

1 **INTERLOCAL ACT AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Johnny Anderson**

5 Senate Sponsor: Wayne A. Harper

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7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

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

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill takes effect on May 12, 2015.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **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

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

65 (b) An assignment, pledge, or other conveyance under Subsection (1)(a)~~[(i)]~~(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) (A) Except as provided in Subsection (1)(c)(i)(B), an interlocal entity is subject  
70 to each state law that governs each public agency that is a member of the entity to the extent  
71 that the law governs an activity or action of the public agency in which the interlocal entity is  
72 also engaged.

73 (B) Subsection (1)(c)(i)(A) does not apply if an interlocal entity is expressly exempt  
74 from the law.

75 (C) A law described in Subsection (1)(c)(i)(A) does not include a local ordinance or  
76 other local law.

77 (ii) If a state law that governs a public agency that is a member of the interlocal entity  
78 conflicts with a state law that governs another member entity, the interlocal entity shall choose  
79 and comply with one of the conflicting state laws.

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

82 (B) If a policy of the Board of Regents adopted by an interlocal entity in accordance  
83 with Subsection (1)(c)(iii)(A) conflicts with a state law that governs a public agency that is a  
84 member entity, the state law governs.

85 (2) An energy services interlocal entity:

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

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

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

91 (b) may:

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

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

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

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

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

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

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

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

113 (d) five years after the facilities and improvements of the interlocal entity are no longer

114 useful in providing the service, output, product, or other benefit of the facilities and  
115 improvements, as determined under the agreement governing the sale of the service, output,  
116 product, or other benefit.

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

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

122 (A) a copy of a notice of an impending boundary action, as defined in Section  
123 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

124 (B) if less than all of the territory of any Utah public agency that is a party to the  
125 agreement is included within the interlocal entity, a copy of an approved final local entity plat,  
126 as defined in Section 67-1a-6.5; and

127 (ii) upon the lieutenant governor's issuance of a certificate of creation under Section  
128 67-1a-6.5:

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

131 (I) the original:

132 (Aa) notice of an impending boundary action;

133 (Bb) certificate of creation; and

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

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

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

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

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

142 (Bb) a certified copy of the agreement approving the creation of the interlocal entity;  
143 and

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

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

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

148 (b) Upon the lieutenant governor's issuance of a certificate of creation under Section  
149 [67-1a-6.5](#), the interlocal entity is created.

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

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

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

156 (a) nothing in this section may be construed to expand or limit the rights of a  
157 municipality to sell or provide retail electric service; and

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

160 (7) (a) An energy services interlocal entity created before July 1, 2003, that is  
161 comprised solely of Utah municipalities and that, for a minimum of 50 years before July 1,  
162 2010, provided retail electric service to customers outside the municipal boundaries of its  
163 members, may provide retail electric service outside the municipal boundaries of its members  
164 if:

165 (i) the energy services interlocal entity:

166 (A) enters into a written agreement with each public utility holding a certificate of  
167 public convenience and necessity issued by the Public Service Commission to provide service  
168 within an agreed upon geographic area for the energy services interlocal entity to be  
169 responsible to provide electric service in the agreed upon geographic area outside the municipal

170 boundaries of the members of the energy services interlocal entity; and

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

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

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

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

187 (c) In providing retail electric service to customers outside of the municipal boundaries  
188 of its members, but not within the municipal boundaries of another municipality that grants a  
189 franchise agreement in accordance with Subsection (7)(a)(i)(B), an energy services interlocal  
190 entity shall comply with the following:

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

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

196 (iii) a general rebate, refund, or other payment made to customers located within the  
197 municipal boundaries of the members shall also be provided to similarly situated customers

198 located outside the municipal boundaries of the members;

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

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

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

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

211 (e) Nothing in this section:

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

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

217 (f) Nothing in this section expands or diminishes the jurisdiction of the Public Service  
218 Commission over a municipality or an association of municipalities organized under Title 11,  
219 Chapter 13, Interlocal Cooperation Act, except as specifically authorized by this section's  
220 language.

221 (g) (i) An energy services interlocal entity described in Subsection (7)(a) retains its  
222 authority to provide electric service to the extent authorized by Sections 11-13-202 and  
223 11-13-203 and Subsections 11-13-204 (1) through (5).

224 (ii) Notwithstanding Subsection (7)(g)(i), if the Public Service Commission approves  
225 the agreement described in Subsection (7)(a)(i), the energy services interlocal entity may not



226 provide retail electric service to customers located outside the municipal boundaries of its  
227 members, except for customers located within the geographic area described in the agreement.

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

229 **11-13-223. Open and public meetings.**

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

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

235 (b) give public notice of its meeting pursuant to Section [52-4-202](#).

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

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

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

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

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

249 (c) provide for an anchor location for the public meeting at the principal office of the  
250 governing body; and

251 (d) provide space and facilities for the physical attendance and participation of  
252 interested persons and the public at the anchor location, including providing for interested  
253 persons and the public to hear by speaker or other equipment all discussions and deliberations

254 of those members of the governing body participating in the meeting by means of telephonic or  
255 telecommunications conference.

256 (3) Compliance with the provisions of this section by a governing body constitutes full  
257 and complete compliance by the governing body with the corresponding provisions of Sections  
258 52-4-201 and 52-4-202, to the extent that those sections are applicable to the governing body.

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

260 **11-13-315. Taxed interlocal entity.**

261 (1) As used in this section:

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

263 (b) "Public asset" means:

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

265 (ii) tax revenue;

266 (iii) state funds; or

267 (iv) public funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

302 (6) (a) A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter  
303 6a, Utah Procurement Code.

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

306 (7) (a) A taxed interlocal entity is not a participating local entity as defined in Section  
307 63A-3-401.

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

310 (i) the taxed interlocal entity's financial statements for and as of the end of the fiscal  
311 year and the prior fiscal year, including the taxed interlocal entity's balance sheet as of the end  
312 of the fiscal year and the prior fiscal year, and the related statements of revenues and expenses  
313 and of cash flows for the fiscal year; and

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

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

319 (i) in a manner described in Subsection [63A-3-405\(3\)](#); and

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

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

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

327 (ii) the information described in Subsection (7)(b)(i) or (ii) does not constitute public  
328 financial information as defined in Section [63A-3-401](#).

329 (8) (a) A taxed interlocal entity's governing body is not a governing board as defined in  
330 Section [51-2a-102](#).

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

334 (9) (a) A taxed interlocal entity is not subject to the provisions of Subsection  
335 [11-13-204\(1\)\(a\)\(i\)](#) or (c).

336 (b) In addition to the powers provided in Subsection [11-13-204\(1\)\(a\)\(ii\)](#), a taxed  
337 interlocal entity may, for the regulation of the entity's affairs and conduct of its business, adopt,

338 amend, or repeal bylaws, policies, or procedures.

339 Section 4. **Effective date.**

340 This bill takes effect on May 12, 2015.