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**AMENDMENTS TO THE INTERLOCAL
COOPERATION ACT
2003 GENERAL SESSION
STATE OF UTAH**

Sponsor: Leonard M. Blackham

This act modifies the Interlocal Cooperation Act including making technical changes. The act adds definitions and modifies provisions related to project entity and generation output requirements. For purposes of the payment of fee in lieu of ad valorem property tax, this act provides that a fee base for a project can be determined by agreement. This act provides for valuation by the State Tax Commission if a fee base is not determined by an agreement.

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

AMENDS:

- 11-13-103**, as renumbered and amended by Chapter 286, Laws of Utah 2002
- 11-13-301**, as enacted by Chapter 286, Laws of Utah 2002
- 11-13-302**, as renumbered and amended by Chapter 286, Laws of Utah 2002
- 11-13-310**, as renumbered and amended by Chapter 286, Laws of Utah 2002
- 11-13-311**, as renumbered and amended by Chapter 286, Laws of Utah 2002

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

Section 1. Section **11-13-103** is amended to read:

11-13-103. Definitions.

As used in this chapter:

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

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



28 the project; and

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

31 (2) "Board" means the Permanent Community Impact Fund Board created by Section
32 9-4-304, and its successors.

33 (3) "Candidate" means one or more of:

34 (a) the state;

35 (b) a county, municipality, school district, special district, or other political subdivision
36 of the state; and

37 (c) a prosecution district.

38 (4) "Commercial project entity" means a project entity, defined in Subsection [~~(11)~~]
39 (12), that:

40 (a) has no taxing authority; and

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

43 (5) "Direct impacts" means an increase in the need for public facilities or services that
44 is attributable to the project or facilities providing additional project capacity, except impacts
45 resulting from the construction or operation of a facility that is:

46 (a) owned by an owner other than the owner of the project or of the facilities providing
47 additional project capacity; and

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

49 (6) "Electric interlocal entity" means an interlocal entity described in Subsection
50 11-13-203(3).

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

53 (8) (a) "Estimated electric requirements," when used with respect to a qualified energy
54 services interlocal entity, includes any of the following that meets the requirements of
55 Subsection (8)(b):

56 (i) generation capacity;

57 (ii) generation output; or

58 (iii) an electric energy production facility.

59 **(b) An item listed in Subsection (8)(a) is included in "estimated electric requirements"**
60 **if it is needed by the qualified energy services interlocal entity to perform the qualified energy**
61 **services interlocal entity's contractual or legal obligations to any of its members.**

62 ~~[(8)]~~ (9) "Interlocal entity" means:

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

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

66 ~~[(9)]~~ (10) "Out-of-state public agency" means a public agency as defined in Subsection
67 ~~[(12)]~~ (13)(c), (d), or (e).

68 ~~[(10)]~~ (11) (a) "Project":

69 (i) means an electric generation and transmission facility owned by a Utah interlocal
70 entity or an electric interlocal entity; and

71 (ii) includes fuel or fuel transportation facilities and water facilities owned by that Utah
72 interlocal entity or electric interlocal entity and required for the generation and transmission
73 facility.

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

75 (i) facilities that provide additional project capacity; and

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

78 ~~[(11)]~~ (12) "Project entity" means a Utah interlocal entity or an electric interlocal entity
79 that owns a project.

80 ~~[(12)]~~ (13) "Public agency" means:

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

83 (b) the state or any department, division, or agency of the state;

84 (c) any agency of the United States;

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

88 (e) any Indian tribe, band, nation, or other organized group or community which is
89 recognized as eligible for the special programs and services provided by the United States to

90 Indians because of their status as Indians.

91 (14) "Qualified energy services interlocal entity" means an energy services interlocal
92 entity that at the time that the energy services interlocal entity acquires its interest in facilities
93 providing additional project capacity has at least five members that are Utah public agencies.

94 [~~13~~] (15) "Utah interlocal entity":

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

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

98 [~~14~~] (16) "Utah public agency" means a public agency under Subsection [~~12~~]
99 (13)(a) or (b).

100 Section 2. Section **11-13-301** is amended to read:

101 **11-13-301. Project entity and generation output requirements.**

102 (1) Each project entity shall:

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

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

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

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

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

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

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

120 (A) made available as needed to meet the estimated electric requirements of entities or

121 consumers within the state; and

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

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

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

129 Section 3. Section **11-13-302** is amended to read:

130 **11-13-302. Payment of fee in lieu of ad valorem property tax by certain energy**
131 **suppliers -- Method of calculating -- Collection -- Extent of tax lien.**

132 (1) ~~[A]~~ (a) Each project entity created under this chapter ~~[which]~~ that owns a project
133 and ~~[which]~~ that sells any capacity, service, or other benefit from it to an energy supplier or
134 suppliers whose tangible property is not exempted by Utah Constitution Article XIII, Section 2,
135 from the payment of ad valorem property tax, shall pay an annual fee in lieu of ad valorem
136 property tax as provided in this section to each taxing jurisdiction within which the project or
137 any part of it is located.

138 (b) For purposes of this section, "annual fee" means the annual fee described in
139 Subsection (1)(a) that is in lieu of ad valorem property tax.

140 (c) The requirement to pay ~~[these fees]~~ an annual fee shall commence:

141 ~~[(a)]~~ (i) with respect to each taxing jurisdiction that is a candidate receiving the benefit
142 of impact alleviation payments under contracts or determination orders provided for in Sections
143 11-13-305 and 11-13-306, with the fiscal year of the candidate following the fiscal year of the
144 candidate in which the date of commercial operation of the last generating unit, other than any
145 generating unit providing additional project capacity, of the project occurs, or, in the case of
146 any facilities providing additional project capacity, with the fiscal year of the candidate
147 following the fiscal year of the candidate in which the date of commercial operation of the
148 generating unit providing the additional project capacity occurs; and

149 ~~[(b)]~~ (ii) with respect to any ~~[other]~~ taxing ~~[jurisdictions]~~ jurisdiction other than a
150 taxing jurisdiction described in Subsection (1)(c)(i), with the fiscal year of the taxing
151 jurisdiction in which construction of the project commences, or, in the case of facilities

152 providing additional project capacity, with the fiscal year of the taxing jurisdiction in which
153 construction of those facilities commences.

154 (d) The ~~[requirements]~~ requirement to pay ~~[these fees]~~ an annual fee shall continue for
155 the period of the useful life of the project or facilities.

156 (2) (a) ~~[Because]~~ The annual fees due a school district shall be as provided in
157 Subsection (2)(b) because the ad valorem property tax imposed by a school district and
158 authorized by the Legislature under Section 53A-17a-135 represents both:

159 ~~[(a)]~~ (i) a levy mandated by the state for the state minimum school program under
160 Section 53A-17a-135; and

161 ~~[(b)]~~ (ii) local levies for capital outlay, maintenance, transportation, and other purposes
162 under Sections 11-2-7, 53A-16-107, 53A-16-110, 53A-17a-126, 53A-17a-127, 53A-17a-133,
163 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103~~[-the]~~.

164 (b) ~~The annual [fee in lieu of ad valorem property tax]~~ fees due a school district shall
165 be as follows:

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

169 (ii) for all other local property tax levies authorized to be imposed by a school district,
170 the project entity shall pay to the school district either ~~[a]~~:

171 (A) an annual fee ~~[in lieu of ad valorem property tax]~~; or

172 (B) impact alleviation payments under contracts or determination orders provided for
173 in Sections 11-13-305 and 11-13-306~~[-for all other local property tax levies authorized]~~.

174 (3) (a) ~~[The]~~ An annual fee due a taxing jurisdiction for a particular year shall be
175 calculated by multiplying the tax rate or rates of the jurisdiction for that year by the product
176 obtained by multiplying the ~~[taxable]~~ fee base or value determined in accordance with
177 Subsection (4) for that year of the portion of the project located within the jurisdiction by the
178 percentage of the project which is used to produce the capacity, service, or other benefit sold to
179 the energy supplier or suppliers.

180 (b) As used in this section, "tax rate," when applied in respect to a school district,
181 includes any assessment to be made by the school district under Subsection (2) or Section
182 63-51-6.

183 (c) There is to be credited against the annual fee due a taxing jurisdiction for each year,
184 an amount equal to the debt service, if any, payable in that year by the project entity on bonds,
185 the proceeds of which were used to provide public facilities and services for impact alleviation
186 in the taxing jurisdiction in accordance with Sections 11-13-305 and 11-13-306.

187 (d) The tax rate for the taxing jurisdiction for that year shall be computed so as to:

188 ~~(a)~~ (i) take into account the ~~[taxable]~~ fee base or value of the percentage of the project
189 located within the taxing jurisdiction determined in accordance with Subsection (4) used to
190 produce the capacity, service, or other benefit sold to the supplier or suppliers; and

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

192 (4) (a) Except as otherwise provided in this section, the annual fees required by this
193 section shall be paid, collected, and distributed to the taxing jurisdiction as if:

194 (i) the annual fees were ad valorem property taxes; and

195 (ii) the project were assessed at the same rate and upon the same measure of value as
196 taxable property in the state.

197 (b) (i) Notwithstanding Subsection (4)(a), for purposes of an annual fee required by
198 this section, the fee base of a project may be determined in accordance with an agreement
199 among:

200 (A) the project entity; and

201 (B) any county that:

202 (I) is due an annual fee from the project entity; and

203 (II) agrees to have the fee base of the project determined in accordance with the
204 agreement described in this Subsection (4).

205 (ii) The agreement described in Subsection (4)(b)(i):

206 (A) shall specify each year for which the fee base determined by the agreement shall be
207 used for purposes of an annual fee; and

208 (B) may not modify any provision of this chapter except the method by which the fee
209 base of a project is determined for purposes of an annual fee.

210 (iii) For purposes of an annual fee imposed by a taxing jurisdiction within a county
211 described in Subsection (4)(b)(i)(B), the fee base determined by the agreement described in
212 Subsection (4)(b)(i) shall be used for purposes of an annual fee imposed by that taxing
213 jurisdiction.

214 (iv) (A) If there is not agreement as to the fee base of a portion of a project for any
215 year, for purposes of an annual fee, the State Tax Commission shall determine the value of that
216 portion of the project for which there is not an agreement:

217 (I) for that year; and

218 (II) using the same measure of value as is used for taxable property in the state.

219 (B) The [assessment] valuation required by Subsection (4)(b)(iv)(A) shall be made by
220 the State Tax Commission in accordance with rules [promulgated] made by [it] the State Tax
221 Commission.

222 (c) Payments of the annual fees shall be made from:

223 (i) the proceeds of bonds issued for the project; and [from]

224 (ii) revenues derived by the project entity from the project[; and the].

225 (d) (i) The contracts of the project entity with the purchasers of the capacity, service, or
226 other benefits of the project whose tangible property is not exempted by Utah Constitution
227 Article XIII, Section 2, from the payment of ad valorem property tax shall require each
228 purchaser, whether or not located in the state, to pay, to the extent not otherwise provided for,
229 its share, determined in accordance with the terms of the contract, of these fees.

230 (ii) It is the responsibility of the project entity to enforce the obligations of the
231 purchasers.

232 (5) (a) The responsibility of the project entity to make payment of the annual fees is
233 limited to the extent that there is legally available to the project entity, from bond proceeds or
234 revenues, monies to make these payments, and the obligation to make payments of the annual
235 fees is not otherwise a general obligation or liability of the project entity.

236 (b) No tax lien may attach upon any property or money of the project entity by virtue of
237 any failure to pay all or any part of [the] an annual fee.

238 (c) The project entity or any purchaser may contest the validity of [the] an annual fee to
239 the same extent as if the payment was a payment of the ad valorem property tax itself.

240 (d) The payments of [the] an annual fee shall be reduced to the extent that any contest
241 is successful.

242 (6) (a) Any public agency that is not a project entity and that owns an interest in
243 facilities providing additional project capacity which, if its tangible property is not exempted
244 by Utah Constitution, Article XIII, Section 2, from the payment of ad valorem property tax,

245 uses any capacity, service, or other benefit from it or which sells any capacity, service, or other
 246 benefit from it to an energy supplier or suppliers whose tangible property is not exempted by
 247 Utah Constitution, Article XIII, Section 2, from the payment of ad valorem property tax, shall
 248 pay an annual fee [~~in lieu of ad valorem property tax~~] with respect to its ownership interest, and
 249 shall have the obligations, credits, rights, and protections set forth in Subsections (1) [~~through~~],
 250 (2), (3), (4)(a), (4)(c), (4)(d), and (5) with respect to its ownership interest as though it were a
 251 project entity.

252 (b) The ownership interest of a public agency upon which [~~a fee in lieu of ad valorem~~
 253 ~~property tax~~] an annual fee is payable is not subject to:

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

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

256 (c) Each public agency and project entity that owns an interest in facilities providing
 257 additional project capacity:

258 (i) is subject to [~~a fee in lieu of ad valorem property tax~~] an annual fee only with
 259 respect to that ownership interest; and

260 (ii) is not subject to [~~a fee in lieu of ad valorem property tax~~] an annual fee with respect
 261 to any portion of the facilities providing additional project capacity that it does not own.

262 Section 4. Section **11-13-310** is amended to read:

263 **11-13-310. Termination of impact alleviation contract.**

264 If the project or any part of it or the facilities providing additional project capacity or
 265 any part of them, or the output from the project or facilities providing additional project
 266 capacity become subject, in addition to the requirements of Section 11-13-302, to ad valorem
 267 property taxation or other payments in lieu of ad valorem property taxation, or other form of
 268 tax equivalent payments to any candidate which is a party to an impact alleviation contract with
 269 respect to the project or facilities providing additional project capacity or is receiving impact
 270 alleviation payments or means with respect to the project or facilities providing additional
 271 project capacity pursuant to a determination by the board, then the impact alleviation contract
 272 or the requirement to make impact alleviation payments or provide means therefor pursuant to
 273 the determination, as the case may be, shall, at the election of the candidate, terminate. In any
 274 event, each impact alleviation contract or determination order shall terminate upon the project,
 275 or, in the case of facilities providing additional project capacity, those facilities becoming

276 subject to the provisions of Section 11-13-302, except that no impact alleviation contract or
277 agreement entered by a school district shall terminate because of in lieu ad valorem property
278 tax fees levied under Subsection 11-13-302(2)[~~(a)~~] (b)(i) or because of ad valorem property
279 taxes levied under Section 53A-17a-135 for the state minimum school program. In addition, if
280 the construction of the project, or, in the case of facilities providing additional project capacity,
281 of those facilities, is permanently terminated for any reason, each impact alleviation contract
282 and determination order, and the payments and means required thereunder, shall terminate. No
283 termination of an impact alleviation contract or determination order may terminate or reduce
284 any liability previously incurred pursuant to the contract or determination order by the
285 candidate beneficiary under it. If the provisions of Section 11-13-302, or its successor, are held
286 invalid by a court of competent jurisdiction, and no ad valorem taxes or other form of tax
287 equivalent payments are payable, the remaining provisions of this chapter shall continue in
288 operation without regard to the commencement of commercial operation of the last generating
289 unit of that project or of facilities providing additional project capacity.

290 Section 5. Section **11-13-311** is amended to read:

291 **11-13-311. Credit for impact alleviation payments against in lieu of ad valorem**
292 **property taxes -- Federal or state assistance.**

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

300 (2) Each candidate may make application to any federal or state governmental authority
301 for any assistance that may be available from that authority to alleviate the impacts to the
302 candidate. To the extent that the impact was attributable to the project or to the facilities
303 providing additional project capacity, any assistance received from that authority shall be
304 credited to the alleviation obligation with respect to the project or the facilities providing
305 additional project capacity, as the case may be, in proportion to the percentage of impact
306 attributable to the project or facilities providing additional project capacity, but in no event

307 shall the candidate realize less revenues than would have been realized without receipt of any
308 assistance.

309 (3) With respect to school districts the fee in lieu of ad valorem property tax for the
310 state minimum school program required to be paid by the project entity or other public agency
311 under Subsection 11-13-302(2)[(a)] (b)(i) shall be treated as a separate fee and shall not affect
312 any credits for alleviation payments received by the school districts under Subsection
313 11-13-302(2)[(a)] (b)(i), or Sections 11-13-305 and 11-13-306.

Legislative Review Note
as of 12-2-02 11:17 AM

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

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-12-02 2:10 PM

The Public Utilities and Technology Interim Committee recommended this bill.

Fiscal Note
Bill Number SB0021

Amendments to the Interlocal Cooperation Act

07-Jan-03

4:20 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst