

INTERLOCAL ACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Johnny Anderson

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Political Subdivisions Interim Committee recommended this bill.

General Description:

This bill enacts language related to the governance of an interlocal entity.

Highlighted Provisions:

This bill:

- ▶ requires parties entering into an interlocal agreement to identify with specificity the rules, policies, and procedures that will govern the interlocal entity;
- ▶ amends provisions governing an interlocal entity's compliance with public meeting requirements;
- ▶ requires an interlocal entity to adopt certain budget and fiscal procedures;
- ▶ exempts a taxed interlocal entity from certain provisions; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-13-204, as last amended by Laws of Utah 2010, Chapter 173



28 **11-13-206**, as renumbered and amended by Laws of Utah 2002, Chapter 286

29 **11-13-223**, as last amended by Laws of Utah 2007, Chapter 249

30 **11-13-315**, as enacted by Laws of Utah 2013, Chapter 230

31 ENACTS:

32 **11-13-225**, Utah Code Annotated 1953



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

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

36 **11-13-204. Powers and duties of interlocal entities -- Additional powers of energy**
37 **services interlocal entities -- Length of term of agreement and interlocal entity -- Notice to**
38 **lieutenant governor -- Recording requirements -- Public Service Commission.**

39 (1) (a) An interlocal entity:

40 [~~(i) may:~~]

41 [~~(A)~~] (i) in accordance with Subsection (1)(c), shall adopt~~[, amend, and repeal rules,]~~
42 bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business;

43 (ii) may:

44 (A) amend or repeal a bylaw, policy, or procedure;

45 (B) sue and be sued;

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

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

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

52 (F) directly or by contract with another:

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

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

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

57 (G) borrow money, incur indebtedness, and issue revenue bonds, notes, or other
58 obligations and secure their payment by an assignment, pledge, or other conveyance of all or

59 any part of the revenues and receipts from the facilities, improvements, or services that the
60 interlocal entity provides;

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

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

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

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

69 ~~[(†)]~~ (iii) may not levy, assess, or collect ad valorem property taxes.

70 (b) An assignment, pledge, or other conveyance under Subsection (1)(a)~~[(†)]~~(ii)(G)
71 may, to the extent provided by the documents under which the assignment, pledge, or other
72 conveyance is made, rank prior in right to any other obligation except taxes or payments in lieu
73 of taxes payable to the state or its political subdivisions.

74 (c) (i) An interlocal entity shall adopt with specificity the rules, policies, and
75 procedures of one member public agency that has rules, policies, and procedures that are:

76 (A) the most applicable to the purpose and daily functions of the interlocal entity; and

77 (B) the most restrictive.

78 (ii) (A) The interlocal entity shall comply with an applicable state administrative rule
79 or statutory requirement that is applicable to the member public agency described in Subsection
80 (1)(c)(i).

81 (B) If the rules, policies, procedures, or governing state administrative rules or statutes
82 of the public agency described in Subsection (1)(c)(i) are silent as to a particular issue, policy,
83 procedure, or other governance matter intrinsic to the interlocal entity, the interlocal entity shall
84 adopt a rule, policy, or procedure specific to that matter.

85 (iii) Subsection (1)(c)(i) does not apply to a rule, policy, or procedure governed by this
86 chapter.

87 (iv) The interlocal entity shall adopt the rules, policies, and procedures, and, if
88 applicable, governing state administrative rule or statute, of the public agency described in
89 Subsection (1)(c)(i) in substantially the same form without changing requirements but may

90 make minimal changes to accommodate the structure and governance of the interlocal entity.

91 (v) The rules, policies, and procedures shall include, if applicable, rules, policies, and
92 procedures governing:

93 (A) the conduct of meetings of the governing body;

94 (B) the negotiation and execution of contracts;

95 (C) records maintenance;

96 (D) employment;

97 (E) the purchase, management, and disposal of personal and real property;

98 (F) the construction or acquisition of facilities and improvements; and

99 (G) any other governance matter intrinsic to the purpose and daily functions of the
100 interlocal entity.

101 (vi) The provisions of Section [11-13-225](#), and not this section, govern rules and
102 procedures for the adoption of a budget and fiscal procedures.

103 (2) An energy services interlocal entity:

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

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

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

109 (b) may:

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

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

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

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

121 energy, including forward purchase and sale contracts, hedging, tolling and swap agreements,
122 and other instruments.

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

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

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

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

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

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

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

140 (A) a copy of a notice of an impending boundary action, as defined in Section
141 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

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

145 (ii) upon the lieutenant governor's issuance of a certificate of creation under Section
146 67-1a-6.5:

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

149 (I) the original:

150 (Aa) notice of an impending boundary action;

151 (Bb) certificate of creation; and

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

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

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

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

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

160 (Bb) a certified copy of the agreement approving the creation of the interlocal entity;
161 and

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

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

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

166 (b) Upon the lieutenant governor's issuance of a certificate of creation under Section
167 [67-1a-6.5](#), the interlocal entity is created.

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

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

173 (6) Except as provided in Subsection (7):

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

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

178 (7) (a) An energy services interlocal entity created before July 1, 2003, that is
179 comprised solely of Utah municipalities and that, for a minimum of 50 years before July 1,
180 2010, provided retail electric service to customers outside the municipal boundaries of its
181 members, may provide retail electric service outside the municipal boundaries of its members
182 if:

183 (i) the energy services interlocal entity:

184 (A) enters into a written agreement with each public utility holding a certificate of
185 public convenience and necessity issued by the Public Service Commission to provide service
186 within an agreed upon geographic area for the energy services interlocal entity to be
187 responsible to provide electric service in the agreed upon geographic area outside the municipal
188 boundaries of the members of the energy services interlocal entity; and

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

192 (ii) each public utility described in Subsection (7)(a)(i)(A) applies for and obtains from
193 the Public Service Commission approval of the agreement specified in Subsection (7)(a)(i)(A).

194 (b) (i) The Public Service Commission shall, after a public hearing held in accordance
195 with Title 52, Chapter 4, Open and Public Meetings Act, approve an agreement described in
196 Subsection (7)(a)(ii) if it determines that the agreement is in the public interest in that it
197 incorporates the customer protections described in Subsection (7)(c) and the franchise
198 agreement described in Subsection (7)(a)(i)(B) provides a reasonable mechanism using a
199 neutral arbiter or ombudsman for resolving potential future complaints by customers of the
200 energy services interlocal entity.

201 (ii) In approving an agreement, the Public Service Commission shall also amend the
202 certificate of public convenience and necessity of any public utility described in Subsection
203 (7)(a)(i) to delete from the geographic area specified in the certificate or certificates of the
204 public utility the geographic area that the energy services interlocal entity has agreed to serve.

205 (c) In providing retail electric service to customers outside of the municipal boundaries
206 of its members, but not within the municipal boundaries of another municipality that grants a
207 franchise agreement in accordance with Subsection (7)(a)(i)(B), an energy services interlocal
208 entity shall comply with the following:

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

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

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

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

220 (v) before implementation of any rate increase, the governing body of the energy
221 services interlocal entity shall first hold a public meeting to take public comment on the
222 proposed increase, after providing at least 20 days and not more than 60 days' advance written
223 notice to its customers on the ordinary billing and on the Utah Public Notice Website, created
224 by Section 63F-1-701; and

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

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

229 (e) Nothing in this section:

230 (i) gives the Public Service Commission jurisdiction over the provision of retail
231 electric service by an energy services interlocal entity within the municipal boundaries of its
232 members; or

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

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

239 (g) (i) An energy services interlocal entity described in Subsection (7)(a) retains its
240 authority to provide electric service to the extent authorized by Sections 11-13-202 and
241 11-13-203 and Subsections 11-13-204 (1) through (5).

242 (ii) Notwithstanding Subsection (7)(g)(i), if the Public Service Commission approves
243 the agreement described in Subsection (7)(a)(i), the energy services interlocal entity may not
244 provide retail electric service to customers located outside the municipal boundaries of its

245 members, except for customers located within the geographic area described in the agreement.

246 Section 2. Section 11-13-206 is amended to read:

247 **11-13-206. Requirements for agreements for joint or cooperative action.**

248 (1) Each agreement under Section 11-13-202, 11-13-203, or 11-13-205 shall specify:

249 (a) its duration;

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

251 (i) the precise organization, composition, and nature of the interlocal entity;

252 (ii) the powers delegated to the interlocal entity;

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

254 (iv) subject to Subsection (2), the manner in which the members of its governing body

255 are to be appointed or selected;

256 (c) its purpose or purposes;

257 (d) the manner of financing the joint or cooperative undertaking and, subject to Section

258 11-13-225, of establishing and maintaining a budget for it;

259 (e) the permissible method or methods to be employed in accomplishing the partial or

260 complete termination of the agreement and for disposing of property upon such partial or

261 complete termination; and

262 (f) any other necessary and proper matters.

263 (2) Each agreement under Section 11-13-203 or 11-13-205 that creates an interlocal

264 entity shall require that Utah public agencies that are parties to the agreement have the right to

265 appoint or select members of the interlocal entity's governing body with a majority of the

266 voting power.

267 Section 3. Section 11-13-223 is amended to read:

268 **11-13-223. Open and public meetings.**

269 (1) To the extent that an interlocal entity is subject to [~~or elects, by formal resolution of~~
270 ~~its governing body to comply with~~] the provisions of Title 52, Chapter 4, Open and Public

271 Meetings Act, it may for purposes of complying with those provisions:

272 (a) convene and conduct any public meeting by means of a telephonic or

273 telecommunications conference; and

274 (b) give public notice of its meeting pursuant to Section 52-4-202.

275 (2) In order to convene and conduct a public meeting by means of a telephonic or

276 telecommunications conference, each interlocal entity shall if it is subject to [~~or elects by~~
277 ~~formal resolution of its governing body to comply with~~] Title 52, Chapter 4, Open and Public
278 Meetings Act:

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

280 (i) notice of the telephonic or telecommunications conference to the members of the
281 governing body at least 24 hours before the meeting so that they may participate in and be
282 counted as present for all purposes, including the determination that a quorum is present; and

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

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

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

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

295 (3) Compliance with the provisions of this section by a governing body constitutes full
296 and complete compliance by the governing body with the corresponding provisions of Sections
297 52-4-201 and 52-4-202, to the extent that those sections are applicable to the governing body.

298 Section 4. Section 11-13-225 is enacted to read:

299 **11-13-225. Budget and fiscal procedures.**

300 (1) An interlocal entity that spends money shall adopt a budget.

301 (2) An interlocal entity described in Subsection (1) shall:

302 (a) choose the budget adoption and fiscal procedures, as prescribed by law, of one of
303 the public agencies that is party to the agreement, including any notice and hearing
304 requirements and any requirement to provide previous budgets for comparison;

305 (b) adopt the budget adoption and fiscal procedures described in Subsection (2)(a) in
306 substantially the same form for the interlocal entity; and

307 (c) comply with the budget adoption and fiscal procedures.

308 Section 5. Section **11-13-315** is amended to read:

309 **11-13-315. Taxed interlocal entity.**

310 (1) As used in this section:

311 (a) "Asset" means funds, money, an account, real or personal property, or personnel.

312 (b) "Public asset" means:

313 (i) an asset used by a public entity;

314 (ii) tax revenue;

315 (iii) state funds; or

316 (iv) public funds.

317 (c) (i) "Taxed interlocal entity" means a project entity that:

318 (A) is not exempt from a tax or fee in lieu of taxes imposed in accordance with Part 3,

319 Project Entity Provisions;

320 (B) does not receive a payment of funds from a federal agency or office, state agency or

321 office, political subdivision, or other public agency or office other than a payment that does not

322 materially exceed the greater of the fair market value and the cost of a service provided or

323 property conveyed by the project entity; and

324 (C) does not receive, expend, or have the authority to compel payment from tax

325 revenue.

326 (ii) Before and on May 1, 2014, "taxed interlocal entity" includes an interlocal entity

327 that:

328 (A) (I) was created before 1981 for the purpose of providing power supply at wholesale

329 to its members; or

330 (II) is described in Subsection [11-13-204\(7\)](#);

331 (B) does not receive a payment of funds from a federal agency or office, state agency or

332 office, political subdivision, or other public agency or office other than a payment that does not

333 materially exceed the greater of the fair market value and the cost of a service provided or

334 property conveyed by the interlocal entity; and

335 (C) does not receive, expend, or have the authority to compel payment from tax

336 revenue.

337 (d) (i) "Use" means to use, own, manage, hold, keep safe, maintain, invest, deposit,

338 administer, receive, expend, appropriate, disburse, or have custody.

339 (ii) "Use" includes, when constituting a noun, the corresponding nominal form of each
340 term in Subsection (1)(d)(i), individually.

341 (2) Notwithstanding any other provision of law, the use of an asset by a taxed interlocal
342 entity does not constitute the use of a public asset.

343 (3) Notwithstanding any other provision of law, a taxed interlocal entity's use of an
344 asset that was a public asset prior to the taxed interlocal entity's use of the asset does not
345 constitute a taxed interlocal entity's use of a public asset.

346 (4) Notwithstanding any other provision of law, an official of a project entity is not a
347 public treasurer.

348 (5) Notwithstanding any other provision of law, a taxed interlocal entity's governing
349 body, as described in Section 11-13-206, shall determine and direct the use of an asset by the
350 taxed interlocal entity.

351 (6) (a) A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter
352 6a, Utah Procurement Code.

353 (b) An agent of a taxed interlocal entity is not an external procurement unit as defined
354 in Section 63G-6a-104.

355 (7) (a) A taxed interlocal entity is not a participating local entity as defined in Section
356 63A-3-401.

357 (b) For each fiscal year of a taxed interlocal entity, the taxed interlocal entity shall
358 provide:

359 (i) the taxed interlocal entity's financial statements for and as of the end of the fiscal
360 year and the prior fiscal year, including the taxed interlocal entity's balance sheet as of the end
361 of the fiscal year and the prior fiscal year, and the related statements of revenues and expenses
362 and of cash flows for the fiscal year; and

363 (ii) the accompanying auditor's report and management's discussion and analysis with
364 respect to the taxed interlocal entity's financial statements for and as of the end of the fiscal
365 year.

366 (c) The taxed interlocal entity shall provide the information described in Subsections
367 (7)(b)(i) and (b)(ii):

368 (i) in a manner described in Subsection 63A-3-405(3); and

369 (ii) within a reasonable time after the taxed interlocal entity's independent auditor
370 delivers to the taxed interlocal entity's governing body the auditor's report with respect to the
371 financial statements for and as of the end of the fiscal year.

372 (d) Notwithstanding Subsections (7)(b) and (c) or a taxed interlocal entity's compliance
373 with one or more of the requirements of Title 63A, Chapter 3, Division of Finance:

374 (i) the taxed interlocal entity is not subject to Title 63A, Chapter 3, Division of
375 Finance; and

376 (ii) the information described in Subsection (7)(b)(i) or (ii) does not constitute public
377 financial information as defined in Section [63A-3-401](#).

378 (8) (a) A taxed interlocal entity's governing body is not a governing board as defined in
379 Section [51-2a-102](#).

380 (b) A taxed interlocal entity is not subject to the provisions of Title 51, Chapter 2a,
381 Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local
382 Entities Act.

383 (9) (a) A taxed interlocal entity is not subject to the provisions of Subsections
384 [11-13-204\(1\)\(a\)\(i\)](#), [11-13-204\(1\)\(c\)](#), or Section [11-13-225](#).

385 (b) In addition to the powers provided in Subsection [11-13-204\(1\)\(a\)\(ii\)](#), a taxed
386 interlocal entity may, for the regulation of the entity's affairs and conduct of its business, adopt,
387 amend, or repeal bylaws, policies, or procedures.

Legislative Review Note
as of 10-1-13 6:45 AM

Office of Legislative Research and General Counsel