

INTERLOCAL ENTITY SERVICE PROHIBITION

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to an interlocal entity.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ prohibits an interlocal entity that provides telecommunication service through a fiber optic network from constructing infrastructure or providing telecommunication service in locations outside the boundaries of its members.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

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

Utah Code Sections Affected by Revisor Instructions:

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

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



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

29 **11-13-204. Powers and duties of interlocal entities -- Additional powers of energy**
30 **services interlocal entities -- Length of term of agreement and interlocal entity -- Notice to**
31 **lieutenant governor -- Recording requirements -- Public Service Commission.**

32 (1) (a) An interlocal entity:

33 (i) may:

34 (A) adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation
35 of its affairs and the conduct of its business;

36 (B) sue and be sued;

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

38 (D) make and execute contracts and other instruments necessary or convenient for the
39 performance of its duties and the exercise of its powers and functions;

40 (E) acquire real or personal property, or an undivided, fractional, or other interest in
41 real or personal property, necessary or convenient for the purposes contemplated in the
42 agreement creating the interlocal entity and sell, lease, or otherwise dispose of that property;

43 (F) directly or by contract with another:

44 (I) own and acquire facilities and improvements or an undivided, fractional, or other
45 interest in facilities and improvements;

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

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

48 (G) borrow money, incur indebtedness, and issue revenue bonds, notes, or other
49 obligations and secure their payment by an assignment, pledge, or other conveyance of all or
50 any part of the revenues and receipts from the facilities, improvements, or services that the
51 interlocal entity provides;

52 (H) offer, issue, and sell warrants, options, or other rights related to the bonds, notes, or
53 other obligations issued by the interlocal entity; and

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

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

57 (II) with respect to any excess services, output, product, or benefits, any person on
58 terms that the interlocal entity considers to be in the best interest of the public agencies that are

59 parties to the agreement creating the interlocal entity; and

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

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

65 (2) An energy services interlocal entity:

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

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

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

71 (b) may:

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

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

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

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

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

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

89 (b) five years after the interlocal entity has fully paid or otherwise discharged all of its

90 indebtedness;

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

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

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

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

102 (A) a copy of a notice of an impending boundary action, as defined in Section
103 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

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

107 (ii) upon the lieutenant governor's issuance of a certificate of creation under Section
108 67-1a-6.5:

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

111 (I) the original:

112 (Aa) notice of an impending boundary action;

113 (Bb) certificate of creation; and

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

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

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

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

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

121 (Cc); and
122 (Bb) a certified copy of the agreement approving the creation of the interlocal entity;
123 and
124 (II) submit to the recorder of each other county:
125 (Aa) a certified copy of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb),
126 and (Cc); and
127 (Bb) a certified copy of the agreement approving the creation of the interlocal entity.
128 (b) Upon the lieutenant governor's issuance of a certificate of creation under Section
129 67-1a-6.5, the interlocal entity is created.
130 (c) Until the documents listed in Subsection (4)(a)(ii) are recorded in the office of the
131 recorder of each county in which the property is located, a newly created interlocal entity may
132 not charge or collect a fee for service provided to property within the interlocal entity.
133 (5) Nothing in this section may be construed as expanding the rights of any
134 municipality or interlocal entity to sell or provide retail service.
135 (6) Except as provided in Subsection (7):
136 (a) nothing in this section may be construed to expand or limit the rights of a
137 municipality to sell or provide retail electric service; and
138 (b) an energy services interlocal entity may not provide retail electric service to
139 customers located outside the municipal boundaries of its members.
140 (7) (a) An energy services interlocal entity created before July 1, 2003, that is
141 comprised solely of Utah municipalities and that, for a minimum of 50 years before July 1,
142 2010, provided retail electric service to customers outside the municipal boundaries of its
143 members, may provide retail electric service outside the municipal boundaries of its members
144 if:
145 (i) the energy services interlocal entity:
146 (A) enters into a written agreement with each public utility holding a certificate of
147 public convenience and necessity issued by the Public Service Commission to provide service
148 within an agreed upon geographic area for the energy services interlocal entity to be
149 responsible to provide electric service in the agreed upon geographic area outside the municipal
150 boundaries of the members of the energy services interlocal entity; and
151 (B) obtains a franchise agreement, with the legislative body of the county or other

152 governmental entity for the geographic area in which the energy services interlocal entity
153 provides service outside the municipal boundaries of its members; and

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

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

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

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

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

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

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

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

182 (v) before implementation of any rate increase, the governing body of the energy

183 services interlocal entity shall first hold a public meeting to take public comment on the
184 proposed increase, after providing at least 20 days and not more than 60 days' advance written
185 notice to its customers on the ordinary billing and on the Utah Public Notice Website, created
186 by Section 63F-1-701; and

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

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

191 (e) Nothing in this section:

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

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

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

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

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

208 (8) (a) As used in this Subsection (8):

209 (i) "fiber optic network interlocal entity" means an interlocal entity that provides
210 telecommunication service through a fiber optic network; and

211 (ii) "member" means a city or town that is a party to the interlocal agreement creating
212 the fiber optic network interlocal entity.

213 (b) Subject to Subsection (8)(c), in locations outside the boundaries of its members, a

214 fiber optic network interlocal entity may not:

215 (i) construct infrastructure directly related to the operation of a fiber optic network; or

216 (ii) provide telecommunication service.

217 (c) Subsection (8)(b) does not apply to a contract to construct infrastructure or provide

218 telecommunication service that was entered into before the effective date of this bill.

219 (d) Notwithstanding Subsection (8)(b)(i), a fiber optic network interlocal entity may

220 construct infrastructure necessary to connect the network between its members.

221 **Section 2. Effective date.**

222 If approved by two-thirds of all the members elected to each house, this bill takes effect

223 upon approval by the governor, or the day following the constitutional time limit of Utah

224 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,

225 the date of veto override.

226 **Section 3. Revisor instructions.**

227 The Legislature intends that the Office of Legislative Research and General Counsel, in

228 preparing the Utah Code database for publication, replace the phrase "the effective date of this

229 bill" in Subsection [11-13-204](#)(8)(c) in this bill with the actual effective date of this bill.

Legislative Review Note
as of 1-16-14 1:58 PM

Office of Legislative Research and General Counsel