

Representative Johnny Anderson proposes the following substitute bill:

INTERLOCAL ACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Johnny Anderson

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill enacts language related to the governance of an interlocal entity.

Highlighted Provisions:

This bill:

- ▶ requires members of an interlocal entity to comply with law that is applicable to each public agency that is a member;
- ▶ amends provisions governing an interlocal entity's compliance with public meeting requirements;
- ▶ amends the definition of taxed interlocal entity;
- ▶ exempts a taxed interlocal entity from certain provisions; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on May 12, 2015.

Utah Code Sections Affected:

AMENDS:

11-13-204, as last amended by Laws of Utah 2010, Chapter 173



26 [11-13-223](#), as last amended by Laws of Utah 2007, Chapter 249

27 [11-13-315](#), as enacted by Laws of Utah 2013, Chapter 230

28

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **11-13-204** is amended to read:

31 **11-13-204. Powers and duties of interlocal entities -- Additional powers of energy**
32 **services interlocal entities -- Length of term of agreement and interlocal entity -- Notice to**
33 **lieutenant governor -- Recording requirements -- Public Service Commission.**

34 (1) (a) An interlocal entity:

35 [~~(i) may:~~]

36 [~~(A)] (i) shall adopt[~~, amend, and repeal rules;~~] bylaws, policies, and procedures for the~~

37 regulation of its affairs and the conduct of its business;

38 (ii) may:

39 (A) amend or repeal a bylaw, policy, or procedure;

40 (B) sue and be sued;

41 (C) have an official seal and alter that seal at will;

42 (D) make and execute contracts and other instruments necessary or convenient for the

43 performance of its duties and the exercise of its powers and functions;

44 (E) acquire real or personal property, or an undivided, fractional, or other interest in

45 real or personal property, necessary or convenient for the purposes contemplated in the

46 agreement creating the interlocal entity and sell, lease, or otherwise dispose of that property;

47 (F) directly or by contract with another:

48 (I) own and acquire facilities and improvements or an undivided, fractional, or other

49 interest in facilities and improvements;

50 (II) construct, operate, maintain, and repair facilities and improvements; and

51 (III) provide the services contemplated in the agreement creating the interlocal entity;

52 (G) borrow money, incur indebtedness, and issue revenue bonds, notes, or other

53 obligations and secure their payment by an assignment, pledge, or other conveyance of all or

54 any part of the revenues and receipts from the facilities, improvements, or services that the

55 interlocal entity provides;

56 (H) offer, issue, and sell warrants, options, or other rights related to the bonds, notes, or

57 other obligations issued by the interlocal entity; and

58 (I) sell or contract for the sale of the services, output, product, or other benefits
59 provided by the interlocal entity to:

60 (I) public agencies inside or outside the state; and

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

64 ~~[(it)]~~ (iii) may not levy, assess, or collect ad valorem property taxes.

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

69 (c) (i) ~~Ĥ→~~ (A) ~~[An]~~ **Except as provided in Subsection (1)(c)(i)(B), an ~~←Ĥ~~ interlocal**
69a **entity is subject to each ~~Ĥ→~~ state ~~←Ĥ~~ law that governs each public agency that is**
70 **a member of the entity ~~Ĥ→~~ to the extent that the law governs an activity or action of the public**
70a **agency in which the interlocal entity is also engaged.**

70b **(B) Subsection (1)(c)(i)(A) does not apply if an interlocal entity is expressly exempt from**
70c **the law ~~←Ĥ~~.**

70d ~~Ĥ→~~ (C) **A law described in Subsection (1)(c)(i)(A) does not include a local ordinance or**
70e **other local law. ~~←Ĥ~~**

71 (ii) If a ~~Ĥ→~~ state ~~←Ĥ~~ law that governs a public agency that is a member of the
71a interlocal entity

72 conflicts with a ~~Ĥ→~~ state ~~←Ĥ~~ law that governs another member entity, ~~Ŝ→~~ **[the most restrictive**
72a **~~Ĥ→~~ state ~~←Ĥ~~ law governs.] the interlocal entity shall choose and comply with one of the**
72b **conflicting state laws ~~←Ŝ~~**

73 (iii) (A) If a public agency that is a member of the interlocal entity is an institution of
74 higher education, the interlocal entity shall adopt the policies of the Board of Regents.

75 (B) If a policy of the Board of Regents adopted by an interlocal entity in accordance
76 with Subsection (1)(c)(iii)(A) conflicts with a ~~Ĥ→~~ state ~~←Ĥ~~ law that governs a public agency
76a that is a
77 member entity, the ~~Ĥ→~~ state ~~←Ĥ~~ law governs.

78 (2) An energy services interlocal entity:

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

81 (i) Part 3, Project Entity Provisions; or

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

84 (b) may:

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

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

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

94 (iv) adopt and implement risk management policies and strategies and enter into
95 transactions and agreements to manage the risks associated with the purchase and sale of
96 energy, including forward purchase and sale contracts, hedging, tolling and swap agreements,
97 and other instruments.

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

101 (a) 50 years after the date of the agreement or amendment;

102 (b) five years after the interlocal entity has fully paid or otherwise discharged all of its
103 indebtedness;

104 (c) five years after the interlocal entity has abandoned, decommissioned, or conveyed
105 or transferred all of its interest in its facilities and improvements; or

106 (d) five years after the facilities and improvements of the interlocal entity are no longer
107 useful in providing the service, output, product, or other benefit of the facilities and
108 improvements, as determined under the agreement governing the sale of the service, output,
109 product, or other benefit.

110 (4) (a) The governing body of each party to the agreement to approve the creation of an
111 interlocal entity, including an electric interlocal entity and an energy services interlocal entity,
112 under Section 11-13-203 shall:

113 (i) within 30 days after the date of the agreement, jointly file with the lieutenant
114 governor:

115 (A) a copy of a notice of an impending boundary action, as defined in Section
116 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

117 (B) if less than all of the territory of any Utah public agency that is a party to the
118 agreement is included within the interlocal entity, a copy of an approved final local entity plat,

119 as defined in Section 67-1a-6.5; and

120 (ii) upon the lieutenant governor's issuance of a certificate of creation under Section
121 67-1a-6.5:

122 (A) if the interlocal entity is located within the boundary of a single county, submit to
123 the recorder of that county:

124 (I) the original:

125 (Aa) notice of an impending boundary action;

126 (Bb) certificate of creation; and

127 (Cc) approved final local entity plat, if an approved final local entity plat was required
128 to be filed with the lieutenant governor under Subsection (4)(a)(i)(B); and

129 (II) a certified copy of the agreement approving the creation of the interlocal entity; or

130 (B) if the interlocal entity is located within the boundaries of more than a single
131 county:

132 (I) submit to the recorder of one of those counties:

133 (Aa) the original of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb), and
134 (Cc); and

135 (Bb) a certified copy of the agreement approving the creation of the interlocal entity;
136 and

137 (II) submit to the recorder of each other county:

138 (Aa) a certified copy of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb),
139 and (Cc); and

140 (Bb) a certified copy of the agreement approving the creation of the interlocal entity.

141 (b) Upon the lieutenant governor's issuance of a certificate of creation under Section
142 67-1a-6.5, the interlocal entity is created.

143 (c) Until the documents listed in Subsection (4)(a)(ii) are recorded in the office of the
144 recorder of each county in which the property is located, a newly created interlocal entity may
145 not charge or collect a fee for service provided to property within the interlocal entity.

146 (5) Nothing in this section may be construed as expanding the rights of any
147 municipality or interlocal entity to sell or provide retail service.

148 (6) Except as provided in Subsection (7):

149 (a) nothing in this section may be construed to expand or limit the rights of a

150 municipality to sell or provide retail electric service; and

151 (b) an energy services interlocal entity may not provide retail electric service to
152 customers located outside the municipal boundaries of its members.

153 (7) (a) An energy services interlocal entity created before July 1, 2003, that is
154 comprised solely of Utah municipalities and that, for a minimum of 50 years before July 1,
155 2010, provided retail electric service to customers outside the municipal boundaries of its
156 members, may provide retail electric service outside the municipal boundaries of its members
157 if:

158 (i) the energy services interlocal entity:

159 (A) enters into a written agreement with each public utility holding a certificate of
160 public convenience and necessity issued by the Public Service Commission to provide service
161 within an agreed upon geographic area for the energy services interlocal entity to be
162 responsible to provide electric service in the agreed upon geographic area outside the municipal
163 boundaries of the members of the energy services interlocal entity; and

164 (B) obtains a franchise agreement, with the legislative body of the county or other
165 governmental entity for the geographic area in which the energy services interlocal entity
166 provides service outside the municipal boundaries of its members; and

167 (ii) each public utility described in Subsection (7)(a)(i)(A) applies for and obtains from
168 the Public Service Commission approval of the agreement specified in Subsection (7)(a)(i)(A).

169 (b) (i) The Public Service Commission shall, after a public hearing held in accordance
170 with Title 52, Chapter 4, Open and Public Meetings Act, approve an agreement described in
171 Subsection (7)(a)(ii) if it determines that the agreement is in the public interest in that it
172 incorporates the customer protections described in Subsection (7)(c) and the franchise
173 agreement described in Subsection (7)(a)(i)(B) provides a reasonable mechanism using a
174 neutral arbiter or ombudsman for resolving potential future complaints by customers of the
175 energy services interlocal entity.

176 (ii) In approving an agreement, the Public Service Commission shall also amend the
177 certificate of public convenience and necessity of any public utility described in Subsection
178 (7)(a)(i) to delete from the geographic area specified in the certificate or certificates of the
179 public utility the geographic area that the energy services interlocal entity has agreed to serve.

180 (c) In providing retail electric service to customers outside of the municipal boundaries

181 of its members, but not within the municipal boundaries of another municipality that grants a
182 franchise agreement in accordance with Subsection (7)(a)(i)(B), an energy services interlocal
183 entity shall comply with the following:

184 (i) the rates and conditions of service for customers outside the municipal boundaries
185 of the members shall be at least as favorable as the rates and conditions of service for similarly
186 situated customers within the municipal boundaries of the members;

187 (ii) the energy services interlocal entity shall operate as a single entity providing
188 service both inside and outside of the municipal boundaries of its members;

189 (iii) a general rebate, refund, or other payment made to customers located within the
190 municipal boundaries of the members shall also be provided to similarly situated customers
191 located outside the municipal boundaries of the members;

192 (iv) a schedule of rates and conditions of service, or any change to the rates and
193 conditions of service, shall be approved by the governing body of the energy services interlocal
194 entity;

195 (v) before implementation of any rate increase, the governing body of the energy
196 services interlocal entity shall first hold a public meeting to take public comment on the
197 proposed increase, after providing at least 20 days and not more than 60 days' advance written
198 notice to its customers on the ordinary billing and on the Utah Public Notice Website, created
199 by Section [63F-1-701](#); and

200 (vi) the energy services interlocal entity shall file with the Public Service Commission
201 its current schedule of rates and conditions of service.

202 (d) The Public Service Commission shall make the schedule of rates and conditions of
203 service of the energy services interlocal entity available for public inspection.

204 (e) Nothing in this section:

205 (i) gives the Public Service Commission jurisdiction over the provision of retail
206 electric service by an energy services interlocal entity within the municipal boundaries of its
207 members; or

208 (ii) makes an energy services interlocal entity a public utility under Title 54, Public
209 Utilities.

210 (f) Nothing in this section expands or diminishes the jurisdiction of the Public Service
211 Commission over a municipality or an association of municipalities organized under Title 11,

212 Chapter 13, Interlocal Cooperation Act, except as specifically authorized by this section's
213 language.

214 (g) (i) An energy services interlocal entity described in Subsection (7)(a) retains its
215 authority to provide electric service to the extent authorized by Sections 11-13-202 and
216 11-13-203 and Subsections 11-13-204 (1) through (5).

217 (ii) Notwithstanding Subsection (7)(g)(i), if the Public Service Commission approves
218 the agreement described in Subsection (7)(a)(i), the energy services interlocal entity may not
219 provide retail electric service to customers located outside the municipal boundaries of its
220 members, except for customers located within the geographic area described in the agreement.

221 Section 2. Section 11-13-223 is amended to read:

222 **11-13-223. Open and public meetings.**

223 (1) To the extent that an interlocal entity is subject to [~~or elects, by formal resolution of~~
224 ~~its governing body to comply with]~~ the provisions of Title 52, Chapter 4, Open and Public
225 Meetings Act, it may for purposes of complying with those provisions:

226 (a) convene and conduct any public meeting by means of a telephonic or
227 telecommunications conference; and

228 (b) give public notice of its meeting pursuant to Section 52-4-202.

229 (2) In order to convene and conduct a public meeting by means of a telephonic or
230 telecommunications conference, each interlocal entity shall if it is subject to [~~or elects by~~
231 ~~formal resolution of its governing body to comply with]~~ Title 52, Chapter 4, Open and Public
232 Meetings Act:

233 (a) in addition to giving public notice required by Subsection (1) provide:

234 (i) notice of the telephonic or telecommunications conference to the members of the
235 governing body at least 24 hours before the meeting so that they may participate in and be
236 counted as present for all purposes, including the determination that a quorum is present; and

237 (ii) a description of how the members will be connected to the telephonic or
238 telecommunications conference;

239 (b) establish written procedures governing the conduct of any meeting at which one or
240 more members of the governing body are participating by means of a telephonic or
241 telecommunications conference;

242 (c) provide for an anchor location for the public meeting at the principal office of the

243 governing body; and

244 (d) provide space and facilities for the physical attendance and participation of
245 interested persons and the public at the anchor location, including providing for interested
246 persons and the public to hear by speaker or other equipment all discussions and deliberations
247 of those members of the governing body participating in the meeting by means of telephonic or
248 telecommunications conference.

249 (3) Compliance with the provisions of this section by a governing body constitutes full
250 and complete compliance by the governing body with the corresponding provisions of Sections
251 [52-4-201](#) and [52-4-202](#), to the extent that those sections are applicable to the governing body.

252 Section 3. Section **11-13-315** is amended to read:

253 **11-13-315. Taxed interlocal entity.**

254 (1) As used in this section:

255 (a) "Asset" means funds, money, an account, real or personal property, or personnel.

256 (b) "Public asset" means:

257 (i) an asset used by a public entity;

258 (ii) tax revenue;

259 (iii) state funds; or

260 (iv) public funds.

261 (c) (i) "Taxed interlocal entity" means a project entity that:

262 (A) is not exempt from a tax or fee in lieu of taxes imposed in accordance with Part 3,
263 Project Entity Provisions;

264 (B) does not receive a payment of funds from a federal agency or office, state agency or
265 office, political subdivision, or other public agency or office other than a payment that does not
266 materially exceed the greater of the fair market value and the cost of a service provided or
267 property conveyed by the project entity; and

268 (C) does not receive, expend, or have the authority to compel payment from tax
269 revenue.

270 (ii) [~~Before and on May 1, 2014, "taxed"~~] "Taxed interlocal entity" includes an
271 interlocal entity that:

272 (A) [~~†~~] was created before 1981 for the purpose of providing power supply at
273 wholesale to its members; [~~or~~]

274 [~~(H) is described in Subsection 11-13-204(7);~~]

275 (B) does not receive a payment of funds from a federal agency or office, state agency or
276 office, political subdivision, or other public agency or office other than a payment that does not
277 materially exceed the greater of the fair market value and the cost of a service provided or
278 property conveyed by the interlocal entity; and

279 (C) does not receive, expend, or have the authority to compel payment from tax
280 revenue.

281 (d) (i) "Use" means to use, own, manage, hold, keep safe, maintain, invest, deposit,
282 administer, receive, expend, appropriate, disburse, or have custody.

283 (ii) "Use" includes, when constituting a noun, the corresponding nominal form of each
284 term in Subsection (1)(d)(i), individually.

285 (2) Notwithstanding any other provision of law, the use of an asset by a taxed interlocal
286 entity does not constitute the use of a public asset.

287 (3) Notwithstanding any other provision of law, a taxed interlocal entity's use of an
288 asset that was a public asset prior to the taxed interlocal entity's use of the asset does not
289 constitute a taxed interlocal entity's use of a public asset.

290 (4) Notwithstanding any other provision of law, an official of a project entity is not a
291 public treasurer.

292 (5) Notwithstanding any other provision of law, a taxed interlocal entity's governing
293 body, as described in Section 11-13-206, shall determine and direct the use of an asset by the
294 taxed interlocal entity.

295 (6) (a) A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter
296 6a, Utah Procurement Code.

297 (b) An agent of a taxed interlocal entity is not an external procurement unit as defined
298 in Section 63G-6a-104.

299 (7) (a) A taxed interlocal entity is not a participating local entity as defined in Section
300 63A-3-401.

301 (b) For each fiscal year of a taxed interlocal entity, the taxed interlocal entity shall
302 provide:

303 (i) the taxed interlocal entity's financial statements for and as of the end of the fiscal
304 year and the prior fiscal year, including the taxed interlocal entity's balance sheet as of the end

305 of the fiscal year and the prior fiscal year, and the related statements of revenues and expenses
306 and of cash flows for the fiscal year; and

307 (ii) the accompanying auditor's report and management's discussion and analysis with
308 respect to the taxed interlocal entity's financial statements for and as of the end of the fiscal
309 year.

310 (c) The taxed interlocal entity shall provide the information described in Subsections
311 (7)(b)(i) and (b)(ii):

312 (i) in a manner described in Subsection 63A-3-405(3); and

313 (ii) within a reasonable time after the taxed interlocal entity's independent auditor
314 delivers to the taxed interlocal entity's governing body the auditor's report with respect to the
315 financial statements for and as of the end of the fiscal year.

316 (d) Notwithstanding Subsections (7)(b) and (c) or a taxed interlocal entity's compliance
317 with one or more of the requirements of Title 63A, Chapter 3, Division of Finance:

318 (i) the taxed interlocal entity is not subject to Title 63A, Chapter 3, Division of
319 Finance; and

320 (ii) the information described in Subsection (7)(b)(i) or (ii) does not constitute public
321 financial information as defined in Section 63A-3-401.

322 (8) (a) A taxed interlocal entity's governing body is not a governing board as defined in
323 Section 51-2a-102.

324 (b) A taxed interlocal entity is not subject to the provisions of Title 51, Chapter 2a,
325 Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local
326 Entities Act.

327 (9) (a) A taxed interlocal entity is not subject to the provisions of Subsection
328 11-13-204(1)(a)(i) or (c).

329 (b) In addition to the powers provided in Subsection 11-13-204(1)(a)(ii), a taxed
330 interlocal entity may, for the regulation of the entity's affairs and conduct of its business, adopt,
331 amend, or repeal bylaws, policies, or procedures.

332 Section 4. **Effective date.**

333 This bill takes effect on May 12, 2015.