and other instruments necessary or

convenient to the exercise of its powers, and (4) from time to time, to make, amend, and repeal by-laws, rules, and regulations not inconsistent with this act to carry out and effectuate its powers and purposes.

Sec. 41. The powers of an agency shall include the power:

(1) To plan, develop, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend, improve, or acquire by purchase, gift, lease, or otherwise, one or more projects within or outside this state and act as agent, or designate one or more other persons to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension, or improvement of such project, except that before any power project is constructed by an agency, approval of the power project shall have been obtained from the Nebraska Power Review Board under sections 70-1012 to 70-1016;

(2) To produce, acquire, sell, and distribute commodities, including, without limitation, fuels necessary to the ownership, use, operation, or maintenance of one or more projects;

(3) To enter into franchises, exchange, interchange, pooling, wheeling, transmission, and other similar agreements;

(4) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the agency;

(5) To employ agents and employees;

(6) To contract with any person within or outside this state for the sale or transmission of any service, product, or commodity supplied, transmitted, conveyed, transformed, produced, or generated by any project, or for any interest therein or any right to capacity thereof, on such terms and for such period of time as the agency's board shall determine;

(7) To purchase, sell, exchange, produce, generate, transmit, or distribute any service, product, or commodity within and outside the state in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person with respect to such purchase, sale, exchange, production, generation, transmission, or distribution on such terms and for such period of time as the agency's

board shall determine;

(8) To acquire, own, hold, use, lease, as lessor or lessee, sell, or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity, product, or service or any interest therein or right thereto;

(9) To exercise the power of eminent domain in the manner set forth in Chapter 76, article 7. No real property of the state, any municipality, or any political subdivision of the state, may be so acquired without the consent of the state, such municipality, or such subdivision;

(10) To incur debts, liabilities, or obligations including the borrowing of money and the issuance of bonds, secured or unsecured, pursuant to this act;

(11) To borrow money or accept contributions, grants, or other financial assistance from a public authority and to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable;

(12) To fix, maintain, revise, and collect fees, rates, rents, and charges for functions, services, facilities, or commodities provided by the agency, and it shall be the mandatory duty of each agency to fix, maintain, revise, and collect such fees, rates, rents, and charges as will always be sufficient to pay all operating and maintenance expenses of the agency, to pay for costs of renewals and replacements to a project, to pay interest on and principal of, whether at maturity or upon sinking fund redemption, any outstanding bonds or other indebtedness of the agency, and to provide, as may be required by a resolution, trust indenture, security instrument, or other agreement of the agency, for any reasonable reserves for any such expenses, costs, or debt service or for any margins or coverages over and above debt service;

(13) Subject to any agreements with holders of outstanding bonds, to invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities, and other investments as the board shall deem proper;

(14) To join and pay dues to organizations, membership in which is deemed by the board to be beneficial to the accomplishment of the agency's

purposes; and

(15) To exercise any other powers which are deemed necessary and convenient to carry out this act.

Sec. 42. Before any agency shall enter into any contract for the construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement of any project, power plant or system, or irrigation works, or any part or section thereof, for the use of the agency, or for the purchase of any materials, machinery, or apparatus to be used in such construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, such agency shall cause estimates of the cost thereof to be made by some competent engineer or engineers. If such estimated cost shall exceed the sum of fifty thousand dollars, no such contract shall be entered into without advertising for sealed bids, except that with respect to contracts entered into by an agency in the exercise of its rights and powers, relating to radioactive material or the energy therefrom, or relating to any maintenance or repair contracts, if such engineer or engineers shall certify that by reason of the nature of the subject matter of the contract compliance with this section would be impractical and not in the public interest, and the engineer's certification is approved by a two-thirds vote of the board, then sections 42 to 44 of this act shall not apply, and the agency shall advertise notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work. Any contract for which the board has approved such engineer's certificate shall be advertised in three issues not less than seven days between issues in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement. With respect to contracts in excess of fifty thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in the construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement of any power plant or system, or irrigation works, or any part or section thereof when the contract does not include onsite labor for the

installation thereof, if, after advertising for sealed bids, no responsive bids are received or if the board of directors of such agency determines that all bids received are in excess of the fair market value of the subject matter of such bids, then the provisions of sections 42 to 44 of this act shall not apply.

Sec. 43. Prior to advertisement for sealed bids, plans and specifications for the proposed work or materials shall be prepared and filed at the principal office or place of business of the agency. Such advertisement shall be made in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of the receiving of bids. Such advertisement shall designate the nature of the work proposed to be done or materials proposed to be purchased, that the plans and specifications therefor may be inspected at the office of the agency, giving the location thereof, and shall designate the time within which bids shall be filed, and the date, hour, and place the same shall be opened.

Sec. 44. The board of directors of the agency may let the contract for such work or materials to the responsible bidder who submits the lowest and best bid or, in the sole discretion of the board, all bids tendered may be rejected, and readvertisement for bids made, in the manner, form, and time as provided in section 43 of this act. In determining whether a bidder is responsible, the board may consider the bidder's financial responsibility, skill, experience, record of integrity, ability to furnish repairs and maintenance services, ability to meet delivery or performance deadlines, and whether the bid is in conformance with specifications. Consideration may also be given by the board of directors to the relative quality of supplies and services to be provided, the adaptability of machinery, apparatus, supplies, or services to be purchased to the particular uses required, to the preservation of uniformity, and the coordination of machinery and equipment with other machinery and equipment already installed. No such contract shall be valid nor shall any money of the agency be expended thereunder unless advertisement and letting shall have been had as provided in sections 42 to 44 of this act.

Sec. 45. (1) In the event of sudden or unexpected damage, injury, or impairment of such project, plant, works, system, or other property belonging to the agency, or an order of a regulatory body which would prevent compliance with section 42 of this act, the board of directors may, in its discretion, declare an emergency, and proceed with the necessary construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement without first complying with the provisions of sections 42 to 44 of this act.

(2) When, by reason of disturbed or disrupted economic conditions due to war or due to the operation of laws, rules, or regulations of governmental authorities, whether enacted, passed, promulgated, or issued under or due to the emergency or necessities of war or national defense, the contracting or purchasing by the agency is so restricted, prohibited, limited, allocated, regulated, rationed, or otherwise controlled, that the letting of contracts therefor, pursuant to the requirements of such sections, is legally or physically impossible or impractical, the provisions of sections 42 to 44 of this act shall not apply to such contracts or purchases.

(3) Such contract shall provide that, to the extent practicable, workers who are citizens of Nebraska shall be given preference for employment by the contractor.

(4) All provisions of section 52-118, with reference to contractors' bonds, shall be applicable and effective as to any contract let pursuant to this act.

Sec. 46. (1) Money of the agency shall be paid out or expended only upon the authorization or approval of the board of directors by specific agreement, a written contract, or by a resolution. All money of the agency shall be paid out or expended only by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or such other officer, employee, or agent of the agency as shall be authorized by the treasurer to sign in his or her behalf. Such authorization shall be in writing and filed with the secretary of the agency.

(2) Money of the agency paid out or expended shall be examined by the board of directors at a regular meeting within two months following such expenditure.

(3) In the event that there is no treasurer's bond that expressly insures the agency against loss resulting from the fraudulent, illegal, negligent, or

otherwise wrongful or unauthorized acts or conduct by or on the part of any and every person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the secretary of the agency, together with the written authorization filed with the secretary of the board, a surety bond, effective for protection against such loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the agency other than the treasurer. The secretary shall report to the board at each meeting any such bonds filed, or any change in the status of any such bonds, since the last previous meeting of the board.

Sec. 47. Notwithstanding any other provision of Nebraska law, any municipality may enter into agreements with an agency for the purchase of water, electric power and energy, energy conservation services or devices, energy sources or fuels, sewerage services, or solid waste disposal services whereby the purchasing municipality is obligated to make payments in amounts which shall be sufficient to pay all operating and maintenance expenses of the agency, to pay for costs of renewals and replacements to a project, to pay interest on and principal of, whether at maturity or upon sinking fund redemption, any outstanding bonds or other indebtedness of the agency, and to provide, as may be required by any resolution, trust indenture, security instrument, or other agreement of the agency, for any reasonable reserves for any such expenses, costs, or debt service or for any margins or coverages over and above debt service. A purchase agreement may contain such other terms and conditions as the agency and the purchasing municipality may determine, including provisions whereby the purchasing municipality is obligated to make payments for water, electric power and energy, energy conservation services or devices, the acquisition of energy sources or fuel, sewerage service, or solid waste disposal irrespective of whether water, electric power and energy, energy conservation services or devices, energy sources or fuel, sewerage service, or solid waste disposal is provided or produced or delivered to the purchaser or whether any project contemplated by any purchase agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the output or services of such project. A purchase agreement may be for a term covering the life of a project or for any other term, or for an indefinite period. A purchase agreement may provide that if one or more of the purchasing municipalities shall default in the payment of its obligations under any purchase agreement, then some

or all of the remaining municipalities which also have purchase agreements with the same agency shall be required to accept and pay for, and shall be entitled proportionately to use or otherwise dispose of, the output, devices, fuel, or services undertaken to be purchased by such defaulting municipality.

Sec. 48. (1) The obligations of a nondefaulting municipality under a purchase agreement with an agency or arising out of the default by any other municipality with respect to a purchase agreement shall constitute special and limited obligations of the nondefaulting municipality payable solely from the revenue and other money derived by the nondefaulting municipality from its municipal utility with respect to which the purchase agreement relates and shall not be construed as constituting a debt of the nondefaulting municipality. If and to the extent provided in the purchase agreement, such obligations shall be treated as expenses of operating a municipal utility owned and operated by the nondefaulting municipality. It shall be the mandatory duty of any municipality entering into any contract or purchase agreement with an agency to fix, maintain, revise, and collect fees, rates, rents, and charges for functions, services, facilities, or commodities, furnished to its customers and users by and through its municipal utility as will be sufficient to pay the cost of operating and maintaining its municipal utility, renewals, or replacements thereto, including all amounts due and payable under any contract or purchase agreement with an agency, the interest on and principal of any outstanding bonds or other indebtedness of the municipality, whether at maturity or upon sinking fund redemption, which are payable from the revenue of its municipal utility, and to provide, as may be required by any resolution, ordinance, trust indenture, security instrument, or other agreement of the agency, for any reasonable reserves for operating and maintenance expenses and for any margins or coverages over and above debt service.

(2) The purchase agreement also may provide for payments in the form of contributions to defray the cost of any purchase permitted by the purchase agreement and as advances for any such purchase subject to repayment by the agency.

Sec. 49. (1) An agency may sell or exchange excess capacity of any project or any excess water, electrical energy or power, energy source, or fuel, produced or owned by the agency not required by any of the participating municipalities. An agency may make such sale to any person for such consideration and for such period and upon such terms and conditions as the

agency may determine, except that no such agency shall sell or exchange excess capacity of power or energy at retail, within the State of Nebraska.

(2) Notwithstanding any other provision of this act or any other statute, nothing shall prohibit an agency from undertaking any project in conjunction with or owning any project jointly with any person.

Sec. 50. The provisions of sections 51 to 62 of this act shall apply only to agencies created pursuant to sections 26 to 34 of this act and shall not be construed to create any exceptions to the provisions of section 49 of this act.

Sec. 51. The books and records of an agency created pursuant to sections 26 to 34 of this act shall be public records and shall be kept at the principal place of business of such agency. The agency books and records shall be open to public inspection at reasonable times and upon reasonable notice. The agency shall annually cause to be filed with the Auditor of Public Accounts an audit of the books, records, and financial affairs of the agency. Such audit shall be made by a certified public accountant or firm of such accountants and shall be in a form prescribed by the Auditor of Public Accounts. Such audit shall show (1) the gross income from all sources of the agency for the previous year, (2) the gross amount of electrical energy supplied by such agency, (3) the amount expended during the previous year for maintenance, (4) the amount expended during the previous year for plant investments, (5) the amount of depreciation of the plant during the previous year, (6) the cost of supplying electrical energy, including production cost, transmission cost, and distribution cost, (7) the number of employees as of December 31 of each year, (8) the salaries paid employees, and (9) all other facts necessary to give an accurate and comprehensive view of the cost of maintaining and operating the agency. When the audit has been examined and approved by the Auditor of Public Accounts, written copies thereof shall be placed and kept on file at the principal place of business of the agency, and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred twenty days after December 31 of each year.

Sec. 52. Any agency created pursuant to sections 26 to 34 of this act shall be considered to be a governmental subdivision within the meaning of section 70-625.02 and shall be considered to be a generating power agency within the meaning of sections 70-626.01 to 70-626.05.

Sec. 53. Subject to the limitations of the petition for its creation and all amendments thereto, an agency may own, construct, reconstruct, purchase, lease, or otherwise acquire, improve, extend, manage, use, or operate any electric light and power plants, lines, and systems, either within or beyond, or partly within and partly beyond, the boundaries of the participating municipalities, and may engage in, transact business, or enter into any kind of contract or arrangement with any person, firm, corporation, state, county, city, village, governmental subdivision or agency, the United States, or any officer, department, bureau, or agency thereof, any corporation organized by federal law, or any body politic or corporate, for any of the purposes enumerated in this section, or for or incident to the exercise of any one or more of the powers enumerated in this section, or for the generation, distribution, transmission, sale, or purchase of electrical energy for lighting, power, heating, and any and every other useful purpose whatsoever, and for any and every service involving, employing, or in any manner pertaining to the use of, electrical energy, by whatever means generated or distributed, or for the financing or payment of the cost and expense incident to the acquisition or operation of any such power plant or system, or incident to any obligation or indebtedness entered into or incurred by the agency. In the case of the acquisition, by purchase, lease, or any other contractual obligation, of an existing electric light and power plant, lines, or system, from any person, firm, association, or private corporation by any such agency, a copy of the proposed contract shall be filed with the Department of Water Resources and open to public inspection and examination for a period of thirty days before such proposed contract may be signed, executed, or delivered, and such proposed contract shall not be valid for any purpose and no rights may arise thereunder until after such period of thirty days has expired.

Sec. 54. Subject to the limitations of the petition for its creation and all amendments thereto, an agency may own, construct, reconstruct, improve, purchase, lease, or otherwise acquire, extend, manage, use, or operate any irrigation works, as defined in section 70-601, either within or beyond, or partly within and partly beyond, the boundaries of the participating municipalities, and any and every kind of property, personal or real, necessary, useful, or incident to such acquisition, extension, management, use, and operation, whether the same be independent of or in connection or conjunction with an electric light and power business, in whole or in part. In connection with the powers enumerated in this section, such agency shall have the right and power to enter into any contract, lease,

agreement, or arrangement with any state, county, city, village, governmental or public corporation or association, person, public or private firm or corporation, the United States, or any officer, department, bureau or agency thereof, or any corporation organized under federal law for the purpose of exercising or utilizing any one or more of the powers enumerated in this section, or for the sale, leasing, or otherwise furnishing or establishing, water rights, water supply, water service, or water storage, for irrigation or flood control, or for the financing or payment of the cost and expenses incident to the construction, acquisition, or operation of such irrigation works, or incident to any obligation or liability entered into or incurred by such agency.

Sec. 55. In addition to all other rights and powers which may be possessed by an agency under the petition for its creation and all amendments thereto or by statute, any such agency which has radioactive material available to it in association with facilities constructed in connection with the production of electrical energy shall have the power to use, sell, lease, transport, dispose of, furnish, or make available under contract or otherwise to any person, firm, corporation, state, county, city, village, governmental subdivision or agency, the United States or any officer, department, bureau or agency thereof, any corporation organized by federal law, or any body politic or corporate any such radioactive material or the energy therefrom; to own, operate, construct, reconstruct, purchase, remove, lease, or otherwise acquire, improve, extend, manage, use, or operate any facilities or any property, real or personal, to engage in or transact business, or enter into any kind of contract or arrangement with anyone, for any of the purposes enumerated in this section, or for or incident to the exercise of any one or more of the powers enumerated in this section, and for any and every service involving, employing, or in any manner pertaining to the use of radioactive material or the energy therefrom; or for the financing or payment of the cost and expense incident to the acquisition, construction, reconstruction, improvement, or operation of any such facilities or property, real or personal, or incident to any obligation or indebtedness entered or incurred by any such agency, for any of the purposes enumerated in this section.

Sec. 56. In addition to the rights and powers enumerated in sections 50 to 62 of this act, and in no manner limiting or restricting the same, such agency shall be deemed to be and shall have and exercise each and all of the rights and powers of a public electric

light and power district or public power district within the meaning of sections 70-501 to 70-503.

Sec. 57. (1) Such agency shall have and may exercise any one or more of the powers, rights, privileges, and franchises mentioned in sections 70-625 to 70-628, either alone or jointly with one or more public power districts. In any joint exercise of powers, rights, privileges, and franchises with respect to the construction, operation, and maintenance of electric generation or transmission facilities, each entity shall own an undivided interest in such facility and be entitled to the share of the output or capacity therefrom attributable to its undivided interest. Each entity may enter into an agreement or agreements with respect to any electric generation or transmission facility with other entities participating therein, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of this section as the board of directors of the entity shall deem to be in the interests of the entity.

(2) The agreement may include, but not be limited to, (a) provisions for the construction, operation, and maintenance of an electric generation or transmission facility by any one of the participating entities, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participating entities or by such other means as may be determined by the participating entities, and (b) provisions for a uniform method of determining and allocating among participating entities the costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as the agent with respect to construction, operation, and maintenance of a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating entities.

(3) Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of the agreement any participating agency or district may delegate its powers and duties with respect to the construction, operation, and maintenance of a facility to the participating entity acting as agent, and all actions taken by such agent in accordance with the provisions of the agreement shall be binding upon each of such participating entities without further action or approval by their respective boards of directors. The entity acting as the agent shall be required to exercise all such powers and perform its duties and functions under

the agreement in a manner consistent with prudent utility practice. As used in this section, prudent utility practice shall mean any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In no event shall anything in this section be deemed to authorize any agency or district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other entity participating in such electric generation or transmission facility. Any agency or district that is interested by ownership, lease, or otherwise in the operation of electric power plants, distribution systems, or transmission lines, either alone or in association with another entity, in thirteen or more counties in the state may sell, lease, combine, merge, or consolidate all or a part of its property with the property of any other agency or district.

Sec. 58. It is hereby declared to be in the public interest of the State of Nebraska that agencies be empowered to participate jointly or in cooperation with municipalities and other public agencies in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or without this state in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such need and in addition to but not in substitution for any other powers granted such agencies, each such agency shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located within or without this state jointly and in cooperation with one or more other such agencies, cities, or villages of this state which own or operate electrical facilities, or municipal corporations or other governmental entities of this or other states which own or operate electrical facilities. The powers granted under this section may be exercised with respect to any electric generation or transmission facility jointly with the powers granted under any other provision of sections 18-412.03 to 18-412.05, 70-628.02 to 70-628.04, 70-646, and 70-657.

Sec. 59. It is hereby declared to be in the public interest of the State of Nebraska that agencies be

empowered to participate jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or without this state in order to achieve economies and efficiencies in meeting the future electric energy needs of the people of the State of Nebraska. In furtherance of such end and in addition to but not in substitution for any other powers granted such agencies, each such agency shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located in this state jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state, and each agency shall have and may exercise such power and authority with respect to electric generation or transmission facilities located outside of this state jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state. The power granted under this section may be exercised with respect to any electric generation or transmission facilities jointly with the powers granted under any other provision of sections 18-412.03 to 18-412.05, 70-628.02 to 70-628.04, 70-646, and 70-657.

Sec. 60. Any agency participating jointly and in cooperation with others in an electric generation or transmission facility shall own an undivided interest in such facility and be entitled to the share of the output or capacity therefrom attributable to such undivided interest. Such agency may enter into an agreement or agreements with respect to each such electric generation or transmission facility with the other participants therein, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of this act as the board of directors of such agency shall deem to be in the interests of such agency. The agreement may include, but not be limited to, provision for the construction, operation, and maintenance of such electric generation or transmission facility by any one of the participants, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participants or by such other means as may be determined by the participants and provision for a uniform method of determining and allocating among participants costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as such agent with respect to

construction, operation, and maintenance of such a facility, including without limitation the letting of contracts therefor, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participants. Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of any such agreement in which or pursuant to which an agency, public power district, public power and irrigation district, city, or village of this state shall be designated as the agent thereunder for the construction, operation, and maintenance of such a facility, each of the participants may delegate its powers and duties with respect to the construction, operation, and maintenance of such facility to such agent, and all actions taken by such agent in accordance with the provisions of such agreement shall be binding upon each of such participants without further action or approval by their respective boards of directors or governing bodies. Such agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. As used in this section, prudent utility practice shall mean any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In no event shall anything in sections 50 to 62 of this act be deemed to authorize any agency to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other participant in such electric generation or transmission facility, and no funds of such agency may be used for any such purpose.

Sec. 61. No power plant, system, or works owned by an agency shall be sold, alienated, or mortgaged by such agency. Nothing in this act shall prevent an agency from assigning, pledging, or otherwise hypothecating, its revenue, incomes, receipts, or profits to secure the payment of indebtedness, but the credit or funds of the State of Nebraska or any subdivision thereof shall never be pledged for the payment or settlement of any indebtedness or obligation whatever of any agency created pursuant to sections 26 to 34 of this act. Neither by sale under foreclosure, receivership, or bankruptcy proceedings, nor by alienation in any other manner, may the property of such an agency become the property of or

come under the control of any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. In order to protect and safeguard the security and the rights of the purchasers or holders of revenue debentures, notes, bonds, warrants, or other evidences of indebtedness, issued by any agency created pursuant to sections 26 to 34 of this act, such agency may agree with the purchasers or holders that in the event of default in the payment on, or principal of, any such evidences of indebtedness or in the event of default in performance of any duty or obligation of such agency in connection therewith, such purchasers or holders, or trustees selected by them, may take possession and control of the business and property of the agency and proceed to operate the same, and to collect and receive the income thereof, and after paying all necessary and proper operating expenses and all other proper disbursements or liabilities made or incurred, use the surplus, if any, of the revenue of the agency as follows: (1) In the payment of all outstanding past-due interest on each issue of revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, so far as such net revenue will go, and paying pro rata the interest due on each issue thereof when there is not enough to pay in full all of the interest; and (2) if any sums shall remain after the payment of interest, then in the payment of the revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, which, by the terms thereof, shall be due and payable on each outstanding issue in accordance with the terms thereof, and paying pro rata when the money available is not sufficient to pay in full. When all legal taxes and charges, all arrears of interest, and all matured revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, have been paid in full, the control of the business and the possession of the property of the agency shall then be restored to such agency. The privilege granted in this section shall be a continuing one as often as the occasion therefor may arise.

Sec. 62. The board of directors of any agency issuing revenue debentures, notes, warrants, bonds, or other evidences of indebtedness under sections 61 to 80 of this act is hereby authorized and empowered to agree and contract with the purchasers or holders thereof that in the event of default in the payment of interest on, or principal of, any such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, issued, or in the event of default in the performance of any duty or obligation under any agreement by such agency, the holder or holders of such revenue debentures, notes, warrants, bonds, or other evidences of

indebtedness then outstanding, shall be entitled as a matter of right, upon application to a court of competent jurisdiction, to have appointed a receiver of the business and property of the agency including all tolls, rents, revenue, issues, income, receipts, profits, benefits, and additions derived, received, or had thereof or therefrom, with power to operate and maintain such business and property, collect, receive, and apply all revenue, income, profits, and receipts arising therefrom, and prescribe rates, tolls, and charges, in the same way and manner as the agency might do. Whenever all defaults in the payment of principal of, and interest on, such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, and any other defaults under any agreement made by the agency, shall have been made good, such receiver shall be discharged by the court and shall therefor surrender control of the business and possession of the property in his or her hands to the agency. An agency created under this act shall never lease or alienate the franchises, plant, or physical equipment of the agency to any private person, firm, association, or corporation for operating, or for any other purpose, except as specifically provided in sections 52 to 62 of this act.

Sec. 63. No bond for costs, appeal, supersedeas, injunction, or attachment shall be required of any agency organized or created pursuant to this act, or of any officer, board, head of any department, agent, or employee of such agency in any proceeding or court action in which the agency or any officer, board, head of department, agent, or employee is a party litigant in its, his, or her official capacity.

Sec. 64. An agency may issue such types of bonds as its board may determine, subject only to any agreement with the holders of outstanding bonds, including bonds as to which the principal and interest are payable exclusively from all or a portion of the revenue from one or more projects, or from one or more revenue-producing contracts made by the agency with any person, or from its revenue generally, or which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person, or a pledge of any income or revenue, funds, or money of the agency from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

Sec. 65. An agency may from time to time issue its bonds in such principal amounts as its board shall deem necessary to provide sufficient funds to carry out any of the agency's purposes and powers, including the

establishment or increase of reserves, interest accrued during construction of a project and for such period thereafter as the board may determine, and the payment of all other costs or expenses of the agency incident to and necessary or convenient to carry out its purposes and powers.

Sec. 66. (1) Neither the members of an agency's board nor any person executing the bonds shall be liable personally on such bonds by reason of the issuance thereof.

(2) The bonds shall not be a debt of any municipality or of this state and neither this state nor any municipality shall be liable thereon. Bonds shall be payable only out of any funds or properties of the issuing agency. Such limitations shall be plainly stated upon the face of the bonds.

Sec. 67. Bonds shall be authorized by resolution of the issuing agency's board and may be issued under a resolution or under a trust indenture or other security instrument in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, trust indenture, or other security instrument may provide, and without limitation by the provisions of any other law limiting amounts, maturities, or interest rates. Any officer authorized or designated to sign, countersign, execute, or attest any bond or any coupon may utilize a facsimile signature in lieu of his or her manual signature.

Sec. 68. (1) Except as the issuing agency's board may otherwise provide, any bond and any interest coupons thereto attached shall be fully negotiable within the meaning of and for all purposes of Article 8 of the Uniform Commercial Code.

(2) The bonds may be sold at public or private sale as the issuing agency's board may provide and at such price or prices as such board shall determine.

Sec. 69. In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such obligations, such signatures shall nevertheless be valid and

sufficient for all purposes to the same extent as if such officers had remained in office until such delivery.

Sec. 70. An agency shall have power in connection with the issuance of its bonds:

(1) To covenant as to the use of any or all of its property, real or personal;

(2) To redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof;

(3) To covenant to charge or seek necessary approvals to charge rates, fees, and charges sufficient to meet operating and maintenance expenses of the agency, costs of renewals and replacements to a project, interest and principal payments, whether at maturity or upon sinking fund redemption, on any outstanding bonds or other indebtedness of the agency, creation and maintenance of any reasonable reserves therefor, and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability or security of the bonds;

(4) To covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived and as to the consequences of default and the remedies of bondholders;

(5) To covenant as to the mortgage or pledge of or the grant of any other security interest in any real or personal property and all or any part of the revenue from any project or projects or any revenue-producing contract or contracts made by the agency with any person to secure the payment of bonds, subject to such agreements with the holders of outstanding bonds as may then exist;

(6) To covenant as to the custody, collection, securing, investment, and payment of any revenue, assets, money, funds, or property with respect to which the agency may have any rights or interest;

(7) To covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds;

(8) To covenant as to limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(9) To covenant as to the rank or priority of any bonds with respect to any lien or security;

(10) To covenant as to the procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(11) To covenant as to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds;

(12) To covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the agency may determine;

(13) To covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state;

(14) To make all other covenants and to do any and all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds, or in the absolute discretion of the agency tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this section; and

(15) To execute all instruments necessary or convenient in the exercise of the powers in this act granted or in the performance of covenants or duties, which instruments may contain such covenants and provisions as any purchaser of bonds may reasonably require.

Sec. 71. An agency may issue and sell refunding bonds for the purpose of paying or providing for the payment of any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at any time prior to or at the maturity or redemption of the refunded bonds as the agency's board deems appropriate. The refunding bonds may be issued in principal amount not exceeding an amount sufficient to pay or to provide for the payment of (1) the principal of

the bonds being refunded, (2) any redemption premium thereon, (3) interest accrued or to accrue to the first or any subsequent redemption date or dates selected by the agency's board in its discretion, or to the date or dates of maturity, whichever shall be determined to be most advantageous or convenient for the agency, (4) the expenses of issuing the refunding bonds, including bond discount, and redeeming the bonds being refunded, and (5) such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be deemed necessary or convenient by the board of the issuing agency. A determination by the board that any refinancing is advantageous or necessary to the agency, or that any of the amounts provided in this section should be included in such refinancing, or that any of the bonds to be refinanced should be called for redemption on the first or any subsequent redemption date or permitted to remain outstanding until their respective dates of maturity, shall be conclusive.

Sec. 72. Refunding bonds may be exchanged for and in payment and discharge of any of the outstanding obligations being refunded. The refunding bonds may be exchanged for a like, greater, or smaller principal amount of the bonds being refunded as the issuing agency's board may determine in its discretion. The holder or holders of the bonds being refunded need not pay accrued interest on the refunding bonds if and to the extent that interest is due or accrued and unpaid on the bonds being refunded and to be surrendered.

Sec. 73. To the extent not required for the immediate payment and retirement of the obligations being refunded or for the payment of expenses incurred in connection with such refunding and subject to any agreement with the holders of any outstanding bonds, principal proceeds from the sale of any refunding bonds shall be deposited in trust to provide for the payment and retirement of the bonds being refunded, payment of interest and any redemption premiums, and payment of any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any surplus, including, without limitation, provision for the pledging of any such surplus to the payment of the principal of and interest on any issue or series of refunding bonds. Money in any such trust fund may be invested in direct obligations of, or obligations the principal of and interest on which are guaranteed by the United States government, or obligations of any agency or instrumentality of the United States government, or in certificates of deposit issued by a bank or trust company if such certificates shall be secured by a pledge of any of such obligations having an aggregate market value,

exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing in this section shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption.

Sec. 74. The issue of refunding bonds, the manner of sale, the maturities, interest rates, form, and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties, and obligations of the agency in respect of the same shall be governed by the provisions of this act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

Sec. 75. Bonds may be issued under this act without obtaining the consent of any department, division, commission, board, bureau, or instrumentality of this state, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required therefor by this act, and the validity of and security for any bonds shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions, or things.

Sec. 76. The board may provide for the publication of any resolution or other proceeding adopted by it pursuant to this act, in a newspaper of general circulation published in the municipality or county where the principal office or place of business of the agency is located, or if no newspaper is so published, then in a newspaper qualified to carry legal notices having general circulation therein.

Sec. 77. In the case of a resolution or other proceeding providing for the issuance of bonds pursuant to this act, the board may, either before or after the adoption of such resolution or other proceeding, in lieu of publishing the entire resolution or other proceeding, publish a notice of intention to issue bonds under this act, titled as such, containing:

(1) The name of the agency;

(2) The purpose of the issue, including a brief description of the project and the name of the municipalities to be serviced by the project;

(3) The principal amount of bonds to be issued;

(4) The maturity date or dates and amount or amounts maturing on such dates;

(5) The maximum rate of interest payable on the bonds; and

(6) The times and place where a copy of the form of the resolution or other proceeding providing for the issuance of the bonds may be examined, which shall be at an office of the agency, identified in the notice, during regular business hours of the agency as described in the notice and for a period of at least thirty days after the publication of the notice.

Sec. 78. For a period of thirty days after such publication any person in interest shall have the right to contest the legality of such resolution or proceeding or any bonds which may be authorized thereby, any provisions made for the security and payment of such bonds, any contract of purchase, sale, or lease, or any contract for the supply of water, power or electricity, energy conservation services or devices, or acquisition of energy sources or fuel, or sewerage or solid waste disposal services, and after such time no one shall have any cause of action to contest the regularity, formality, or legality thereof for any cause whatsoever.

Sec. 79. Bonds issued pursuant to this act are hereby made securities in which all public officers and instrumentalities of the state and all political subdivisions, all insurance companies, trust companies, banks, savings and loan associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or instrumentality of this state or any political subdivision for any purpose for which the deposit of bonds or obligations of this state or any political subdivision thereof is now or may hereafter be authorized by law.

Sec. 80. (1) All bonds of an agency are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all taxes.

(2) The property of an agency, including any pro rata share of any property owned by an agency in conjunction with any other person, is declared to be

public property of a governmental subdivision of the state used for essential public and governmental purposes and such property and the income of an agency shall be exempt from all taxes of the state or any municipality or other political subdivision of the state, and shall be exempt from all special assessments of any participating municipality.

Sec. 81. Legislative consent is hereby given to the application of the laws of other states with respect to taxation payments in lieu of taxes and the assessment thereof to any agency which has acquired an interest in a project or property situated outside the state or which owns or operates a project outside the state and to the application of regulatory and other laws of other states and of the United States to any agency in relation to the acquisition, ownership, and operation by such agency of projects situated outside this state.

Sec. 82. The provisions of this act shall be deemed to provide an additional, alternative, and complete method for the doing of the things authorized hereby and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon municipalities, agencies, and others by law. Insofar as the provisions of this act are inconsistent with the provisions of any general or special law, administrative order, or regulation, the provisions of this act shall be controlling.

Sec. 83. The State of Nebraska does hereby pledge to and agree with the holders of any bonds and with those parties who may enter into contracts with any agency or municipality under this act that the state will not alter, impair, or limit the rights thereby vested until the bonds, together with applicable interest, are fully met and discharged and such contracts are fully performed. Nothing contained in this act shall preclude such alteration, impairment, or limitation if and when adequate provisions shall be made by law for the protection of the holders of the bonds or persons entering into contracts with any agency or municipality. Each agency and municipality is authorized to include this pledge and undertaking for the state in such bonds or contracts.

Sec. 84. This act, being necessary for the welfare of the state and its inhabitants, shall be construed liberally to effect its purposes.

Sec. 85. Insofar as any provisions of this act are applicable to the formation, organization, or operation of power projects, generators, or suppliers of

LB132

electric energy, all agencies created pursuant to this act shall comply with the provisions of Chapter 70, articles 10 and 13.

Sec. 86. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 87. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.