

## JOINT FINANCING OF PUBLIC WORKS AND FACILITIES

### **28F.1 Scope of chapter limitations.**

This chapter provides a means for the joint financing by public agencies of works or facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, and industrial waste, facilities used for the conversion of solid waste to energy, and also electric power facilities constructed within the state of Iowa, except that hydroelectric power facilities may also be located in the waters and on the dams of or on land adjacent to either side of the Mississippi or Missouri river bordering the state of Iowa, water supply systems, swimming pools or golf courses. This chapter applies to the acquisition, construction, reconstruction, ownership, operation, repair, extension, or improvement of such works or facilities, by a separate administrative or legal entity created pursuant to chapter 28E or chapter 389. When the legal entity created under this chapter is comprised solely of cities, counties, and sanitary districts established under chapter 358, or any combination thereof or any combination of the foregoing with other public agencies, the entity shall be both a corporation and a political subdivision with the name under which it was organized. The legal entity may sue and be sued, contract, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the seal at pleasure, and execute all the powers conferred in this chapter.

A city shall not join an entity created under this chapter for the purpose of financing electric power facilities unless that city had established a municipal electric utility as of July 1, 1984. Power supplied by a municipal power agency shall not be furnished to a municipal utility not existing as of July 1, 1984.

After July 1, 1981, a city shall not join an entity created under this chapter or any separate administrative or legal entity created pursuant to chapter 28E for the purpose of utilizing the provisions of this chapter for financing electric power facilities until the proposal for the city to join such an entity has been submitted to and approved by the voters of the city.

The proposal shall be submitted at any city election by the council on its own motion. If a majority of those voting in the city does not approve the proposal, the same or a similar proposal may be submitted to the voters no sooner than one year from the date of the election at which the proposal was defeated.

[C71, 73, 75, 77, 79, 81, S81, § 28F.1; 81 Acts, ch 31, § 1]

83 Acts, ch 127, § 4; 85 Acts, ch 78, § 2; 87 Acts, ch 225, § 402; 91 Acts, ch 168, § 1

### **28F.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Electric power agency*" means an entity financing or acquiring electric power facilities pursuant to this chapter or chapter 28E or 476A.
2. "*Project*" or "*projects*" means any works or facilities referred to in section 28F.1 and shall include all property real and personal, pertinent thereto or connected with such project or projects, and the existing works or facilities, if any, to which such project or projects are an extension, addition, betterment, or improvement.
3. "*Public agency*", "*state*", and "*private agency*" shall have the meanings prescribed by section 28E.2.

[C71, 73, 75, 77, 79, 81, S81, § 28F.2; 81 Acts, ch 31, § 7]

2001 Acts, 1st Ex, ch 4, §3, 36

### **28F.3 Revenue bonds.**

An entity created to carry out an agreement authorizing the joint exercise of those governmental powers enumerated in section 28F.1 shall have power to construct, acquire, own, repair, improve, expand, operate and maintain a project or projects necessary to carry out the purposes of such agreement, and to issue from time to time revenue bonds payable from the revenues derived from such project or projects, or any combination of such projects, to finance the cost or part of the cost of the acquisition, construction, reconstruction, repair, extension or improvement of such project or projects, including the acquisition for the purposes of such agreement, of any property, real or personal or mixed therefor. The power of the entity to issue revenue bonds shall not be exercised until authorized by resolution duly adopted by each of the public agencies participating in such agreement. Public agencies participating in such an agreement may not withdraw or in any way terminate, amend, or modify in any manner to the detriment of the bondholders said agreement if revenue bonds or obligations issued in anticipation of the issuance of said revenue bonds have been issued and are then outstanding and unpaid as provided for herein. Any revenue bonds for the payment and discharge of which, upon maturity or upon redemption prior to maturity, provision has been made through the setting apart in a reserve fund or special trust account created pursuant to this chapter to insure the payment thereof, of moneys sufficient for that purpose or through the irrevocable segregation for that purpose in a sinking fund or other fund or trust account of moneys sufficient therefor, shall be deemed to be no longer outstanding and unpaid within the meaning of any provision of this chapter.

[C71, 73, 75, 77, 79, 81, § 28F.3]

### **28F.4 Use of proceeds negotiability.**

Revenue bonds may be issued, as provided in section 28F.3, to provide all or any part of the funds required to finance the cost of the acquisition, construction, reconstruction, repair, extension or improvement of any project or projects or other purposes authorized under this chapter and such cost shall include, but shall not be limited to, administrative expenses, acquisition and construction costs, engineering, fiscal or financial and legal expenses, surveys, plans and specifications, interest during such construction, reconstruction, repair, extension or improvement or acquisition and for one year after completion of such construction, reconstruction, repair, extension or improvement or after acquisition of the project or projects, initial reserve funds, acquisition of real or personal property, including franchises, and such other costs as are necessary and incidental to the construction, reconstruction, repair, extension or improvement, or acquisition of such project or projects and the financing thereof. Such an entity shall have the power to retain and enter into agreements with engineers, fiscal agents, financial advisers, attorneys, architects or other consultants or advisers for planning, supervision and financing of such project or projects upon such terms and conditions as shall be deemed advisable and in the best interest of the entity. Bonds issued under the provisions of this chapter are declared to be investment securities under the laws of the state of Iowa.

[C71, 73, 75, 77, 79, 81, § 28F.4]

### **28F.5 Source of payment rates and charges, pledge of revenues.**

Such an entity shall have the power to pledge all or part of the net revenues of a project or projects to the payment of the principal of and interest on the bonds issued pursuant to this chapter and shall provide by resolution authorizing the issuance of said bonds that such net revenues of the project or projects shall be set apart in a sinking fund for that purpose and kept separate and distinct from all other revenues of the entity. The principal of and interest on the bonds so issued shall be secured by a pledge of such net revenues of the project or projects in the manner and to the extent provided in the resolution authorizing the issuance of said bonds.

Such an entity shall have the power to fix, establish and maintain such rates, tolls, fees, rentals or other

charges and collect the same from the public agencies participating in the agreement or from private agencies or persons for the payment of the services and facilities provided by said project or projects. Such rates, tolls, fees, rentals or other charges shall be so fixed, established and maintained and revised from time to time whenever necessary as will always provide revenues sufficient to pay the cost of maintaining, repairing and operating the project or projects, to pay the principal of and interest on the bonds then outstanding which are payable therefrom as the same become due and payable, to provide adequate and sufficient reserves therefor, to provide for replacements, depreciations and necessary extensions and enlargements and to provide a margin of safety for the making of such payments and providing such reserves. Notwithstanding the foregoing such an entity shall have the further right to pledge to the payment of the bonds issued pursuant to this chapter, in addition to the net revenues of the project or projects pledged therefor, such other moneys that it may have and which are lawfully available therefor.

In order to pay the rates, tolls, fees, rentals or other charges levied against a public agency by an entity for the payment of the services and facilities provided by a project or projects authorized by this chapter, public agencies participating in such an agreement shall have the power by ordinance to fix, establish and maintain, rates or other charges for the use of and the services and facilities rendered by said project or projects. Such rates or charges may be so fixed, established and maintained and revised from time to time whenever necessary as will always provide such public agencies with sufficient revenue to pay the rates, tolls, fees, rentals or other charges levied against it by the entity for the payments of the services and facilities provided by said project or projects. All such rates or charges to be paid by the owners of real property, if not paid as by the ordinance provided, when due, shall constitute a lien upon such real property served by such project or projects, and shall be collected in the same manner as general taxes.

[C71, 73, 75, 77, 79, 81, § 28F.5]

#### **28F.6 Bonds not debts of the public agencies.**

The principal of and interest on the bonds issued by an entity under the provisions of this chapter shall be payable solely from and secured by the net revenues of the project or projects and from other funds of the entity lawfully available therefor as provided in section 28F.5 and said bonds shall not in any respect be a general obligation of any public agency participating in said entity nor shall the entity or any public agency participating in said entity be in any manner liable by reason of such net revenues or other funds being insufficient to pay said bonds. All bonds issued by the entity shall contain a recital on their face that neither the payment of the principal nor any part thereof nor any interest thereon constitutes a debt, liability or obligation of any of the public agencies participating in the agreement creating such entity or of the entity itself, except that the entity shall be liable for the payment of such bonds from the net revenues derived from the project or projects and from the other moneys lawfully available therefor and pledged thereto pursuant to the provisions of the resolution which authorized their issuance. Said bonds issued by the entity shall be authorized by resolution which may be adopted at the same meeting at which it was introduced by a majority of the members of the governing body of the entity. The terms, conditions and provisions for the authorization, issuance, sale, and security of said bonds and of the holders thereof shall be set forth in said resolution.

[C71, 73, 75, 77, 79, 81, § 28F.6]

#### **28F.7 Construction and operation of project.**

An entity shall operate, maintain and preserve a project in good repair and working order, and shall construct and operate the project in an efficient and economical manner, provided that the entity may lease or rent a project or any part of a project, or otherwise provide for the construction and operation of a project or any part of a project in the manner and upon the terms as the governing body of the entity directs.

The electric light and power plant and system of any public agency participating in and receiving wholesale

power from electric power facilities owned, operated, or financed pursuant to this chapter shall meet the standards of the national electric safety code of 1968, as amended to and including January 1, 1981, of the national fire protection association.

[C71, 73, 75, 77, 79, 81, S81, § 28F.7; 81 Acts, ch 31, § 2]

### **28F.8 Details of revenue bonds.**

Revenue bonds issued pursuant to this chapter shall bear interest at rates not exceeding those permitted by chapter 74A for revenue bonds issued by a city, may be in one or more series, may bear dates, may mature at times not exceeding forty years from their respective dates, may be payable in a medium of payment, at places within the state, may carry registration privileges, may be subject to terms of prior redemption, with or without premium, may be executed in the manner, may contain terms, covenants and conditions, may be sold at public or private sale in the manner and on terms provided by the entity or may be exchanged for outstanding interim notes, and may be in a form otherwise, as the resolution or subsequent resolutions provide.

[C71, 73, 75, 77, 79, 81, S81, § 28F.8; 81 Acts, ch 31, § 3]

### **28F.9 Issuance of interim notes.**

The entity may borrow money for the purposes for which bonds may be issued, in anticipation of the receipt of the proceeds of the sale of bonds. Notes shall be issued for moneys borrowed under this section, and the notes may be renewed. The notes shall be authorized by resolution of the governing body of the entity and may be issued in denominations, bear interest at rates not exceeding the maximum rate of interest permitted by chapter 74A for pledge orders issued by a city, shall be in a form and shall be executed in a manner, all as the entity prescribes. If the notes are renewal notes, they may be exchanged for notes then outstanding on terms the governing body of the entity determines. Notes may be sold at public or private sale or may be issued to persons furnishing materials and services constituting a part of the cost of the acquisition, construction, reconstruction, repair, extension or improvement of a project. The governing body of the entity may retire any notes from the revenues derived from the project or from other moneys of the entity which are lawfully available for that purpose or from a combination of each, in lieu of retiring them by means of bond proceeds.

[C71, 73, 75, 77, 79, 81, S81, § 28F.9; 81 Acts, ch 31, § 4]

### **28F.10 Refunding bonds.**

Refunding bonds may be issued by an entity in a principal amount sufficient to provide funds for the payment (including premium, if any) of bonds issued by said entity pursuant to the provisions of this chapter to be refunded thereby and the interest thereon and in addition for the payment of all expenses incident to the calling, retiring, or paying of such outstanding bonds to be refunded, such refunding bonds may also finance the construction of a project or projects authorized by this chapter or the improvement, addition, betterment or extension of an existing project or projects so authorized. Said refunding bonds shall not be issued to refund the principal of and interest on any bonds to be refunded unless such bonds mature or are redeemable under their terms within ten years from the date of delivery of the refunding bonds. The proceeds of said refunding bonds to be used for the payment of the principal of, interest on and redemption premiums, if any, on said bonds to be refunded which will not be due and payable immediately shall be deposited in trust for the sole purpose of making such payments in a bank or trust company within the state. Any moneys in such trust fund, prior to the date such funds will be needed for the payment of such principal of, interest on and redemption premiums, if any, of such outstanding bonds to be refunded, may be invested or reinvested as provided in the resolution authorizing said refunding bonds. Refunding bonds shall be issued in the same manner and detail as revenue bonds herein authorized.

[C71, 73, 75, 77, 79, 81, § 28F.10]

### **28F.11 Eminent domain.**

Any public agency participating in an agreement authorizing the joint exercise of governmental powers pursuant to this chapter may exercise its power of eminent domain to acquire interests in property, under provisions of law then in effect and applicable to the public agency, for the use of the entity created to carry out the agreement, provided that the power of eminent domain is not used to acquire interests in property which is part of a system of facilities in existence, under construction, or planned, for the generation, transmission or sale of electric power. In the exercise of the power of eminent domain, the public agency shall proceed in the manner provided by chapter 6B. Any interests in property acquired are acquired for a public purpose, as defined in chapter 6A, of the condemning public agency, and the payment of the costs of the acquisition may be made pursuant to the agreement or to any separate agreement between the public agency and the entity or the other public agencies participating in the entity or any of them. Upon payment of costs, any property acquired is the property of the entity.

[C71, 73, 75, 77, 79, 81, S81, § 28F.11; 81 Acts, ch 31, § 5]

2006 Acts, 1st Ex, ch 1001, §28, 49

2006 amendments to this section take effect July 14, 2006, and apply to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

### **28F.12 Additional powers of the entity.**

If the entity is comprised solely of cities, counties, and sanitary districts established under chapter 358 or any combination thereof, the entity shall have in addition to all the powers enumerated in this chapter, the powers which a county has with respect to solid waste disposal projects.

[C77, 79, 81, S81, § 28F.12; 81 Acts, ch 117, § 1003]

### **Footnotes**

See § 331.381, 331.441, 331.461

### **28F.13 Laws applicable.**

An entity created to carry out an agreement authorizing the joint exercise of the powers enumerated in section 28F.1 with regard to electric power facilities shall be subject to the provisions of chapter 21, relating to open meetings, chapter 22, relating to the examination of public records, chapter 97B, relating to the Iowa public employees' retirement system and chapter 476A, relating to electric power generators.

[S81, § 28F.13; 81 Acts, ch 31, § 6]

### **28F.14 Hydroelectric utilities eminent domain contracts.**

As used in this section, "*hydroelectric utility*" means an entity comprised of any number of public agencies or entities created to carry out an agreement authorizing the joint exercise of any of the governmental powers enumerated in section 28F.1, which owns or operates or proposes to own or operate all or part of a hydroelectric power facility or the capacity or use of a hydroelectric power facility.

In addition to other powers, a hydroelectric utility having complied with chapter 469A shall have the power of eminent domain for the purposes of constructing a hydroelectric utility but before exercising the power it

shall first exhaust all efforts to secure the necessary voluntary easements. The hydroelectric utility shall comply with provisions of law then in effect, including section 28F.11, and applicable to those public agencies comprising the hydroelectric utility in connection with the construction of hydroelectric power facilities.

In addition to other powers, the governing body of a hydroelectric utility may purchase all or part of any power plant and may purchase all or part of the capacity, power or energy associated with any power plant owned by, or contract to sell all or part of the hydroelectric utility's power and energy including any surplus to, a public agency or private agency or an entity created to carry out an agreement authorizing the joint exercise of any of the governmental powers enumerated in section 28F.1. Any such entity, public agency, or hydroelectric utility may enter into contracts for the purchase or supply, from any source, of all or a portion of the capacity, power and energy requirements of the entity, public agency or hydroelectric utility on terms and conditions as the governing body of the entity, public agency or hydroelectric utility deems fit, subject to section 476.43. The terms may include provisions for the payment for capacity or output of a facility whether the facility is completed or operating, and for establishing the rights and obligations of all parties to the contract in the event of default. Payments made by an entity, public agency or hydroelectric utility under contracts constitute operating expenses of the entity, public agency or hydroelectric utility payable from the revenues derived from the electric power plant and systems of the entity, public agency or hydroelectric utility.

85 Acts, ch 78, §1