

HB0017S01 compared with HB0017

~~{deleted text}~~ shows text that was in HB0017 but was deleted in HB0017S01.

inserted text shows text that was not in HB0017 but was inserted into HB0017S01.

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Representative Johnny Anderson proposes the following substitute bill:

INTERLOCAL ACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Johnny Anderson

Senate Sponsor: _____

LONG TITLE

~~{Committee Note:~~

~~—The Political Subdivisions Interim Committee recommended this bill.~~

~~}General Description:~~

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

Highlighted Provisions:

This bill:

- ▶ requires ~~{parties entering into an interlocal agreement to identify with specificity the rules, policies, and procedures that will govern the}~~ 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;
- ▶ ~~{requires an}~~ amends the definition of taxed interlocal entity ~~{to adopt certain~~

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~~budget and fiscal procedures~~};

- ▶ exempts a taxed interlocal entity from certain provisions; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ 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

~~{ **11-13-206**, as renumbered and amended by Laws of Utah 2002, Chapter 286 }~~

~~{ **11-13-223**, as last amended by Laws of Utah 2007, Chapter 249 }~~

11-13-315, as enacted by Laws of Utah 2013, Chapter 230

~~{ ENACTS:~~

~~— **11-13-225**, Utah Code Annotated 1953~~

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

Section 1. 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 lieutenant governor -- Recording requirements -- Public Service Commission.

(1) (a) An interlocal entity:

~~[(i) may:]~~

~~[(A)] (i) ~~in accordance with Subsection (1)(c), }~~ shall adopt[, amend, and repeal rules,]~~

bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business;

(ii) may:

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

(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;

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

(b) An assignment, pledge, or other conveyance under Subsection (1)(a)~~[(+)]~~~~(ii)~~(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.

(c) (i) An interlocal entity ~~{shall adopt with specificity the rules, policies, and procedures of one member}~~ is subject to each law that governs each public agency that has rules, policies, and procedures that are:

~~— (A) the most applicable to the purpose and daily functions}~~ is a member of the entity.

(ii) If a law that governs a public agency that is a member of the interlocal entity~~}; and~~

~~— (B) }~~ conflicts with a law that governs another member entity, the most restrictive~~};~~

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~~(ii) (A) The interlocal entity shall comply with an applicable state administrative rule or statutory requirement that is applicable to the member public agency described in Subsection (1)(c)(i):~~

~~(B) If the rules, policies, procedures, or governing state administrative rules or statutes of the public agency described in Subsection (1)(c)(i) are silent as to a particular issue, policy, procedure, or other governance matter intrinsic to the interlocal entity, } law governs.~~

(iii) (A) If a public agency that is a member of the interlocal entity } shall adopt a rule, policy, or procedure specific to that matter.

~~(iii) Subsection (1)(c)(i) does not apply to a rule, policy, or procedure governed by this chapter:~~

~~(iv) The } is an institution of higher education, the interlocal entity shall adopt the } rules, policies, and procedures, and, if applicable, governing state administrative rule or statute, of the public agency described in } policies of the Board of Regents.~~

(B) If a policy of the Board of Regents adopted by an interlocal entity in accordance with Subsection (1)(c)(~~i~~) in substantially the same form without changing requirements but may make minimal changes to accommodate the structure and governance of the interlocal entity:

~~(v) The rules, policies, and procedures shall include, if applicable, rules, policies, and procedures governing:~~

~~(A) the conduct of meetings of the governing body;~~

~~(B) the negotiation and execution of contracts;~~

~~(C) records maintenance;~~

~~(D) employment;~~

~~(E) the purchase, management, and disposal of personal and real property;~~

~~(F) the construction or acquisition of facilities and improvements; and~~

~~(G) any other governance matter intrinsic to the purpose and daily functions of the interlocal entity:~~

~~(vi) The provisions of Section 11-13-225, and not this section, govern rules and procedures for the adoption of a budget and fiscal procedures } iii)(A) conflicts with a law that governs a public agency that is a member entity, the law governs.~~

(2) An energy services interlocal entity:

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(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 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, 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:

(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.

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

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

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

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

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

(I) the original:

(Aa) notice of an impending boundary action;

(Bb) certificate of creation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the energy services interlocal entity:

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

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

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

(b) (i) The Public Service Commission shall, after a public hearing held in accordance with Title 52, Chapter 4, Open and Public Meetings Act, approve an agreement described in Subsection (7)(a)(ii) if it determines that the agreement is in the public interest in that it

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incorporates the customer protections described in Subsection (7)(c) and the franchise agreement described in Subsection (7)(a)(i)(B) provides a reasonable mechanism using a neutral arbiter or ombudsman for resolving potential future complaints by customers of the energy services interlocal entity.

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

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

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

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

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

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

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

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

(d) The Public Service Commission shall make the schedule of rates and conditions of

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service of the energy services interlocal entity available for public inspection.

(e) Nothing in this section:

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

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

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

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

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

Section 2. Section ~~{11-13-206}~~11-13-223 is amended to read:

~~{~~ **11-13-206. Requirements for agreements for joint or cooperative action:**

~~_____ (1) Each agreement under Section 11-13-202, 11-13-203, or 11-13-205 shall specify:~~

~~_____ (a) its duration;~~

~~_____ (b) if the agreement creates an interlocal entity:~~

~~_____ (i) the precise organization, composition, and nature of the interlocal entity;~~

~~_____ (ii) the powers delegated to the interlocal entity;~~

~~_____ (iii) the manner in which the interlocal entity is to be governed; and~~

~~_____ (iv) subject to Subsection (2), the manner in which the members of its governing body are to be appointed or selected;~~

~~_____ (c) its purpose or purposes;~~

~~_____ (d) the manner of financing the joint or cooperative undertaking and, subject to Section 11-13-225, of establishing and maintaining a budget for it;~~

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~~— (e) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and~~

~~— (f) any other necessary and proper matters.~~

~~— (2) Each agreement under Section 11-13-203 or 11-13-205 that creates an interlocal entity shall require that Utah public agencies that are parties to the agreement have the right to appoint or select members of the interlocal entity's governing body with a majority of the voting power.~~

~~— Section 3. Section 11-13-223 is amended to read:~~

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{4}~~3. Section ~~{11-13-225}~~11-13-315 is ~~{enacted}~~amended to read:

~~{~~ **11-13-225. Budget and fiscal procedures.**

~~_____ (1) An interlocal entity that spends money shall adopt a budget.~~

~~_____ (2) An interlocal entity described in Subsection (1) shall:~~

~~_____ (a) choose the budget adoption and fiscal procedures, as prescribed by law, of one of the public agencies that is party to the agreement, including any notice and hearing requirements and any requirement to provide previous budgets for comparison;~~

~~_____ (b) adopt the budget adoption and fiscal procedures described in Subsection (2)(a) in substantially the same form for the interlocal entity; and~~

~~_____ (c) comply with the budget adoption and fiscal procedures.~~

~~_____ Section 5. Section 11-13-315 is amended to read:~~

~~‡~~ **11-13-315. Taxed interlocal entity.**

(1) As used in this section:

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

(b) "Public asset" means:

(i) an asset used by a public entity;

(ii) tax revenue;

(iii) state funds; or

(iv) public funds.

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

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

(B) does not receive a payment of funds from a federal agency or office, state agency or

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office, political subdivision, or other public agency or office other than a payment that does not materially exceed the greater of the fair market value and the cost of a service provided or property conveyed by the project entity; and

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

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

(A) ~~(H)~~ was created before 1981 for the purpose of providing power supply at wholesale to its members; ~~or~~

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

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

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

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

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

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

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

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

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

(6) (a) A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter

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6a, Utah Procurement Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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(9) (a) A taxed interlocal entity is not subject to the provisions of
~~{Subsections}~~ Subsection 11-13-204(1)(a)(i)~~{, 11-13-204(1)(c)}~~ or ~~{Section 11-13-225}~~ (c).

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

†

Legislative Review Note

~~as of 10-1-13 6:45 AM~~

~~Office of Legislative Research and General Counsel~~ Section 4. Effective date.

This bill takes effect on May 12, 2015.