

1 **AMENDMENTS TO INTERLOCAL**

2 **COOPERATION ACT**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David L. Gladwell**

6 **This act modifies the Interlocal Cooperation Act to specify matters that can be the subject**
7 **of an interlocal agreement between two or more public agencies. The act modifies**
8 **provisions relating to the approval of interlocal agreements and imposes additional**
9 **requirements on interlocal agreements that are required to be approved by a public**
10 **agency's legislative body. The act provides for the powers, immunities, and privileges of**
11 **law enforcement officers performing duties under an interlocal agreement for law**
12 **enforcement services. The act expands the entities with which a political subdivision may**
13 **share its revenues. The act enacts provisions relating to the status of employees of public**
14 **agencies who perform duties under an interlocal agreement with another public agency.**
15 **The act also makes technical changes.**

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

17 AMENDS:

18 **11-13-103**, as renumbered and amended by Chapter 286, Laws of Utah 2002

19 **11-13-202**, as renumbered and amended by Chapter 286, Laws of Utah 2002

20 **11-13-212**, as renumbered and amended by Chapter 286, Laws of Utah 2002

21 **11-13-215**, as renumbered and amended by Chapter 286, Laws of Utah 2002

22 **11-13-216**, as renumbered and amended by Chapter 286, Laws of Utah 2002

23 **11-13-222**, as renumbered and amended by Chapter 286, Laws of Utah 2002

24 ENACTS:

25 **11-13-202.5**, Utah Code Annotated 1953

26 **11-13-203.5**, Utah Code Annotated 1953

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



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

29 **11-13-103. Definitions.**

30 As used in this chapter:

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

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

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

39 (2) "Board" means the Permanent Community Impact Fund Board created by Section
40 9-4-304, and its successors.

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

42 (a) the state;

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

45 (c) a prosecution district.

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

48 (a) has no taxing authority; and

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

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

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

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

57 (6) "Electric interlocal entity" means an interlocal entity described in Subsection
58 11-13-203(3).

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

61 (8) "Interlocal agreement" means an agreement between two or more public agencies
62 under the authority of this chapter.

63 [~~8~~] (9) "Interlocal entity" means:

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

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

67 [~~9~~] (10) "Out-of-state public agency" means a public agency as defined in Subsection
68 [~~12~~] (13)(c), (d), or (e).

69 [~~10~~] (11) (a) "Project":

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

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

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

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

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

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

81 [~~12~~] (13) "Public agency" means:

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

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

85 (c) any agency of the United States;

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

89 (e) any Indian tribe, band, nation, or other organized group or community which is

90 recognized as eligible for the special programs and services provided by the United States to
91 Indians because of their status as Indians.

92 [~~(13)~~] (14) "Utah interlocal entity":

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

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

96 [~~(14)~~] (15) "Utah public agency" means a public agency under Subsection [~~(12)~~]
97 (13)(a) or (b).

98 Section 2. Section 11-13-202 is amended to read:

99 **11-13-202. Agreements for joint or cooperative action -- Resolutions by governing**
100 **bodies required.**

101 (1) Any two or more public agencies may enter into an interlocal agreement with one
102 another under this chapter:

103 (a) for joint or cooperative action [under this chapter.];

104 (b) to provide services that they are individually authorized by statute to provide;

105 (c) to exchange services that they are individually authorized by statute to provide;

106 (d) for a public agency to provide law enforcement services to one or more other public
107 agencies, if the public agency providing law enforcement services under the interlocal
108 agreement is authorized by law to provide those services, or to provide joint or cooperative law
109 enforcement services between or among public agencies authorized by law to provide those
110 services; and

111 (e) to do anything else that they are individually authorized by statute to do.

112 (2) An agreement under Subsection (1) does not take effect until [~~the governing body~~
113 ~~of each public agency entering into the agreement adopts a resolution approving the~~
114 ~~agreement.] it has been approved, as provided in Section 11-13-202.5, by each public agency
115 that is a party to it.~~

116 Section 3. Section 11-13-202.5 is enacted to read:

117 **11-13-202.5. Approval of interlocal agreements -- Review by attorney.**

118 (1) Each interlocal agreement shall be approved by:

119 (a) except as provided in Subsections (1)(b) and (c), the commission, board, council, or
120 other body or officer vested with the executive power of the public agency;

121 (b) the legislative body of the public agency if the interlocal agreement:
 122 (i) requires the public agency to adjust its budget for a current or future fiscal year;
 123 (ii) includes an out-of-state public agency as a party;
 124 (iii) provides for the public agency to acquire or construct:
 125 (A) a facility; or
 126 (B) an improvement to real property;
 127 (iv) provides for the public agency to acquire or transfer title to real property;
 128 (v) provides for the public agency to issue bonds;
 129 (vi) creates an interlocal entity; or
 130 (vii) provides for the public agency to share taxes or other revenues; or
 131 (c) if the public agency is a public agency under Subsection 11-13-103(13)(b), the
 132 director or other head of the applicable state department, division, or agency.

133 (2) If an interlocal agreement is required under Subsection (1) to be approved by the
 134 public agency's legislative body, the ordinance approving the interlocal agreement shall:

135 (a) specify the effective date of the interlocal agreement; and
 136 (b) if the interlocal agreement creates an interlocal entity:
 137 (i) declare that it is the legislative body's intent to create an interlocal entity;
 138 (ii) describe the public purposes for which the interlocal entity is created; and
 139 (iii) describe the powers, duties, and functions of the interlocal entity.

140 (3) The officer or body required under Subsection (1) to approve an interlocal
 141 agreement shall, before the agreement may take effect, submit the agreement to the attorney
 142 authorized to represent the public agency for review as to proper form and compliance with
 143 applicable law.

144 Section 4. Section **11-13-203.5** is enacted to read:

145 **11-13-203.5. Interlocal agreement for law enforcement.**

146 (1) While performing duties under an interlocal agreement for law enforcement
 147 services, each law enforcement officer shall possess:

148 (a) all law enforcement powers that the officer possesses within the officer's own
 149 jurisdiction, including the power to arrest; and

150 (b) the same immunities and privileges as if the duties were performed within the
 151 officer's own jurisdiction.

152 (2) Each interlocal agreement between a Utah public agency and an out-of-state public
 153 agency providing for reciprocal law enforcement services shall require each person from the
 154 other state assigned to law enforcement duty in this state:

155 (a) to be certified as a peace officer in the state of the out-of-state public agency; and

156 (b) to apply to the Peace Officer Standards and Training Council, created in Section
 157 53-6-106, for recognition before undertaking duties in this state under the interlocal agreement.

158 Section 5. Section **11-13-212** is amended to read:

159 **11-13-212. Contracts between public agencies or with interlocal entities to**
 160 **perform services, activities, or undertakings -- Facilities and improvements.**

161 (1) (a) Public agencies may contract with each other and one or more public agencies
 162 may contract with an interlocal entity created under this chapter to perform any service,
 163 activity, or undertaking which each public agency entering into the contract is authorized by
 164 law to perform.

165 (b) Each contract under Subsection (1)(a) shall be authorized [~~by the governing body of~~
 166 ~~each party to the contract~~] as provided in Section 11-13-202.5.

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

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

173 (2) An interlocal entity created by agreement under this chapter may create, construct,
 174 or otherwise acquire facilities or improvements to render services or provide benefits in excess
 175 of those required to meet the needs or requirements of the public agencies that are parties to the
 176 agreement if it is determined by the public agencies to be necessary to accomplish the purposes
 177 and realize the benefits set forth in Section 11-13-102.

178 Section 6. Section **11-13-215** is amended to read:

179 **11-13-215. Sharing tax or other revenues.**

180 [~~Any~~] (1) A county, city, town, or other local political subdivision may, at the
 181 discretion of the local governing body, share its tax and other revenues with other counties,
 182 cities, towns, or local political subdivisions, the state, or a federal government agency. [~~Any~~]

183 (2) Each decision to share tax and other revenues shall be ~~[by local ordinance,~~
184 ~~resolution, or interlocal agreement]~~ made as provided in Section 11-13-202.5.

185 Section 7. Section **11-13-216** is amended to read:

186 **11-13-216. Term of agreements -- Governing body authorization of agreements.**

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

190 Section 8. Section **11-13-222** is amended to read:

191 **11-13-222. Privileges and immunities of public agencies extended to officers and**
192 **employees performing services under agreements.**

193 ~~[Officers]~~ (1) Each officer and [employees] employee performing services for two or
194 more public agencies [pursuant to agreements executed under this chapter] under an interlocal
195 agreement shall be considered to be [officers and employees]:

196 (a) an officer or employee of the public agency employing [their] the officer or
197 employee's services even though [performing] the officer or employee performs those functions
198 outside of the territorial limits of any one of the contracting public agencies[;]; and [shall be
199 considered officers and employees]

200 (b) an officer or employee of the public agencies under the provisions of Title 63,
201 Chapter 30, [Utah] Governmental Immunity Act.

202 (2) Unless otherwise provided in an interlocal agreement that creates an interlocal
203 entity, each employee of a public agency that is a party to the interlocal agreement shall:

204 (a) remain an employee of that public agency, even though assigned to perform
205 services for another public agency under the interlocal agreement; and

206 (b) continue to be governed by the rules, rights, entitlements, and status that apply to an
207 employee of that public agency.

208 (3) All of the privileges, immunities from liability, exemptions from laws, ordinances,
209 and rules, pensions and relief, disability, workers compensation, and other benefits that apply
210 to an officer, agent, or employee of a public agency while performing functions within the
211 territorial limits of the public agency apply to the same degree and extent when the officer,
212 agent, or employee performs functions or duties under the interlocal agreement outside the
213 territorial limits of that public agency.

Legislative Review Note

as of 1-29-03 9:47 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0074

Amendments to Interlocal Cooperation Act

03-Feb-03
10:37 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst