

**11-13-205 Agreement by public agencies to approve the creation of a new entity to own sewage and wastewater facilities -- Powers and duties of new entities -- Validation of previously created entities -- Notice to lieutenant governor -- Recording requirements.**

- (1) It is declared that the policy of the state is to assure the health, safety, and welfare of its citizens, that adequate sewage and wastewater treatment plants and facilities are essential to the well-being of the citizens of the state and that the acquisition of adequate sewage and wastewater treatment plants and facilities on a regional basis in accordance with federal law and state and federal water quality standards and effluent standards in order to provide services to public agencies is a matter of statewide concern and is in the public interest. It is found and declared that there is a statewide need to provide for regional sewage and wastewater treatment plants and facilities, and as a matter of express legislative determination it is declared that the compelling need of the state for construction of regional sewage and wastewater treatment plants and facilities requires the creation of entities under the Interlocal Cooperation Act to own, construct, operate, and finance sewage and wastewater treatment plants and facilities; and it is the purpose of this law to provide for the accomplishment thereof in the manner provided in this section.
- (2) Any two or more public agencies of the state may also agree to approve the creation of a separate legal or administrative entity to accomplish and undertake the purpose of owning, acquiring, constructing, financing, operating, maintaining, and repairing regional sewage and wastewater treatment plants and facilities.
- (3) A separate legal or administrative entity created under this section is considered to be a political subdivision and body politic and corporate of the state with power to carry out and effectuate its corporate powers, including the power:
  - (a) to adopt, amend, and repeal rules, bylaws, and regulations, policies, and procedures for the regulation of its affairs and the conduct of its business, to sue and be sued in its own name, to have an official seal and power to alter that seal at will, and to make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under the Interlocal Cooperation Act;
  - (b) to own, acquire, construct, operate, maintain, repair, or cause to be constructed, operated, maintained, and repaired one or more regional sewage and wastewater treatment plants and facilities, all as shall be set forth in the agreement providing for its creation;
  - (c) to borrow money, incur indebtedness and issue revenue bonds, notes or other obligations payable solely from the revenues and receipts derived from all or a portion of the regional sewage and wastewater treatment plants and facilities which it owns, operates, and maintains, such bonds, notes, or other obligations to be issued and sold in compliance with the provisions of Title 11, Chapter 14, Local Government Bonding Act;
  - (d) to enter into agreements with public agencies and other parties and entities to provide sewage and wastewater treatment services on such terms and conditions as it considers to be in the best interests of its participants; and
  - (e) to acquire by purchase or by exercise of the power of eminent domain, any real or personal property in connection with the acquisition and construction of any sewage and wastewater treatment plant and all related facilities and rights-of-way which it owns, operates, and maintains.
- (4) The provisions of Part 3, Project Entity Provisions, do not apply to a legal or administrative entity created for regional sewage and wastewater treatment purposes under this section.
- (5) All proceedings previously had in connection with the creation of any legal or administrative entity pursuant to this chapter, and all proceedings previously had by any such entity for the authorization and issuance of bonds of the entity are validated, ratified, and confirmed;

and these entities are declared to be validly created interlocal cooperation entities under this chapter. These bonds, whether previously or subsequently issued pursuant to these proceedings, are validated, ratified, and confirmed and declared to constitute, if previously issued, or when issued, the valid and legally binding obligations of the entity in accordance with their terms. Nothing in this section shall be construed to affect or validate any bonds, or the organization of any entity, the legality of which is being contested at the time this act takes effect.

- (6)
- (a) The governing body of each party to the agreement to approve the creation of an entity under this section 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) 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 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; and
        - (II) a certified copy of the agreement approving the creation of the entity; or
      - (B) if the 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 (6)(a)(ii)(A)(I)(Aa), (Bb), and (Cc); and
          - (Bb) a certified copy of the agreement approving the creation of the entity; and
        - (II) submit to the recorder of each other county:
          - (Aa) a certified copy of the documents listed in Subsections (6)(a)(ii)(A)(I)(Aa), (Bb), and (Cc); and
          - (Bb) a certified copy of the agreement approving the creation of the entity.
  - (b) Upon the lieutenant governor's issuance of a certificate of entity creation under Section 67-1a-6.5, the entity is created.
  - (c) Until the documents listed in Subsection (6)(a)(ii) are recorded in the office of the recorder of each county in which the property is located, a newly created entity under this section may not charge or collect a fee for service provided to property within the entity.

Amended by Chapter 350, 2009 General Session