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INTERLOCAL ENERGY AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses the provision of certain energy services by an interlocal entity.

Highlighted Provisions:

This bill:

- ▶ addresses the provision of retail electric service by an energy services interlocal entity;
- ▶ allows certain energy services interlocal entities to provide service outside their municipal members' boundaries under certain circumstances; and
- ▶ addresses the Public Service Commission's role in the provision of certain service by an energy services interlocal entity.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-13-204, as last amended by Laws of Utah 2009, Chapter 350

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

Section 1. Section **11-13-204** is amended to read:



28 **11-13-204. Powers and duties of interlocal entities -- Additional powers of energy**
29 **services interlocal entities -- Length of term of agreement and interlocal entity -- Notice to**
30 **lieutenant governor -- Recording requirements -- Public Service Commission.**

31 (1) (a) An interlocal entity:

32 (i) may:

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

35 (B) sue and be sued;

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

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

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

42 (F) directly or by contract with another:

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

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

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

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

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

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

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

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

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

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

64 (2) An energy services interlocal entity:

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

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

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

70 (b) may:

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

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

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

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

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

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

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

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

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

96 (4) (a) The governing body of each party to the agreement to approve the creation of an
97 interlocal entity, including an electric interlocal entity and an energy services interlocal entity,
98 under Section 11-13-203 shall:

99 (i) within 30 days after the date of the agreement, jointly file with the lieutenant
100 governor:

101 (A) a copy of a notice of an impending boundary action, as defined in Section
102 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

103 (B) if less than all of the territory of any Utah public agency that is a party to the
104 agreement is included within the interlocal entity, a copy of an approved final local entity plat,
105 as defined in Section 67-1a-6.5; and

106 (ii) upon the lieutenant governor's issuance of a certificate of creation under Section
107 67-1a-6.5:

108 (A) if the interlocal entity is located within the boundary of a single county, submit to
109 the recorder of that county:

110 (I) the original:

111 (Aa) notice of an impending boundary action;

112 (Bb) certificate of creation; and

113 (Cc) approved final local entity plat, if an approved final local entity plat was required
114 to be filed with the lieutenant governor under Subsection (4)(a)(i)(B); and

115 (II) a certified copy of the agreement approving the creation of the interlocal entity; or

116 (B) if the interlocal entity is located within the boundaries of more than a single
117 county:

118 (I) submit to the recorder of one of those counties:

119 (Aa) the original of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb), and
120 (Cc); and

121 (Bb) a certified copy of the agreement approving the creation of the interlocal entity;
122 and

123 (II) submit to the recorder of each other county:

124 (Aa) a certified copy of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb),
125 and (Cc); and

126 (Bb) a certified copy of the agreement approving the creation of the interlocal entity.

127 (b) Upon the lieutenant governor's issuance of a certificate of creation under Section
128 67-1a-6.5, the interlocal entity is created.

129 (c) Until the documents listed in Subsection (4)(a)(ii) are recorded in the office of the
130 recorder of each county in which the property is located, a newly created interlocal entity may
131 not charge or collect a fee for service provided to property within the interlocal entity.

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

134 (6) Except as provided in Subsection (7) and Section 10-8-14:

135 (a) nothing in this section may be construed to expand or limit the rights of a
136 municipality to sell or provide retail electric service; and

137 (b) an energy services interlocal entity may not provide retail electric service to
138 customers located outside the municipal boundaries of its members.

139 (7) (a) An energy services interlocal entity created before July 1, 2003, that is
140 comprised solely of Utah municipalities and that, for a minimum of 50 years before July 1,
141 2010, provided retail electric service to customers outside the municipal boundaries of its
142 members, may provide retail electric service outside the municipal boundaries of its members
143 if the energy services interlocal entity:

144 (i) enters into a written agreement with each public utility holding a certificate of
145 public convenience and necessity issued by the Public Service Commission for the energy
146 services interlocal entity to be responsible to provide electric service in the geographic area
147 outside the municipal boundaries of the members of the energy services interlocal entity;

148 (ii) obtains a franchise agreement, with the legislative body of the county or other
149 governmental entity for the geographic area in which the energy services interlocal entity
150 provides service outside the municipal boundaries of its members; and

151 (iii) applies for and obtains from the Public Service Commission approval of the

152 agreement specified in Subsection (7)(a)(ii).

153 (b) (i) The Public Service Commission shall approve an agreement described in
154 Subsection (7)(a)(ii) unless it determines, based upon substantial evidence, that the agreement
155 is contrary to the public interest.

156 (ii) In approving an agreement, the commission shall also amend the certificate of
157 public convenience and necessity of any public utility described in Subsection (7)(a)(i) to
158 delete from the geographic area specified in the certificate or certificates of the public utility
159 the geographic area that the energy services interlocal entity has agreed to serve.

160 (c) In providing retail electric service to customers outside of the municipal boundaries
161 of its members, but not within the municipal boundaries of another municipality, an energy
162 services interlocal entity shall comply with the following:

163 (i) the rates and conditions of service for customers outside the municipal boundaries
164 of the members shall be at least as favorable as the rates and conditions of service for similarly
165 situated customers within the municipal boundaries of the members;

166 (ii) the energy services interlocal entity shall operate as a single entity providing
167 service both inside and outside of the municipal boundaries of its members;

168 (iii) a general rebate, refund, or other payment made to customers located within the
169 municipal boundaries of the members shall also be provided to similarly situated customers
170 located outside the municipal boundaries of the members;

171 (iv) a schedule of rates and conditions of service, or any change to the rates and
172 conditions of service, shall be approved by the governing body of the energy services interlocal
173 entity;

174 (v) before implementation of any rate increase, the governing body of the energy
175 services interlocal entity shall first hold a public meeting to take public comment on the
176 proposed increase, after providing at least 20 days and not more than 60 days' notice published
177 in a newspaper of general circulation within the service area of the energy services interlocal
178 entity; and

179 (vi) the energy services interlocal entity shall file with the Public Service Commission
180 its current schedule of rates and conditions of service.

181 (d) The Public Service Commission shall make the schedule of rates and conditions of
182 service of the energy services interlocal entity available for public inspection.

183 (e) Nothing in this section:
184 (i) gives the Public Service Commission jurisdiction over the provision of retail
185 electric service by an energy services interlocal entity within the municipal boundaries of its
186 members; or

187 (ii) makes an energy services interlocal entity a public utility under Title 54, Public
188 Utilities.

189 (f) Nothing in this section expands or diminishes the jurisdiction of the Public Service
190 Commission over a municipality or an association of municipalities organized under Title 11,
191 Chapter 13, Interlocal Cooperation Act, except as specifically authorized by this section's
192 language.

Legislative Review Note
as of 2-24-10 4:55 PM

Office of Legislative Research and General Counsel

S.B. 227 - Interlocal Energy Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
