

Senator Leonard M. Blackham proposes the following substitute bill:

**INTERLOCAL COOPERATION ACT AND ELECTRIC
POWER FACILITIES AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

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6 **This act modifies the Interlocal Cooperation Act and Public Utilities provisions. The act**
7 **authorizes the creation of new political subdivisions of the state by Utah public agencies and**
8 **out-of-state public agencies to participate in the undertaking and financing of electric**
9 **generation facilities adjacent to an existing generation and transmission project or to**
10 **conduct other activities relating to the generation, transmission, management, and**
11 **distribution of electricity. The act authorizes an existing Utah interlocal entity to reorganize**
12 **with out-of-state public agencies as an electric interlocal entity. The act provides for the**
13 **powers and duties of new interlocal entities, modifies powers for existing interlocal entities,**
14 **and provides for additional powers for certain interlocal entities. The act modifies**
15 **provisions relating to the length of time that an interlocal entity may remain in existence.**
16 **The act modifies provisions required to be included in an agreement creating an interlocal**
17 **entity. The act modifies provisions relating to the sales and use tax obligation of project**
18 **entities. The act repeals provisions requiring approval of agreements by an attorney. The**
19 **act modifies provisions relating to generation output from a generation and transmission**
20 **project and requires a majority of generation output from facilities providing additional**
21 **project capacity to be made available to and acquired by purchasers in the state. The act**
22 **enacts provisions relating to impact alleviation, gross receipts tax, fee in lieu of property tax,**
23 **sales and use tax, privilege tax, and other matters with respect to facilities providing**
24 **additional project capacity. The act modifies provisions relating to agreements between state**
25 **and federal agencies. The act eliminates a requirement that applies if an interlocal**



26 cooperation entity constructs or acquires facilities to provide services that exceed those
27 needed to meet the requirements of the participating public agencies. The act modifies a
28 provision defining projects that are subject to a requirement to obtain a certificate of public
29 convenience and necessity from the public service commission. This act modifies provisions
30 relating to thermal power facilities and makes them apply instead to electric power facilities.
31 The act expands application of those provisions to include interlocal entities and modifies
32 provisions relating to the requirements for agreements for common facilities, the financing
33 of common facilities, and the liability of public power entities and power utilities. The act
34 repeals legislative purpose language. The act clarifies the taxes, fees, and exemptions
35 relating to public agencies under certain circumstances. The act modifies definitions, adds
36 new definitions, and makes conforming and technical changes. The act provides a
37 coordination clause.

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

39 AMENDS:

- 40 **9-4-305**, as last amended by Chapters 10 and 299, Laws of Utah 2000
- 41 **9-4-306**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 42 **54-4-25**, as last amended by Chapters 173 and 316, Laws of Utah 1995
- 43 **59-2-1101**, as last amended by Chapters 221 and 310, Laws of Utah 2001
- 44 **59-4-101**, as last amended by Chapter 386, Laws of Utah 1997
- 45 **59-7-102**, as last amended by Chapter 331, Laws of Utah 1997
- 46 **59-8-103**, as last amended by Chapter 300, Laws of Utah 2000
- 47 **59-8-104**, as last amended by Chapter 273, Laws of Utah 1996
- 48 **59-12-104**, as last amended by Chapter 12, Laws of Utah 2001, First Special Session
- 49 **63-2-304**, as last amended by Chapters 232 and 335, Laws of Utah 2000

50 ENACTS:

- 51 **11-13-204**, Utah Code Annotated 1953
- 52 **11-13-301**, Utah Code Annotated 1953
- 53 **54-9-101**, Utah Code Annotated 1953

54 RENUMBERS AND AMENDS:

- 55 **11-13-101**, (Renumbered from 11-13-1, as last amended by Chapter 9, Laws of Utah 2001)
- 56 **11-13-102**, (Renumbered from 11-13-2, as last amended by Chapter 9, Laws of Utah 2001)

- 57 **11-13-103**, (Renumbered from 11-13-3, as last amended by Chapter 234, Laws of Utah
58 1997)
- 59 **11-13-201**, (Renumbered from 11-13-4, as last amended by Chapter 83, Laws of Utah
60 2001)
- 61 **11-13-202**, (Renumbered from 11-13-5, as last amended by Chapter 47, Laws of Utah
62 1977)
- 63 **11-13-203**, (Renumbered from 11-13-5.5, as last amended by Chapter 337, Laws of Utah
64 1998)
- 65 **11-13-205**, (Renumbered from 11-13-5.6, as last amended by Chapter 9, Laws of Utah
66 2001)
- 67 **11-13-206**, (Renumbered from 11-13-6, as last amended by Chapter 4, Laws of Utah 1993)
- 68 **11-13-207**, (Renumbered from 11-13-7, as enacted by Chapter 14, Laws of Utah 1965)
- 69 **11-13-208**, (Renumbered from 11-13-8, as enacted by Chapter 14, Laws of Utah 1965)
- 70 **11-13-209**, (Renumbered from 11-13-10, as enacted by Chapter 14, Laws of Utah 1965)
- 71 **11-13-210**, (Renumbered from 11-13-11, as enacted by Chapter 14, Laws of Utah 1965)
- 72 **11-13-211**, (Renumbered from 11-13-13, as last amended by Chapter 143, Laws of Utah
73 1985)
- 74 **11-13-212**, (Renumbered from 11-13-14, as last amended by Chapter 5, Laws of Utah
75 1989, Second Special Session)
- 76 **11-13-213**, (Renumbered from 11-13-15, as last amended by Chapter 47, Laws of Utah
77 1977)
- 78 **11-13-214**, (Renumbered from 11-13-16, as last amended by Chapter 5, Laws of Utah
79 1989, Second Special Session)
- 80 **11-13-215**, (Renumbered from 11-13-16.5, as enacted by Chapter 3, Laws of Utah 1984,
81 Second Special Session)
- 82 **11-13-216**, (Renumbered from 11-13-17, as enacted by Chapter 14, Laws of Utah 1965)
- 83 **11-13-217**, (Renumbered from 11-13-18, as last amended by Chapter 47, Laws of Utah
84 1977)
- 85 **11-13-218**, (Renumbered from 11-13-19, as last amended by Chapter 47, Laws of Utah
86 1977)
- 87 **11-13-219**, (Renumbered from 11-13-20, as repealed and reenacted by Chapter 30, Laws

- 88 of Utah 1994)
- 89 **11-13-220**, (Renumbered from 11-13-22, as enacted by Chapter 27, Laws of Utah 1967)
- 90 **11-13-221**, (Renumbered from 11-13-23, as enacted by Chapter 31, Laws of Utah 1969)
- 91 **11-13-222**, (Renumbered from 11-13-24, as enacted by Chapter 31, Laws of Utah 1969)
- 92 **11-13-223**, (Renumbered from 11-13-37, as enacted by Chapter 30, Laws of Utah 1994)
- 93 **11-13-302**, (Renumbered from 11-13-25, as last amended by Chapter 326, Laws of Utah
- 94 1996)
- 95 **11-13-303**, (Renumbered from 11-13-26, as last amended by Chapter 5, Laws of Utah
- 96 1987)
- 97 **11-13-304**, (Renumbered from 11-13-27, as last amended by Chapter 188, Laws of Utah
- 98 1987)
- 99 **11-13-305**, (Renumbered from 11-13-28, as enacted by Chapter 10, Laws of Utah 1980)
- 100 **11-13-306**, (Renumbered from 11-13-29, as enacted by Chapter 10, Laws of Utah 1980)
- 101 **11-13-307**, (Renumbered from 11-13-30, as enacted by Chapter 10, Laws of Utah 1980)
- 102 **11-13-308**, (Renumbered from 11-13-31, as enacted by Chapter 10, Laws of Utah 1980)
- 103 **11-13-309**, (Renumbered from 11-13-32, as enacted by Chapter 10, Laws of Utah 1980)
- 104 **11-13-310**, (Renumbered from 11-13-33, as last amended by Chapter 72, Laws of Utah
- 105 1991)
- 106 **11-13-311**, (Renumbered from 11-13-34, as last amended by Chapter 231, Laws of Utah
- 107 1983)
- 108 **11-13-312**, (Renumbered from 11-13-35, as last amended by Chapter 2, Laws of Utah
- 109 1987)
- 110 **11-13-313**, (Renumbered from 11-13-36, as enacted by Chapter 10, Laws of Utah 1980)
- 111 **54-9-102**, (Renumbered from 54-9-1.5, as last amended by Chapter 241, Laws of Utah
- 112 1985)
- 113 **54-9-103**, (Renumbered from 54-9-2, as last amended by Chapter 241, Laws of Utah 1985)
- 114 **54-9-104**, (Renumbered from 54-9-3, as enacted by Chapter 21, Laws of Utah 1975)
- 115 **54-9-105**, (Renumbered from 54-9-4, as last amended by Chapter 241, Laws of Utah 1985)
- 116 **54-9-106**, (Renumbered from 54-9-5, as last amended by Chapter 9, Laws of Utah 2001)
- 117 **54-9-107**, (Renumbered from 54-9-6, as last amended by Chapter 241, Laws of Utah 1985)
- 118 REPEALS:

119 **11-13-9**, as last amended by Chapter 188, Laws of Utah 1987

120 **11-13-12**, as repealed and reenacted by Chapter 188, Laws of Utah 1987

121 **54-9-1**, as last amended by Chapter 241, Laws of Utah 1985

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

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

124 **9-4-305. Duties -- Loans -- Interest.**

125 (1) The impact board shall:

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

129 (i) planning;

130 (ii) construction and maintenance of public facilities; and

131 (iii) provision of public services;

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

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

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

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

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

140 (g) perform other duties assigned to it under Sections [~~11-13-29~~] 11-13-306 and
141 [~~11-13-30~~] 11-13-307.

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

146 (3) The average annual return to the impact fund on all bonus monies may not be less than
147 1/2 of the average interest rate paid by the state on general obligation bonds issued during the most
148 recent fiscal year in which bonds were sold.

149 (4) (a) "Provision of public services" under Subsection (1)(a) includes contracts with

150 public postsecondary institutions to fund research, education, or public service programs that
151 benefit impacted counties or political subdivisions of the counties.

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

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

154 (ii) approved by the county legislative body.

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

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

157 **9-4-306. Powers.**

158 The impact board may:

159 (1) appoint, where it deems this appropriate, a hearing examiner or administrative law
160 judge with authority to conduct any hearings, make determinations, and enter appropriate findings
161 of facts, conclusions of law, and orders under authority of the impact board under Sections
162 [~~11-13-29~~] 11-13-306 and [~~11-13-30~~] 11-13-307;

163 (2) appoint additional professional and administrative staff necessary to effectuate Sections
164 [~~11-13-29~~] 11-13-306 and [~~11-13-30~~] 11-13-307;

165 (3) make independent studies regarding matters submitted to it under Sections [~~11-13-29~~]
166 11-13-306 and [~~11-13-30~~] 11-13-307 that the impact board, in its discretion, deems necessary,
167 which studies shall be made a part of the record and may be considered in the impact board's
168 determination; and

169 (4) make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act it deems
170 necessary to perform its responsibilities under Sections [~~11-13-29~~] 11-13-306 and [~~11-13-30~~]
171 11-13-307.

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

174 **Part 1. General Provisions**

175 [~~11-13-1~~]. **11-13-101. Title.**

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

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

179 [~~11-13-2~~]. **11-13-102. Purpose of chapter.**

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

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

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

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

190 ~~[11-13-3].~~ **11-13-103. Definitions.**

191 As used in this chapter:

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

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

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

200 ~~[(1)]~~ (2) "Board" means the Permanent Community Impact Fund Board created by Section
201 9-4-304, and its successors.

202 ~~[(2)]~~ (3) "Candidate" means one or more of:

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

204 (b) a county, municipality, school district, [prosecution district,] special district, or [any]
205 other political subdivision of the state [of Utah or its authorized agent or any one or more of
206 them.]; and

207 (c) a prosecution district.

208 ~~[(3)]~~ (4) "Commercial project entity" means a project entity, defined in Subsection ~~[(7)]~~
209 (11), that:

210 (a) has no taxing authority; and

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

212 ~~[(4)]~~ (5) "Direct impacts" ~~[mean]~~ means an increase in the need for ~~[any]~~ public facilities
213 or services that is attributable to the project or facilities providing additional project capacity,
214 except impacts resulting from the construction or operation of ~~[any]~~ a facility that is:

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

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

218 (6) "Electric interlocal entity" means an interlocal entity described in Subsection
219 11-13-203(3).

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

222 (8) "Interlocal entity" means:

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

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

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

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

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

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

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

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

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

236 ~~[(vi) education;]~~

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

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

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

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

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

242 ~~[(xii) transportation;]~~

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

244 ~~[(xiv) utilities;]~~

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

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

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

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

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

250 ~~[(xx) library.]~~

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

253 ~~[(6)] (10) (a) "Project":~~

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

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

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

261 ~~(i) facilities that provide additional project capacity; and~~

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

264 ~~[(7)] (11) "Project entity" means [a legal or administrative] a Utah interlocal entity [created~~
265 ~~under this chapter which owns] or an electric interlocal entity that owns a project [and which sells~~
266 ~~the capacity, services, or other benefits from it].~~

267 ~~[(8)] (12) "Public agency" means:~~

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

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

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

273 ~~(c) any agency of the United States;~~

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

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

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

281 (13) "Utah interlocal entity":

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

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

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

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

288 **Part 2. Public Agencies' Joint Exercise of Powers**

289 [~~11-13-4~~]. **11-13-201. Joint exercise of power, privilege, or authority by public**
290 **agencies -- Relationship to the Municipal Cable Television and Public Telecommunications**
291 **Services Act.**

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

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

301 (2) This chapter may not enlarge or expand the authority of a public agency not authorized
302 to offer and provide cable television services and public telecommunications services under Title
303 10, Chapter 18, Municipal Cable Television and Public Telecommunications Services Act, to offer
304 or provide cable television services and public telecommunications services.

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

307 ~~[11-13-5].~~ **11-13-202. Agreements for joint or cooperative action -- Resolutions**
308 **by governing bodies required.**

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

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

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

317 ~~[11-13-5.5].~~ **11-13-203. Interlocal entities -- Agreement to create an interlocal entity**
318 **-- Utah interlocal entity may become electric interlocal entity or energy services interlocal**
319 **entity.**

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

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

322 (b) a body politic and corporate; and

323 (c) a political subdivision of the state.

324 ~~[(1)]~~ (2) Any two or more Utah public agencies ~~[of Utah]~~ may ~~[agree to]~~ by agreement
325 create ~~[a separate legal or administrative]~~ a Utah interlocal entity to accomplish the purpose of
326 their joint or cooperative action, including ~~[the]~~ undertaking and financing ~~[of]~~ a facility or
327 improvement to provide the service contemplated by that agreement.

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

331 (i) facilities to provide additional project capacity;

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

333 (iii) electric generation or transmission facilities.

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

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

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

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

346 (b) (i) A Utah interlocal entity that was created to facilitate the transmission or supply of
347 electric power may, by resolution adopted by its governing body, elect to become an energy
348 services interlocal entity.

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

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

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

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

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

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

361 ~~[(A) the bonds or notes issued by the entity; and]~~

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

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

365 ~~[(v) sell or contract for the sale of the product of the service or other benefits from the~~
366 ~~facility or improvement to public agencies within or without the state on whatever terms that it~~

367 considers to be in the best interest of its participants.]

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

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

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

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

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

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

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

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

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

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

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

395 ~~[(6) (a) The governing authority of each entity created under this section on or after May~~
396 ~~4, 1998, shall, within 30 days of the creation, file a written notice of the creation with the State Tax~~
397 ~~Commission.]~~

398 ~~[(b) Each written notice required under Subsection (6)(a) shall:]~~
399 ~~[(i) be accompanied by:]~~
400 ~~[(A) a copy of the agreement creating the entity; and]~~
401 ~~[(B) a map or plat that delineates a metes and bounds description of the area affected and~~
402 ~~evidence that the information has been recorded by the county recorder; and]~~
403 ~~[(ii) contain a certification by the governing authority that all necessary legal requirements~~
404 ~~relating to the creation have been completed.]~~

405 Section 9. Section **11-13-204** is enacted to read:

406 **11-13-204. Powers and duties of interlocal entities -- Additional powers of energy**
407 **services interlocal entities -- Length of term of agreement and interlocal entity -- Notice to**
408 **State Tax Commission.**

409 (1) (a) An interlocal entity:

410 (i) may:

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

413 (B) sue and be sued;

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

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

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

420 (F) directly or by contract with another:

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

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

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

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

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

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

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

434 (II) with respect to any excess services, output, product, or benefits, any person on terms
435 that the interlocal entity considers to be in the best interest of the public agencies that are parties
436 to the agreement creating the interlocal entity; and

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

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

442 (2) An energy services interlocal entity:

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

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

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

448 (b) may:

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

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

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

458 (iv) adopt and implement risk management policies and strategies and enter into
459 transactions and agreements to manage the risks associated with the purchase and sale of energy

460 in competitive markets, including forward purchase and sale contracts, hedging, tolling and swap
461 agreements, and other instruments.

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

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

466 (b) five years after the interlocal entity has fully paid or otherwise discharged all of its
467 indebtedness;

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

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

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

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

478 (i) be accompanied by:

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

480 (B) if less than all of the territory of any Utah public agency that is a party to the agreement
481 is included within the interlocal entity, a plat that delineates a metes and bounds description of the
482 area affected or a map of the area affected and evidence that the information has been recorded by
483 the recorder of the county in which the Utah public agency is located; and

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

486 Section 10. Section **11-13-205**, which is renumbered from Section 11-13-5.6 is
487 renumbered and amended to read:

488 **[~~11-13-5.6~~. 11-13-205. Agreement by public agencies to create a new entity to own**
489 **sewage and wastewater facilities -- Powers and duties of new entities -- Validation of**
490 **previously created entities.**

491 (1) It is declared that the policy of the state is to assure the health, safety, and welfare of
492 its citizens, that adequate sewage and wastewater treatment plants and facilities are essential to the
493 well-being of the citizens of the state and that the acquisition of adequate sewage and wastewater
494 treatment plants and facilities on a regional basis in accordance with federal law and state and
495 federal water quality standards and effluent standards in order to provide services to public
496 agencies is a matter of statewide concern and is in the public interest. It is found and declared that
497 there is a statewide need to provide for regional sewage and wastewater treatment plants and
498 facilities, and as a matter of express legislative determination it is declared that the compelling
499 need of the state for construction of regional sewage and wastewater treatment plants and facilities
500 requires the creation of entities under the Interlocal Cooperation Act to own, construct, operate,
501 and finance sewage and wastewater treatment plants and facilities; and it is the purpose of this law
502 to provide for the accomplishment thereof in the manner provided in this section.

503 (2) Any two or more public agencies of the state may also agree to create a separate legal
504 or administrative entity to accomplish and undertake the purpose of owning, acquiring,
505 constructing, financing, operating, maintaining, and repairing regional sewage and wastewater
506 treatment plants and facilities.

507 (3) A separate legal or administrative entity created in the manner provided herein is
508 considered to be a political subdivision and body politic and corporate of the state with power to
509 carry out and effectuate its corporate powers, including, but not limited to, the power:

510 (a) to adopt, amend, and repeal rules, bylaws, and regulations, policies, and procedures for
511 the regulation of its affairs and the conduct of its business, to sue and be sued in its own name, to
512 have an official seal and power to alter that seal at will, and to make and execute contracts and all
513 other instruments necessary or convenient for the performance of its duties and the exercise of its
514 powers and functions under the Interlocal Cooperation Act;

515 (b) to own, acquire, construct, operate, maintain, repair, or cause to be constructed,
516 operated, maintained, and repaired one or more regional sewage and wastewater treatment plants
517 and facilities, all as shall be set forth in the agreement providing for its creation;

518 (c) to borrow money, incur indebtedness and issue revenue bonds, notes or other
519 obligations payable solely from the revenues and receipts derived from all or a portion of the
520 regional sewage and wastewater treatment plants and facilities which it owns, operates, and
521 maintains, such bonds, notes, or other obligations to be issued and sold in compliance with the

522 provisions of Title 11, Chapter 14, Utah Municipal Bond Act;

523 (d) to enter into agreements with public agencies and other parties and entities to provide
524 sewage and wastewater treatment services on such terms and conditions as it considers to be in the
525 best interests of its participants; and

526 (e) to acquire by purchase or by exercise of the power of eminent domain, any real or
527 personal property in connection with the acquisition and construction of any sewage and
528 wastewater treatment plant and all related facilities and rights-of-way which it owns, operates, and
529 maintains.

530 (4) The provisions of [~~Sections 11-13-25, 11-13-26, 11-13-27, 11-13-28, 11-13-29,~~
531 ~~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
532 Provisions, do not apply to a legal or administrative entity created for regional sewage and
533 wastewater treatment purposes under this section.

534 (5) All proceedings previously had in connection with the creation of any legal or
535 administrative entity pursuant to this chapter, and all proceedings previously had by any such entity
536 for the authorization and issuance of bonds of the entity are validated, ratified, and confirmed; and
537 these entities are declared to be validly created interlocal cooperation entities under this chapter.
538 These bonds, whether previously or subsequently issued pursuant to these proceedings, are
539 validated, ratified, and confirmed and declared to constitute, if previously issued, or when issued,
540 the valid and legally binding obligations of the entity in accordance with their terms. Nothing in
541 this section shall be construed to affect or validate any bonds, or the organization of any entity, the
542 legality of which is being contested at the time this act takes effect.

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

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

547 (i) be accompanied by:

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

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

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

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

555 ~~[11-13-6].~~ **11-13-206. Requirements for agreements for joint or cooperative**
556 **action.**

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

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

560 (b) if the agreement creates an interlocal entity:

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

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

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

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

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

572 ~~[(4)]~~ (d) the manner of financing the joint or cooperative undertaking and of establishing
573 and maintaining a budget ~~[therefor]~~ for it;

574 ~~[(5)]~~ (e) the permissible method or methods to be employed in accomplishing the partial
575 or complete termination of the agreement and for disposing of property upon such partial or
576 complete termination; and

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

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

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

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

586 ~~[11-13-7].~~ **11-13-207. Additional requirements for agreement not establishing**
587 **interlocal entity.**

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

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

593 (a) an administrator; or

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

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

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

601 ~~[11-13-8].~~ **11-13-208. Agreement does not relieve public agency of legal obligation**
602 **or responsibility -- Exception.**

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

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

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

613 ~~[11-13-10].~~ **11-13-209. Filing of agreement.**

614 ~~[Prior to its entry into force, an]~~ An agreement made ~~[pursuant to]~~ under this ~~[act shall be]~~

615 chapter does not take effect until it is filed with the keeper of records of each of the public agencies
616 [party thereto] that are parties to the agreement.

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

619 ~~[11-13-11].~~ **11-13-210. Controversies involving agreements between Utah public**
620 **agencies and out-of-state agencies.**

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

630 (2) An action shall be maintainable against any public agency [or agencies] whose default,
631 failure [or performance] to perform, or other conduct caused or contributed to the incurring of
632 damage or liability by the state.

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

635 ~~[11-13-13].~~ **11-13-211. Public agencies authorized to provide resources to**
636 **administrative joint boards or interlocal entity.**

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

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

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

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

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

648 ~~[11-13-14].~~ **11-13-212. Contracts between public agencies or with interlocal entities**
649 **to perform services, activities, or undertakings -- Facilities and improvements.**

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

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

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

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

663 (2) ~~[A legal or administrative]~~ An interlocal entity created by agreement under this chapter
664 may create, construct, or otherwise acquire facilities or improvements to render ~~[service]~~ services
665 or provide benefits in excess of those required to meet the needs or requirements of the public
666 agencies ~~[party to the]~~ that are parties to the agreement if ~~[(a)]~~ it is determined by the public
667 agencies to be necessary to accomplish the purposes and realize the benefits set forth in Section
668 ~~[11-13-2]~~ 11-13-102 ~~[, and]~~.

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

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

674 ~~[11-13-15].~~ **11-13-213. Agreements for joint ownership, operation or acquisition**
675 **of facilities or improvements authorized.**

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

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

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

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

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

687 (5) any combination of the foregoing.

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

690 ~~[11-13-16].~~ **11-13-214. Conveyance or acquisition of property by public agency**
691 **authorized.**

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

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

696 ~~[11-13-16.5].~~ **11-13-215. Sharing tax or other revenues.**

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

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

703 ~~[11-13-17].~~ **11-13-216. Term of agreements -- Governing body authorization of**
704 **agreements.**

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

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

710 ~~[11-13-18].~~ **11-13-217. Control and operation of joint facility or improvement**
711 **provided by agreement.**

712 Any facility or improvement jointly owned or jointly operated by any two or more public
713 agencies or acquired or constructed pursuant to an agreement under this ~~[act]~~ chapter may be
714 operated by any one or more of the interested public agencies designated for the purpose or may
715 be operated by a joint board or commission or ~~[a legal or administrative]~~ an interlocal entity
716 created for the purpose or through an agreement by ~~[a legal or administrative]~~ an interlocal entity
717 and a public agency receiving service ~~[of]~~ or other benefits from such entity or may be controlled
718 and operated in some other manner, all as may be provided by appropriate ~~[contract]~~ agreement.
719 Payment for the cost of such operation shall be made as provided in any such ~~[contract]~~ agreement.

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

722 ~~[11-13-19].~~ **11-13-218. Authority of public agencies or interlocal entities to issue**
723 **bonds.**

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

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

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

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

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

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

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

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

747 ~~[11-13-20].~~ **11-13-219. Publication of resolutions or agreements -- Contesting**
748 **legality of resolution or agreement.**

749 (1) As used in this section:

750 (a) "Enactment" means:

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

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

756 (b) "Governing ~~entity~~ body" means:

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

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

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

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

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

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

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

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

770 by this section.

771 (c) (i) If the enactment is [~~a contract~~] an agreement, document, or other instrument, or a
772 resolution or other proceeding authorizing or approving [~~a contract~~] an agreement, document, or
773 other instrument, the governing [~~entity~~] body may, instead of publishing the full text of the
774 [~~contract~~] agreement, resolution, or other proceeding, publish a notice of [~~contract~~] agreement
775 containing:

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

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

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

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

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

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

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

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

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

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

800 (A) the official newspaper;

801 (B) the newspaper published in the municipality in which the principal office of the
802 governmental entity is located; or

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

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

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

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

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

816 [~~11-13-22~~]. **11-13-220. Qualifications of officers or employees performing services**
817 **under agreements.**

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

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

826 [~~11-13-23~~]. **11-13-221. Compliance with chapter sufficient to effectuate**
827 **agreements.**

828 When public agencies enter into agreements [~~pursuant to the provisions of~~] under this [~~act~~]
829 chapter whereby they utilize a power or facility jointly, or whereby one political agency provides
830 a service or facility to another, compliance with the requirements of this [~~act shall be~~] chapter is
831 sufficient to effectuate [~~said~~] those agreements.

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

834 ~~[11-13-24].~~ **11-13-222. Privileges and immunities of public agencies extended to**
835 **officers and employees performing services under agreements.**

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

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

844 ~~[11-13-37].~~ **11-13-223. Open and public meetings.**

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

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

851 (b) give public notice of its meeting pursuant to Section 52-4-6 by:

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

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

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

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

862 (i) notice of the telephonic or telecommunications conference to the members of the

863 governing body at least 24 hours before the meeting so that they may participate in and be counted
864 as present for all purposes, including the determination that a quorum is present; and

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

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

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

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

877 (3) Compliance with the provisions of this section by a governing [entity] body constitutes
878 full and complete compliance by the governing [entity] body with the corresponding provisions
879 of Sections 52-4-3 and 52-4-6, to the extent that those sections are applicable to the governing
880 body.

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

882 **Part 3. Project Entity Provisions**

883 **11-13-301. Project entity requirements -- Generation output requirements.**

884 (1) Each project entity shall:

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

888 (b) establish rules and procedures for an offer under Subsection (1)(a) that provide at least
889 60 days for a prospective power purchaser to accept the offer before it is considered rejected; and

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

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

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

894 or retail.

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

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

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

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

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

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

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

911 **~~[11-13-25].~~ 11-13-302. Payment of fee in lieu of ad valorem property tax by certain**
912 **energy suppliers -- Method of calculating -- Collection -- Extent of tax lien.**

913 (1) A project entity created under this chapter which owns a project and which sells any
914 capacity, service, or other benefit from it to an energy supplier or suppliers whose tangible property
915 is not exempted by Utah Constitution Article XIII, Section 2, from the payment of ad valorem
916 property tax, shall pay an annual fee in lieu of ad valorem property tax as provided in this section
917 to each taxing jurisdiction within which the project or any part of it is located. The requirement
918 to pay these fees shall commence:

919 (a) with respect to each taxing jurisdiction that is a candidate receiving the benefit of
920 impact alleviation payments under contracts or determination orders provided for in Sections
921 ~~[11-13-28]~~ 11-13-305 and ~~[11-13-29]~~ 11-13-306, with the fiscal year of the candidate following
922 the fiscal year of the candidate in which the date of commercial operation of the last generating
923 unit, other than any generating unit providing additional project capacity, of the project occurs, or,
924 in the case of any facilities providing additional project capacity, with the fiscal year of the

925 candidate following the fiscal year of the candidate in which the date of commercial operation of
926 the generating unit providing the additional project capacity occurs; and

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

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

934 (a) a levy mandated by the state for the state minimum school program under Section
935 53A-17a-135; and

936 (b) local levies for capital outlay, maintenance, transportation, and other purposes under
937 Sections 11-2-7, 53A-16-107, 53A-16-110, 53A-17a-126, 53A-17a-127, 53A-17a-133,
938 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103, the annual fee in lieu of ad valorem
939 property tax due a school district shall be as follows:

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

943 (ii) the project entity shall pay to the school district either a fee in lieu of ad valorem
944 property tax or impact alleviation payments under contracts or determination orders provided for
945 in Sections [~~11-13-28~~] 11-13-305 and [~~11-13-29~~] 11-13-306, for all other local property tax levies
946 authorized.

947 (3) The fee due a taxing jurisdiction for a particular year shall be calculated by multiplying
948 the tax rate or rates of the jurisdiction for that year by the product obtained by multiplying the
949 taxable value for that year of the portion of the project located within the jurisdiction by the
950 percentage of the project which is used to produce the capacity, service, or other benefit sold to
951 the energy supplier or suppliers. As used in this section, "tax rate," when applied in respect to a
952 school district, includes any assessment to be made by the school district under Subsection (2) or
953 Section 63-51-6. There is to be credited against the fee due a taxing jurisdiction for each year, an
954 amount equal to the debt service, if any, payable in that year by the project entity on bonds, the
955 proceeds of which were used to provide public facilities and services for impact alleviation in the

956 jurisdiction in accordance with Sections [~~11-13-28~~] 11-13-305 and [~~11-13-29~~] 11-13-306. The tax
957 rate for the jurisdiction for that year shall be computed so as to:

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

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

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

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

981 (6) (a) Any public agency that is not a project entity and that owns an interest in facilities
982 providing additional project capacity which, if its tangible property is not exempted by Utah
983 Constitution, Article XIII, Section 2, from the payment of ad valorem property tax, uses any
984 capacity, service, or other benefit from it or which sells any capacity, service, or other benefit from
985 it to an energy supplier or suppliers whose tangible property is not exempted by Utah Constitution,
986 Article XIII, Section 2, from the payment of ad valorem property tax, shall pay an annual fee in

987 lieu of ad valorem property tax with respect to its ownership interest, and shall have the
988 obligations, credits, rights, and protections set forth in Subsections (1) through (5) with respect to
989 its ownership interest as though it were a project entity.

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

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

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

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

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

1000 ~~[11-13-26].~~ **11-13-303. Source of project entity's payment of sales and use tax --**
1001 **Gross receipts taxes for facilities providing additional project capacity.**

1002 [~~Notwithstanding the provisions of Section 59-12-104, a project entity created under this~~
1003 ~~chapter is subject to state sales and use taxes. The sales and use taxes shall be paid, collected, and~~
1004 ~~distributed in accordance with the provisions of law relative to the payment, collection, and~~
1005 ~~distribution of sales and use taxes, including prepayment as provided in Title 63, Chapter 51.~~
1006 ~~Project entities are authorized to]~~

1007 (1) A project entity is not exempt from sales and use taxes under Title 59, Chapter 12,
1008 Sales and Use Tax Act, to the extent provided in Subsection 59-12-104(2).

1009 (2) A project entity may make payments or prepayments of sales and use taxes, as provided
1010 in Title 63, Chapter 51, Resource Development, from the proceeds of revenue bonds issued
1011 [pursuant to] under Section [11-13-19] 11-13-218 or other revenues of the project entity.

1012 (3) (a) This Subsection (3) applies with respect to facilities providing additional project
1013 capacity.

1014 (b) (i) The in lieu excise tax imposed under Title 59, Chapter 8, Gross Receipts Tax on
1015 Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, shall be
1016 imposed collectively on all gross receipts derived with respect to the ownership interests of all
1017 project entities and other public agencies in facilities providing additional project capacity as

1018 though all such ownership interests were held by a single project entity.

1019 (ii) The in lieu excise tax shall be calculated as though the gross receipts derived with
1020 respect to all such ownership interests were received by a single taxpayer that has no other gross
1021 receipts.

1022 (iii) The gross receipts attributable to such ownership interests shall consist solely of gross
1023 receipts that are expended by each project entity and other public agency holding an ownership
1024 interest in the facilities for the operation or maintenance of or ordinary repairs or replacements to
1025 the facilities.

1026 (iv) For purposes of calculating the in lieu excise tax, the determination of whether there
1027 is a tax rate and, if so, what the tax rate is shall be governed by Section 59-8-104, except that the
1028 \$10,000,000 figures in Subsection 59-8-104(1) indicating the amount of gross receipts that
1029 determine the applicable tax rate shall be replaced with \$5,000,000.

1030 (c) Each project entity and public agency owning an interest in the facilities providing
1031 additional project capacity shall be liable only for the portion of the gross receipts tax referred to
1032 in Subsection (3)(b) that is proportionate to its percentage ownership interest in the facilities and
1033 may not be liable for any other gross receipts taxes with respect to its percentage ownership
1034 interest in the facilities.

1035 (d) No project entity or other public agency that holds an ownership interest in the facilities
1036 may be subject to the taxes imposed under Title 59, Chapter 7, Corporate Franchise and Income
1037 Tax, or Title 59, Chapter 8a, Gross Receipts Tax on Electrical Corporations, with respect to those
1038 facilities.

1039 (4) For purposes of calculating the gross receipts tax imposed on a project entity or other
1040 public agency under Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not
1041 Required to Pay Corporate Franchise or Income Tax Act or Subsection (3), gross receipts include
1042 only gross receipts from the first sale of capacity, services, or other benefits and do not include
1043 gross receipts from any subsequent sale, resale, or layoff of the capacity, services, or other benefits.

1044 Section 32. Section **11-13-304**, which is renumbered from Section 11-13-27 is renumbered
1045 and amended to read:

1046 **~~[11-13-27].~~ 11-13-304. Certificate of public convenience and necessity required --**
1047 **Exceptions.**

1048 ~~[Any political subdivision organized pursuant to this act before]~~

1049 (1) Before proceeding with the construction of any electrical generating plant or
1050 transmission line, each project entity and each out-of-state public agency shall first obtain from
1051 the public service commission a certificate, after hearing, that public convenience and necessity
1052 requires such construction and in addition that such construction will in no way impair the public
1053 convenience and necessity of electrical consumers of the state of Utah at the present time or in the
1054 future. [~~This section shall become effective for all projects~~]

1055 (2) The requirement to obtain a certificate of public convenience and necessity applies to
1056 each project initiated after the section's effective date [~~hereof, and shall~~] but does not apply to
1057 [~~those~~]:

1058 (a) a project for which a feasibility [~~studies were~~] study was initiated prior to [~~said~~] the
1059 effective date [~~, including any additional generating capacity added to a generating project~~
1060 ~~producing electricity prior to April 21, 1987, and~~];

1061 (b) any facilities providing additional project capacity; or

1062 (c) transmission lines required [~~and used solely~~] for the delivery of electricity from [~~such~~]
1063 a [~~generating~~] project described in Subsection (2)(a) or facilities providing additional project
1064 capacity within the corridor of a transmission line, with reasonable deviation, of [~~such~~] a
1065 [~~generating~~] project producing as of April 21, 1987.

1066 Section 33. Section **11-13-305**, which is renumbered from Section 11-13-28 is renumbered
1067 and amended to read:

1068 ~~[11-13-28].~~ **11-13-305. Impact alleviation requirements -- Payments in lieu of ad**
1069 **valorem tax -- Source of impact alleviation payment.**

1070 (1) (a) (i) A project entity [~~is authorized to~~] may assume financial responsibility for or
1071 provide for the alleviation of the direct impacts of its project, and make loans to candidates to
1072 alleviate impacts created by the construction or operation of any facility owned by others which
1073 is utilized to furnish fuel, construction or operation materials for use in the project to the extent
1074 the impacts were attributable to the project.

1075 (ii) Provision for the alleviation may be made by contract as provided in Subsection (2)
1076 or by the terms of a determination order as provided in Section [~~11-13-29~~] 11-13-306.

1077 (b) A Utah public agency that is not a project entity may take the actions set forth in this
1078 Subsection (1) as though it were a project entity with respect to its ownership interest in facilities
1079 providing additional project capacity.

1080 (2) ~~[Each]~~ A candidate ~~[shall have the power]~~ may, except as otherwise provided in
1081 Section ~~[11-13-29, to]~~ 11-13-306, require the project entity or, in the case of facilities providing
1082 additional project capacity, any other public agency that owns an interest in those facilities, to enter
1083 into a contract with the candidate requiring the project entity or other public agency to assume
1084 financial responsibility for or provide for the alleviation of any direct impacts experienced by the
1085 candidate as a result of the project or facilities providing additional project capacity, as the case
1086 may be. Each contract with respect to a project or facilities providing additional project capacity
1087 shall be for a term ending at or before the end of the fiscal year of the candidate who is party to the
1088 contract ~~[within which the date of commercial operation of the last generating unit of the project~~
1089 ~~shall occur]~~ immediately before the fiscal year in which the project becomes, or, in the case of
1090 facilities providing additional project capacity, those facilities become subject to the fee set forth
1091 in Section 11-13-302, unless terminated earlier as provided in Section ~~[11-13-33]~~ 11-13-310, and
1092 shall specify the direct impacts or methods to determine the direct impacts to be covered, the
1093 amounts, or methods of computing the amounts, of the alleviation payments, or the means to
1094 provide for impact alleviation, provisions assuring the timely completion of the project or facilities
1095 providing additional project capacity and the furnishing of the services, and such other pertinent
1096 matters as shall be agreed to by the project entity or other public agency and the candidate.

1097 (3) ~~[At the end of the fiscal year of the candidate who is a party to the contract within~~
1098 ~~which the date of commercial operation of the last generating unit has begun]~~ Beginning at the
1099 time specified in Subsection 11-13-302(1), the project entity or other public agency shall make in
1100 lieu ad valorem tax payments to that candidate to the extent required by, and in the manner
1101 provided in, Section ~~[11-13-25]~~ 11-13-302.

1102 (4) Payments under any impact alleviation contract or pursuant to a determination by the
1103 board shall be made from the proceeds of bonds issued for the project or for the facilities providing
1104 additional project capacity or from any other sources of funds available ~~[in]~~ with respect ~~[of]~~ to
1105 the project or the facilities providing additional project capacity.

1106 Section 34. Section **11-13-306**, which is renumbered from Section 11-13-29 is renumbered
1107 and amended to read:

1108 ~~[11-13-29]~~. **11-13-306. Procedure in case of inability to formulate contract for**
1109 **impact alleviation.**

1110 (1) ~~[In the event]~~ If the project entity or other public agency and a candidate are unable to

1111 agree upon the terms of an impact alleviation contract or to agree that the candidate has or will
1112 experience any direct impacts, the project entity or other public agency and the candidate shall each
1113 have the right to submit the question of whether or not these direct impacts have been or will be
1114 experienced, and any other questions regarding the terms of the impact alleviation contract to the
1115 board for its determination.

1116 (2) Within 40 days after receiving a notice of a request for determination, the board shall
1117 hold a public hearing on the questions at issue, at which hearing the parties shall have an
1118 opportunity to present evidence. Within 20 days after the conclusion of the hearing, the board shall
1119 enter an order embodying its determination and directing the parties to act in accordance with it.
1120 The order shall contain findings of facts and conclusions of law setting forth the reasons for the
1121 board's determination. To the extent that the order pertains to the terms of an impact alleviation
1122 contract, the terms of the order shall satisfy the criteria for contract terms set forth in Section
1123 [~~11-13-28~~] 11-13-305.

1124 (3) At any time 20 or more days before the hearing begins, either party may serve upon the
1125 adverse party an offer to agree to specific terms or payments. If within 10 days after the service of
1126 the offer the adverse party serves written notice that the offer is accepted, either party may then file
1127 the offer and notice of acceptance, together with proof of service thereof, and the board shall enter
1128 a corresponding order. An offer not accepted shall be deemed withdrawn and evidence concerning
1129 it is not admissible except in a proceeding to determine costs. If the order finally obtained by the
1130 offeree is not more favorable than the offer, the offeree shall pay the costs incurred after the
1131 making of the offer, including a reasonable attorney's fee. The fact that an offer is made but not
1132 accepted does not preclude a subsequent offer.

1133 Section 35. Section **11-13-307**, which is renumbered from Section 11-13-30 is renumbered
1134 and amended to read:

1135 [~~11-13-30~~]. **11-13-307. Method of amending impact alleviation contract.**

1136 An impact alleviation contract or a determination order may be amended with the consent
1137 of the parties, or otherwise in accordance with their provisions. In addition, any party may propose
1138 an amendment to a contract or order which, if not agreed to by the other parties, may be submitted
1139 by the proposing party to the board for a determination of whether or not the amendment shall be
1140 incorporated into the contract or order. The board shall determine whether or not a contract or
1141 determination order shall be amended under the procedures and standards set forth in Sections

1142 [~~11-13-28~~] 11-13-305 and [~~11-13-29~~] 11-13-306.

1143 Section 36. Section **11-13-308**, which is renumbered from Section 11-13-31 is renumbered
1144 and amended to read:

1145 [~~11-13-31~~]. **11-13-308. Effect of failure to comply.**

1146 The construction or operation of a project or of facilities providing additional project
1147 capacity may commence and proceed, notwithstanding the fact that all impact alleviation contracts
1148 or determination orders with respect to the project or facilities providing additional project capacity
1149 have not been entered into or made or that any appeal or review concerning the contract or
1150 determination has not been finally resolved. The failure of the project entity or other public agency
1151 to comply with the requirements of this [~~act~~] chapter or with the terms of any alleviation contract
1152 or determination order or any amendment to them [~~shall~~] may not be grounds for enjoining the
1153 construction or operation of the project or facilities providing additional project capacity.

1154 Section 37. Section **11-13-309**, which is renumbered from Section 11-13-32 is renumbered
1155 and amended to read:

1156 [~~11-13-32~~]. **11-13-309. Venue for civil action -- No trial de novo.**

1157 (1) Any civil action seeking to challenge, enforce, or otherwise have reviewed, any order
1158 of the board, or any alleviation contract, shall be brought only in the district court for the county
1159 within which is located the candidate to which the order or contract pertains. If the candidate is the
1160 state of Utah, the action shall be brought in the district court for Salt Lake County. Any action
1161 brought in any judicial district shall be ordered transferred to the court where venue is proper under
1162 this section.

1163 (2) In any civil action seeking to challenge, enforce, or otherwise review, any order of the
1164 board, a trial de novo shall not be held. The matter shall be considered on the record compiled
1165 before the board, and the findings of fact made by the board shall not be set aside by the district
1166 court unless the board clearly abused its discretion.

1167 Section 38. Section **11-13-310**, which is renumbered from Section 11-13-33 is renumbered
1168 and amended to read:

1169 [~~11-13-33~~]. **11-13-310. Termination of impact alleviation contract.**

1170 If the project or any part of it or the facilities providing additional project capacity or any
1171 part of them, or the output from [~~it shall~~] the project or facilities providing additional project
1172 capacity become subject, in addition to the requirements of Section [~~11-13-25~~] 11-13-302, to ad

1173 valorem property taxation or other payments in lieu of ad valorem property taxation, or other form
1174 of tax equivalent payments to any candidate which is a party to an impact alleviation contract with
1175 respect to the project or facilities providing additional project capacity or is receiving impact
1176 alleviation payments or means ~~[in]~~ with respect ~~[of]~~ to the project or facilities providing additional
1177 project capacity pursuant to a determination by the board, then the impact alleviation contract or
1178 the requirement to make impact alleviation payments or provide means therefor pursuant to the
1179 determination, as the case may be, shall, at the election of the candidate, terminate. In any event,
1180 each impact alleviation contract or determination order shall terminate upon the project, or, in the
1181 case of facilities providing additional project capacity, those facilities becoming subject to the
1182 provisions of Section ~~[11-13-25. Except]~~ 11-13-302, except that no impact alleviation contract
1183 or agreement entered by a school district shall terminate because of in lieu ad valorem property tax
1184 fees levied under Subsection ~~[11-13-25]~~ 11-13-302(2)(a) or because of ad valorem property taxes
1185 levied under Section 53A-17a-135 for the state minimum school program. In addition, ~~[in the~~
1186 ~~event that]~~ if the construction of the project ~~[shall be]~~, or, in the case of facilities providing
1187 additional project capacity, of those facilities, is permanently terminated for any reason, each
1188 impact alleviation contract and determination order, and the payments and means required
1189 thereunder, shall terminate ~~[except to the extent of]~~. No termination of an impact alleviation
1190 contract or determination order may terminate or reduce any liability previously incurred pursuant
1191 to the contract or determination order by the candidate beneficiary under it. If the provisions of
1192 Section ~~[11-13-25]~~ 11-13-302, or its successor, are held invalid by a court of competent
1193 jurisdiction, and no ad valorem taxes or other form of tax equivalent payments ~~[shall be]~~ are
1194 payable, the remaining provisions of this ~~[act]~~ chapter shall continue in operation without regard
1195 to the commencement of commercial operation of the last generating unit of that project or of
1196 facilities providing additional project capacity.

1197 Section 39. Section **11-13-311**, which is renumbered from Section 11-13-34 is renumbered
1198 and amended to read:

1199 ~~[11-13-34]~~. **11-13-311. Impact alleviation payments credit against in lieu of ad**
1200 **valorem property taxes -- Federal or state assistance.**

1201 (1) In consideration of the impact alleviation payments and means provided by the project
1202 entity or other public agency pursuant to the contracts and determination orders, the project entity
1203 or other public agency, as the case may be, shall be entitled to a credit against the fees paid in lieu

1204 of ad valorem property taxes as provided by Section [~~11-13-25~~] 11-13-302, ad valorem property
1205 or other taxation by, or other payments in lieu of ad valorem property taxation or other form of tax
1206 equivalent payments required by any candidate which is a party to an impact alleviation contract
1207 or board order.

1208 (2) Each candidate may make application to any federal or state governmental authority
1209 for any assistance that may be available from that authority to alleviate the impacts to the
1210 candidate. To the extent that the impact was attributable to the project or to the facilities providing
1211 additional project capacity, any assistance received from that authority shall be credited to the
1212 [~~project's~~] alleviation obligation with respect to the project or the facilities providing additional
1213 project capacity, as the case may be, in proportion to the percentage of impact attributable to the
1214 project or facilities providing additional project capacity, but in no event shall the candidate realize
1215 less revenues than would have been realized without receipt of any assistance.

1216 (3) With respect to school districts the fee in lieu of ad valorem property tax for the state
1217 minimum school program required to be paid by the project entity or other public agency under
1218 Subsection [~~11-13-25~~] 11-13-302(2)(a) shall be treated as a separate fee and shall not affect any
1219 credits for alleviation payments received by the school districts under Subsection [~~11-13-25~~]
1220 11-13-302(2)(a), or Sections [~~11-13-28~~] 11-13-305 and [~~11-13-29~~] 11-13-306.

1221 Section 40. Section **11-13-312**, which is renumbered from Section 11-13-35 is renumbered
1222 and amended to read:

1223 [~~11-13-35~~]. **11-13-312. Exemption from privilege tax.**

1224 Title 59, Chapter 4, Privilege Tax, does not apply to a project, or any part of it, or to
1225 facilities providing additional project capacity, or any part of them, or to the possession or other
1226 beneficial use of a project or facilities providing additional project capacity as long as there is a
1227 requirement to make impact alleviation payments, fees in lieu of ad valorem property taxes, or ad
1228 valorem property taxes, with respect to the project or facilities providing additional project
1229 capacity pursuant to this chapter.

1230 Section 41. Section **11-13-313**, which is renumbered from Section 11-13-36 is renumbered
1231 and amended to read:

1232 [~~11-13-36~~]. **11-13-313. Arbitration of disputes.**

1233 Any impact alleviation contract may provide that disputes between the parties will be
1234 submitted to arbitration pursuant to Title 78, Chapter [~~31~~] 31a, Utah Arbitration Act.

1235 Section 42. Section **54-4-25** is amended to read:

1236 **54-4-25. Certificate of convenience and necessity prerequisite to construction and**
1237 **operation -- Electrical suppliers.**

1238 (1) ~~[A]~~ Except as provided in Section 11-13-304, a gas corporation, electric corporation,
1239 telephone corporation, telegraph corporation, heat corporation, water corporation, or sewerage
1240 corporation may not establish, or begin construction or operation of a line, route, plant, or system
1241 or of any extension of a line, route, plant, or system, without having first obtained from the
1242 commission a certificate that present or future public convenience and necessity does or will
1243 require the construction.

1244 (2) This section may not be construed to require any corporation to secure a certificate for
1245 an extension:

1246 (a) within any city or town within which it has lawfully commenced operations;

1247 (b) into territory, either within or without a city or town, contiguous to its line, plant, or
1248 system that is not served by a public utility of like character; or

1249 (c) within or to territory already served by it, necessary in the ordinary course of its
1250 business.

1251 (3) If any public utility in constructing or extending its line, plant, or system interferes or
1252 may interfere with the operation of the line, plant, or system of any other public utility already
1253 constructed, the commission, on complaint of the public utility claiming to be injuriously affected,
1254 may, after a hearing, make an order and prescribe the terms and conditions for the location of the
1255 lines, plants, or systems affected as the commission determines are just and reasonable.

1256 (4) (a) Each applicant for a certificate shall file in the office of the commission evidence
1257 as required by the commission to show that the applicant has received the required consent,
1258 franchise, or permit of the proper county, city, municipal, or other public authority.

1259 (b) Each applicant, except ~~[a legal or administrative]~~ an interlocal entity ~~[created pursuant~~
1260 ~~to]~~ defined in Section ~~[11-13-5.5]~~ 11-13-103, shall also file in the office of the commission a
1261 statement that any proposed line, plant, or system will not conflict with or adversely affect the
1262 operations of any existing certificated fixed public utility which supplies the same product or
1263 service to the public and that it will not constitute an extension into the territory certificated to the
1264 existing fixed public utility.

1265 (c) The commission may, after a hearing:

1266 (i) issue the certificate as requested;

1267 (ii) refuse to issue the certificate; or

1268 (iii) issue the certificate for the construction of a portion only of the contemplated line,
1269 plant, or system, or extension thereof, or for the partial exercise only of the right or privilege.

1270 (d) The commission may attach to the exercise of the rights granted by the certificate the
1271 terms and conditions as in its judgment public convenience and necessity may require.

1272 (e) (i) If a public utility desires to exercise a right or privilege under a franchise or permit
1273 which it contemplates securing but which has not yet been granted to it, the public utility may
1274 apply to the commission for an order preliminary to the issue of the certificate.

1275 (ii) The commission may make an order declaring that it will upon application, under
1276 rules and regulations as it may prescribe, issue the desired certificate upon terms and conditions
1277 as it may designate after the public utility has obtained the contemplated franchise or permit.

1278 (iii) Upon presentation to the commission of evidence satisfactory to it that the franchise
1279 or permit has been secured by the public utility, the commission shall issue the certificate.

1280 (5) (a) Any supplier of electricity which is brought under the jurisdiction and regulation
1281 of the Public Service Commission by this act may file with the commission an application for a
1282 certificate of convenience and necessity, giving the applicant the exclusive right to serve the
1283 customers it is serving in the area in which it is serving at the time of this filing, subject to the
1284 existing right of any other electrical corporation to likewise serve its customers in existence in the
1285 area at the time.

1286 (b) The application shall be prima facie evidence of the applicant's rights to a certificate,
1287 and the certificate shall be issued within 30 days after the filing, pending which, however, the
1288 applicant shall have the right to continue its operations.

1289 (c) Upon good cause shown to the commission by anyone protesting the issuance of such
1290 a certificate, or upon the commission's own motion, a public hearing may be held to determine if
1291 the applicant has sufficient finances, equipment, and plant to continue its existing service. The
1292 commission shall issue its order within 45 days after the hearing according to the proof submitted
1293 at the hearing.

1294 (d) Every electrical corporation, save and except those applying for a certificate to serve
1295 only the customers served by applicant on May 11, 1965, applying for a certificate shall have
1296 established a ratio of debt capital to equity capital or will within a reasonable period of time

1297 establish a ratio of debt capital to equity capital which the commission shall find renders the
1298 electrical corporation financially stable and which financing shall be found to be in the public
1299 interest.

1300 (6) Nothing in this section affects the existing rights of municipalities.

1301 Section 43. Section **54-9-101** is enacted to read:

1302 **CHAPTER 9. ELECTRIC POWER FACILITIES ACT**

1303 **54-9-101. Title.**

1304 This chapter is known as the "Electric Power Facilities Act."

1305 Section 44. Section **54-9-102**, which is renumbered from Section 54-9-1.5 is renumbered
1306 and amended to read:

1307 **[54-9-1.5]. 54-9-102. Definitions.**

1308 As used in this chapter:

1309 [~~(1) "City" means a city of this state owning a system for the generation, transmission, or~~
1310 ~~distribution of electric power and energy for public or private use.]~~

1311 [~~(2) (1) "Common facilities" means all works and facilities necessary to the generation,~~
1312 ~~transmission, or distribution of electric power[;] and energy [by thermal means].~~

1313 (2) "Interlocal entity" has the same meaning as provided in Section 11-13-103.

1314 (3) "Power utility":

1315 (a) means [any of the following entities] a public agency, as defined in Section 11-13-103,
1316 or other person engaged in generating, transmitting, [or] distributing, or marketing electric power
1317 and energy[: a state, a political subdivision or agency of a state, or a cooperative or privately
1318 owned electric utility company subject to regulation by the Public Service Commission of Utah
1319 or comparable governmental body in their respective states.]; and

1320 [~~(4) "Town" means a town of this state owning a system for the generation, transmission,~~
1321 ~~or distribution of electric power and energy for public or private use.]~~

1322 (b) does not include a public power entity.

1323 (4) "Public power entity" means:

1324 (a) a city or town that owns a system for the generation, transmission, or distribution of
1325 electric power and energy for public or private use; and

1326 (b) an interlocal entity.

1327 Section 45. Section **54-9-103**, which is renumbered from Section 54-9-2 is renumbered

1328 and amended to read:

1329 ~~[54-9-2]~~. **54-9-103. Public power entity authority regarding common facilities**

1330 -- **Determination of needs -- Agreement requirements -- Ownership interest.**

1331 (1) ~~[In]~~ (a) Notwithstanding Title 11, Chapter 13, Interlocal Cooperation Act, and
1332 Subsection 11-14-1(1)(k), and in addition to [the] all other powers [otherwise] conferred on [cities
1333 and towns of this state, any city or town, irrespective of the provisions of Title 11, Chapter 13 or
1334 Subsection 11-14-1(1)(k):] public power entities, a public power entity may:

1335 (i) plan, finance, construct, acquire, operate, own, and maintain an undivided interest in
1336 common facilities; ~~[may]~~

1337 (ii) participate in and enter into agreements with one or more public power entities or
1338 power utilities; and [may]

1339 (iii) enter into contracts and agreements as may be necessary or appropriate for the joint
1340 planning, financing, construction, operation, ownership, or maintenance of common facilities.

1341 (b) (i) Before entering into an agreement providing for common facilities, the governing
1342 body of ~~[a city or town]~~ each public power entity shall determine the needs of ~~[a city or town]~~ the
1343 public power entity for electric power and energy based on engineering studies and reports.

1344 (ii) In determining the future electric power and energy requirements of a ~~[city]~~ public
1345 power entity, the governing body shall consider ~~[the following]~~:

1346 ~~[(a)]~~ (A) the ~~[economies]~~ economies and efficiencies of scale to be achieved in
1347 constructing or acquiring common facilities for the generation and transmission of electric power
1348 and energy;

1349 ~~[(b)]~~ (B) the public power entity's need ~~[of the city or town]~~ for reserve and peaking
1350 capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related
1351 to the needs of the ~~[city or town]~~ public power entity for power and energy ~~[to which the city is or~~
1352 ~~may become a party]~~;

1353 ~~[(c)]~~ (C) the estimated useful life of the common facilities;

1354 ~~[(d)]~~ (D) the estimated time necessary for the planning, financing, construction, and
1355 acquisition of the common facilities and the ~~[length of time in advance to obtain, acquire, or~~
1356 ~~construct]~~ estimated timing of the need for an additional power supply; and

1357 ~~[(e)]~~ (E) the reliability and availability of existing or alternate power supply sources and
1358 the cost of those existing or alternate power supply sources.

1359 (2) ~~[the]~~ (a) Each agreement providing for common facilities shall ~~[not]~~;
1360 (i) contain provisions not inconsistent with this chapter~~[-as]~~ that the governing body of
1361 the ~~[city or town]~~ public power entity determines to be in the interests of the ~~[city or town. An~~
1362 ~~agreement shall be ratified by resolution of the governing body of the city or town and shall~~
1363 ~~include provisions relating to, but not limited to, the following]~~ public power entity, including:
1364 ~~[(a)]~~ (A) the purposes of the agreement;
1365 ~~[(b)]~~ (B) the duration of the agreement;
1366 ~~[(c)]~~ (C) the method of appointing or employing the personnel necessary in connection
1367 with the common facilities;
1368 ~~[(d)]~~ (D) the method of financing the common facilities, including the apportionment of
1369 costs of construction and operation;
1370 ~~[(e)]~~ (E) the ownership interests of the owners in the common facilities and other property
1371 used or useful in connection with the common facilities and the procedures for disposition of ~~[that~~
1372 the common facilities and other property when the agreement expires or is terminated or when the
1373 common facilities are abandoned, decommissioned, or dismantled;
1374 ~~[(f) the prohibition or restriction of]~~
1375 (F) any agreement of the parties prohibiting or restricting the alienation or partition of the
1376 undivided interests of ~~[a city or town]~~ an owner in the common facilities~~[-, which provision shall~~
1377 ~~not be subject to a law restricting covenants against alienation or partition];~~
1378 ~~[(g)]~~ (G) the construction and repair of the common facilities, ~~[which may include]~~
1379 including, if the parties agree, a determination that a ~~[city or town, person, firm, or corporation]~~
1380 power utility or public power entity may construct or repair the common facilities as agent for all
1381 parties to the agreement;
1382 ~~[(h)]~~ (H) the administration, operation, and maintenance of the common facilities, ~~[which~~
1383 ~~may include]~~ including, if the parties agree, a determination that a ~~[city or town, person, firm, or~~
1384 ~~corporation]~~ power utility or public power entity may administer, operate, and maintain the
1385 common facilities as agent for all parties to the agreement;
1386 ~~[(i)]~~ (I) the creation of a committee of representatives of the parties to the agreement~~[-,~~
1387 ~~which committee shall have powers regarding the construction and operation of the common~~
1388 ~~facilities as the agreement, not inconsistent with this chapter, may provide];~~
1389 ~~[(j)]~~ (J) if the ~~[city or town]~~ parties agree, a provision that if any party defaults in the

1390 performance or discharge of its obligations with respect to the common facilities, ~~[that]~~ the other
1391 parties may perform or assume, pro rata or otherwise, the obligations of the defaulting ~~[parties]~~
1392 party and may, if the ~~[city or town]~~ defaulting party fails to remedy the default, succeed to or
1393 require the disposition of the rights and interests of the defaulting party ~~[or parties]~~ in the common
1394 facilities ~~[as may be agreed upon in the agreement];~~

1395 ~~[(k)]~~ (K) provisions for indemnification of construction ~~[and]~~, operation, and
1396 administration agents, for completion of construction, for handling emergencies, and for allocation
1397 of output of the common facilities among the parties to the agreement according to the ownership
1398 interests of the parties;

1399 ~~[(l)]~~ (L) methods for amending and terminating the agreement; and

1400 ~~[(m)]~~ (M) any other matter, not inconsistent with this chapter, determined by the parties
1401 to the agreement to be necessary and proper~~[-not inconsistent with this chapter.];~~

1402 ~~[(3) Agreements providing for common facilities shall]~~

1403 (ii) clearly disclose the ~~[cities' or towns']~~ ownership interest~~[-]~~ of each party;

1404 (iii) provide for an equitable method of allocating operation, repair, and maintenance costs
1405 of the common facilities; and

1406 (iv) be approved or ratified by resolution of the governing body of the public power entity.

1407 (b) A provision under Subsection (2)(a)(i)(F) in an agreement providing for common
1408 facilities under this Subsection (2) is not subject to any law restricting covenants against alienation
1409 or partition.

1410 (c) Each committee created under Subsection (2)(a)(i)(I) in an agreement providing for
1411 common facilities under this Subsection (2) shall have the powers, not inconsistent with this
1412 chapter, regarding the construction and operation of the common facilities that the agreement
1413 provides.

1414 (d) (i) The ~~[cities' or towns']~~ ownership interest ~~[shall be in]~~ of a public power entity in the
1415 common facilities may not be less than the proportion ~~[to]~~ of the funds or the value of property
1416 supplied by it for the acquisition, construction, and operation of the common ~~[facility]~~ facilities.
1417 ~~[The city or town]~~

1418 (ii) Each public power entity shall own and control [a like percentage] the same proportion
1419 of the electrical output [thereof. The agreement shall provide for an equitable method of allocating
1420 operation and maintenance costs of the common facility] from the common facilities as its

1421 ownership interest in them.

1422 (3) Notwithstanding any other provision of this chapter, an interlocal entity may not act
1423 in a manner inconsistent with any provision of the agreement under which it was created.

1424 Section 46. Section **54-9-104**, which is renumbered from Section 54-9-3 is renumbered
1425 and amended to read:

1426 **[54-9-3]. 54-9-104. Joint owners to supply materials, arrange for own financing,**
1427 **and share in costs and taxes -- Public power entity authority to finance through financing**
1428 **agent.**

1429 (1) The joint owners of the common [~~facility must~~] facilities shall supply the materials and
1430 make the payments provided for in the agreement.

1431 (2) Each owner shall arrange its own funding and financing and be responsible for all the
1432 costs, interest, and payments required in connection with its share of the funding for the planning,
1433 acquisition, construction, operation, repairs, and improvements, and each participant shall pay its
1434 share of taxes or charges in lieu of taxes in connection with the common [facility] facilities.

1435 (3) Notwithstanding any other provision of this section, a public power entity may finance
1436 its funding share with one or more other owners through a financing agent, as long as no public
1437 power entity is liable for more than its proportionate share of the debt service with respect to the
1438 financing.

1439 (4) (a) The owners of common facilities may appoint as their agent:

1440 (i) a public power entity that owns an interest in common facilities;

1441 (ii) an interlocal entity of which a public power entity that owns an interest in the common
1442 facilities is a member;

1443 (iii) an interlocal entity that owns electric generation or transmission facilities that are
1444 located on a site adjacent to the common facilities; or

1445 (iv) a public agency that is an owner of the common facilities or that purchases power from
1446 a public agency that is an owner of the common facilities.

1447 (b) One or more agents under Subsection (4)(a) may be appointed, as determined by the
1448 owners of the common facilities, for one or more of the following purposes:

1449 (i) the construction, repair, administration, operation, or maintenance of the common
1450 facilities;

1451 (ii) the administration and payment of, and any challenge or dispute regarding, any tax, fee

1452 in lieu of any tax, impact alleviation payment, or other fee or payment imposed by the state or a
1453 political subdivision of the state that relates to the common facilities; or

1454 (iii) the financing of all or part of the common facilities under Subsection (3).

1455 Section 47. Section **54-9-105**, which is renumbered from Section 54-9-4 is renumbered
1456 and amended to read:

1457 **[54-9-4]. 54-9-105. Limitations on liability.**

1458 (1) (a) Each [city or town shall] public power entity and power utility may be held liable
1459 only for its own acts, omissions, and obligations with respect to the planning, financing,
1460 construction, acquisition, administration, operation, ownership, repair, or maintenance of the
1461 common facilities and [shall] may not be jointly or severally liable for the acts, omissions, or
1462 obligations of others.

1463 (b) Subsection (1)(a) may not be construed to:

1464 (i) affect the liability of a public power entity or power utility with respect to its
1465 contractual obligations, including a contractual obligation to indemnify a construction, operation,
1466 or administrative agent for the common facilities; or

1467 (ii) affect an immunity or other protection that may be available to a public power entity
1468 or power utility under applicable law.

1469 (2) No money, materials, or other contribution supplied by a [city or town shall] public
1470 power entity may be credited or otherwise applied to the account of any other [participant] owner
1471 in the common facilities, nor [shall] may the undivided share of a [city or town] public power
1472 entity be charged, directly or indirectly, with any debt or obligation of any other [participant]
1473 owner or be subject to any lien as a result thereof.

1474 (3) No action in connection with [a] common [facility shall] facilities may be binding upon
1475 [any city or town] a public power entity unless the action or the agreement under which the action
1476 is taken is authorized or approved by a resolution or ordinance of its governing body.

1477 Section 48. Section **54-9-106**, which is renumbered from Section 54-9-5 is renumbered
1478 and amended to read:

1479 **[54-9-5]. 54-9-106. Funding -- Power sales contracts -- Fee in lieu of ad valorem**
1480 **property taxes -- Bond issues -- Outlay declared for public purpose.**

1481 (1) A [city or town] public power entity participating in common facilities under [authority
1482 contained in] this chapter may furnish money and provide property, both real and personal, and,

1483 in addition to any other authority now existing, may issue and sell, either at public or privately
1484 negotiated sale, general obligation bonds or revenue bonds, pledging either the revenues of its
1485 entire electric system or only its interest or share of the revenues derived from the common
1486 facilities in order to pay its respective share of the costs of the planning, financing, acquisition,
1487 ~~[and]~~ construction, repair, and replacement of common facilities.

1488 (2) (a) Capacity or output derived by a ~~[city or town]~~ public power entity from its
1489 ownership share of common facilities not then required by the ~~[city or town]~~ public power entity
1490 for its own use and for the use of its customers may be sold or exchanged ~~[by the city or town]~~ for
1491 a consideration, for a period, and upon other terms and conditions as may be determined by the
1492 parties prior to the sale and as embodied in a power sales contract ~~[entered into by the city or town;~~
1493 ~~and any]~~.

1494 (b) Any revenues arising under [the] a power sales contract under Subsection (2)(a) may
1495 be pledged by the [city or town] public power entity to the payment of revenue bonds issued to pay
1496 its respective share of the costs of the common facilities. [Each power sales contract entered into
1497 by a city or town with a consumer which is not exempt by Article XIII, Sec. 2, Utah Constitution,
1498 for the sale or exchange to the consumer of capacity or output derived by the city or town from its
1499 ownership share of common facilities shall contain a provision for payment of an annual fee to the
1500 city or town by the consumer in lieu of ad valorem property taxes based upon the taxable value of
1501 the percentage of the ownership share of the city or town in the common facilities which is used
1502 to produce the capacity or output that is sold or exchanged by the city or town to or with consumer
1503 , which fee in lieu of ad valorem property taxes shall be paid over by the city or town to the county
1504 treasurer for distribution as per distribution of other ad valorem tax revenues.]

1505 (c) (i) As used in this Subsection (c), "nonexempt purchaser" means a purchaser that is not
1506 exempt from property taxes under Utah Constitution Article XIII, Section 2.

1507 (ii) (A) Each power sales contract between a public power entity and a nonexempt
1508 purchaser shall contain a provision requiring the nonexempt purchaser to pay an annual fee to the
1509 public power entity in lieu of ad valorem property taxes.

1510 (B) The amount of the fee in lieu of ad valorem property taxes under Subsection
1511 (2)(c)(ii)(A) shall be based on the taxable value of the public power entity's percentage ownership
1512 of the common facilities used to produce the capacity or output that the public power entity sells
1513 to or exchanges with the nonexempt purchaser.

1514 (iii) The public power entity shall pay over to the county treasurer each fee in lieu of ad
1515 valorem property taxes that it receives from a nonexempt purchaser for distribution in the same
1516 manner as other ad valorem tax revenues.

1517 (iv) This Subsection (c) does not apply to a public power entity to the extent that its
1518 interest in common facilities is subject to or exempt from the fee in lieu of ad valorem property
1519 taxes under Section 11-13-302.

1520 (3) ~~[Any city or town]~~ A public power entity acquiring or owning an undivided interest
1521 in common facilities may contract with a county ~~[or counties]~~ to pay, solely from the revenues
1522 derived from the interest of the ~~[city or town]~~ public power entity in the common facilities, to the
1523 county or counties in which the common facilities are located, an annual fee in lieu of ad valorem
1524 property taxes based upon the taxable value of the percentage of the ownership share of the ~~[city~~
1525 ~~or town]~~ public power entity in the common facilities, which fee in lieu of ad valorem property
1526 taxes shall be paid over by the ~~[city or town]~~ public power entity to the county treasurer of the
1527 county or counties in which the common facilities are located for distribution as per distribution
1528 of other ad valorem tax revenues.

1529 (4) (a) Bonds issued by a city or town shall be issued under the applicable provisions of
1530 Title 11, Chapter 14, Utah Municipal Bond Act, ~~[and of Title 55, Chapter 3, Public Works~~
1531 ~~Program,]~~ authorizing the issuance of bonds for the acquisition and construction of electric public
1532 utility properties by cities or towns.

1533 (b) Bonds or other debt instruments issued by an interlocal entity shall be issued under
1534 Title 11, Chapter 13, Interlocal Cooperation Act, or other applicable law.

1535 ~~[(4)]~~ (5) All moneys paid or property supplied by ~~[any city or town]~~ a public power entity
1536 for the purpose of carrying out powers conferred by this chapter are declared to be for a public
1537 purpose~~[-; but before a city or cities, town or towns, or power utility undertakes the construction~~
1538 ~~of transmission facilities in which it or they have a common ownership interest, the city or cities,~~
1539 ~~town or towns, or power utility shall, if the construction results in a duplication, in whole or part,~~
1540 ~~of existing transmission in purpose or function, before construction endeavor to attain the~~
1541 ~~equivalent capacity for a comparable term and comparable cost by purchase or contract with the~~
1542 ~~duplicated facility. If the contract cannot be executed within six months from the date the city or~~
1543 ~~cities, town or towns, or power utility request to contract with the owner of the duplicated facility,~~
1544 ~~then the city or cities, town or towns, or power utility may proceed to construct the proposed~~

1545 ~~transmission facilities notwithstanding the duplication].~~

1546 Section 49. Section **54-9-107**, which is renumbered from Section 54-9-6 is renumbered
1547 and amended to read:

1548 ~~[54-9-6].~~ **54-9-107. Disposition of proceeds and revenues.**

1549 All monies belonging to ~~[cities or towns]~~ a public power entity in connection with common
1550 facilities, including the proceeds of the sale of bonds and the revenues arising from the operation
1551 of ~~[a] common [facility,]~~ facilities:

1552 (1) may be deposited in a bank or trust company doing business within or without the state
1553 ~~[of Utah];~~ and

1554 (2) shall be accounted for and disbursed in accordance with applicable law and the
1555 provisions of the resolution or indenture authorizing the issuance of ~~[such]~~ the bonds.

1556 Section 50. Section **59-2-1101** is amended to read:

1557 **59-2-1101. Exemption of property devoted to public, religious, or charitable uses --**
1558 **Proportional payments for government-owned property -- Intangibles exempt -- Signed**
1559 **statement required -- County legislative body authority to adopt rules or ordinances.**

1560 (1) The exemptions, deferrals, and abatements authorized by this part may be allowed only
1561 if the claimant is the owner of the property as of January 1 of the year the exemption is claimed,
1562 unless the claimant is a federal, state, or political subdivision entity under Subsection (2)(a), (b),
1563 or (c), in which case the entity shall collect and pay a proportional tax based upon the length of
1564 time that the property was not owned by the entity.

1565 (2) The following property is exempt from taxation:

1566 (a) property exempt under the laws of the United States;

1567 (b) property of the state, school districts, and public libraries;

1568 (c) property of counties, cities, towns, special districts, and all other political subdivisions
1569 of the state, except as provided in Title 11, Chapter 13, Interlocal Cooperation Act;

1570 (d) property owned by a nonprofit entity which is used exclusively for religious, charitable,
1571 or educational purposes;

1572 (e) places of burial not held or used for private or corporate benefit;

1573 (f) farm equipment and machinery; ~~[and]~~

1574 (g) intangible property; and

1575 (h) the ownership interest of an out-of-state public agency, as defined in Section

1576 11-13-103, in property providing additional project capacity, as defined in Section 11-13-103, on
1577 which a fee in lieu of ad valorem property tax is payable under Section 11-13-302.

1578 (3) (a) The owner who receives exempt status for property, if required by the commission,
1579 shall file a signed statement, on or before March 1 each year, certifying the use to which the
1580 property has been placed during the past year. The signed statement shall contain the following
1581 information in summary form:

- 1582 (i) identity of the individual who signed the statement;
- 1583 (ii) the basis of the signer's knowledge of the use of the property;
- 1584 (iii) authority to make the signed statement on behalf of the owner;
- 1585 (iv) county where property is located; and
- 1586 (v) nature of use of the property.

1587 (b) If the signed statement is not filed within the time limits prescribed by the county, the
1588 exempt status may, after notice and hearing, be revoked and the property then placed on the tax
1589 rolls.

1590 (4) The county legislative body may adopt rules or ordinances to:

- 1591 (a) effectuate the exemptions, deferrals, abatements, or other relief from taxation provided
1592 in this part; and
- 1593 (b) designate one or more persons to perform the functions given the county under this
1594 part.

1595 Section 51. Section **59-4-101** is amended to read:

1596 **59-4-101. Tax basis -- Exceptions -- Assessment and collection.**

1597 (1) (a) Except as provided in Subsections (1)(b) and (c), a tax is imposed on the possession
1598 or other beneficial use enjoyed by any person of any real or personal property which for any reason
1599 is exempt from taxation, if that property is used in connection with a business conducted for profit.

1600 (b) Any interest remaining in the state in state lands after subtracting amounts paid or due
1601 in part payment of the purchase price as provided in Subsection 59-2-1103(2)(b)(i) under a contract
1602 of sale is subject to taxation under this chapter regardless of whether the property is used in
1603 connection with a business conducted for profit.

1604 (c) The tax imposed under Subsection (1)(a) does not apply to property exempt from
1605 taxation under Section 59-2-1114.

1606 (2) The tax imposed under this chapter is the same amount that the ad valorem property

1607 tax would be if the possessor or user were the owner of the property. The amount of any payments
1608 which are made in lieu of taxes is credited against the tax imposed on the beneficial use of property
1609 owned by the federal government.

1610 (3) A tax is not imposed under this chapter on the following:

1611 (a) the use of property which is a concession in, or relative to, the use of a public airport,
1612 park, fairground, or similar property which is available as a matter of right to the use of the general
1613 public;

1614 (b) the use or possession of property by a religious, educational, or charitable organization;

1615 (c) the use or possession of property if the revenue generated by the possessor or user of
1616 the property through its possession or use of the property inures only to the benefit of a religious,
1617 educational, or charitable organization and not to the benefit of any other person;

1618 (d) the possession or other beneficial use of public land occupied under the terms of a
1619 grazing lease or permit issued by the United States or this state; [or]

1620 (e) the use or possession of any lease, permit, or easement unless the lease, permit, or
1621 easement entitles the lessee or permittee to exclusive possession of the premises to which the lease,
1622 permit, or easement relates. Every lessee, permittee, or other holder of a right to remove or extract
1623 the mineral covered by the holder's lease, right, permit, or easement except from brines of the
1624 Great Salt Lake, is considered to be in possession of the premises, notwithstanding the fact that
1625 other parties may have a similar right to remove or extract another mineral from the same lands
1626 or estates[-]; or

1627 (f) the use or possession of property by a public agency, as defined in Section 11-13-103,
1628 to the extent that the ownership interest of the public agency in that property is subject to a fee in
1629 lieu of ad valorem property tax under Section 11-13-302.

1630 (4) A tax imposed under this chapter is assessed to the possessors or users of the property
1631 on the same forms, and collected and distributed at the same time and in the same manner, as taxes
1632 assessed owners, possessors, or other claimants of property which is subject to ad valorem property
1633 taxation. The tax is not a lien against the property, and no tax-exempt property may be attached,
1634 encumbered, sold, or otherwise affected for the collection of the tax.

1635 Section 52. Section **59-7-102** is amended to read:

1636 **59-7-102. Exemptions.**

1637 (1) Except as provided in Part 8, the following are exempt from this chapter:

1638 (a) organizations exempt under Sections 501 and 521, Internal Revenue Code, and
1639 organizations meeting the requirements of Subchapter T, Internal Revenue Code;

1640 (b) organizations exempt under Section 528, Internal Revenue Code, provided that to the
1641 extent such organization's income is taxable for federal tax purposes under Section 528, such
1642 organization's income is also taxable under this chapter;

1643 (c) insurance companies which are otherwise taxed on their premiums under Title 59,
1644 Chapter 9, Taxation of Admitted Insurers; ~~and~~

1645 (d) building authorities as defined in Section 17A-3-902[-]; and

1646 (e) public agencies, as defined in Section 11-13-103, with respect to or as a result of an
1647 ownership interest in a project, as defined in Section 11-13-103, or facilities providing additional
1648 project capacity, as defined in Section 11-13-103.

1649 (2) Notwithstanding any other provision in Chapter 7 or 8, a person not otherwise subject
1650 to the tax imposed by this chapter or Chapter 8 shall not become subject to the tax imposed by
1651 Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, by reason of:

1652 (a) that person's ownership of tangible personal property located at the premises of a
1653 printer's facility in this state with which the person has contracted for printing; or

1654 (b) the activities of the person's employees or agents who are located solely at the premises
1655 of a printer's facility and who are performing services related to quality control, distribution, or
1656 printing services performed by the printer's facility in this state with which the person has
1657 contracted for printing.

1658 Section 53. Section **59-8-103** is amended to read:

1659 **59-8-103. Definitions.**

1660 As used in this chapter:

1661 (1) "Corporation" means:

1662 (a) any domestic corporation organized under Title 16, Chapter 6a, Utah Revised
1663 Nonprofit Corporation Act;

1664 (b) any foreign corporation engaged in business in this state under Sections 16-6a-1501
1665 through 16-6a-1518; ~~or~~

1666 (c) any ~~[legal or administrative]~~ project entity ~~[created under Section 11-13-5.5.]~~ defined
1667 in Section 11-13-103; or

1668 (d) a public agency, as defined in Section 11-13-103, to the extent it owns an interest in

1669 facilities providing additional project capacity, as defined in Section 11-13-103.

1670 (2) "Engaging in business" means carrying on or causing to be carried on any activity
1671 through which goods or services are made or rendered by the taxpayer, except as provided in
1672 Section 59-7-102.

1673 (3) "Gross receipts" means the totality of the consideration that the taxpayer receives for
1674 any good or service produced or rendered in the state without any deduction or expense paid or
1675 accrued in respect to it.

1676 (4) "Taxpayer" means any corporation, other than an eleemosynary, religious, or charitable
1677 institution, any insurance company, credit union, or Subchapter S organization, any nonprofit
1678 hospital, educational, welfare, or employee representation organization, or any mutual benefit
1679 association engaged in business in the state that is not otherwise required to pay income or
1680 franchise tax to the state under Title 59, Chapter 7.

1681 Section 54. Section **59-8-104** is amended to read:

1682 **59-8-104. Rate -- Change of rate.**

1683 (1) For taxable years beginning on or after July 1, 1996 and subject to Section 11-13-303,
1684 an in lieu excise tax is imposed on the gross receipts of a taxpayer engaging in business in the state
1685 of Utah in each taxable year as follows:

1686	Gross Receipts Amount	Rate of Tax
1687	Not in excess of \$10,000,000	None
1688	In excess of \$10,000,000 but not	
1689	in excess of \$500,000,000	.8613%
1690	In excess of \$500,000,000 but not	
1691	in excess of \$1,000,000,000	1.3214%
1692	In excess of \$1,000,000,000	1.7520%

1693 (2) A taxpayer subject to the in lieu excise tax under Subsection (1) is not required to pay
1694 the tax imposed under Title 59, Chapter 8a, Gross Receipts Tax on Electrical Corporations Act.

1695 Section 55. Section **59-12-104** is amended to read:

1696 **59-12-104. Exemptions.**

1697 The following sales and uses are exempt from the taxes imposed by this chapter:

1698 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
1699 under Chapter 13, Motor and Special Fuel Tax Act;

1700 (2) sales to the state, its institutions, and its political subdivisions; however, this exemption
1701 does not apply to sales of;

1702 (a) construction materials except:

1703 ~~(a)~~ (i) construction materials purchased by or on behalf of institutions of the public
1704 education system as defined in Utah Constitution Article X, Section 2, provided the construction
1705 materials are clearly identified and segregated and installed or converted to real property which is
1706 owned by institutions of the public education system; and

1707 ~~(b)~~ (ii) construction materials purchased by the state, its institutions, or its political
1708 subdivisions which are installed or converted to real property by employees of the state, its
1709 institutions, or its political subdivisions; or

1710 (b) tangible personal property in connection with the construction, operation, maintenance,
1711 repair, or replacement of a project, as defined in Section 11-13-103, or facilities providing
1712 additional project capacity, as defined in Section 11-13-103;

1713 (3) sales of food, beverage, and dairy products from vending machines in which the
1714 proceeds of each sale do not exceed \$1 if the vendor or operator of the vending machine reports
1715 an amount equal to 150% of the cost of items as goods consumed;

1716 (4) sales of food, beverage, dairy products, similar confections, and related services to
1717 commercial airline carriers for in-flight consumption;

1718 (5) sales of parts and equipment installed in aircraft operated by common carriers in
1719 interstate or foreign commerce;

1720 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
1721 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
1722 exhibitor, distributor, or commercial television or radio broadcaster;

1723 (7) sales of cleaning or washing of tangible personal property by a coin-operated laundry
1724 or dry cleaning machine;

1725 (8) (a) except as provided in Subsection (8)(b), sales made to or by religious or charitable
1726 institutions in the conduct of their regular religious or charitable functions and activities, if the
1727 requirements of Section 59-12-104.1 are fulfilled;

1728 (b) the exemption provided for in Subsection (8)(a) does not apply to the following sales,
1729 uses, leases, or rentals relating to the Olympic Winter Games of 2002 made to or by an
1730 organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue

- 1731 Code:
- 1732 (i) retail sales of Olympic merchandise;
- 1733 (ii) except as provided in Subsection (51), admissions or user fees described in Subsection
- 1734 59-12-103(1)(f);
- 1735 (iii) sales of accommodations and services as provided in Subsection 59-12-103(1)(i),
- 1736 except for accommodations and services:
- 1737 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games
- 1738 of 2002;
- 1739 (B) exclusively used by:
- 1740 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
- 1741 Olympic Winter Games of 2002; or
- 1742 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter
- 1743 Games of 2002; and
- 1744 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002
- 1745 does not receive reimbursement; or
- 1746 (iv) a lease or rental of a vehicle as defined in Section 41-1a-102, except for a lease or
- 1747 rental of a vehicle:
- 1748 (A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games
- 1749 of 2002;
- 1750 (B) exclusively used by:
- 1751 (I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the
- 1752 Olympic Winter Games of 2002; or
- 1753 (II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter
- 1754 Games of 2002; and
- 1755 (C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002
- 1756 does not receive reimbursement;
- 1757 (9) sales of vehicles of a type required to be registered under the motor vehicle laws of this
- 1758 state which are made to bona fide nonresidents of this state and are not afterwards registered or
- 1759 used in this state except as necessary to transport them to the borders of this state;
- 1760 (10) sales of medicine;
- 1761 (11) sales or use of property, materials, or services used in the construction of or

1762 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

1763 (12) (a) sales of meals served by:

1764 (i) the following if the meals are not available to the general public:

1765 (A) a church; or

1766 (B) a charitable institution;

1767 (ii) an institution of higher education if:

1768 (A) the meals are not available to the general public; or

1769 (B) the meals are prepaid as part of a student meal plan offered by the institution of higher

1770 education; or

1771 (b) inpatient meals provided at:

1772 (i) a medical facility; or

1773 (ii) a nursing facility;

1774 (13) isolated or occasional sales by persons not regularly engaged in business, except the

1775 sale of vehicles or vessels required to be titled or registered under the laws of this state in which

1776 case the tax is based upon:

1777 (a) the bill of sale or other written evidence of value of the vehicle or vessel being sold;

1778 or

1779 (b) in the absence of a bill of sale or other written evidence of value, the then existing fair

1780 market value of the vehicle or vessel being sold as determined by the commission;

1781 (14) (a) the following purchases or leases by a manufacturer on or after July 1, 1995:

1782 (i) machinery and equipment:

1783 (A) used in the manufacturing process;

1784 (B) having an economic life of three or more years; and

1785 (C) used:

1786 (I) to manufacture an item sold as tangible personal property; and

1787 (II) in new or expanding operations in a manufacturing facility in the state; and

1788 (ii) subject to the provisions of Subsection (14)(b), normal operating replacements that:

1789 (A) have an economic life of three or more years;

1790 (B) are used in the manufacturing process in a manufacturing facility in the state;

1791 (C) are used to replace or adapt an existing machine to extend the normal estimated useful

1792 life of the machine; and

1793 (D) do not include repairs and maintenance;

1794 (b) the rates for the exemption under Subsection (14)(a)(ii) are as follows:

1795 (i) beginning July 1, 1996, through June 30, 1997, 30% of the sale or lease described in

1796 Subsection (14)(a)(ii) is exempt;

1797 (ii) beginning July 1, 1997, through June 30, 1998, 60% of the sale or lease described in

1798 Subsection (14)(a)(ii) is exempt; and

1799 (iii) beginning July 1, 1998, 100% of the sale or lease described in Subsection (14)(a)(ii)

1800 is exempt;

1801 (c) for purposes of this Subsection (14), the commission shall by rule define the terms

1802 "new or expanding operations" and "establishment"; and

1803 (d) on or before October 1, 1991, and every five years after October 1, 1991, the

1804 commission shall:

1805 (i) review the exemptions described in Subsection (14)(a) and make recommendations to

1806 the Revenue and Taxation Interim Committee concerning whether the exemptions should be

1807 continued, modified, or repealed; and

1808 (ii) include in its report:

1809 (A) the cost of the exemptions;

1810 (B) the purpose and effectiveness of the exemptions; and

1811 (C) the benefits of the exemptions to the state;

1812 (15) sales of tooling, special tooling, support equipment, and special test equipment used

1813 or consumed exclusively in the performance of any aerospace or electronics industry contract with

1814 the United States government or any subcontract under that contract, but only if, under the terms

1815 of that contract or subcontract, title to the tooling and equipment is vested in the United States

1816 government as evidenced by a government identification tag placed on the tooling and equipment

1817 or by listing on a government-approved property record if a tag is impractical;

1818 (16) intrastate movements of:

1819 (a) freight by common carriers; and

1820 (b) passengers:

1821 (i) by taxicabs as described in SIC Code 4121 of the 1987 Standard Industrial

1822 Classification Manual of the federal Executive Office of the President, Office of Management and

1823 Budget; or

1824 (ii) transported by an establishment described in SIC Code 4111 of the 1987 Standard
1825 Industrial Classification Manual of the federal Executive Office of the President, Office of
1826 Management and Budget, if the transportation originates and terminates within a county of the
1827 first, second, or third class;

1828 (17) sales of newspapers or newspaper subscriptions;

1829 (18) tangible personal property, other than money, traded in as full or part payment of the
1830 purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by
1831 a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

1832 (a) the bill of sale or other written evidence of value of the vehicle being sold and the
1833 vehicle being traded in; or

1834 (b) in the absence of a bill of sale or other written evidence of value, the then existing fair
1835 market value of the vehicle being sold and the vehicle being traded in, as determined by the
1836 commission;

1837 (19) sprays and insecticides used to control insects, diseases, and weeds for commercial
1838 production of fruits, vegetables, feeds, seeds, and animal products, but not those sprays and
1839 insecticides used in the processing of the products;

1840 (20) (a) sales of tangible personal property used or consumed primarily and directly in
1841 farming operations, including sales of irrigation equipment and supplies used for agricultural
1842 production purposes, whether or not they become part of real estate and whether or not installed
1843 by farmer, contractor, or subcontractor, but not sales of:

1844 (i) machinery, equipment, materials, and supplies used in a manner that is incidental to
1845 farming, such as hand tools with a unit purchase price not in excess of \$250, and maintenance and
1846 janitorial equipment and supplies;

1847 (ii) tangible personal property used in any activities other than farming, such as office
1848 equipment and supplies, equipment and supplies used in sales or distribution of farm products, in
1849 research, or in transportation; or

1850 (iii) any vehicle required to be registered by the laws of this state, without regard to the use
1851 to which the vehicle is put;

1852 (b) sales of hay;

1853 (21) exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or
1854 other agricultural produce if sold by a producer during the harvest season;

1855 (22) purchases of food as defined in 7 U.S.C. Sec. 2012(g) under the Food Stamp Program,
1856 7 U.S.C. Sec. 2011 et seq.;

1857 (23) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
1858 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler,
1859 or retailer for use in packaging tangible personal property to be sold by that manufacturer,
1860 processor, wholesaler, or retailer;

1861 (24) property stored in the state for resale;

1862 (25) property brought into the state by a nonresident for his or her own personal use or
1863 enjoyment while within the state, except property purchased for use in Utah by a nonresident living
1864 and working in Utah at the time of purchase;

1865 (26) property purchased for resale in this state, in the regular course of business, either in
1866 its original form or as an ingredient or component part of a manufactured or compounded product;

1867 (27) property upon which a sales or use tax was paid to some other state, or one of its
1868 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
1869 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the
1870 tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;

1871 (28) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person
1872 for use in compounding a service taxable under the subsections;

1873 (29) purchases of supplemental foods as defined in 42 U.S.C. Sec. 1786(b)(14) under the
1874 special supplemental nutrition program for women, infants, and children established in 42 U.S.C.
1875 Sec. 1786;

1876 (30) beginning on July 1, 1999, through June 30, 2004, sales or leases of rolls, rollers,
1877 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
1878 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual
1879 of the federal Executive Office of the President, Office of Management and Budget;

1880 (31) sales of boats of a type required to be registered under Title 73, Chapter 18, State
1881 Boating Act, boat trailers, and outboard motors which are made to bona fide nonresidents of this
1882 state and are not thereafter registered or used in this state except as necessary to transport them to
1883 the borders of this state;

1884 (32) sales of tangible personal property to persons within this state that is subsequently
1885 shipped outside the state and incorporated pursuant to contract into and becomes a part of real

1886 property located outside of this state, except to the extent that the other state or political entity
1887 imposes a sales, use, gross receipts, or other similar transaction excise tax on it against which the
1888 other state or political entity allows a credit for taxes imposed by this chapter;

1889 (33) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah where
1890 a sales or use tax is not imposed, even if the title is passed in Utah;

1891 (34) amounts paid for the purchase of telephone service for purposes of providing
1892 telephone service;

1893 (35) fares charged to persons transported directly by a public transit district created under
1894 the authority of Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

1895 (36) sales or leases of vehicles to, or use of vehicles by an authorized carrier;

1896 (37) (a) 45% of the sales price of any new manufactured home; and

1897 (b) 100% of the sales price of any used manufactured home;

1898 (38) sales relating to schools and fundraising sales;

1899 (39) sales or rentals of home medical equipment and supplies;

1900 (40) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
1901 Section 72-11-102; and

1902 (b) the commission shall by rule determine the method for calculating sales exempt under
1903 Subsection (40)(a) that are not separately metered and accounted for in utility billings;

1904 (41) sales to a ski resort of:

1905 (a) snowmaking equipment;

1906 (b) ski slope grooming equipment; and

1907 (c) passenger ropeways as defined in Section 72-11-102;

1908 (42) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

1909 (43) sales or rentals of the right to use or operate for amusement, entertainment, or
1910 recreation a coin-operated amusement device as defined in Section 59-12-102;

1911 (44) sales of cleaning or washing of tangible personal property by a coin-operated car wash
1912 machine;

1913 (45) sales by the state or a political subdivision of the state, except state institutions of
1914 higher education as defined in Section 53B-3-102, of:

1915 (a) photocopies; or

1916 (b) other copies of records held or maintained by the state or a political subdivision of the

1917 state; and

1918 (46) (a) amounts paid:

1919 (i) to a person providing intrastate transportation to an employer's employee to or from the

1920 employee's primary place of employment;

1921 (ii) by an:

1922 (A) employee; or

1923 (B) employer; and

1924 (iii) pursuant to a written contract between:

1925 (A) the employer; and

1926 (B) (I) the employee; or

1927 (II) a person providing transportation to the employer's employee; and

1928 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1929 commission may for purposes of Subsection (46)(a) make rules defining what constitutes an

1930 employee's primary place of employment;

1931 (47) amounts paid for admission to an athletic event at an institution of higher education

1932 that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec.

1933 1681 et seq.;

1934 (48) sales of telephone service charged to a prepaid telephone calling card;

1935 (49) (a) sales of hearing aids; and

1936 (b) sales of hearing aid accessories;

1937 (50) (a) sales made to or by:

1938 (i) an area agency on aging; or

1939 (ii) a senior citizen center owned by a county, city, or town; or

1940 (b) sales made by a senior citizen center that contracts with an area agency on aging;

1941 (51) (a) beginning on July 1, 2000, through June 30, 2002, amounts paid or charged as

1942 admission or user fees described in Subsection 59-12-103(1)(f) relating to the Olympic Winter

1943 Games of 2002 if the amounts paid or charged are established by the Salt Lake Organizing

1944 Committee for the Olympic Winter Games of 2002 in accordance with requirements of the

1945 International Olympic Committee; and

1946 (b) the State Olympic Officer and the Salt Lake Organizing Committee for the Olympic

1947 Winter Games of 2002 shall make at least two reports during the 2000 interim:

1948 (i) to the:

1949 (A) Olympic Coordination Committee; and

1950 (B) Revenue and Taxation Interim Committee; and

1951 (ii) regarding the status of:

1952 (A) agreements relating to the funding of public safety services for the Olympic Winter

1953 Games of 2002;

1954 (B) agreements relating to the funding of services, other than public safety services, for

1955 the Olympic Winter Games of 2002;

1956 (C) other agreements relating to the Olympic Winter Games of 2002 as requested by the

1957 Olympic Coordination Committee or the Revenue and Taxation Interim Committee;

1958 (D) other issues as requested by the Olympic Coordination Committee or the Revenue and

1959 Taxation Interim Committee; or

1960 (E) a combination of Subsections (51)(b)(ii)(A) through (D);

1961 (52) (a) beginning on July 1, 2001, through June 30, 2004, and subject to Subsection

1962 (52)(b), a sale or lease of semiconductor fabricating or processing materials regardless of whether

1963 the semiconductor fabricating or processing materials:

1964 (i) actually come into contact with a semiconductor; or

1965 (ii) ultimately become incorporated into real property;

1966 (b) (i) beginning on July 1, 2001, through June 30, 2002, 10% of the sale or lease

1967 described in Subsection (52)(a) is exempt;

1968 (ii) beginning on July 1, 2002, through June 30, 2003, 50% of the sale or lease described

1969 in Subsection (52)(a) is exempt; and

1970 (iii) beginning on July 1, 2003, through June 30, 2004, the entire amount of the sale or

1971 lease described in Subsection (52)(a) is exempt; and

1972 (c) each year on or before the November interim meeting, the Revenue and Taxation

1973 Interim Committee shall:

1974 (i) review the exemption described in this Subsection (52) and make recommendations

1975 concerning whether the exemption should be continued, modified, or repealed; and

1976 (ii) include in the review under this Subsection (52)(c):

1977 (A) the cost of the exemption;

1978 (B) the purpose and effectiveness of the exemption; and

1979 (C) the benefits of the exemption to the state;

1980 (53) an amount paid by or charged to a purchaser for accommodations and services
1981 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
1982 59-12-104.2; or

1983 (54) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
1984 sports event registration certificate in accordance with Section 41-3-306 for the event period
1985 specified on the temporary sports event registration certificate.

1986 Section 56. Section **63-2-304** is amended to read:

1987 **63-2-304. Protected records.**

1988 The following records are protected if properly classified by a governmental entity:

1989 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has
1990 provided the governmental entity with the information specified in Section 63-2-308;

1991 (2) commercial information or nonindividual financial information obtained from a person
1992 if:

1993 (a) disclosure of the information could reasonably be expected to result in unfair
1994 competitive injury to the person submitting the information or would impair the ability of the
1995 governmental entity to obtain necessary information in the future;

1996 (b) the person submitting the information has a greater interest in prohibiting access than
1997 the public in obtaining access; and

1998 (c) the person submitting the information has provided the governmental entity with the
1999 information specified in Section 63-2-308;

2000 (3) commercial or financial information acquired or prepared by a governmental entity to
2001 the extent that disclosure would lead to financial speculations in currencies, securities, or
2002 commodities that will interfere with a planned transaction by the governmental entity or cause
2003 substantial financial injury to the governmental entity or state economy;

2004 (4) records the disclosure of which could cause commercial injury to, or confer a
2005 competitive advantage upon a potential or actual competitor of, a commercial project entity as
2006 defined in [~~Subsection 11-13-3(3)~~] Section 11-13-103;

2007 (5) test questions and answers to be used in future license, certification, registration,
2008 employment, or academic examinations;

2009 (6) records the disclosure of which would impair governmental procurement proceedings

2010 or give an unfair advantage to any person proposing to enter into a contract or agreement with a
2011 governmental entity, except that this subsection does not restrict the right of a person to see bids
2012 submitted to or by a governmental entity after bidding has closed;

2013 (7) records that would identify real property or the appraisal or estimated value of real or
2014 personal property, including intellectual property, under consideration for public acquisition before
2015 any rights to the property are acquired unless:

2016 (a) public interest in obtaining access to the information outweighs the governmental
2017 entity's need to acquire the property on the best terms possible;

2018 (b) the information has already been disclosed to persons not employed by or under a duty
2019 of confidentiality to the entity;

2020 (c) in the case of records that would identify property, potential sellers of the described
2021 property have already learned of the governmental entity's plans to acquire the property; or

2022 (d) in the case of records that would identify the appraisal or estimated value of property,
2023 the potential sellers have already learned of the governmental entity's estimated value of the
2024 property;

2025 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
2026 compensated transaction of real or personal property including intellectual property, which, if
2027 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of
2028 the subject property, unless:

2029 (a) the public interest in access outweighs the interests in restricting access, including the
2030 governmental entity's interest in maximizing the financial benefit of the transaction; or

2031 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the
2032 value of the subject property have already been disclosed to persons not employed by or under a
2033 duty of confidentiality to the entity;

2034 (9) records created or maintained for civil, criminal, or administrative enforcement
2035 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
2036 release of the records:

2037 (a) reasonably could be expected to interfere with investigations undertaken for
2038 enforcement, discipline, licensing, certification, or registration purposes;

2039 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
2040 proceedings;

- 2041 (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;
- 2042 (d) reasonably could be expected to disclose the identity of a source who is not generally
- 2043 known outside of government and, in the case of a record compiled in the course of an
- 2044 investigation, disclose information furnished by a source not generally known outside of
- 2045 government if disclosure would compromise the source; or
- 2046 (e) reasonably could be expected to disclose investigative or audit techniques, procedures,
- 2047 policies, or orders not generally known outside of government if disclosure would interfere with
- 2048 enforcement or audit efforts;
- 2049 (10) records the disclosure of which would jeopardize the life or safety of an individual;
- 2050 (11) records the disclosure of which would jeopardize the security of governmental
- 2051 property, governmental programs, or governmental recordkeeping systems from damage, theft, or
- 2052 other appropriation or use contrary to law or public policy;
- 2053 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
- 2054 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
- 2055 with the control and supervision of an offender's incarceration, treatment, probation, or parole;
- 2056 (13) records that, if disclosed, would reveal recommendations made to the Board of
- 2057 Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board
- 2058 of Pardons and Parole, or the Department of Human Services that are based on the employee's or
- 2059 contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;
- 2060 (14) records and audit workpapers that identify audit, collection, and operational
- 2061 procedures and methods used by the State Tax Commission, if disclosure would interfere with
- 2062 audits or collections;
- 2063 (15) records of a governmental audit agency relating to an ongoing or planned audit until
- 2064 the final audit is released;
- 2065 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
- 2066 litigation that are not available under the rules of discovery;
- 2067 (17) records disclosing an attorney's work product, including the mental impressions or
- 2068 legal theories of an attorney or other representative of a governmental entity concerning litigation;
- 2069 (18) records of communications between a governmental entity and an attorney
- 2070 representing, retained, or employed by the governmental entity if the communications would be
- 2071 privileged as provided in Section 78-24-8;

2072 (19) personal files of a legislator, including personal correspondence to or from a member
2073 of the Legislature, but not correspondence that gives notice of legislative action or policy;

2074 (20) (a) records in the custody or control of the Office of Legislative Research and General
2075 Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or
2076 contemplated course of action before the legislator has elected to support the legislation or course
2077 of action, or made the legislation or course of action public; and

2078 (b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of
2079 Legislative Research and General Counsel is a public document unless a legislator submits the
2080 "Request For Legislation" with a request that it be maintained as a protected record until such time
2081 as the legislator elects to make the legislation or course of action public;

2082 (21) research requests from legislators to the Office of Legislative Research and General
2083 Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response
2084 to these requests;

2085 (22) drafts, unless otherwise classified as public;

2086 (23) records concerning a governmental entity's strategy about collective bargaining or
2087 pending litigation;

2088 (24) records of investigations of loss occurrences and analyses of loss occurrences that
2089 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured
2090 Employers' Fund, or similar divisions in other governmental entities;

2091 (25) records, other than personnel evaluations, that contain a personal recommendation
2092 concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal
2093 privacy, or disclosure is not in the public interest;

2094 (26) records that reveal the location of historic, prehistoric, paleontological, or biological
2095 resources that if known would jeopardize the security of those resources or of valuable historic,
2096 scientific, educational, or cultural information;

2097 (27) records of independent state agencies if the disclosure of the records would conflict
2098 with the fiduciary obligations of the agency;

2099 (28) records of a public institution of higher education regarding tenure evaluations,
2100 appointments, applications for admissions, retention decisions, and promotions, which could be
2101 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
2102 Meetings, provided that records of the final decisions about tenure, appointments, retention,

2103 promotions, or those students admitted, may not be classified as protected under this section;

2104 (29) records of the governor's office, including budget recommendations, legislative
2105 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
2106 policies or contemplated courses of action before the governor has implemented or rejected those
2107 policies or courses of action or made them public;

2108 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
2109 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
2110 recommendations in these areas;

2111 (31) records provided by the United States or by a government entity outside the state that
2112 are given to the governmental entity with a requirement that they be managed as protected records
2113 if the providing entity certifies that the record would not be subject to public disclosure if retained
2114 by it;

2115 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
2116 except as provided in Section 52-4-7;

2117 (33) records that would reveal the contents of settlement negotiations but not including
2118 final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

2119 (34) memoranda prepared by staff and used in the decision-making process by an
2120 administrative law judge, a member of the Board of Pardons and Parole, or a member of any other
2121 body charged by law with performing a quasi-judicial function;

2122 (35) records that would reveal negotiations regarding assistance or incentives offered by
2123 or requested from a governmental entity for the purpose of encouraging a person to expand or
2124 locate a business in Utah, but only if disclosure would result in actual economic harm to the person
2125 or place the governmental entity at a competitive disadvantage, but this section may not be used
2126 to restrict access to a record evidencing a final contract;

2127 (36) materials to which access must be limited for purposes of securing or maintaining the
2128 governmental entity's proprietary protection of intellectual property rights including patents,
2129 copyrights, and trade secrets;

2130 (37) the name of a donor or a prospective donor to a governmental entity, including a
2131 public institution of higher education, and other information concerning the donation that could
2132 reasonably be expected to reveal the identity of the donor, provided that:

2133 (a) the donor requests anonymity in writing;

2134 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
2135 classified protected by the governmental entity under this Subsection (37); and

2136 (c) except for public institutions of higher education, the governmental unit to which the
2137 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no
2138 regulatory or legislative authority over the donor, a member of his immediate family, or any entity
2139 owned or controlled by the donor or his immediate family;

2140 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

2141 (39) a notification of workers' compensation insurance coverage described in Section
2142 34A-2-205; and

2143 (40) the following records of a public institution of education, which have been developed,
2144 discovered, or received by or on behalf of faculty, staff, employees, or students of the institution:
2145 unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative
2146 works in process, scholarly correspondence, and confidential information contained in research
2147 proposals. Nothing in this Subsection (40) shall be construed to affect the ownership of a record.

2148 Section 57. **Repealer.**

2149 This act repeals:

2150 Section **11-13-9, Approval of agreements by authorized attorney.**

2151 Section **11-13-12, Agreements for services or facilities under control of state officer**
2152 **or agency -- Approval by authorized attorney.**

2153 Section **54-9-1, Legislative purpose.**

2154 Section 58. **Coordination clause.**

2155 If this bill and HB 131, Reporting of Data to the Automated Geographic Reference Center,
2156 both pass, it is the intent of the Legislature that the references to Sections 11-13-5.5 and 11-13-5.6
2157 in Subsection 63A-6-203(4), as provided in HB 131, be deleted and replaced with Sections
2158 11-13-204 and 11-13-205.