

INTERLOCAL COOPERATIVE ENTITIES

RELATED TO NATURAL GAS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Darin G. Peterson

This act modifies the Interlocal Cooperation Act to permit public agencies in contiguous states to participate in certain interlocal cooperatives.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

11-13-5.5, as last amended by Chapter 337, Laws of Utah 1998

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

Section 1. Section **11-13-5.5** is amended to read:

11-13-5.5. Contract by public agencies to create new entities to provide services -- Powers and duties of new entities -- Generation of electricity -- Transportation of natural gas.

(1) Any two or more public agencies of Utah may agree to create a separate legal or administrative entity to accomplish the purpose of their joint or cooperative action, including the undertaking and financing of a facility or improvement to provide the service contemplated by that agreement.

(2) (a) The separate legal or administrative entity created under the authority of this section is a political subdivision of Utah and may:

(i) own, acquire, construct, operate, maintain, and repair or cause to be constructed, operated, maintained, and repaired any facility or improvement set forth in the agreement;

(ii) borrow money, incur indebtedness, and issue revenue bonds or notes for the purposes for which it was created;

(iii) offer, issue, and sell warrants, options, or other rights related to:

(A) the bonds or notes issued by the entity; and



28 (B) any rights or interests pertaining to the bonds or notes;

29 (iv) assign, pledge, or otherwise convey as security for the payment of any bonded
30 indebtedness, the revenues, and receipts from the facility, improvement, or service; or

31 (v) sell or contract for the sale of the product of the service or other benefits from the
32 facility or improvement to public agencies within or without the state on whatever terms that it
33 considers to be in the best interest of its participants.

34 (b) The assignment, pledge, or other conveyance specified in Subsection (2)(a)(iii) may
35 rank prior in right to any other obligation except taxes or payments in lieu of taxes payable to the
36 state or its political subdivisions.

37 (3) (a) Any entity formed to construct any electrical generation facility shall, at least 150
38 days before adoption of the bond resolution for financing the project, offer to enter into firm or
39 withdrawable power sales contracts to suppliers of electric energy within Utah who are existing
40 and furnishing services in this state at the time that the offer is made.

41 (b) That offer ~~must~~ shall be:

42 (i) accepted within 120 days from the date offered or ~~it~~ the offer will be considered
43 rejected; and

44 (ii) for not less than 50% of its energy output.

45 (c) The demand by those electric energy suppliers or the amounts deliverable to any
46 electric energy supplier or a combination of them may not exceed the amount allowable by the
47 United States Internal Revenue Service in a way that would result in a change in or a loss of the
48 tax exemption from federal income tax for the interest paid, or to be paid, under any bonds or
49 indebtedness created or incurred by any entity formed under this section.

50 (d) For any electrical generation facility, the amount of energy output available within this
51 state may not be less than 5% of the total output.

52 (4) Subsection (3) applies only to the construction and operation of a facility to generate
53 electricity.

54 (5) (a) Any entity formed to construct and operate facilities for the generation of electricity
55 and any entity formed to facilitate the transmission or supply of electrical power under this section
56 may include within the agreement creating the entity provisions authorizing any public agency
57 located within a contiguous state to:

58 ~~(a)~~ (i) participate as a member of the project entity if it enters into an agreement in

59 accordance with Section 11-13-11; and

60 ~~[(b)]~~ (ii) vote on any issues affecting that public agency's interests, if the public agency
61 enters into the agreement required by Subsection (5)(a)(i).

62 (b) (i) Any entity formed under this section to construct and operate a facility for the
63 transmission or supply of natural gas may include within the entity a public agency located within
64 a contiguous state if:

65 (A) the agreement creating the entity formed under this section authorizes the inclusion
66 of a public agency located within a contiguous state as a member of the entity; ~~h~~ **[and]** ~~h~~

67 (B) the public agency located within a contiguous state enters into an agreement in
68 accordance with Section 11-13-11 ~~h~~ [:] ; AND ~~h~~

68a ~~h~~ **[~~h~~ (C) A PUBLIC AGENCY MAY NOT BE INCLUDED IF TO DO SO WOULD SUBJECT ANY**
68b **PROVIDER OF NATURAL GAS TO FEDERAL JURISDICTION. ~~h~~]**

68c **(C) INCLUDING THE PUBLIC AGENCY WITHIN A CONTIGUOUS STATE WOULD NOT**
68d **SUBJECT THE FOLLOWING TO FEDERAL JURISDICTION:**

68e **(I) A SUPPLIER OF NATURAL GAS;**

68f **(II) THE FACILITIES OR SERVICES OF A SUPPLIER OF NATURAL GAS; OR**

68g **(III) A PROVIDER OF NATURAL GAS TRANSPORTATION SERVICES. ~~h~~**

69 (ii) A public agency located within a contiguous state that is part of an entity described in
70 Subsection (5)(b)(i) may vote as a member of the entity on any issue affecting that public agency's
71 interests if the public agency meets the requirements of Subsection (5)(b)(i).

72 (c) For purposes of this Subsection (5) a "public agency located within or contiguous state"
73 means an agency that:

74 (i) would be a public agency if located in this state; and

75 (ii) is located in a state contiguous to this state.

76 (6) (a) The governing authority of each entity created under this section on or after May
77 4, 1998, shall, within 30 days of the creation, file a written notice of the creation with the State Tax
78 Commission.

79 (b) Each written notice required under Subsection (6)(a) shall:

80 (i) be accompanied by:

81 (A) a copy of the agreement creating the entity; and

82 (B) a map or plat that delineates a metes and bounds description of the area affected and
83 evidence that the information has been recorded by the county recorder; and

84 (ii) contain a certification by the governing authority that all necessary legal requirements
85 relating to the creation have been completed.

Legislative Review Note
as of 1-18-01 9:14 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel