INTERLOCAL COOPERATION ACT AND ELECTRIC POWER FACILITIES AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

This act modifies the Interlocal Cooperation Act and Public Utilities provisions. The act authorizes the creation of new political subdivisions of the state by Utah public agencies and out-of-state public agencies to participate in the undertaking and financing of electric generation facilities adjacent to an existing generation and transmission project or to conduct other activities relating to the generation, transmission, management, and distribution of electricity. The act authorizes an existing Utah interlocal entity to reorganize with out-of-state public agencies as an electric interlocal entity. The act provides for the powers and duties of new interlocal entities, modifies powers for existing interlocal entities, and provides for additional powers for certain interlocal entities. The act modifies provisions relating to the length of time that an interlocal entity may remain in existence. The act modifies provisions required to be included in an agreement creating an interlocal entity. The act modifies provisions relating to the sales and use tax obligation of project entities. The act repeals provisions requiring approval of agreements by an attorney. The act modifies provisions relating to generation output from a generation and transmission project and requires a majority of generation output from facilities providing additional project capacity to be made available to and acquired by purchasers in the state. The act enacts provisions relating to impact alleviation, gross receipts tax, fee in lieu of property tax, sales and use tax, privilege tax, and other matters with respect to facilities providing additional project capacity. The act modifies provisions relating to agreements between state and federal agencies. The act eliminates a requirement that applies if an interlocal cooperation entity constructs or acquires facilities to provide services that exceed those needed to meet the requirements of the participating public agencies. The act modifies a provision defining projects that are subject to a requirement to obtain a certificate of public convenience and necessity from the Public Service Commission. This act modifies provisions

relating to thermal power facilities and makes them apply instead to electric power facilities. The act expands application of those provisions to include interlocal entities and modifies provisions relating to the requirements for agreements for common facilities, the financing of common facilities, and the liability of public power entities and power utilities. The act repeals legislative purpose language. The act clarifies the taxes, fees, and exemptions relating to public agencies under certain circumstances. The act modifies definitions, adds new definitions, and makes conforming and technical changes. The act provides a coordination clause.

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

AMENDS:

9-4-305, as last amended by Chapters 10 and 299, Laws of Utah 2000

9-4-306, as renumbered and amended by Chapter 241, Laws of Utah 1992

54-4-25, as last amended by Chapters 173 and 316, Laws of Utah 1995

59-2-1101, as last amended by Chapters 221 and 310, Laws of Utah 2001

59-4-101, as last amended by Chapter 386, Laws of Utah 1997

59-7-102, as last amended by Chapter 331, Laws of Utah 1997

59-8-103, as last amended by Chapter 300, Laws of Utah 2000

59-8-104, as last amended by Chapter 273, Laws of Utah 1996

59-12-104, as last amended by Chapter 12, Laws of Utah 2001, First Special Session

63-2-304, as last amended by Chapters 232 and 335, Laws of Utah 2000

ENACTS:

11-13-204, Utah Code Annotated 1953

11-13-301, Utah Code Annotated 1953

54-9-101, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

11-13-101, (Renumbered from 11-13-1, as last amended by Chapter 9, Laws of Utah 2001)

11-13-102, (Renumbered from 11-13-2, as last amended by Chapter 9, Laws of Utah 2001)

11-13-103, (Renumbered from 11-13-3, as last amended by Chapter 234, Laws of Utah 1997)

11-13-201, (Renumbered from 11-13-4, as last amended by Chapter 83, Laws of Utah 2001)

11-13-202, (Renumbered from 11-13-5, as last amended by Chapter 47, Laws of Utah 1977)

11-13-203, (Renumbered from 11-13-5.5, as last amended by Chapter 337, Laws of Utah 1998)

11-13-205, (Renumbered from 11-13-5.6, as last amended by Chapter 9, Laws of Utah 2001)

11-13-206, (Renumbered from 11-13-6, as last amended by Chapter 4, Laws of Utah 1993)

11-13-207, (Renumbered from 11-13-7, as enacted by Chapter 14, Laws of Utah 1965)

11-13-208, (Renumbered from 11-13-8, as enacted by Chapter 14, Laws of Utah 1965)

11-13-209, (Renumbered from 11-13-10, as enacted by Chapter 14, Laws of Utah 1965)

11-13-210, (Renumbered from 11-13-11, as enacted by Chapter 14, Laws of Utah 1965)

11-13-211, (Renumbered from 11-13-13, as last amended by Chapter 143, Laws of Utah 1985)

11-13-212, (Renumbered from 11-13-14, as last amended by Chapter 5, Laws of Utah 1989, Second Special Session)

11-13-213, (Renumbered from 11-13-15, as last amended by Chapter 47, Laws of Utah 1977)

11-13-214, (Renumbered from 11-13-16, as last amended by Chapter 5, Laws of Utah 1989, Second Special Session)

11-13-215, (Renumbered from 11-13-16.5, as enacted by Chapter 3, Laws of Utah 1984, Second Special Session)

11-13-216, (Renumbered from 11-13-17, as enacted by Chapter 14, Laws of Utah 1965)

11-13-217, (Renumbered from 11-13-18, as last amended by Chapter 47, Laws of Utah 1977)

11-13-218, (Renumbered from 11-13-19, as last amended by Chapter 47, Laws of Utah 1977)

11-13-219, (Renumbered from 11-13-20, as repealed and reenacted by Chapter 30, Laws of Utah 1994)

11-13-220, (Renumbered from 11-13-22, as enacted by Chapter 27, Laws of Utah 1967)

11-13-221, (Renumbered from 11-13-23, as enacted by Chapter 31, Laws of Utah 1969)

11-13-222, (Renumbered from 11-13-24, as enacted by Chapter 31, Laws of Utah 1969)

11-13-223, (Renumbered from 11-13-37, as enacted by Chapter 30, Laws of Utah 1994)

11-13-302, (Renumbered from 11-13-25, as last amended by Chapter 326, Laws of Utah 1996)

11-13-303, (Renumbered from 11-13-26, as last amended by Chapter 5, Laws of Utah 1987)

11-13-304, (Renumbered from 11-13-27, as last amended by Chapter 188, Laws of Utah 1987)

11-13-305, (Renumbered from 11-13-28, as enacted by Chapter 10, Laws of Utah 1980)

11-13-306, (Renumbered from 11-13-29, as enacted by Chapter 10, Laws of Utah 1980)

11-13-307, (Renumbered from 11-13-30, as enacted by Chapter 10, Laws of Utah 1980)

11-13-308, (Renumbered from 11-13-31, as enacted by Chapter 10, Laws of Utah 1980)

11-13-309, (Renumbered from 11-13-32, as enacted by Chapter 10, Laws of Utah 1980)

11-13-310, (Renumbered from 11-13-33, as last amended by Chapter 72, Laws of Utah 1991)

11-13-311, (Renumbered from 11-13-34, as last amended by Chapter 231, Laws of Utah 1983)

11-13-312, (Renumbered from 11-13-35, as last amended by Chapter 2, Laws of Utah 1987)

11-13-313, (Renumbered from 11-13-36, as enacted by Chapter 10, Laws of Utah 1980)

54-9-102, (Renumbered from 54-9-1.5, as last amended by Chapter 241, Laws of Utah 1985)

54-9-103, (Renumbered from 54-9-2, as last amended by Chapter 241, Laws of Utah 1985)

54-9-104, (Renumbered from 54-9-3, as enacted by Chapter 21, Laws of Utah 1975)

54-9-105, (Renumbered from 54-9-4, as last amended by Chapter 241, Laws of Utah 1985)

54-9-106, (Renumbered from 54-9-5, as last amended by Chapter 9, Laws of Utah 2001)

54-9-107, (Renumbered from 54-9-6, as last amended by Chapter 241, Laws of Utah 1985)

REPEALS:

11-13-9, as last amended by Chapter 188, Laws of Utah 1987

11-13-12, as repealed and reenacted by Chapter 188, Laws of Utah 1987

54-9-1, as last amended by Chapter 241, Laws of Utah 1985

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

Section 1. Section **9-4-305** is amended to read:

9-4-305. Duties -- Loans -- Interest.

(1) The impact board shall:

(a) make grants and loans from the amounts appropriated by the Legislature out of the impact fund to state agencies, subdivisions, and interlocal agencies that are or may be socially or economically impacted, directly or indirectly, by mineral resource development for:

(i) planning;

(ii) construction and maintenance of public facilities; and

(iii) provision of public services;

(b) establish the criteria by which the loans and grants will be made;

(c) determine the order in which projects will be funded;

(d) in conjunction with other agencies of the state or of subdivisions or of interlocal agencies, conduct studies, investigations, and research into the effects of proposed mineral resource development projects upon local communities;

(e) sue and be sued in accordance with applicable law;

(f) qualify for, accept, and administer grants, gifts, loans, or other funds from the federal government and from other sources, public or private; and

(g) perform other duties assigned to it under Sections [~~11-13-29~~] 11-13-306 and [~~11-13-30~~] 11-13-307.

(2) Monies, including all loan repayments and interest, in the impact fund derived from bonus payments may be used for any of the purposes set forth in Subsection (1)(a) but may only be given in the form of loans to be paid back into the impact fund by the agency, subdivision, or interlocal agency.

(3) The average annual return to the impact fund on all bonus monies may not be less than 1/2 of the average interest rate paid by the state on general obligation bonds issued during the most recent fiscal year in which bonds were sold.

(4) (a) "Provision of public services" under Subsection (1)(a) includes contracts with public postsecondary institutions to fund research, education, or public service programs that benefit impacted counties or political subdivisions of the counties.

(b) Each contract under Subsection (4)(a) shall be:

(i) based on an application to the impact board from the impacted county; and

(ii) approved by the county legislative body.

(c) For purposes of this section, a land use plan is a public service program.

Section 2. Section **9-4-306** is amended to read:

9-4-306. Powers.

The impact board may:

(1) appoint, where it [~~deems~~] considers this appropriate, a hearing examiner or administrative law judge with authority to conduct any hearings, make determinations, and enter appropriate findings of facts, conclusions of law, and orders under authority of the impact board under Sections [~~11-13-29~~] 11-13-306 and [~~11-13-30~~] 11-13-307;

(2) appoint additional professional and administrative staff necessary to effectuate Sections [~~11-13-29~~] 11-13-306 and [~~11-13-30~~] 11-13-307;

(3) make independent studies regarding matters submitted to it under Sections [~~11-13-29~~] 11-13-306 and [~~11-13-30~~] 11-13-307 that the impact board, in its discretion, [~~deems~~] considers necessary, which studies shall be made a part of the record and may be considered in the impact board's determination; and

(4) make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act it [~~deems~~] considers necessary to perform its responsibilities under Sections [~~11-13-29~~] 11-13-306 and [~~11-13-30~~] 11-13-307.

Section 3. Section **11-13-101**, which is renumbered from Section 11-13-1 is renumbered and amended to read:

Part 1. General Provisions

[~~11-13-1~~]. 11-13-101. Title.

This chapter [~~may be cited~~] is known as the "Interlocal Cooperation Act."

Section 4. Section **11-13-102**, which is renumbered from Section 11-13-2 is renumbered and amended to read:

[~~11-13-2~~]. 11-13-102. Purpose of chapter.

[~~It is the~~] The purpose of this chapter is:

(1) to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and under forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

(2) to provide the benefit of economy of scale, economic development, and utilization of natural resources for the overall promotion of the general welfare of the state.

Section 5. Section **11-13-103**, which is renumbered from Section 11-13-3 is renumbered and amended to read:

[~~11-13-3~~]. 11-13-103. Definitions.

As used in this chapter:

(1) "Additional project capacity" means electric generating capacity provided by a generating unit that first produces electricity on or after May 6, 2002 and that is constructed or installed at or adjacent to the site of a project that first produced electricity before May 6, 2002, regardless of whether:

(a) the owners of the new generating unit are the same as or different from the owner of the project; and

(b) the purchasers of electricity from the new generating unit are the same as or different from the purchasers of electricity from the project.

[~~(1)~~] (2) "Board" means the Permanent Community Impact Fund Board created by Section 9-4-304, and its successors.

[~~(2)~~] (3) "Candidate" means one or more of:

(a) the state [~~of Utah and any~~];

(b) a county, municipality, school district, [~~prosecution district,~~] special district, or [~~any~~]

other political subdivision of the state [~~of Utah or its authorized agent or any one or more of them.~~]; and

(c) a prosecution district.

[~~(3)~~] (4) "Commercial project entity" means a project entity, defined in Subsection [~~(7)~~] (11), that:

(a) has no taxing authority; and

(b) is not supported in whole or in part by and does not expend or disburse tax revenues.

[~~(4)~~] (5) "Direct impacts" [~~mean~~] means an increase in the need for [~~any~~] public facilities or services that is attributable to the project or facilities providing additional project capacity, except impacts resulting from the construction or operation of [~~any~~] a facility that is:

(a) owned by [~~others that is~~] an owner other than the owner of the project or of the facilities providing additional project capacity; and

(b) used to furnish fuel, construction, or operation materials for use in the project.

(6) "Electric interlocal entity" means an interlocal entity described in Subsection 11-13-203(3).

(7) "Energy services interlocal entity" means an interlocal entity that is described in Subsection 11-13-203(4).

(8) "Interlocal entity" means:

(a) a Utah interlocal entity, an electric interlocal entity, or an energy services interlocal entity; or

(b) a separate legal or administrative entity created under Section 11-13-205.

(9) "Out-of-state public agency" means a public agency as defined in Subsection (12)(c), (d), or (e).

[~~(5) (a) "Facilities," "services," or "improvements" mean facilities, services, or improvements of any kind or character provided by a candidate with respect to any one or more of the following:~~]

[~~(i) flood control;~~]

[~~(ii) storm drainage;~~]

[~~(iii) government administration;~~]

[~~(iv) planning and zoning;~~]

[~~(v) buildings and grounds;~~]

[~~(vi) education;~~]

[~~(vii) health care;~~]

[~~(viii) parks and recreation;~~]

[~~(ix) police and fire protection;~~]

[~~(x) prosecution of violations of state criminal statutes;~~]

[~~(xi) defense of individuals prosecuted for violations of state criminal statutes;~~]

[~~(xii) transportation;~~]

[~~(xiii) streets and roads;~~]

[~~(xiv) utilities;~~]

[~~(xv) culinary water;~~]

[~~(xvi) sewage disposal;~~]

[~~(xvii) social services;~~]

[~~(xviii) solid waste disposal;~~]

[~~(xix) economic development or new venture investment fund; and~~]

[~~(xx) library.~~]

[~~(b) "Facilities" and "improvements" include entire facilities and improvements or interests in facilities or improvements.~~]

[~~(6)~~] (10) (a) "Project":

(i) means an electric [~~generating~~] generation and transmission [~~project~~] facility owned by [~~a legal or administrative~~] a Utah interlocal entity [~~created under this chapter~~] or an electric interlocal entity; and [~~shall include any electric generating facilities, transmission facilities,~~]

(ii) includes fuel or fuel transportation facilities[~~, or~~] and water facilities owned by that Utah interlocal entity or electric interlocal entity and required for [~~that project~~] the generation and transmission facility.

(b) "Project" includes a project entity's ownership interest in:

(i) facilities that provide additional project capacity; and

(ii) additional generating, transmission, fuel, fuel transportation, water, or other facilities added to a project.

[~~(7)~~] (11) "Project entity" means [~~a legal or administrative~~] a Utah interlocal entity [~~created under this chapter which owns~~] or an electric interlocal entity that owns a project [~~and which sells the capacity, services, or other benefits from it~~].

[~~(8)~~] (12) "Public agency" means:

[~~(a) any political subdivision of this state including, but not limited to, cities, towns, counties, school districts, and special districts of various kinds;~~]

(a) a city, town, county, school district, special district, or other political subdivision of the state;

(b) the state [~~of Utah~~] or any department, division, or agency of the state [~~of Utah~~];

(c) any agency of the United States;

(d) any political subdivision or agency of another state or the District of Columbia including any interlocal cooperation or joint powers agency formed under the authority of the law of [~~another~~] the other state or the District of Columbia; and

(e) any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

[~~(9) "State" means a state of the United States and the District of Columbia.~~]

(13) "Utah interlocal entity":

(a) means an interlocal entity described in Subsection 11-13-203(2); and

(b) includes a separate legal or administrative entity created under Chapter 47, Laws of Utah 1977, Section 3, as amended.

(14) "Utah public agency" means a public agency under Subsection (12)(a) or (b).

Section 6. Section **11-13-201**, which is renumbered from Section 11-13-4 is renumbered and amended to read:

Part 2. Public Agencies' Joint Exercise of Powers

[~~11-13-4~~]. 11-13-201. Joint exercise of power, privilege, or authority by public

agencies -- Relationship to the Municipal Cable Television and Public Telecommunications Services Act.

(1) (a) Any power [~~or powers, privileges~~], privilege, or authority exercised or capable of exercise by a Utah public agency [~~of this state~~] may be exercised and enjoyed jointly with any other Utah public agency [~~of this state~~] having the power [~~or powers, privileges~~], privilege, or authority, and jointly with any out-of-state public agency [~~of any other state or of the United States~~] to the extent that the laws governing the out-of-state public agency permit such joint exercise or enjoyment.

(b) Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by this chapter upon a public agency.

(2) This chapter may not enlarge or expand the authority of a public agency not authorized to offer and provide cable television services and public telecommunications services under Title 10, Chapter 18, Municipal Cable Television and Public Telecommunications Services Act, to offer or provide cable television services and public telecommunications services.

Section 7. Section **11-13-202**, which is renumbered from Section 11-13-5 is renumbered and amended to read:

[~~11-13-5~~]. 11-13-202. Agreements for joint or cooperative action -- Resolutions by governing bodies required.

(1) Any two or more public agencies may enter into [~~agreements~~] an agreement with one another for joint or cooperative action [~~pursuant to~~] under this [~~act~~] chapter. [~~Adoption of appropriate resolutions by the governing bodies of the participating public agencies are necessary before any such agreement may enter into force.~~]

(2) An agreement under Subsection (1) does not take effect until the governing body of each public agency entering into the agreement adopts a resolution approving the agreement.

Section 8. Section **11-13-203**, which is renumbered from Section 11-13-5.5 is renumbered and amended to read:

[~~11-13-5.5~~]. 11-13-203. Interlocal entities -- Agreement to create an interlocal entity -- Utah interlocal entity may become electric interlocal entity or energy services interlocal

entity.

(1) An interlocal entity created under this section is:

(a) separate from the public agencies that create it;

(b) a body politic and corporate; and

(c) a political subdivision of the state.

[~~(1)~~] (2) Any two or more Utah public agencies [~~of Utah~~] may [~~agree to~~] by agreement create [~~a separate legal or administrative~~] a Utah interlocal 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.

(3) (a) A Utah public agency and one or more public agencies may by agreement create an electric interlocal entity to accomplish the purpose of their joint or cooperative action if that purpose is to participate in the undertaking or financing of:

(i) facilities to provide additional project capacity;

(ii) common facilities under Title 54, Chapter 9, Electric Power Facilities Act; or

(iii) electric generation or transmission facilities.

(b) By agreement with one or more public agencies that are not parties to the agreement creating it, a Utah interlocal entity may be reorganized as an electric interlocal entity if:

(i) the public agencies that are parties to the agreement creating the Utah interlocal entity authorize, in the same manner required to amend the agreement creating the Utah interlocal entity, the Utah interlocal entity to be reorganized as an electric interlocal entity; and

(ii) the purpose of the joint or cooperative action to be accomplished by the electric interlocal
entity meets the requirements of Subsection (3)(a).

(4) (a) Two or more Utah public agencies may by agreement with one another or with one or more public agencies create an energy services interlocal entity to accomplish the purposes of their joint and cooperative action with respect to facilities, services, and improvements necessary or desirable with respect to the acquisition, generation, transmission, management, and distribution of electric energy for the use and benefit of the public agencies that enter into the agreement.

(b) (i) A Utah interlocal entity that was created to facilitate the transmission or supply of

electric power may, by resolution adopted by its governing body, elect to become an energy services interlocal entity.

(ii) Notwithstanding Subsection (4)(b)(i), a Utah interlocal entity that is also a project entity may not elect to become an energy services interlocal entity.

(iii) An election under Subsection (4)(b)(i) does not alter, limit, or affect the validity or enforceability of a previously executed contract, agreement, bond, or other obligation of the Utah interlocal entity making the election.

[~~(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~~]

[~~(B) any rights or interests pertaining to the bonds or notes;~~]

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

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

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

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

[~~(b) That offer must be:~~]

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

[~~(ii) for not less than 50% of its energy output.~~]

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

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

[~~(4) Subsection (3) applies only to the construction and operation of a facility to generate electricity.~~]

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

[~~(a) participate as a member of the project entity if it enters into an agreement in accordance with Section 11-13-11; and~~]

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

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

[~~(b) Each written notice required under Subsection (6)(a) shall:~~]

[~~(i) be accompanied by:~~]

[~~(A) a copy of the agreement creating the entity; and~~]

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

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

Section 9. Section **11-13-204** is enacted 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 State Tax Commission.

(1) (a) An interlocal entity:

(i) may:

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

(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;

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

(b) An assignment, pledge, or other conveyance under Subsection (1)(a)(i)(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.

(2) An energy services interlocal entity:

(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 the 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 in competitive markets, 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.

(4) (a) The governing body of each interlocal entity created under Section 11-13-203 on or after May 4, 1998, shall, within 30 days of the creation, file a written notice of the creation with the State Tax Commission.

(b) Each written notice required under Subsection (4)(a) shall:

(i) be accompanied by:

(A) a copy of the agreement creating the interlocal entity; 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 plat that delineates a metes and bounds description of the area affected or a map of the area affected and evidence that the information has been recorded by the recorder of the county in which the Utah public agency is located; and

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

Section 10. Section **11-13-205**, which is renumbered from Section 11-13-5.6 is renumbered

and amended to read:

[~~11-13-5.6~~]. 11-13-205. Agreement by public agencies to create a new entity to own sewage and wastewater facilities -- Powers and duties of new entities -- Validation of previously created entities.

(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 create 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 in the manner provided herein 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, but not limited to, 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, Utah Municipal Bond 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 [~~Sections 11-13-25, 11-13-26, 11-13-27, 11-13-28, 11-13-29, 11-13-30, 11-13-31, 11-13-32, 11-13-33, 11-13-34, 11-13-35, and 11-13-36~~] 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 [~~authority~~] body of each entity created under this section on or after

May 4, 1998, shall, within 30 days of the creation, file a written notice of the creation with the State Tax Commission.

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

(i) be accompanied by:

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

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

(ii) contain a certification by the governing [~~authority~~] body that all necessary legal requirements relating to the creation have been completed.

Section 11. Section **11-13-206**, which is renumbered from Section 11-13-6 is renumbered and amended to read:

[~~11-13-6~~]. 11-13-206. Requirements for agreements for joint or cooperative action.

[~~Any such~~] (1) Each agreement under Section 11-13-202, 11-13-203, or 11-13-205 shall specify [~~the following~~]:

[~~(1)~~] (a) its duration;

(b) if the agreement creates an interlocal entity:

[~~(2)~~] (i) the precise organization, composition, and nature of [~~any separate legal or administrative~~] the interlocal entity [~~created thereby, together with~~];

(ii) the powers delegated [~~thereto, provided such entity may be legally created. If a separate entity or administrative body is created to perform the joint functions, a majority of the governing body of such entity shall be constituted by appointments made by the governing bodies of the public agencies creating the entity and such appointees shall serve at the pleasure of the governing bodies of the creating public agencies~~] 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;

[~~(3)~~] (c) its purpose or purposes;

[~~(4)~~] (d) the manner of financing the joint or cooperative undertaking and of establishing and

maintaining a budget [~~therefor~~] for it;

[~~(5)~~] (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

[~~(6)~~] (f) any other necessary and proper matters[~~; and~~].

[~~(7) the price of any product of the service or benefit to the consumer allocated to any buyer except the participating agencies within the state shall include the amount necessary to provide for the payments of the in lieu fee provided for in Section 11-13-25.~~]

(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 12. Section **11-13-207**, which is renumbered from Section 11-13-7 is renumbered and amended to read:

[~~11-13-7~~]. 11-13-207. Additional requirements for agreement not establishing interlocal entity.

[~~In the event that the~~] If an agreement under Section 11-13-202 does not establish [~~a separate legal~~] an interlocal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to the items specified in Section [~~11-13-6~~] 11-13-206, [~~contain the following~~] provide for:

(1) [~~Provision for~~] the joint or cooperative undertaking to be administered by:

(a) an administrator; or

(b) a joint board [~~responsible for administering the joint or co-operative undertaking. In the case of a joint board,~~] with representation from the public agencies [~~party~~] that are parties to the agreement [~~shall be represented.~~]; and

(2) [~~The~~] the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

Section 13. Section **11-13-208**, which is renumbered from Section 11-13-8 is renumbered and amended to read:

[~~11-13-8~~]. 11-13-208. Agreement does not relieve public agency of legal obligation

or responsibility -- Exception.

[~~No~~] (1) Except as provided in Subsection (2), an agreement made [~~pursuant to this act shall~~] under this chapter does not relieve [~~any~~] a public agency of [~~any~~] an obligation or responsibility imposed upon it by law [~~except that to the extent of actual and timely performance thereof~~].

(2) If an obligation or responsibility of a public agency is actually and timely performed by a joint board or [~~other legal or administrative~~] by an interlocal entity created by an agreement made [~~hereunder, said~~] under this chapter, that performance may be offered in satisfaction of the obligation or responsibility.

Section 14. Section **11-13-209**, which is renumbered from Section 11-13-10 is renumbered and amended to read:

[~~11-13-10~~]. 11-13-209. Filing of agreement.

[~~Prior to its entry into force, an~~] An agreement made [~~pursuant to~~] under this [~~act shall be~~] chapter does not take effect until it is filed with the keeper of records of each of the public agencies [~~party thereto~~] that are parties to the agreement.

Section 15. Section **11-13-210**, which is renumbered from Section 11-13-11 is renumbered and amended to read:

[~~11-13-11~~]. 11-13-210. Controversies involving agreements between Utah public agencies and out-of-state agencies.

(1) In [~~the event that~~] any case or controversy involving the performance or interpretation of or the liability under an agreement entered into [~~pursuant to~~] under this [~~act is~~] chapter between or among one or more Utah public agencies [~~of this state~~] and one or more out-of-state public agencies [~~of another state or of the United States, said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder~~], the public agencies [~~party thereto~~] that are parties to the agreement shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liabilities which it may incur by reason of being joined as a party [~~therein~~] to the case or controversy. [~~Such~~]

(2) An action shall be maintainable against any public agency [~~or agencies~~] whose default,

failure [~~or performance~~] to perform, or other conduct caused or contributed to the incurring of damage or liability by the state.

Section 16. Section **11-13-211**, which is renumbered from Section 11-13-13 is renumbered and amended to read:

[~~11-13-13~~]. 11-13-211. Public agencies authorized to provide resources to administrative joint boards or interlocal entity.

[~~Any~~] A public agency entering into an agreement [~~pursuant to~~] under this [~~act~~] chapter under which an administrative joint board is established or an interlocal entity is created to operate the joint or cooperative undertaking may:

(1) appropriate funds [~~and may~~] to the administrative joint board or interlocal entity;

(2) sell, lease, give, or otherwise supply tangible and intangible property to the administrative joint board or [~~other legal or administrative entity created to operate the joint or cooperative undertaking and may~~] interlocal entity; and

(3) provide personnel or services [~~therefor~~] for the administrative joint board or interlocal entity as may be within its legal power to furnish.

Section 17. Section **11-13-212**, which is renumbered from Section 11-13-14 is renumbered and amended to read:

[~~11-13-14~~]. 11-13-212. Contracts between public agencies or with interlocal entities to perform services, activities, or undertakings -- Facilities and improvements.

(1) (a) [~~Any one or more public~~] Public agencies may contract with each other [~~or~~] and one or more public agencies may contract with [~~a legal or administrative~~] an interlocal entity created [~~pursuant to~~] under this chapter to perform any [~~governmental~~] service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform[~~, provided that the~~].

(b) Each contract under Subsection (1)(a) shall be authorized by the governing body of each party to the contract. [~~The~~]

(c) Each contract under Subsection (1)(a) shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

(d) In order to perform [~~such~~] a service, activity, or undertaking provided for in a contract under Subsection (1)(a), a public agency may create, construct, or otherwise acquire facilities or improvements in excess of those required to meet the needs and requirements of the parties to the contract.

(2) [~~A legal or administrative~~] An interlocal entity created by agreement under this chapter may create, construct, or otherwise acquire facilities or improvements to render [~~service~~] services or provide benefits in excess of those required to meet the needs or requirements of the public agencies [~~party to the~~] that are parties to the agreement if[~~: (a)~~] it is determined by the public agencies to be necessary to accomplish the purposes and realize the benefits set forth in Section [~~11-13-2~~] 11-13-102[~~; and~~].

[~~(b) any excess sold to other public agencies within or without the state is sold on terms that assure that the cost of providing the excess will be recovered by the legal or administrative entity.~~]

Section 18. Section **11-13-213**, which is renumbered from Section 11-13-15 is renumbered and amended to read:

[~~11-13-15~~]. 11-13-213. Agreements for joint ownership, operation, or acquisition of facilities or improvements.

Any two or more public agencies may make agreements between or among themselves:

(1) for the joint ownership of any one or more facilities or improvements which they have authority by law to own individually;

(2) for the joint operation of any one or more facilities or improvements which they have authority by law to operate individually;

(3) for the joint acquisition by gift, grant, purchase, construction, condemnation or otherwise of any one or more such [~~improvements or~~] facilities or improvements and for the extension, repair or improvement thereof;

(4) for the exercise by [~~a legal or administrative~~] an interlocal entity [~~created by agreement of public agencies of the state of Utah~~] of its powers with respect to any one or more facilities or improvements and the extensions, repairs, or improvements of them; or

(5) any combination of the foregoing.

Section 19. Section **11-13-214**, which is renumbered from Section 11-13-16 is renumbered and amended to read:

[~~11-13-16~~]. 11-13-214. Conveyance or acquisition of property by public agency.

In carrying out the provisions of this chapter, any public agency may convey property to or acquire property from any other public agency for consideration as may be agreed upon.

Section 20. Section **11-13-215**, which is renumbered from Section 11-13-16.5 is renumbered and amended to read:

[~~11-13-16.5~~]. 11-13-215. Sharing tax or other revenues.

Any county, city, town, or other local political subdivision may, at the discretion of the local governing body, share its tax and other revenues with other counties, cities, towns, or local political subdivisions. Any decision to share tax and other revenues shall be by local ordinance, resolution, or interlocal agreement.

Section 21. Section **11-13-216**, which is renumbered from Section 11-13-17 is renumbered and amended to read:

[~~11-13-17~~]. 11-13-216. Term of agreements -- Governing body authorization of agreements.

[~~Any contract~~] Except as provided in Subsection 11-13-204(3), each agreement entered into [~~hereunder~~] under this chapter shall extend for a term of not to exceed [~~fifty~~] 50 years and shall be authorized by resolutions adopted by the respective governing bodies.

Section 22. Section **11-13-217**, which is renumbered from Section 11-13-18 is renumbered and amended to read:

[~~11-13-18~~]. 11-13-217. Control and operation of joint facility or improvement provided by agreement.

Any facility or improvement jointly owned or jointly operated by any two or more public agencies or acquired or constructed pursuant to an agreement under this [~~act~~] chapter may be operated by any one or more of the interested public agencies designated for the purpose or may be operated by a joint board or commission or [~~a legal or administrative~~] an interlocal entity created for the purpose or through an agreement by [~~a legal or administrative~~] an interlocal entity and a public

agency receiving service [~~of~~] or other benefits from such entity or may be controlled and operated in some other manner, all as may be provided by appropriate [~~contract~~] agreement. Payment for the cost of such operation shall be made as provided in any such [~~contract~~] agreement.

Section 23. Section **11-13-218**, which is renumbered from Section 11-13-19 is renumbered and amended to read:

[~~11-13-19~~]. 11-13-218. Authority of public agencies or interlocal entities to issue bonds.

[~~Bonds may be issued by any~~] (1) A public agency [~~for the acquisition of~~] may, in the same manner as it may issue bonds for its individual acquisition of a facility or improvement or for constructing, improving, or extending a facility or improvement, issue bonds to:

(a) acquire an interest in [~~any~~] a jointly owned [~~improvement or~~] facility or improvement [~~or~~], a combination of [~~such~~] a jointly owned facility or improvement, or [~~may be issued to~~] any other facility or improvement; or

(b) pay all or part of the cost of [~~the improvement or extension thereof in the same manner as bonds can be issued by such public agency for its individual acquisition of such improvement or facility or combination of such facility or improvement or for the improvement or extension thereof. A legal or administrative~~] constructing, improving, or extending a jointly owned facility or improvement, a combination of a jointly owned facility or improvement, or any other facility or improvement.

(2) (a) An interlocal entity [~~created by agreement of two or more public agencies of the state of Utah under this act~~] may issue bonds or notes under a resolution, trust indenture, or other security instrument for the purpose of financing its facilities or improvements.

(b) The bonds or notes may be sold at public or private sale, mature at such times and bear interest at such rates, and have such other terms and security as the entity determines.

(c) Such bonds [~~shall~~] are not [~~be~~] a debt of any public agency that is a party to the agreement.

(3) Bonds and notes issued under this [~~act~~] chapter are declared to be negotiable instruments and their form and substance need not comply with the Uniform Commercial Code.

Section 24. Section **11-13-219**, which is renumbered from Section 11-13-20 is renumbered and amended to read:

[~~11-13-20~~]. 11-13-219. Publication of resolutions or agreements -- Contesting legality of resolution or agreement.

(1) As used in this section:

(a) "Enactment" means:

(i) a resolution adopted or proceedings taken by a governing [~~entity~~] body under the authority of this chapter, and includes a resolution, indenture, or other instrument providing for the issuance of bonds; and

(ii) [~~a contract,~~] an agreement[~~,~~] or other instrument that is authorized, executed, or approved by a governing [~~entity~~] body under the authority of this chapter.

(b) "Governing [~~entity~~] body" means:

(i) the legislative body of a public agency; and

(ii) the governing body of [~~a separate legal or administrative agency~~] an interlocal entity created under this chapter.

(c) "Notice of bonds" means the notice authorized by Subsection (3)(d).

(d) "Notice of [~~contract~~] agreement" means the notice authorized by Subsection (3)(c).

(e) "Official newspaper" means the newspaper selected by a governing [~~entity~~] body under Subsection (4)(b) to publish its enactments.

(2) Any enactment taken or made under the authority of this chapter is not subject to referendum.

(3) (a) A governing [~~entity~~] body need not publish any enactment taken or made under the authority of this chapter.

(b) A governing [~~entity~~] body may provide for the publication of any enactment taken or made by it under the authority of this chapter according to the publication requirements established by this section.

(c) (i) If the enactment is [~~a contract~~] an agreement, document, or other instrument, or a resolution or other proceeding authorizing or approving [~~a contract~~] an agreement, document, or

other instrument, the governing [~~entity~~] body may, instead of publishing the full text of the [~~contract~~] agreement, resolution, or other proceeding, publish a notice of [~~contract~~] agreement containing:

(A) the names of the parties to the [~~contract~~] agreement;

(B) the general subject matter of the [~~contract~~] agreement;

(C) the term of the [~~contract~~] agreement;

(D) a description of the payment obligations, if any, of the parties to the [~~contract~~] agreement; and

(E) a statement that the resolution and [~~contract~~] agreement will be available for review at the governing [~~entity's~~] body's principal place of business during regular business hours for 30 days after the publication of the notice of [~~contract~~] agreement.

(ii) The governing [~~entity~~] body shall make a copy of the resolution or other proceeding and a copy of the contract available at its principal place of business during regular business hours for 30 days after the publication of the notice of [~~contract~~] agreement.

(d) If the enactment is a resolution or other proceeding authorizing the issuance of bonds, the governing [~~entity~~] body may, instead of publishing the full text of the resolution or other proceeding and the documents pertaining to the issuance of bonds, publish a notice of bonds that contains the information described in Subsection 11-14-21(3).

(4) (a) If the governing [~~entity~~] body chooses to publish an enactment, notice of bonds, or notice of [~~contract~~] agreement, the governing [~~entity~~] body shall comply with the requirements of this Subsection (4).

(b) If there is more than one newspaper of general circulation, or more than one newspaper, published within the boundaries of the governing [~~entity~~] body, the governing [~~entity~~] body may designate one of those newspapers as the official newspaper for all publications made under this section.

(c) (i) The governing [~~entity~~] body shall publish the enactment, notice of bonds, or notice of [~~contract~~] agreement in:

(A) the official newspaper;

(B) the newspaper published in the municipality in which the principal office of the

governmental entity is located; or

(C) if no newspaper is published in that municipality, in a newspaper having general circulation in the municipality.

(ii) The governing [~~entity~~] body may publish the enactment, notice of bonds, or notice of [~~contract~~] agreement in a newspaper of general circulation or in a newspaper that is published within the boundaries of any public agency that is a party to the enactment or [~~contract~~] agreement.

(5) (a) Any person in interest may contest the legality of an enactment or any action performed or instrument issued under the authority of the enactment for 30 days after the publication of the enactment, notice of bonds, or notice of [~~contract~~] agreement.

(b) After the 30 days have passed, no one may contest the regularity, formality, or legality of the enactment or any action performed or instrument issued under the authority of the enactment for any cause whatsoever.

Section 25. Section **11-13-220**, which is renumbered from Section 11-13-22 is renumbered and amended to read:

[~~11-13-22~~]. 11-13-220. Qualifications of officers or employees performing services under agreements.

Other provisions of law which [~~may~~] require an officer or employee of a public agency to be an elector or resident of the public agency or to have other qualifications not generally applicable to all of the contracting agencies in order to qualify for [~~said~~] that office or employment [~~shall~~] are not [~~be~~] applicable to officers or employees who hold office or perform services for more than one public agency pursuant to agreements executed under [~~the provisions of the Interlocal Co-operation Act~~] this chapter.

Section 26. Section **11-13-221**, which is renumbered from Section 11-13-23 is renumbered and amended to read:

[~~11-13-23~~]. 11-13-221. Compliance with chapter sufficient to effectuate agreements.

When public agencies enter into agreements [~~pursuant to the provisions of~~] under this [~~act~~] chapter whereby they utilize a power or facility jointly, or whereby one political agency provides a

service or facility to another, compliance with the requirements of this [~~act shall be~~] chapter is sufficient to effectuate [~~said~~] those agreements.

Section 27. Section **11-13-222**, which is renumbered from Section 11-13-24 is renumbered and amended to read:

[~~11-13-24~~]. 11-13-222. Privileges and immunities of public agencies extended to officers and employees performing services under agreements.

Officers and employees performing services for two or more public agencies pursuant to [~~contracts~~] agreements executed under [~~the provisions of~~] this [~~act~~] chapter shall be [~~deemed~~] considered to be officers and employees of the public agency employing their services even though performing [~~said~~] those functions outside of the territorial limits of any one of the contracting public agencies, and shall be [~~deemed~~] considered officers and employees of [~~said~~] the public agencies under the provisions of [~~the~~] Title 63, Chapter 30, Utah Governmental Immunity Act.

Section 28. Section **11-13-223**, which is renumbered from Section 11-13-37 is renumbered and amended to read:

[~~11-13-37~~]. 11-13-223. Open and public meetings.

(1) To the extent that [~~a separate legal or administrative agency~~] 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, 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 52-4-6 by:

(i) posting written notice at the principal office of the governing body of the [~~separate legal or administrative agency~~] interlocal entity, or if no such office exists, at the building where the meeting is to be held; and

(ii) providing notice to at least one newspaper of general circulation within the boundaries of the municipality in which that principal office is located, or to a local media correspondent.

(2) In order to convene and conduct a public meeting by means of a telephonic or telecommunications conference, [~~a separate legal or administrative agency~~] 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:

(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

(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 [~~entity~~] body constitutes full and complete compliance by the governing [~~entity~~] body with the corresponding provisions of Sections 52-4-3 and 52-4-6, to the extent that those sections are applicable to the governing body.

Section 29. Section **11-13-301** is enacted to read:

Part 3. Project Entity Provisions

11-13-301. Project entity requirements -- Generation output requirements.

(1) Each project entity shall:

(a) before undertaking the construction of a project or of facilities to provide additional project capacity, offer to sell or make available at least 50% of the generation output of or electric energy produced by the project or additional project capacity, respectively;

(b) establish rules and procedures for an offer under Subsection (1)(a) that provide at least 60 days for a prospective power purchaser to accept the offer before it is considered rejected; and

(c) make each offer under Subsection (1)(a):

(i) under a long-term arrangement that may be an undivided ownership interest, a participation interest, a power sales agreement, or otherwise; and

(ii) to one or more power purchasers in the state that supply electric energy at wholesale or retail.

(2) (a) The generation output or electric energy production available to power purchasers in the state from a project shall be at least 5% of the total generation output or electric energy production of the project.

(b) (i) Subject to Subsection (2)(b)(ii), at least a majority of the generation output or electric energy production of facilities providing additional project capacity shall be:

(A) made available as needed to meet the estimated electric requirements of entities or consumers within the state; and

(B) owned, purchased, or consumed by entities or consumers within the state.

(ii) (A) As used in this Subsection (2)(b)(ii), "default provision" means a provision authorizing a nondefaulting party to succeed to or require the disposition of the rights and interests of a defaulting party.

(B) The requirements of Subsection (2)(b)(i) do not apply to the extent that those requirements are not met due to the operation of a default provision in an agreement providing for ownership interests in facilities providing additional project capacity.

Section 30. Section **11-13-302**, which is renumbered from Section 11-13-25 is renumbered and amended to read:

[~~11-13-25~~]. 11-13-302. Payment of fee in lieu of ad valorem property tax by certain energy suppliers -- Method of calculating -- Collection -- Extent of tax lien.

(1) A project entity created under this chapter which owns a project and which sells any capacity, service, or other benefit from it to an energy supplier or suppliers whose tangible property is not exempted by Utah Constitution Article XIII, Section 2, from the payment of ad valorem

property tax, shall pay an annual fee in lieu of ad valorem property tax as provided in this section to each taxing jurisdiction within which the project or any part of it is located. The requirement to pay these fees shall commence:

(a) with respect to each taxing jurisdiction that is a candidate receiving the benefit of impact alleviation payments under contracts or determination orders provided for in Sections [~~11-13-28~~] 11-13-305 and [~~11-13-29~~] 11-13-306, with the fiscal year of the candidate following the fiscal year of the candidate in which the date of commercial operation of the last generating unit, other than any generating unit providing additional project capacity, of the project occurs, or, in the case of any facilities providing additional project capacity, with the fiscal year of the candidate following the fiscal year of the candidate in which the date of commercial operation of the generating unit providing the additional project capacity occurs; and

(b) with respect to any other taxing jurisdictions, with the fiscal year of the taxing jurisdiction in which construction of the project commences, or, in the case of facilities providing additional project capacity, with the fiscal year of the taxing jurisdiction in which construction of those facilities commences. The requirements to pay these fees shall continue for the period of the useful life of the project or facilities.

(2) Because the ad valorem property tax imposed by a school district and authorized by the Legislature under Section 53A-17a-135 represents both:

(a) a levy mandated by the state for the state minimum school program under Section 53A-17a-135; and

(b) local levies for capital outlay, maintenance, transportation, and other purposes under Sections 11-2-7, 53A-16-107, 53A-16-110, 53A-17a-126, 53A-17a-127, 53A-17a-133, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103, the annual fee in lieu of ad valorem property tax due a school district shall be as follows:

(i) the project entity shall pay to the school district a fee in lieu of ad valorem property tax for the state minimum school program at the rate imposed by the school district and authorized by the Legislature under Subsection 53A-17a-135(1); and

(ii) the project entity shall pay to the school district either a fee in lieu of ad valorem property

tax or impact alleviation payments under contracts or determination orders provided for in Sections [~~11-13-28~~] 11-13-305 and [~~11-13-29~~] 11-13-306, for all other local property tax levies authorized.

(3) The fee due a taxing jurisdiction for a particular year shall be calculated by multiplying the tax rate or rates of the jurisdiction for that year by the product obtained by multiplying the taxable value for that year of the portion of the project located within the jurisdiction by the percentage of the project which is used to produce the capacity, service, or other benefit sold to the energy supplier or suppliers. As used in this section, "tax rate," when applied in respect to a school district, includes any assessment to be made by the school district under Subsection (2) or Section 63-51-6. There is to be credited against the fee due a taxing jurisdiction for each year, an amount equal to the debt service, if any, payable in that year by the project entity on bonds, the proceeds of which were used to provide public facilities and services for impact alleviation in the jurisdiction in accordance with Sections [~~11-13-28~~] 11-13-305 and [~~11-13-29~~] 11-13-306. The tax rate for the jurisdiction for that year shall be computed so as to:

(a) take into account the taxable value of the percentage of the project located within the jurisdiction used to produce the capacity, service, or other benefit sold to the supplier or suppliers; and

(b) reflect any credit to be given in that year.

(4) Except as otherwise provided in this section, the fees shall be paid, collected, and distributed to the taxing jurisdiction as if the fees were ad valorem property taxes and the project were assessed at the same rate and upon the same measure of value as taxable property in the state. The assessment shall be made by the State Tax Commission in accordance with rules promulgated by it. Payments of the fees shall be made from the proceeds of bonds issued for the project and from revenues derived by the project entity from the project; and the contracts of the project entity with the purchasers of the capacity, service, or other benefits of the project whose tangible property is not exempted by Utah Constitution Article XIII, Section 2, from the payment of ad valorem property tax shall require each purchaser, whether or not located in the state, to pay, to the extent not otherwise provided for, its share, determined in accordance with the terms of the contract, of these fees. It is the responsibility of the project entity to enforce the obligations of the purchasers.

(5) The responsibility of the project entity to make payment of the fees is limited to the extent that there is legally available to the project entity, from bond proceeds or revenues, monies to make these payments, and the obligation to make payments of the fees is not otherwise a general obligation or liability of the project entity. No tax lien may attach upon any property or money of the project entity by virtue of any failure to pay all or any part of the fee. The project entity or any purchaser may contest the validity of the fee to the same extent as if the payment was a payment of the ad valorem property tax itself. The payments of the fee shall be reduced to the extent that any contest is successful.

(6) (a) Any public agency that is not a project entity and that owns an interest in facilities providing additional project capacity which, if its tangible property is not exempted by Utah Constitution, Article XIII, Section 2, from the payment of ad valorem property tax, uses any capacity, service, or other benefit from it or which sells any capacity, service, or other benefit from it to an energy supplier or suppliers whose tangible property is not exempted by Utah Constitution, Article XIII, Section 2, from the payment of ad valorem property tax, shall pay an annual fee in lieu of ad valorem property tax with respect to its ownership interest, and shall have the obligations, credits, rights, and protections set forth in Subsections (1) through (5) with respect to its ownership interest as though it were a project entity.

(b) The ownership interest of a public agency upon which a fee in lieu of ad valorem property tax is payable is not subject to:

(i) ad valorem property taxes under Title 59, Chapter 2, Property Tax Act; or

(ii) privilege taxes under Title 59, Chapter 4, Privilege Tax.

(c) Each public agency and project entity that owns an interest in facilities providing additional project capacity is subject to a fee in lieu of ad valorem property tax only with respect to that ownership interest and is not subject to a fee in lieu of ad valorem property tax with respect to any portion of the facilities providing additional project capacity that it does not own.

Section 31. Section **11-13-303**, which is renumbered from Section 11-13-26 is renumbered and amended to read:

[~~11-13-26~~]. 11-13-303. Source of project entity's payment of sales and use tax --

Gross receipts taxes for facilities providing additional project capacity.

[~~Notwithstanding the provisions of Section 59-12-104, a project entity created under this chapter is subject to state sales and use taxes. The sales and use taxes shall be paid, collected, and distributed in accordance with the provisions of law relative to the payment, collection, and distribution of sales and use taxes, including prepayment as provided in Title 63, Chapter 51. Project entities are authorized to~~]

(1) A project entity is not exempt from sales and use taxes under Title 59, Chapter 12, Sales and Use Tax Act, to the extent provided in Subsection 59-12-104(2).

(2) A project entity may make payments or prepayments of sales and use taxes, as provided in Title 63, Chapter 51, Resource Development, from the proceeds of revenue bonds issued [~~pursuant to~~] under Section [~~11-13-19~~] 11-13-218 or other revenues of the project entity.

(3) (a) This Subsection (3) applies with respect to facilities providing additional project capacity.

(b) (i) The in lieu excise tax imposed under Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, shall be imposed collectively on all gross receipts derived with respect to the ownership interests of all project entities and other public agencies in facilities providing additional project capacity as though all such ownership interests were held by a single project entity.

(ii) The in lieu excise tax shall be calculated as though the gross receipts derived with respect to all such ownership interests were received by a single taxpayer that has no other gross receipts.

(iii) The gross receipts attributable to such ownership interests shall consist solely of gross receipts that are expended by each project entity and other public agency holding an ownership interest in the facilities for the operation or maintenance of or ordinary repairs or replacements to the facilities.

(iv) For purposes of calculating the in lieu excise tax, the determination of whether there is a tax rate and, if so, what the tax rate is shall be governed by Section 59-8-104, except that the $10,000,000 figures in Subsection 59-8-104(1) indicating the amount of gross receipts that determine the applicable tax rate shall be replaced with $5,000,000.

(c) Each project entity and public agency owning an interest in the facilities providing additional project capacity shall be liable only for the portion of the gross receipts tax referred to in Subsection (3)(b) that is proportionate to its percentage ownership interest in the facilities and may not be liable for any other gross receipts taxes with respect to its percentage ownership interest in the facilities.

(d) No project entity or other public agency that holds an ownership interest in the facilities may be subject to the taxes imposed under Title 59, Chapter 7, Corporate Franchise and Income Tax, or Title 59, Chapter 8a, Gross Receipts Tax on Electrical Corporations, with respect to those facilities.

(4) For purposes of calculating the gross receipts tax imposed on a project entity or other public agency under Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, or Subsection (3), gross receipts include only gross receipts from the first sale of capacity, services, or other benefits and do not include gross receipts from any subsequent sale, resale, or layoff of the capacity, services, or other benefits.

Section 32. Section **11-13-304**, which is renumbered from Section 11-13-27 is renumbered and amended to read:

[~~11-13-27~~]. 11-13-304. Certificate of public convenience and necessity required -- Exceptions.

[~~Any political subdivision organized pursuant to this act before~~]

(1) Before proceeding with the construction of any electrical generating plant or transmission line, each interlocal entity and each out-of-state public agency shall first obtain from the public service commission a certificate, after hearing, that public convenience and necessity requires such construction and in addition that such construction will in no way impair the public convenience and necessity of electrical consumers of the state of Utah at the present time or in the future. [~~This section shall become effective for all projects~~]

(2) The requirement to obtain a certificate of public convenience and necessity applies to each project initiated after the section's effective date [~~hereof, and shall~~] but does not apply to [~~those~~]:

(a) a project for which a feasibility [~~studies were~~] study was initiated prior to [~~said~~] the effective date[~~, including any additional generating capacity added to a generating project producing electricity prior to April 21, 1987, and~~];

(b) any facilities providing additional project capacity; or

(c) transmission lines required [~~and used solely~~] for the delivery of electricity from [~~such~~] a [~~generating~~] project described in Subsection (2)(a) or facilities providing additional project capacity within the corridor of a transmission line, with reasonable deviation, of [~~such~~] a [~~generating~~] project producing as of April 21, 1987.

Section 33. Section **11-13-305**, which is renumbered from Section 11-13-28 is renumbered and amended to read:

[~~11-13-28~~]. 11-13-305. Impact alleviation requirements -- Payments in lieu of ad valorem tax -- Source of impact alleviation payment.

(1) (a) (i) A project entity [~~is authorized to~~] may assume financial responsibility for or provide for the alleviation of the direct impacts of its project, and make loans to candidates to alleviate impacts created by the construction or operation of any facility owned by others which is utilized to furnish fuel, construction or operation materials for use in the project to the extent the impacts were attributable to the project.

(ii) Provision for the alleviation may be made by contract as provided in Subsection (2) or by the terms of a determination order as provided in Section [~~11-13-29~~] 11-13-306.

(b) A Utah public agency that is not a project entity may take the actions set forth in this Subsection (1) as though it were a project entity with respect to its ownership interest in facilities providing additional project capacity.

(2) [~~Each~~] A candidate [~~shall have the power~~] may, except as otherwise provided in Section [~~11-13-29, to~~] 11-13-306, require the project entity or, in the case of facilities providing additional project capacity, any other public agency that owns an interest in those facilities, to enter into a contract with the candidate requiring the project entity or other public agency to assume financial responsibility for or provide for the alleviation of any direct impacts experienced by the candidate as a result of the project or facilities providing additional project capacity, as the case may be. Each

contract with respect to a project or facilities providing additional project capacity shall be for a term ending at or before the end of the fiscal year of the candidate who is party to the contract [~~within which the date of commercial operation of the last generating unit of the project shall occur~~] immediately before the fiscal year in which the project becomes, or, in the case of facilities providing additional project capacity, those facilities become subject to the fee set forth in Section 11-13-302, unless terminated earlier as provided in Section [~~11-13-33~~] 11-13-310, and shall specify the direct impacts or methods to determine the direct impacts to be covered, the amounts, or methods of computing the amounts, of the alleviation payments, or the means to provide for impact alleviation, provisions assuring the timely completion of the project or facilities providing additional project capacity and the furnishing of the services, and such other pertinent matters as shall be agreed to by the project entity or other public agency and the candidate.

(3) [~~At the end of the fiscal year of the candidate who is a party to the contract within which the date of commercial operation of the last generating unit has begun~~] Beginning at the time specified in Subsection 11-13-302(1), the project entity or other public agency shall make in lieu ad valorem tax payments to that candidate to the extent required by, and in the manner provided in, Section [~~11-13-25~~] 11-13-302.

(4) Payments under any impact alleviation contract or pursuant to a determination by the board shall be made from the proceeds of bonds issued for the project or for the facilities providing additional project capacity or from any other sources of funds available [~~in~~] with respect [~~of~~] to the project or the facilities providing additional project capacity.

Section 34. Section **11-13-306**, which is renumbered from Section 11-13-29 is renumbered and amended to read:

[~~11-13-29~~]. 11-13-306. Procedure in case of inability to formulate contract for impact alleviation.

(1) [~~In the event~~] If the project entity or other public agency and a candidate are unable to agree upon the terms of an impact alleviation contract or to agree that the candidate has or will experience any direct impacts, the project entity or other public agency and the candidate shall each have the right to submit the question of whether or not these direct impacts have been or will be

experienced, and any other questions regarding the terms of the impact alleviation contract to the board for its determination.

(2) Within 40 days after receiving a notice of a request for determination, the board shall hold a public hearing on the questions at issue, at which hearing the parties shall have an opportunity to present evidence. Within 20 days after the conclusion of the hearing, the board shall enter an order embodying its determination and directing the parties to act in accordance with it. The order shall contain findings of facts and conclusions of law setting forth the reasons for the board's determination. To the extent that the order pertains to the terms of an impact alleviation contract, the terms of the order shall satisfy the criteria for contract terms set forth in Section [~~11-13-28~~] 11-13-305.

(3) At any time 20 or more days before the hearing begins, either party may serve upon the adverse party an offer to agree to specific terms or payments. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and the board shall enter a corresponding order. An offer not accepted shall be deemed withdrawn and evidence concerning it is not admissible except in a proceeding to determine costs. If the order finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs incurred after the making of the offer, including a reasonable attorney's fee. The fact that an offer is made but not accepted does not preclude a subsequent offer.

Section 35. Section **11-13-307**, which is renumbered from Section 11-13-30 is renumbered and amended to read:

[~~11-13-30~~]. 11-13-307. Method of amending impact alleviation contract.

An impact alleviation contract or a determination order may be amended with the consent of the parties, or otherwise in accordance with their provisions. In addition, any party may propose an amendment to a contract or order which, if not agreed to by the other parties, may be submitted by the proposing party to the board for a determination of whether or not the amendment shall be incorporated into the contract or order. The board shall determine whether or not a contract or determination order shall be amended under the procedures and standards set forth in Sections

[~~11-13-28~~] 11-13-305 and [~~11-13-29~~] 11-13-306.

Section 36. Section **11-13-308**, which is renumbered from Section 11-13-31 is renumbered and amended to read:

[~~11-13-31~~]. 11-13-308. Effect of failure to comply.

The construction or operation of a project or of facilities providing additional project capacity may commence and proceed, notwithstanding the fact that all impact alleviation contracts or determination orders with respect to the project or facilities providing additional project capacity have not been entered into or made or that any appeal or review concerning the contract or determination has not been finally resolved. The failure of the project entity or other public agency to comply with the requirements of this [~~act~~] chapter or with the terms of any alleviation contract or determination order or any amendment to them [~~shall~~] may not be grounds for enjoining the construction or operation of the project or facilities providing additional project capacity.

Section 37. Section **11-13-309**, which is renumbered from Section 11-13-32 is renumbered and amended to read:

[~~11-13-32~~]. 11-13-309. Venue for civil action -- No trial de novo.

(1) Any civil action seeking to challenge, enforce, or otherwise have reviewed, any order of the board, or any alleviation contract, shall be brought only in the district court for the county within which is located the candidate to which the order or contract pertains. If the candidate is the state of Utah, the action shall be brought in the district court for Salt Lake County. Any action brought in any judicial district shall be ordered transferred to the court where venue is proper under this section.

(2) In any civil action seeking to challenge, enforce, or otherwise review, any order of the board, a trial de novo shall not be held. The matter shall be considered on the record compiled before the board, and the findings of fact made by the board shall not be set aside by the district court unless the board clearly abused its discretion.

Section 38. Section **11-13-310**, which is renumbered from Section 11-13-33 is renumbered and amended to read:

[~~11-13-33~~]. 11-13-310. Termination of impact alleviation contract.

If the project or any part of it or the facilities providing additional project capacity or any part

of them, or the output from [~~it shall~~] the project or facilities providing additional project capacity become subject, in addition to the requirements of Section [~~11-13-25~~] 11-13-302, to ad valorem property taxation or other payments in lieu of ad valorem property taxation, or other form of tax equivalent payments to any candidate which is a party to an impact alleviation contract with respect to the project or facilities providing additional project capacity or is receiving impact alleviation payments or means [~~in~~] with respect [~~of~~] to the project or facilities providing additional project capacity pursuant to a determination by the board, then the impact alleviation contract or the requirement to make impact alleviation payments or provide means therefor pursuant to the determination, as the case may be, shall, at the election of the candidate, terminate. In any event, each impact alleviation contract or determination order shall terminate upon the project, or, in the case of facilities providing additional project capacity, those facilities becoming subject to the provisions of Section [~~11-13-25. Except~~] 11-13-302, except that no impact alleviation contract or agreement entered by a school district shall terminate because of in lieu ad valorem property tax fees levied under Subsection [~~11-13-25~~] 11-13-302(2)(a) or because of ad valorem property taxes levied under Section 53A-17a-135 for the state minimum school program. In addition, [~~in the event that~~] if the construction of the project [~~shall be~~], or, in the case of facilities providing additional project capacity, of those facilities, is permanently terminated for any reason, each impact alleviation contract and determination order, and the payments and means required thereunder, shall terminate [~~except to the extent of~~]. No termination of an impact alleviation contract or determination order may terminate or reduce any liability previously incurred pursuant to the contract or determination order by the candidate beneficiary under it. If the provisions of Section [~~11-13-25~~] 11-13-302, or its successor, are held invalid by a court of competent jurisdiction, and no ad valorem taxes or other form of tax equivalent payments [~~shall be~~] are payable, the remaining provisions of this [~~act~~] chapter shall continue in operation without regard to the commencement of commercial operation of the last generating unit of that project or of facilities providing additional project capacity.

Section 39. Section **11-13-311**, which is renumbered from Section 11-13-34 is renumbered and amended to read:

[~~11-13-34~~]. 11-13-311. Credit for impact alleviation payments against in lieu of ad

valorem property taxes -- Federal or state assistance.

(1) In consideration of the impact alleviation payments and means provided by the project entity or other public agency pursuant to the contracts and determination orders, the project entity or other public agency, as the case may be, shall be entitled to a credit against the fees paid in lieu of ad valorem property taxes as provided by Section [~~11-13-25~~] 11-13-302, ad valorem property or other taxation by, or other payments in lieu of ad valorem property taxation or other form of tax equivalent payments required by any candidate which is a party to an impact alleviation contract or board order.

(2) Each candidate may make application to any federal or state governmental authority for any assistance that may be available from that authority to alleviate the impacts to the candidate. To the extent that the impact was attributable to the project or to the facilities providing additional project capacity, any assistance received from that authority shall be credited to the [~~project's~~] alleviation obligation with respect to the project or the facilities providing additional project capacity, as the case may be, in proportion to the percentage of impact attributable to the project or facilities providing additional project capacity, but in no event shall the candidate realize less revenues than would have been realized without receipt of any assistance.

(3) With respect to school districts the fee in lieu of ad valorem property tax for the state minimum school program required to be paid by the project entity or other public agency under Subsection [~~11-13-25~~] 11-13-302(2)(a) shall be treated as a separate fee and shall not affect any credits for alleviation payments received by the school districts under Subsection [~~11-13-25~~] 11-13-302(2)(a), or Sections [~~11-13-28~~] 11-13-305 and [~~11-13-29~~] 11-13-306.

Section 40. Section **11-13-312**, which is renumbered from Section 11-13-35 is renumbered and amended to read:

[~~11-13-35~~]. 11-13-312. Exemption from privilege tax.

Title 59, Chapter 4, Privilege Tax, does not apply to a project, or any part of it, or to facilities providing additional project capacity, or any part of them, or to the possession or other beneficial use of a project or facilities providing additional project capacity as long as there is a requirement to make impact alleviation payments, fees in lieu of ad valorem property taxes, or ad valorem property

taxes, with respect to the project or facilities providing additional project capacity pursuant to this chapter.

Section 41. Section **11-13-313**, which is renumbered from Section 11-13-36 is renumbered and amended to read:

[~~11-13-36~~]. 11-13-313. Arbitration of disputes.

Any impact alleviation contract may provide that disputes between the parties will be submitted to arbitration pursuant to Title 78, Chapter [~~31~~] 31a, Utah Arbitration Act.

Section 42. Section **54-4-25** is amended to read:

54-4-25. Certificate of convenience and necessity prerequisite to construction and operation -- Electrical suppliers.

(1) [~~A~~] Except as provided in Section 11-13-304, a gas corporation, electric corporation, telephone corporation, telegraph corporation, heat corporation, water corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or of any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction.

(2) This section may not be construed to require any corporation to secure a certificate for an extension:

(a) within any city or town within which it has lawfully commenced operations;

(b) into territory, either within or without a city or town, contiguous to its line, plant, or system that is not served by a public utility of like character; or

(c) within or to territory already served by it, necessary in the ordinary course of its business.

(3) If any public utility in constructing or extending its line, plant, or system interferes or may interfere with the operation of the line, plant, or system of any other public utility already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after a hearing, make an order and prescribe the terms and conditions for the location of the lines, plants, or systems affected as the commission determines are just and reasonable.

(4) (a) Each applicant for a certificate shall file in the office of the commission evidence as

required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper county, city, municipal, or other public authority.

(b) Each applicant, except [~~a legal or administrative~~] an interlocal entity [~~created pursuant to~~] defined in Section [~~11-13-5.5~~] 11-13-103, shall also file in the office of the commission a statement that any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to the existing fixed public utility.

(c) The commission may, after a hearing:

(i) issue the certificate as requested;

(ii) refuse to issue the certificate; or

(iii) issue the certificate for the construction of a portion only of the contemplated line, plant, or system, or extension thereof, or for the partial exercise only of the right or privilege.

(d) The commission may attach to the exercise of the rights granted by the certificate the terms and conditions as in its judgment public convenience and necessity may require.

(e) (i) If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not yet been granted to it, the public utility may apply to the commission for an order preliminary to the issue of the certificate.

(ii) The commission may make an order declaring that it will upon application, under rules and regulations as it may prescribe, issue the desired certificate upon terms and conditions as it may designate after the public utility has obtained the contemplated franchise or permit.

(iii) Upon presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

(5) (a) Any supplier of electricity which is brought under the jurisdiction and regulation of the Public Service Commission by this act may file with the commission an application for a certificate of convenience and necessity, giving the applicant the exclusive right to serve the customers it is serving in the area in which it is serving at the time of this filing, subject to the existing right of any other electrical corporation to likewise serve its customers in existence in the

area at the time.

(b) The application shall be prima facie evidence of the applicant's rights to a certificate, and the certificate shall be issued within 30 days after the filing, pending which, however, the applicant shall have the right to continue its operations.

(c) Upon good cause shown to the commission by anyone protesting the issuance of such a certificate, or upon the commission's own motion, a public hearing may be held to determine if the applicant has sufficient finances, equipment, and plant to continue its existing service. The commission shall issue its order within 45 days after the hearing according to the proof submitted at the hearing.

(d) Every electrical corporation, save and except those applying for a certificate to serve only the customers served by applicant on May 11, 1965, applying for a certificate shall have established a ratio of debt capital to equity capital or will within a reasonable period of time establish a ratio of debt capital to equity capital which the commission shall find renders the electrical corporation financially stable and which financing shall be found to be in the public interest.

(6) Nothing in this section affects the existing rights of municipalities.

Section 43. Section **54-9-101** is enacted to read:

CHAPTER 9. ELECTRIC POWER FACILITIES ACT

54-9-101. Title.

This chapter is known as the "Electric Power Facilities Act."

Section 44. Section **54-9-102**, which is renumbered from Section 54-9-1.5 is renumbered and amended to read:

[~~54-9-1.5~~]. 54-9-102. Definitions.

As used in this chapter:

[~~(1) "City" means a city of this state owning a system for the generation, transmission, or distribution of electric power and energy for public or private use.~~]

[~~(2)~~] (1) "Common facilities" means all works and facilities necessary to the generation, transmission, or distribution of electric power[~~,~~] and energy [~~by thermal means~~].

(2) "Interlocal entity" has the same meaning as provided in Section 11-13-103.

(3) "Power utility":

(a) means [~~any of the following entities~~] a public agency, as defined in Section 11-13-103, or other person engaged in generating, transmitting, [~~or~~] distributing, or marketing electric power and energy[~~: a state, a political subdivision or agency of a state, or a cooperative or privately owned electric utility company subject to regulation by the Public Service Commission of Utah or comparable governmental body in their respective states.~~]; and

[~~(4) "Town" means a town of this state owning a system for the generation, transmission, or distribution of electric power and energy for public or private use.~~]

(b) does not include a public power entity.

(4) "Public power entity" means:

(a) a city or town that owns a system for the generation, transmission, or distribution of electric power and energy for public or private use; and

(b) an interlocal entity.

Section 45. Section **54-9-103**, which is renumbered from Section 54-9-2 is renumbered and amended to read:

[~~54-9-2~~]. 54-9-103. Public power entity authority regarding common facilities -- Determination of needs -- Agreement requirements -- Ownership interest.

(1) [~~In~~] (a) Notwithstanding Title 11, Chapter 13, Interlocal Cooperation Act, and Subsection 11-14-1(1)(k), and in addition to [~~the~~] all other powers [~~otherwise~~] conferred on [~~cities and towns of this state, any city or town, irrespective of the provisions of Title 11, Chapter 13 or Subsection 11-14-1 (1) (k).~~] public power entities, a public power entity may:

(i) plan, finance, construct, acquire, operate, own, and maintain an undivided interest in common facilities; [~~may~~]

(ii) participate in and enter into agreements with one or more public power entities or power utilities; and [~~may~~]

(iii) enter into contracts and agreements as may be necessary or appropriate for the joint planning, financing, construction, operation, ownership, or maintenance of common facilities.

(b) (i) Before entering into an agreement providing for common facilities, the governing

body of [~~a city or town~~] each public power entity shall determine the needs of [~~a city or town~~] the public power entity for electric power and energy based on engineering studies and reports.

(ii) In determining the future electric power and energy requirements of a [~~city~~] public power entity, the governing body shall consider [~~the following~~]:

[~~(a)~~] (A) the [~~economics~~] economies and efficiencies of scale to be achieved in constructing or acquiring common facilities for the generation and transmission of electric power and energy;

[~~(b)~~] (B) the public power entity's need [~~of the city or town~~] for reserve and peaking capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related to the needs of the [~~city or town~~] public power entity for power and energy [~~to which the city is or may become a party~~];

[~~(c)~~] (C) the estimated useful life of the common facilities;

[~~(d)~~] (D) the estimated time necessary for the planning, financing, construction, and acquisition of the common facilities and the [~~length of time in advance to obtain, acquire, or construct~~] estimated timing of the need for an additional power supply; and

[~~(e)~~] (E) the reliability and availability of existing or alternate power supply sources and the cost of those existing or alternate power supply sources.

(2) [~~the~~] (a) Each agreement providing for common facilities shall [~~not~~]:

(i) contain provisions not inconsistent with this chapter[~~, as~~] that the governing body of the [~~city or town~~] public power entity determines to be in the interests of the [~~city or town. An agreement shall be ratified by resolution of the governing body of the city or town and shall include provisions relating to, but not limited to, the following~~] public power entity, including:

[~~(a)~~] (A) the purposes of the agreement;

[~~(b)~~] (B) the duration of the agreement;

[~~(c)~~] (C) the method of appointing or employing the personnel necessary in connection with the common facilities;

[~~(d)~~] (D) the method of financing the common facilities, including the apportionment of costs of construction and operation;

[~~(e)~~] (E) the ownership interests of the owners in the common facilities and other property

used or useful in connection with the common facilities and the procedures for disposition of [~~that~~] the common facilities and other property when the agreement expires or is terminated or when the common facilities are abandoned, decommissioned, or dismantled;

[~~(f) the prohibition or restriction of~~]

(F) any agreement of the parties prohibiting or restricting the alienation or partition of the undivided interests of [~~a city or town~~] an owner in the common facilities[~~, which provision shall not be subject to a law restricting covenants against alienation or partition~~];

[~~(g)~~] (G) the construction and repair of the common facilities, [~~which may include~~] including, if the parties agree, a determination that a [~~city or town, person, firm, or corporation~~] power utility or public power entity may construct or repair the common facilities as agent for all parties to the agreement;

[~~(h)~~] (H) the administration, operation, and maintenance of the common facilities, [~~which may include~~] including, if the parties agree, a determination that a [~~city or town, person, firm, or corporation~~] power utility or public power entity may administer, operate, and maintain the common facilities as agent for all parties to the agreement;

[~~(i)~~] (I) the creation of a committee of representatives of the parties to the agreement[~~, which committee shall have powers regarding the construction and operation of the common facilities as the agreement, not inconsistent with this chapter, may provide~~];

[~~(j)~~] (J) if the [~~city or town~~] parties agree, a provision that if any party defaults in the performance or discharge of its obligations with respect to the common facilities, [~~that~~] the other parties may perform or assume, pro rata or otherwise, the obligations of the defaulting [~~parties~~] party and may, if the [~~city or town~~] defaulting party fails to remedy the default, succeed to or require the disposition of the rights and interests of the defaulting party [~~or parties~~] in the common facilities [~~as may be agreed upon in the agreement~~];

[~~(k)~~] (K) provisions for indemnification of construction [~~and~~], operation, and administration agents, for completion of construction, for handling emergencies, and for allocation of output of the common facilities among the parties to the agreement according to the ownership interests of the parties;

[~~(l)~~] (L) methods for amending and terminating the agreement; and

[~~(m)~~] (M) any other matter, not inconsistent with this chapter, determined by the parties to the agreement to be necessary and proper[~~, not inconsistent with this chapter.~~];

[~~(3) Agreements providing for common facilities shall~~]

(ii) clearly disclose the [~~cities' or towns'~~] ownership interest[~~.~~] of each party;

(iii) provide for an equitable method of allocating operation, repair, and maintenance costs of the common facilities; and

(iv) be approved or ratified by resolution of the governing body of the public power entity.

(b) A provision under Subsection (2)(a)(i)(F) in an agreement providing for common facilities under this Subsection (2) is not subject to any law restricting covenants against alienation or partition.

(c) Each committee created under Subsection (2)(a)(i)(I) in an agreement providing for common facilities under this Subsection (2) shall have the powers, not inconsistent with this chapter, regarding the construction and operation of the common facilities that the agreement provides.

(d) (i) The [~~cities' or towns'~~] ownership interest [~~shall be in~~] of a public power entity in the common facilities may not be less than the proportion [~~to~~] of the funds or the value of property supplied by it for the acquisition, construction, and operation of the common [~~facility~~] facilities. [~~The city or town~~]

(ii) Each public power entity shall own and control [~~a like percentage~~] the same proportion of the electrical output [~~thereof. The agreement shall provide for an equitable method of allocating operation and maintenance costs of the common facility~~] from the common facilities as its ownership interest in them.

(3) Notwithstanding any other provision of this chapter, an interlocal entity may not act in a manner inconsistent with any provision of the agreement under which it was created.

Section 46. Section **54-9-104**, which is renumbered from Section 54-9-3 is renumbered and amended to read:

[~~54-9-3~~]. 54-9-104. Joint owners to supply materials, arrange for own financing, and share in costs and taxes -- Public power entity authority to finance through financing

agent -- Common facilities owners authority to appoint an agent.

(1) The joint owners of the common [~~facility must~~] facilities shall supply the materials and make the payments provided for in the agreement.

(2) Each owner shall arrange its own funding and financing and be responsible for all the costs, interest, and payments required in connection with its share of the funding for the planning, acquisition, construction, operation, repairs, and improvements, and each participant shall pay its share of taxes or charges in lieu of taxes in connection with the common [~~facility~~] facilities.

(3) Notwithstanding any other provision of this section, a public power entity may finance its funding share with one or more other owners through a financing agent, as long as no public power entity is liable for more than its proportionate share of the debt service with respect to the financing.

(4) (a) The owners of common facilities may appoint as their agent:

(i) a public power entity or power utility that owns an interest in common facilities;

(ii) an interlocal entity of which a public power entity that owns an interest in the common facilities is a member;

(iii) an interlocal entity that owns electric generation or transmission facilities that are located on a site adjacent to the common facilities; or

(iv) a public agency that is an owner of the common facilities or that purchases power from a public agency that is an owner of the common facilities.

(b) One or more agents under Subsection (4)(a) may be appointed, as determined by the owners of the common facilities, for one or more of the following purposes:

(i) the construction, repair, administration, operation, or maintenance of the common facilities;

(ii) the administration and payment of, and any challenge or dispute regarding, any tax, fee in lieu of any tax, impact alleviation payment, or other fee or payment imposed by the state or a political subdivision of the state that relates to the common facilities; or

(iii) the financing of all or part of the common facilities under Subsection (3).

Section 47. Section **54-9-105**, which is renumbered from Section 54-9-4 is renumbered and

amended to read:

[~~54-9-4~~]. 54-9-105. Limitations on liability.

(1) (a) Each [~~city or town shall~~] public power entity and power utility may be held liable only for its own acts, omissions, and obligations with respect to the planning, financing, construction, acquisition, administration, operation, ownership, repair, or maintenance of the common facilities and [~~shall~~] may not be jointly or severally liable for the acts, omissions, or obligations of others.

(b) Subsection (1)(a) may not be construed to:

(i) affect the liability of a public power entity or power utility with respect to its contractual obligations, including a contractual obligation to indemnify a construction, operation, or administrative agent for the common facilities; or

(ii) affect an immunity or other protection that may be available to a public power entity or power utility under applicable law.

(2) No money, materials, or other contribution supplied by a [~~city or town shall~~] public power entity may be credited or otherwise applied to the account of any other [~~participant~~] owner in the common facilities, nor [~~shall~~] may the undivided share of a [~~city or town~~] public power entity be charged, directly or indirectly, with any debt or obligation of any other [~~participant~~] owner or be subject to any lien as a result thereof.

(3) No action in connection with [~~a~~] common [~~facility shall~~] facilities may be binding upon [~~any city or town~~] a public power entity unless the action or the agreement under which the action is taken is authorized or approved by a resolution or ordinance of its governing body.

Section 48. Section **54-9-106**, which is renumbered from Section 54-9-5 is renumbered and amended to read:

[~~54-9-5~~]. 54-9-106. Funding -- Power sales contracts -- Revenue bonds -- Fee in lieu of ad valorem property taxes -- Bond issues -- Public purpose.

(1) A [~~city or town~~] public power entity participating in common facilities under [~~authority contained in~~] this chapter may furnish money and provide property, both real and personal, and, in addition to any other authority now existing, may issue and sell, either at public or privately negotiated sale, general obligation bonds or revenue bonds, pledging either the revenues of its entire

electric system or only its interest or share of the revenues derived from the common facilities in order to pay its respective share of the costs of the planning, financing, acquisition, [~~and~~] construction, repair, and replacement of common facilities.

(2) (a) Capacity or output derived by a [~~city or town~~] public power entity from its ownership share of common facilities not then required by the [~~city or town~~] public power entity for its own use and for the use of its customers may be sold or exchanged [~~by the city or town~~] for a consideration, for a period, and upon other terms and conditions as may be determined by the parties prior to the sale and as embodied in a power sales contract [~~entered into by the city or town; and any~~].

(b) Any revenues arising under [~~the~~] a power sales contract under Subsection (2)(a) may be pledged by the [~~city or town~~] public power entity to the payment of revenue bonds issued to pay its respective share of the costs of the common facilities. [~~Each power sales contract entered into by a city or town with a consumer which is not exempt by Article XIII, Sec. 2, Utah Constitution, for the sale or exchange to the consumer of capacity or output derived by the city or town from its ownership share of common facilities shall contain a provision for payment of an annual fee to the city or town by the consumer in lieu of ad valorem property taxes based upon the taxable value of the percentage of the ownership share of the city or town in the common facilities which is used to produce the capacity or output that is sold or exchanged by the city or town to or with consumer , which fee in lieu of ad valorem property taxes shall be paid over by the city or town to the county treasurer for distribution as per distribution of other ad valorem tax revenues.~~]

(c) (i) As used in this Subsection (2)(c), "nonexempt purchaser" means a purchaser that is not exempt from property taxes under Utah Constitution Article XIII, Section 2.

(ii) (A) Each power sales contract between a public power entity and a nonexempt purchaser shall contain a provision requiring the nonexempt purchaser to pay an annual fee to the public power entity in lieu of ad valorem property taxes.

(B) The amount of the fee in lieu of ad valorem property taxes under Subsection (2)(c)(ii)(A) shall be based on the taxable value of the public power entity's percentage ownership of the common facilities used to produce the capacity or output that the public power entity sells to or exchanges with the nonexempt purchaser.

(iii) The public power entity shall pay over to the county treasurer each fee in lieu of ad valorem property taxes that it receives from a nonexempt purchaser for distribution in the same manner as other ad valorem tax revenues.

(iv) This Subsection (2)(c) does not apply to a public power entity to the extent that its interest in common facilities is subject to or exempt from the fee in lieu of ad valorem property taxes under Section 11-13-302.

(3) [~~Any city or town~~] A public power entity acquiring or owning an undivided interest in common facilities may contract with a county [~~or counties~~] to pay, solely from the revenues derived from the interest of the [~~city or town~~] public power entity in the common facilities, to the county or counties in which the common facilities are located, an annual fee in lieu of ad valorem property taxes based upon the taxable value of the percentage of the ownership share of the [~~city or town~~] public power entity in the common facilities, which fee in lieu of ad valorem property taxes shall be paid over by the [~~city or town~~] public power entity to the county treasurer of the county or counties in which the common facilities are located for distribution as per distribution of other ad valorem tax revenues.

(4) (a) Bonds issued by a city or town shall be issued under the applicable provisions of Title 11, Chapter 14, Utah Municipal Bond Act, [~~and of Title 55, Chapter 3, Public Works Program,~~] authorizing the issuance of bonds for the acquisition and construction of electric public utility properties by cities or towns.

(b) Bonds or other debt instruments issued by an interlocal entity shall be issued under Title 11, Chapter 13, Interlocal Cooperation Act, or other applicable law.

[~~(4)~~] (5) All moneys paid or property supplied by [~~any city or town~~] a public power entity for the purpose of carrying out powers conferred by this chapter are declared to be for a public purpose[~~; but before a city or cities, town or towns, or power utility undertakes the construction of transmission facilities in which it or they have a common ownership interest, the city or cities, town or towns, or power utility shall, if the construction results in a duplication, in whole or part, of existing transmission in purpose or function, before construction endeavor to attain the equivalent capacity for a comparable term and comparable cost by purchase or contract with the duplicated~~

~~facility. If the contract cannot be executed within six months from the date the city or cities, town or towns, or power utility request to contract with the owner of the duplicated facility, then the city or cities, town or towns, or power utility may proceed to construct the proposed transmission facilities notwithstanding the duplication~~].

Section 49. Section **54-9-107**, which is renumbered from Section 54-9-6 is renumbered and amended to read:

[~~54-9-6~~]. 54-9-107. Disposition of proceeds and revenues.

All monies belonging to [~~cities or towns~~] a public power entity in connection with common facilities, including the proceeds of the sale of bonds and the revenues arising from the operation of [~~a~~] common [~~facility,~~] facilities:

(1) may be deposited in a bank or trust company doing business within or without the state [~~of Utah~~]; and

(2) shall be accounted for and disbursed in accordance with applicable law and the provisions of the resolution or indenture authorizing the issuance of [~~such~~] the bonds.

Section 50. Section **59-2-1101** is amended to read:

59-2-1101. Exemption of property devoted to public, religious, or charitable uses -- Proportional payments for government-owned property -- Intangibles exempt -- Signed statement required -- County legislative body authority to adopt rules or ordinances.

(1) The exemptions, deferrals, and abatements authorized by this part may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed, unless the claimant is a federal, state, or political subdivision entity under Subsection (2)(a), (b), or (c), in which case the entity shall collect and pay a proportional tax based upon the length of time that the property was not owned by the entity.

(2) The following property is exempt from taxation:

(a) property exempt under the laws of the United States;

(b) property of the state, school districts, and public libraries;

(c) property of counties, cities, towns, special districts, and all other political subdivisions of the state, except as provided in Title 11, Chapter 13, Interlocal Cooperation Act;

(d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes;

(e) places of burial not held or used for private or corporate benefit;

(f) farm equipment and machinery; [~~and~~]

(g) intangible property; and

(h) the ownership interest of an out-of-state public agency, as defined in Section 11-13-103, in property providing additional project capacity, as defined in Section 11-13-103, on which a fee in lieu of ad valorem property tax is payable under Section 11-13-302.

(3) (a) The owner who receives exempt status for property, if required by the commission, shall file a signed statement, on or before March 1 each year, certifying the use to which the property has been placed during the past year. The signed statement shall contain the following information in summary form:

(i) identity of the individual who signed the statement;

(ii) the basis of the signer's knowledge of the use of the property;

(iii) authority to make the signed statement on behalf of the owner;

(iv) county where property is located; and

(v) nature of use of the property.

(b) If the signed statement is not filed within the time limits prescribed by the county, the exempt status may, after notice and hearing, be revoked and the property then placed on the tax rolls.

(4) The county legislative body may adopt rules or ordinances to:

(a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided in this part; and

(b) designate one or more persons to perform the functions given the county under this part.

Section 51. Section **59-4-101** is amended to read:

59-4-101. Tax basis -- Exceptions -- Assessment and collection.

(1) (a) Except as provided in Subsections (1)(b) and (c), a tax is imposed on the possession or other beneficial use enjoyed by any person of any real or personal property which for any reason is exempt from taxation, if that property is used in connection with a business conducted for profit.

(b) Any interest remaining in the state in state lands after subtracting amounts paid or due in part payment of the purchase price as provided in Subsection 59-2-1103(2)(b)(i) under a contract of sale is subject to taxation under this chapter regardless of whether the property is used in connection with a business conducted for profit.

(c) The tax imposed under Subsection (1)(a) does not apply to property exempt from taxation under Section 59-2-1114.

(2) The tax imposed under this chapter is the same amount that the ad valorem property tax would be if the possessor or user were the owner of the property. The amount of any payments which are made in lieu of taxes is credited against the tax imposed on the beneficial use of property owned by the federal government.

(3) A tax is not imposed under this chapter on the following:

(a) the use of property which is a concession in, or relative to, the use of a public airport, park, fairground, or similar property which is available as a matter of right to the use of the general public;

(b) the use or possession of property by a religious, educational, or charitable organization;

(c) the use or possession of property if the revenue generated by the possessor or user of the property through its possession or use of the property inures only to the benefit of a religious, educational, or charitable organization and not to the benefit of any other person;

(d) the possession or other beneficial use of public land occupied under the terms of a grazing lease or permit issued by the United States or this state; [~~or~~]

(e) the use or possession of any lease, permit, or easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. Every lessee, permittee, or other holder of a right to remove or extract the mineral covered by the holder's lease, right, permit, or easement except from brines of the Great Salt Lake, is considered to be in possession of the premises, notwithstanding the fact that other parties may have a similar right to remove or extract another mineral from the same lands or estates[~~.~~]; or

(f) the use or possession of property by a public agency, as defined in Section 11-13-103,

to the extent that the ownership interest of the public agency in that property is subject to a fee in lieu of ad valorem property tax under Section 11-13-302.

(4) A tax imposed under this chapter is assessed to the possessors or users of the property on the same forms, and collected and distributed at the same time and in the same manner, as taxes assessed owners, possessors, or other claimants of property which is subject to ad valorem property taxation. The tax is not a lien against the property, and no tax-exempt property may be attached, encumbered, sold, or otherwise affected for the collection of the tax.

Section 52. Section **59-7-102** is amended to read:

59-7-102. Exemptions.

(1) Except as provided in Part 8, the following are exempt from this chapter:

(a) organizations exempt under Sections 501 and 521, Internal Revenue Code, and organizations meeting the requirements of Subchapter T, Internal Revenue Code;

(b) organizations exempt under Section 528, Internal Revenue Code, provided that to the extent such organization's income is taxable for federal tax purposes under Section 528, such organization's income is also taxable under this chapter;

(c) insurance companies which are otherwise taxed on their premiums under Title 59, Chapter 9, Taxation of Admitted Insurers; [~~and~~]

(d) building authorities as defined in Section 17A-3-902[~~.~~]; and

(e) public agencies, as defined in Section 11-13-103, with respect to or as a result of an ownership interest in a project, as defined in Section 11-13-103, or facilities providing additional project capacity, as defined in Section 11-13-103.

(2) Notwithstanding any other provision in Chapter 7 or 8, a person not otherwise subject to the tax imposed by this chapter or Chapter 8 shall not become subject to the tax imposed by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, by reason of:

(a) that person's ownership of tangible personal property located at the premises of a printer's facility in this state with which the person has contracted for printing; or

(b) the activities of the person's employees or agents who are located solely at the premises of a printer's facility and who are performing services related to quality control, distribution, or

printing services performed by the printer's facility in this state with which the person has contracted for printing.

Section 53. Section **59-8-103** is amended to read:

59-8-103. Definitions.

As used in this chapter:

(1) "Corporation" means:

(a) any domestic corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act;

(b) any foreign corporation engaged in business in this state under Sections 16-6a-1501 through 16-6a-1518; [~~or~~]

(c) any [~~legal or administrative~~] project entity [~~created under Section 11-13-5.5.~~] defined in Section 11-13-103; or

(d) a public agency, as defined in Section 11-13-103, to the extent it owns an interest in facilities providing additional project capacity, as defined in Section 11-13-103.

(2) "Engaging in business" means carrying on or causing to be carried on any activity through which goods or services are made or rendered by the taxpayer, except as provided in Section 59-7-102.

(3) "Gross receipts" means the totality of the consideration that the taxpayer receives for any good or service produced or rendered in the state without any deduction or expense paid or accrued in respect to it.

(4) "Taxpayer" means any corporation, other than an eleemosynary, religious, or charitable institution, any insurance company, credit union, or Subchapter S organization, any nonprofit hospital, educational, welfare, or employee representation organization, or any mutual benefit association engaged in business in the state that is not otherwise required to pay income or franchise tax to the state under Title 59, Chapter 7.

Section 54. Section **59-8-104** is amended to read:

59-8-104. Rate -- Change of rate.

(1) For taxable years beginning on or after July 1, 1996 and subject to Section 11-13-303,

an in lieu excise tax is imposed on the gross receipts of a taxpayer engaging in business in the state of Utah in each taxable year as follows:

Gross Receipts Amount	Rate of Tax
Not in excess of $10,000,000	None
In excess of $10,000,000 but not in excess of $500,000,000	.8613%
In excess of $500,000,000 but not in excess of $1,000,000,000	1.3214%
In excess of $1,000,000,000	1.7520%

(2) A taxpayer subject to the in lieu excise tax under Subsection (1) is not required to pay the tax imposed under Title 59, Chapter 8a, Gross Receipts Tax on Electrical Corporations Act.

Section 55. Section **59-12-104** is amended to read:

59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under Chapter 13, Motor and Special Fuel Tax Act;

(2) sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of:

(a) construction materials except:

[~~(a)~~] (i) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and

[~~(b)~~] (ii) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions; or

(b) tangible personal property in connection with the construction, operation, maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities providing additional

project capacity, as defined in Section 11-13-103;

(3) sales of food, beverage, and dairy products from vending machines in which the proceeds of each sale do not exceed $1 if the vendor or operator of the vending machine reports an amount equal to 150% of the cost of items as goods consumed;

(4) sales of food, beverage, dairy products, similar confections, and related services to commercial airline carriers for in-flight consumption;

(5) sales of parts and equipment installed in aircraft operated by common carriers in interstate or foreign commerce;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) sales of cleaning or washing of tangible personal property by a coin-operated laundry or dry cleaning machine;

(8) (a) except as provided in Subsection (8)(b), sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

(b) the exemption provided for in Subsection (8)(a) does not apply to the following sales, uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code:

(i) retail sales of Olympic merchandise;

(ii) except as provided in Subsection (51), admissions or user fees described in Subsection 59-12-103(1)(f);

(iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i), except for accommodations and services:

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the

Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement; or

(iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or rental of a vehicle:

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement;

(9) sales of vehicles of a type required to be registered under the motor vehicle laws of this state which are made to bona fide nonresidents of this state and are not afterwards registered or used in this state except as necessary to transport them to the borders of this state;

(10) sales of medicine;

(11) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

(12) (a) sales of meals served by:

(i) the following if the meals are not available to the general public:

(A) a church; or

(B) a charitable institution;

(ii) an institution of higher education if:

(A) the meals are not available to the general public; or

(B) the meals are prepaid as part of a student meal plan offered by the institution of higher education; or

(b) inpatient meals provided at:

(i) a medical facility; or

(ii) a nursing facility;

(13) isolated or occasional sales by persons not regularly engaged in business, except the sale of vehicles or vessels required to be titled or registered under the laws of this state in which case the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle or vessel being sold as determined by the commission;

(14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

(i) machinery and equipment:

(A) used in the manufacturing process;

(B) having an economic life of three or more years; and

(C) used:

(I) to manufacture an item sold as tangible personal property; and

(II) in new or expanding operations in a manufacturing facility in the state; and

(ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

(A) have an economic life of three or more years;

(B) are used in the manufacturing process in a manufacturing facility in the state;

(C) are used to replace or adapt an existing machine to extend the normal estimated useful life of the machine; and

(D) do not include repairs and maintenance;

(b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:

(i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in

Subsection (14)(a)(ii) is exempt; and

(iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii) is exempt;

(c) for purposes of this Subsection (14), the commission shall by rule define the terms "new or expanding operations" and "establishment"; and

(d) on or before October 1, 1991, and every five years after October 1, 1991, the commission shall:

(i) review the exemptions described in Subsection (14)(a) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and

(ii) include in its report:

(A) the cost of the exemptions;

(B) the purpose and effectiveness of the exemptions; and

(C) the benefits of the exemptions to the state;

(15) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract, but only if, under the terms of that contract or subcontract, title to the tooling and equipment is vested in the United States government as evidenced by a government identification tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical;

(16) intrastate movements of:

(a) freight by common carriers; and

(b) passengers:

(i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget, if the transportation originates and terminates within a county of the first,

second, or third class;

(17) sales of newspapers or newspaper subscriptions;

(18) tangible personal property, other than money, traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(a) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in; or

(b) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission;

(19) sprays and insecticides used to control insects, diseases, and weeds for commercial production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and insecticides used in the processing of the products;

(20) (a) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

(i) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools with a unit purchase price not in excess of $250, and maintenance and janitorial equipment and supplies;

(ii) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

(iii) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

(b) sales of hay;

(21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce if sold by a producer during the harvest season;

(22) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

(23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer;

(24) property stored in the state for resale;

(25) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;

(26) property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(27) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;

(28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(29) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(31) sales of boats of a type required to be registered under Title 73, Chapter 18, State Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to

the borders of this state;

(32) sales of tangible personal property to persons within this state that is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state, except to the extent that the other state or political entity imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the other state or political entity allows a credit for taxes imposed by this chapter;

(33) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where a sales or use tax is not imposed, even if the title is passed in Utah;

(34) amounts paid for the purchase of telephone service for purposes of providing telephone service;

(35) fares charged to persons transported directly by a public transit district created under the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

(36) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

(37) (a) 45% of the sales price of any new manufactured home; and

(b) 100% of the sales price of any used manufactured home;

(38) sales relating to schools and fundraising sales;

(39) sales or rentals of home medical equipment and supplies;

(40) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (40)(a) that are not separately metered and accounted for in utility billings;

(41) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment; and

(c) passenger ropeways as defined in Section 72-11-102;

(42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

(43) sales or rentals of the right to use or operate for amusement, entertainment, or recreation a coin-operated amusement device as defined in Section 59-12-102;

(44) sales of cleaning or washing of tangible personal property by a coin-operated car wash machine;

(45) sales by the state or a political subdivision of the state, except state institutions of higher education as defined in Section 53B-3-102, of:

(a) photocopies; or

(b) other copies of records held or maintained by the state or a political subdivision of the state; and

(46) (a) amounts paid:

(i) to a person providing intrastate transportation to an employer's employee to or from the employee's primary place of employment;

(ii) by an:

(A) employee; or

(B) employer; and

(iii) pursuant to a written contract between:

(A) the employer; and

(B) (I) the employee; or

(II) a person providing transportation to the employer's employee; and

(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may for purposes of Subsection (46)(a) make rules defining what constitutes an employee's primary place of employment;

(47) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;

(48) sales of telephone service charged to a prepaid telephone calling card;

(49) (a) sales of hearing aids; and

(b) sales of hearing aid accessories;

(50) (a) sales made to or by:

(i) an area agency on aging; or

(ii) a senior citizen center owned by a county, city, or town; or

(b) sales made by a senior citizen center that contracts with an area agency on aging;

(51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 in accordance with requirements of the International Olympic Committee; and

(b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 shall make at least two reports during the 2000 interim:

(i) to the:

(A) Olympic Coordination Committee; and

(B) Revenue and Taxation Interim Committee; and

(ii) regarding the status of:

(A) agreements relating to the funding of public safety services for the Olympic Winter Games of 2002;

(B) agreements relating to the funding of services, other than public safety services, for the Olympic Winter Games of 2002;

(C) other agreements relating to the Olympic Winter Games of 2002 as requested by the Olympic Coordination Committee or the Revenue and Taxation Interim Committee;

(D) other issues as requested by the Olympic Coordination Committee or the Revenue and Taxation Interim Committee; or

(E) a combination of Subsections (51)(b)(ii)(A) through (D);

(52) (a) beginning on July 1, 2001, through June 30, 2004, and subject to Subsection (52)(b), a sale or lease of semiconductor fabricating or processing materials regardless of whether the semiconductor fabricating or processing materials:

(i) actually come into contact with a semiconductor; or

(ii) ultimately become incorporated into real property;

(b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease described

in Subsection (52)(a) is exempt;

(ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease described in Subsection (52)(a) is exempt; and

(iii) beginning on July 1, 2003, through June 30, 2004, the entire amount of the sale or lease described in Subsection (52)(a) is exempt; and

(c) each year on or before the November interim meeting, the Revenue and Taxation Interim Committee shall:

(i) review the exemption described in this Subsection (52) and make recommendations concerning whether the exemption should be continued, modified, or repealed; and

(ii) include in the review under this Subsection (52)(c):

(A) the cost of the exemption;

(B) the purpose and effectiveness of the exemption; and

(C) the benefits of the exemption to the state;

(53) an amount paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section 59-12-104.2; or

(54) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary sports event registration certificate in accordance with Section 41-3-306 for the event period specified on the temporary sports event registration certificate.

Section 56. Section **63-2-304** is amended to read:

63-2-304. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in [~~Subsection 11-13-3(3)~~] Section 11-13-103;

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this subsection does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property; or

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

(19) personal files of a legislator, including personal correspondence to or from a member of the Legislature, but not correspondence that gives notice of legislative action or policy;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator submits the "Request For Legislation" with a request that it be maintained as a protected record until such time

as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,

revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for public institutions of higher education, the governmental unit to which the

donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family;

(38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205; and

(40) the following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution: unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative works in process, scholarly correspondence, and confidential information contained in research proposals. Nothing in this Subsection (40) shall be construed to affect the ownership of a record.

Section 57. **Repealer.**

This act repeals:

Section **11-13-9, Approval of agreements by authorized attorney.**

Section **11-13-12, Agreements for services or facilities under control of state officer or agency -- Approval by authorized attorney.**

Section **54-9-1, Legislative purpose.**

Section 58. **Coordination clause.**

(1) If this bill and H.B. 131, Reporting of Data to the Automated Geographic Reference Center, both pass, it is the intent of the Legislature that the references to Sections 11-13-5.5 and 11-13-5.6 in Subsection 63A-6-203(4), as provided in H.B. 131, be deleted and replaced with Sections 11-13-204 and 11-13-205.

(2) If this bill and S.B. 57, Corporate Franchise and Income Taxes - Treatment of Certain Cooperatives, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, combine and coordinate the amendments to Section 59-7-102, as set forth in this bill and S.B. 57, to read as follows:

"**59-7-102. Exemptions.**

(1) Except as provided in [~~Part 8~~] this section, the following are exempt from this chapter:

(a) [~~organizations~~] an organization exempt under [~~Sections~~] Section 501 [~~and 521~~], Internal Revenue Code[~~, and organizations meeting the requirements of Subchapter T, Internal Revenue Code~~];

(b) [~~organizations~~] an organization exempt under Section 528, Internal Revenue Code[~~, provided that to the extent such organization's income is taxable for federal tax purposes under Section 528, such organization's income is also taxable under this chapter~~];

(c) an insurance [~~companies which are~~] company that is otherwise taxed on [~~their~~] the insurance company's premiums under [~~Title 59,~~] Chapter 9, Taxation of Admitted Insurers; [~~and~~]

(d) a building [~~authorities~~] authority as defined in Section 17A-3-902[~~,~~];

(e) a farmers' cooperative; or

(f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an ownership interest in:

(i) a project, as defined in Section 11-13-103; or

(ii) facilities providing additional project capacity, as defined in Section 11-13-103.

(2) Notwithstanding any other provision in this chapter or Chapter [~~7 or~~] 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax, a person not otherwise subject to the tax imposed by this chapter or Chapter 8 [~~shall~~] is not [~~become~~] subject to the tax imposed by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, [~~by reason~~] because of:

(a) that person's ownership of tangible personal property located at the premises of a printer's facility in this state with which the person has contracted for printing; or

(b) the activities of the person's employees or agents who are:

(i) located solely at the premises of a printer's facility; and [~~who are~~]

(ii) performing services:

(A) related to:

(I) quality control[~~,~~];

(II) distribution[~~,~~]; or

(III) printing services; and

(B) performed by the printer's facility in this state with which the person has contracted for

printing.

(3) Notwithstanding Subsection (1), an organization, company, authority, farmers' cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part 8, Unrelated Business Income, to the extent provided in Part 8.

(4) Notwithstanding Subsection (1)(b), to the extent the income of an organization described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal Revenue Code, the organization's income is also taxable under this chapter."