



UTAH STATE SENATE

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January 22, 2003

Mr. President:

The Revenue and Taxation Committee reports a favorable recommendation on **S.B. 21**, AMENDMENTS TO THE INTERLOCAL COOPERATION ACT, by Senator L. Blackham, with the following amendments:

1. Page 1, Line 8: After "**requirements.**" insert "**The act modifies provisions related to powers and duties of interlocal entities.**"
2. Page 1, Line 14: After line 14 insert:
"**11-13-204**, as enacted by Chapter 286, Laws of Utah 2002"
3. Page 4, Line 99: After line 99 insert:
"Section 2. Section **11-13-204** is amended to read:
11-13-204. Powers and duties of interlocal entities -- Additional powers of energy services interlocal entities -- Length of term of agreement and interlocal entity -- Notice to State Tax Commission.
(1) (a) An interlocal entity:
(i) may:
(A) adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business;
(B) sue and be sued;
(C) have an official seal and alter that seal at will;
(D) make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions;
(E) acquire real or personal property, or an undivided, fractional, or other interest in real or personal property, necessary or convenient for the purposes contemplated in the agreement creating the interlocal entity and sell, lease, or otherwise dispose of that property;
(F) directly or by contract with another:
(I) own and acquire facilities and improvements or an undivided, fractional, or other interest in facilities and improvements;
(II) construct, operate, maintain, and repair facilities and improvements;
and
(III) provide the services contemplated in the agreement creating the interlocal entity;
(G) borrow money, incur indebtedness, and issue revenue bonds, notes, or

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other obligations and secure their payment by an assignment, pledge, or other conveyance of all or any part of the revenues and receipts from the facilities, improvements, or services that the interlocal entity provides; (H) offer, issue, and sell warrants, options, or other rights related to the bonds, notes, or other obligations issued by the interlocal entity; and (I) sell or contract for the sale of the services, output, product, or other benefits provided by the interlocal entity to:

(I) public agencies inside or outside the state; and
(II) with respect to any excess services, output, product, or benefits, any person on terms that the interlocal entity considers to be in the best interest of the public agencies that are parties to the agreement creating the interlocal entity; and

(ii) may not levy, assess, or collect ad valorem property taxes.

(b) An assignment, pledge, or other conveyance under Subsection (1)(a)(i)(G) may, to the extent provided by the documents under which the assignment, pledge, or other conveyance is made, rank prior in right to any other obligation except taxes or payments in lieu of taxes payable to the state or its political subdivisions.

(2) An energy services interlocal entity:

(a) except with respect to any ownership interest it has in facilities providing additional project capacity, is not subject to:

(i) Part 3, Project Entity Provisions; or

(ii) Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act; and

(b) may:

(i) own, acquire, and, by itself or by contract with another, construct, operate, and maintain a facility or improvement for the generation, transmission, and transportation of electric energy or related fuel supplies;

(ii) enter into a contract to obtain a supply of electric power and energy and ancillary services, transmission, and transportation services, and supplies of natural gas and fuels necessary for the operation of generation facilities;

(iii) enter into a contract with public agencies, investor-owned or cooperative utilities, and others, whether located in or out of the state, for the sale of ~~the~~ wholesale services provided by the energy services interlocal entity; and

(iv) adopt and implement risk management policies and strategies and enter into transactions and agreements to manage the risks associated with the purchase and sale of energy [~~in competitive markets~~], including forward purchase and sale contracts, hedging, tolling and swap agreements, and other instruments.

(3) Notwithstanding Section 11-13-216, an agreement creating an interlocal entity or an amendment to that agreement may provide that the agreement may continue and the interlocal entity may remain in existence until the latest to occur of:

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- (a) 50 years after the date of the agreement or amendment;
 - (b) five years after the interlocal entity has fully paid or otherwise discharged all of its indebtedness;
 - (c) five years after the interlocal entity has abandoned, decommissioned, or conveyed or transferred all of its interest in its facilities and improvements; or
 - (d) five years after the facilities and improvements of the interlocal entity are no longer useful in providing the service, output, product, or other benefit of the facilities and improvements, as determined under the agreement governing the sale of the service, output, product, or other benefit.
- (4) (a) The governing body of each interlocal entity created under Section 11-13-203 on or after May 4, 1998, shall, within 30 days of the creation, file a written notice of the creation with the State Tax Commission.
- (b) Each written notice required under Subsection (4)(a) shall:
- (i) be accompanied by:
 - (A) a copy of the agreement creating the interlocal entity; and
 - (B) if less than all of the territory of any Utah public agency that is a party to the agreement is included within the interlocal entity, a plat that delineates a metes and bounds description of the area affected or a map of the area affected and evidence that the information has been recorded by the recorder of the county in which the Utah public agency is located; and
 - (ii) contain a certification by the governing body that all necessary legal requirements relating to the creation have been completed.
- (5) Nothing in this Section 11-13-204 shall be construed as expanding the rights of any municipality or interlocal entity to sell or provide retail service."

Renumber remaining sections accordingly.

Respectfully,

Curtis S. Bramble
Committee Chair

Voting: 5-0-3

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