

1 **INTERLOCAL COOPERATION ACT**

2 **AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Curtis S. Bramble**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to interlocal cooperation entities.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines interlocal fire protection entities;
- 13 ▶ provides an exception to a prohibition against levying and collecting a property tax
14 for interlocal fire protection entities;
- 15 ▶ requires voter approval for a property tax levied by an interlocal fire protection
16 entity;
- 17 ▶ prohibits an election for voter approval of a property tax increase within five years
18 of a previous election approving the levy of a property tax by an interlocal fire
19 protection entity; and
- 20 ▶ authorizes interlocal fire protection entities to:
- 21 • share tax revenues with Utah public agencies that are parties to the agreement
22 creating the interlocal fire protection entity; and
 - 23 • acquire real property by eminent domain.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **11-13-103**, as last amended by Chapter 21, Laws of Utah 2003

31 **11-13-202.5**, as enacted by Chapter 38, Laws of Utah 2003

32 **11-13-204**, as last amended by Chapter 21, Laws of Utah 2003

33 **17A-1-403**, as last amended by Chapter 131, Laws of Utah 2003



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

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

37 **11-13-103. Definitions.**

38 As used in this chapter:

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

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

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

47 (2) "Board" means the Permanent Community Impact Fund Board created by Section
48 9-4-304, and its successors.

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

50 (a) the state;

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

53 (c) a prosecution district.

54 (4) "Commercial project entity" means a project entity, defined in Subsection [~~(12)~~]
55 (13), that:

56 (a) has no taxing authority; and

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

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

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

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

65 (6) "Electric interlocal entity" means an interlocal entity described in Subsection
66 11-13-203(3).

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

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

72 (i) generation capacity;

73 (ii) generation output; or

74 (iii) an electric energy production facility.

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

78 (9) "Interlocal entity" means:

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

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

82 (10) "Interlocal fire protection entity" means a Utah interlocal entity created to provide
83 fire protection, emergency, and emergency medical services.

84 [~~(10)~~] (11) "Out-of-state public agency" means a public agency as defined in
85 Subsection [~~(13)~~] (14)(c), (d), or (e).

86 [~~(11)~~] (12) (a) "Project":

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

89 (ii) includes fuel or fuel transportation facilities and water facilities owned by that Utah

90 interlocal entity or electric interlocal entity and required for the generation and transmission
91 facility.

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

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

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

96 ~~[(12)]~~ (13) "Project entity" means a Utah interlocal entity or an electric interlocal entity
97 that owns a project.

98 ~~[(13)]~~ (14) "Public agency" means:

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

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

102 (c) any agency of the United States;

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

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

109 ~~[(14)]~~ (15) "Qualified energy services interlocal entity" means an energy services
110 interlocal entity that at the time that the energy services interlocal entity acquires its interest in
111 facilities providing additional project capacity has at least five members that are Utah public
112 agencies.

113 ~~[(15)]~~ (16) "Utah interlocal entity":

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

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

117 ~~[(16)]~~ (17) "Utah public agency" means a public agency under Subsection ~~[(13)]~~
118 ~~(14)~~(a) or (b).

119 Section 2. Section **11-13-202.5** is amended to read:

120 **11-13-202.5. Approval of certain agreements -- Review by attorney.**

121 (1) Each agreement under Section 11-13-202 [~~and each agreement under Section~~],
122 11-13-203, or 11-13-212 shall be approved by:

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

125 (b) the legislative body of the public agency if the agreement:

126 (i) requires the public agency to adjust its budget for a current or future fiscal year;

127 (ii) includes an out-of-state public agency as a party;

128 (iii) provides for the public agency to acquire or construct:

129 (A) a facility; or

130 (B) an improvement to real property;

131 (iv) provides for the public agency to acquire or transfer title to real property;

132 (v) provides for the public agency to issue bonds;

133 (vi) creates an interlocal entity; or

134 (vii) provides for the public agency to share taxes or other revenues; or

135 (c) if the public agency is a public agency under Subsection 11-13-103[~~(13)~~] (14)(b),
136 the director or other head of the applicable state department, division, or agency.

137 (2) If an agreement is required under Subsection (1) to be approved by the public
138 agency's legislative body, the resolution or ordinance approving the agreement shall:

139 (a) specify the effective date of the agreement; and

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

141 (i) declare that it is the legislative body's intent to create an interlocal entity;

142 (ii) describe the public purposes for which the interlocal entity is created; and

143 (iii) describe the powers, duties, and functions of the interlocal entity.

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

147 Section 3. Section **11-13-204** is amended to read:

148 **11-13-204. Powers and duties of interlocal entities -- Additional powers of energy**
149 **services interlocal entities -- Length of term of agreement and interlocal entity -- Notice to**
150 **State Tax Commission -- Taxing and other powers and duties of an interlocal fire**
151 **protection entity.**

152 (1) (a) An interlocal entity:
153 (i) may:
154 (A) adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation
155 of its affairs and the conduct of its business;
156 (B) sue and be sued;
157 (C) have an official seal and alter that seal at will;
158 (D) make and execute contracts and other instruments necessary or convenient for the
159 performance of its duties and the exercise of its powers and functions;
160 (E) acquire real or personal property, or an undivided, fractional, or other interest in
161 real or personal property, necessary or convenient for the purposes contemplated in the
162 agreement creating the interlocal entity and sell, lease, or otherwise dispose of that property;
163 (F) directly or by contract with another:
164 (I) own and acquire facilities and improvements or an undivided, fractional, or other
165 interest in facilities and improvements;
166 (II) construct, operate, maintain, and repair facilities and improvements; and
167 (III) provide the services contemplated in the agreement creating the interlocal entity;
168 (G) borrow money, incur indebtedness, and issue revenue bonds, notes, or other
169 obligations and secure their payment by an assignment, pledge, or other conveyance of all or
170 any part of the revenues and receipts from the facilities, improvements, or services that the
171 interlocal entity provides;
172 (H) offer, issue, and sell warrants, options, or other rights related to the bonds, notes, or
173 other obligations issued by the interlocal entity; and
174 (I) sell or contract for the sale of the services, output, product, or other benefits
175 provided by the interlocal entity to:
176 (I) public agencies inside or outside the state; and
177 (II) with respect to any excess services, output, product, or benefits, any person on
178 terms that the interlocal entity considers to be in the best interest of the public agencies that are
179 parties to the agreement creating the interlocal entity; and
180 (ii) may not, except as provided under Subsection (6) for an interlocal fire protection
181 entity, levy, assess, or collect ad valorem property taxes.
182 (b) An assignment, pledge, or other conveyance under Subsection (1)(a)(i)(G) may, to

183 the extent provided by the documents under which the assignment, pledge, or other conveyance
184 is made, rank prior in right to any other obligation except taxes or payments in lieu of taxes
185 payable to the state or its political subdivisions.

186 (2) An energy services interlocal entity:

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

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

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

192 (b) may:

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

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

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

202 (iv) adopt and implement risk management policies and strategies and enter into
203 transactions and agreements to manage the risks associated with the purchase and sale of
204 energy, including forward purchase and sale contracts, hedging, tolling and swap agreements,
205 and other instruments.

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

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

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

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

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

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

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

222 (i) be accompanied by:

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

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

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

230 (5) Nothing in this section shall be construed as expanding the rights of any
231 municipality or interlocal entity to sell or provide retail service.

232 (6) (a) An interlocal fire protection entity may levy, assess, and collect an ad valorem
233 property tax on taxable property within the boundaries of the interlocal fire protection entity, as
234 provided in this Subsection (6), to carry out the purposes for which the entity was created.

235 (b) (i) An interlocal fire protection entity may not levy a property tax without receiving
236 voter approval for the levy at an election held for that purpose.

237 (ii) Each election under Subsection (6)(b)(i) shall be held in the manner provided in
238 Chapter 14, Utah Municipal Bond Act, and shall ask voters whether the interlocal fire
239 protection agency should be authorized to levy a property tax up to a percentage of taxable
240 value of taxable property that the interlocal fire protection entity designates.

241 (iii) An election to approve a property tax levy at a rate higher than the rate approved at
242 an election under Subsection (6)(b)(ii) may not be held within five years after the previous
243 election.

244 (c) In order to carry out the purposes for which it was created, an interlocal fire

245 protection entity may share its tax and other revenues with the Utah public agencies that are
246 parties to the agreement creating the interlocal fire protection agency.

247 (d) An interlocal fire protection entity may acquire by eminent domain real property
248 that is necessary or convenient for the purposes for which the interlocal fire protection entity
249 was created.

250 (e) In levying and collecting property tax and in preparing and adopting a budget, each
251 interlocal fire protection entity shall comply with Title 17A, Chapter 1, Part 4, Uniform Fiscal
252 Procedures for Special Districts Act.

253 Section 4. Section **17A-1-403** is amended to read:

254 **17A-1-403. Applicability to special districts -- Exceptions.**

255 This part applies to all special districts under Subsection 17A-1-404(19) except the
256 following districts which are specifically excluded from this part:

- 257 (1) redevelopment agencies created under Title 17B, Chapter 4;
- 258 (2) public transit districts created under Chapter 2, Part 10;
- 259 (3) health departments created under Title 26A, Chapter 1; and
- 260 (4) entities created under Title 11, Chapter 13, Interlocal Cooperation Act, unless the
261 entity is:

262 (a) also a mental health district created under Chapter 3, Part 6, Local Mental Health
263 Authorities[-]; or

264 (b) an interlocal fire protection entity, as defined in Section 11-13-103.

Legislative Review Note
as of 2-8-05 5:41 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0209

Interlocal Cooperation Act Amendments

16-Feb-05

10:26 AM

State Impact

Passage of this bill could increase local revenues for fire protection. The impact would be dependent upon voter approval.

Individual and Business Impact

If passed by eligible entities property taxes could increase for fire protection.

Office of the Legislative Fiscal Analyst