

Representative Johnny Anderson proposes the following substitute bill:

INTERLOCAL ENTITIES REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Johnny Anderson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts language related to property taxes levied and general obligation bonds issued by an interlocal entity.

Highlighted Provisions:

This bill:

- ▶ authorizes certain interlocal entities to issue general obligation bonds; and
- ▶ authorizes certain interlocal entities to levy ad valorem property taxes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

11-13-204 (Effective 05/12/15), as last amended by Laws of Utah 2014, Chapter 115

ENACTS:

11-13-218.5, Utah Code Annotated 1953

11-13-218.6, Utah Code Annotated 1953

11-13-218.7, Utah Code Annotated 1953



26 11-13-218.8, Utah Code Annotated 1953

27 11-13-218.9, Utah Code Annotated 1953

28 **Utah Code Sections Affected by Coordination Clause:**

29 11-13-218.5, Utah Code Annotated 1953

30 11-13-218.6, Utah Code Annotated 1953

31 11-13-218.7, Utah Code Annotated 1953

32 11-13-218.8, Utah Code Annotated 1953

33 11-13-218.9, Utah Code Annotated 1953



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

36 Section 1. Section 11-13-204 (Effective 05/12/15) is amended to read:

37 **11-13-204 (Effective 05/12/15). Powers and duties of interlocal entities --**

38 **Additional powers of energy services interlocal entities -- Length of term of agreement**
39 **and interlocal entity -- Notice to lieutenant governor -- Recording requirements -- Public**
40 **Service Commission.**

41 (1) (a) An interlocal entity:

42 (i) shall adopt bylaws, policies, and procedures for the regulation of its affairs and the
43 conduct of its business;

44 (ii) may:

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

46 (B) sue and be sued;

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

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

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

53 (F) directly or by contract with another:

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

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

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

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

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

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

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

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

70 (iii) except as provided in Section 11-13-218.6, may not levy, assess, or collect ad
71 valorem property taxes.

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

76 (c) (i) (A) Except as provided in Subsection (1)(c)(i)(B), an interlocal entity is subject
77 to each state law that governs each public agency that is a member of the entity to the extent
78 that the law governs an activity or action of the public agency in which the interlocal entity is
79 also engaged.

80 (B) Subsection (1)(c)(i)(A) does not apply if an interlocal entity is expressly exempt
81 from the law.

82 (C) A law described in Subsection (1)(c)(i)(A) does not include a local ordinance or
83 other local law.

84 (ii) If a state law that governs a public agency that is a member of the interlocal entity
85 conflicts with a state law that governs another member entity, the interlocal entity shall choose
86 and comply with one of the conflicting state laws.

87 (iii) (A) If a public agency that is a member of the interlocal entity is an institution of

88 higher education, the interlocal entity shall adopt the policies of the Board of Regents.

89 (B) If a policy of the Board of Regents adopted by an interlocal entity in accordance
90 with Subsection (1)(c)(iii)(A) conflicts with a state law that governs a public agency that is a
91 member entity, the state law governs.

92 (2) An energy services interlocal entity:

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

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

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

98 (b) may:

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

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

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

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

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

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

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

118 (c) five years after the interlocal entity has abandoned, decommissioned, or conveyed

119 or transferred all of its interest in its facilities and improvements; or

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

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

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

129 (A) a copy of a notice of an impending boundary action, as defined in Section
130 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

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

134 (ii) upon the lieutenant governor's issuance of a certificate of creation under Section
135 67-1a-6.5:

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

138 (I) the original:

139 (Aa) notice of an impending boundary action;

140 (Bb) certificate of creation; and

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

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

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

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

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

149 (Bb) a certified copy of the agreement approving the creation of the interlocal entity;

150 and

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

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

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

155 (b) Upon the lieutenant governor's issuance of a certificate of creation under Section
156 67-1a-6.5, the interlocal entity is created.

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

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

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

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

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

167 (7) (a) An energy services interlocal entity created before July 1, 2003, that is
168 comprised solely of Utah municipalities and that, for a minimum of 50 years before July 1,
169 2010, provided retail electric service to customers outside the municipal boundaries of its
170 members, may provide retail electric service outside the municipal boundaries of its members
171 if:

172 (i) the energy services interlocal entity:

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

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

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

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

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

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

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

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

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

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

209 (v) before implementation of any rate increase, the governing body of the energy
210 services interlocal entity shall first hold a public meeting to take public comment on the
211 proposed increase, after providing at least 20 days and not more than 60 days' advance written

212 notice to its customers on the ordinary billing and on the Utah Public Notice Website, created
213 by Section 63F-1-701; and

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

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

218 (e) Nothing in this section:

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

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

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

228 (g) (i) An energy services interlocal entity described in Subsection (7)(a) retains its
229 authority to provide electric service to the extent authorized by Sections 11-13-202 and
230 11-13-203 and Subsections 11-13-204 (1) through (5).

231 (ii) Notwithstanding Subsection (7)(g)(i), if the Public Service Commission approves
232 the agreement described in Subsection (7)(a)(i), the energy services interlocal entity may not
233 provide retail electric service to customers located outside the municipal boundaries of its
234 members, except for customers located within the geographic area described in the agreement.

235 Section 2. Section 11-13-218.5 is enacted to read:

236 **11-13-218.5. General obligation bonds.**

237 (1) (a) An interlocal entity may only issue general obligation bonds if:

238 (i) each member of the interlocal entity is a municipality, county, special service
239 district, or local district;

240 (ii) the interlocal entity governing body is composed entirely of elected officials
241 appointed, respectively, by a member described in Subsection (1)(a)(i);

242 (iii) the interlocal entity has not issued any bonds currently in default; and

243 (iv) no area designated by a member for inclusion in the interlocal entity is included in
244 the area or areas designated by any other member for inclusion in the interlocal entity.

245 (b) Except as provided in Subsection (4), if an interlocal entity intends to issue general
246 obligation bonds, the interlocal entity shall first obtain the approval of the governing body of
247 each member agency for the specific bond issuance, including approval of the amount and
248 purpose of the issuance.

249 (c) If the proposed issuance is approved by the members in accordance with Subsection
250 (1)(b), the proposed general obligation bonds may not be issued unless submitted to and
251 approved by the voters residing within the boundaries of the interlocal entity at an election held
252 for that purpose as provided in Chapter 14, Local Government Bonding Act.

253 (2) General obligation bonds may be issued for the following purposes only:

254 (a) to construct and equip public safety facilities; or

255 (b) to construct and equip facilities required for the operation of a system, or one or
256 more components of a system, for the collection, storage, retention, control, conservation,
257 treatment, supplying, distribution, or reclamation of water, including storm, flood, sewage,
258 irrigation, and culinary water, whether the system is operated on a wholesale or retail level or
259 both.

260 (3) General obligation bonds are secured by a pledge of the full faith and credit of the
261 interlocal entity.

262 (4) An interlocal entity may issue refunding general obligation bonds, as provided in
263 Chapter 27, Utah Refunding Bond Act, without obtaining voter approval.

264 (5) An interlocal entity may not issue general obligation bonds if:

265 (a) the issuance of the bonds will cause the outstanding principal amount of all the
266 interlocal entity's general obligation bonds to exceed an amount that results from multiplying
267 the fair market value of the taxable property within the interlocal entity, as determined under
268 Subsection [11-14-301](#)(3)(b) by .12; or

269 (b) (i) for each member, the interlocal entity shall calculate an amount equal to the
270 assessed value of the taxable property in the member entity divided by the total taxable value in
271 the interlocal entity multiplied by the amount of the proposed general obligation bond issuance;
272 and

273 (ii) for each member, the amount calculated in accordance with Subsection (5)(b)(i)

274 when added to the existing general obligation debt of the member would exceed the debt limit
275 fixed by law for that member entity.

276 (6) Bonds issued by an interlocal entity that are not general obligation bonds are not
277 subject to this section or Section [11-13-218.6](#).

278 (7) An interlocal entity is not considered to be a municipal corporation for purposes of
279 the debt limitation of the Utah Constitution, Article XIV, Section 4.

280 (8) Bonds issued by an interlocal entity created under this chapter are not bonds of a
281 public agency that participates in the agreement creating the interlocal entity.

282 Section 3. Section **11-13-218.6** is enacted to read:

283 **11-13-218.6. Levy to pay for general obligation bonds.**

284 (1) If an interlocal entity issues general obligation bonds, or expects to have debt
285 service payments due on general obligation bonds during the current year, the interlocal entity's
286 governing body may make an annual levy of ad valorem property taxes within the interlocal
287 boundaries as described in a certificate issued under Section [67-1a-6.5](#) for the following
288 purposes only:

289 (a) to pay the principal of and interest on the general obligation bonds;

290 (b) to establish a sinking fund for defaults and future debt service on the general
291 obligation bonds; and

292 (c) to establish a reserve to secure payment of the general obligation bonds.

293 (2) (a) Each interlocal entity that levies an ad valorem property tax under Subsection
294 (1) shall:

295 (i) levy the tax as a separate and special levy solely for the purpose stated in Subsection
296 (1)(a) or (b); and

297 (ii) apply the proceeds from the levy solely for the purpose of paying the principal of
298 and interest on the general obligation bonds, even though the proceeds may be used to establish
299 or replenish a sinking fund under Subsection (1)(b) or a reserve under Subsection (1)(c).

300 (b) A levy under Subsection (2)(a) is not subject to a priority in favor of an interlocal
301 entity obligation in existence at the time the bonds were issued.

302 Section 4. Section **11-13-218.7** is enacted to read:

303 **11-13-218.7. Property tax levy -- Time for setting -- Computation of total levy --**
304 **Apportionment of proceeds -- Maximum levy.**

305 (1) (a) The governing body of an interlocal entity authorized to levy a property tax for
306 the payment of principal and interest on general obligation bonds issued by the interlocal entity
307 shall, at a regular meeting or special meeting called for that purpose and by resolution, set the
308 rate to be applied to all taxable property within the boundaries of the interlocal entity by the
309 date set under Section [59-2-912](#).

310 (b) Notwithstanding Subsection (1)(a), the governing body may set the rate to be
311 applied to all taxable property within the boundaries of the interlocal entity at an appropriate
312 later date in accordance with Sections [59-2-919](#) through [59-2-923](#).

313 (2) In the governing body's computation of the total levy, the governing body shall:

314 (a) determine the amount of property tax required for payment of principal and interest
315 on general obligation bonds issued by the interlocal entity; and

316 (b) specify in the governing body's resolution adopting the tax rate the amount
317 allocated for such payment.

318 Section 5. Section **11-13-218.8** is enacted to read:

319 **11-13-218.8. Certification of resolution setting levy.**

320 The interlocal entity's clerk, appointed by the governing body, shall certify the
321 resolution setting the levy described in Section [11-13-218.7](#) to each county auditor of a county
322 in which the interlocal entity is located in accordance with Section [59-2-912](#).

323 Section 6. Section **11-13-218.9** is enacted to read:

324 **11-13-218.9. Property tax levy -- Amount in budget as basis for determining**
325 **property tax levy.**

326 From the effective date of the budget or of an amendment enacted prior to the date on
327 which property taxes are levied, the amount stated as the amount of estimated revenue from
328 property taxes for the payment principal and interest on general obligation bonds issued by the
329 interlocal entity shall constitute the basis for determining the property tax levy to be set by the
330 governing body for the corresponding tax year.

331 Section 7. **Coordinating H.B. 330 with H.B. 251 -- Substantive amendments.**

332 If this H.B. 330 and H.B. 251, Amendments to the Interlocal Act, both pass and become
333 law, it is the intent of the Legislature that the Office of Legislative Research and General
334 Counsel, in preparing the Utah Code database for publication, change the terminology in the
335 following provisions from "governing body" or "governing body's" to "governing authority" or

336 "governing authority's":

337 (1) Subsection [11-13-218.5\(1\)\(a\)\(ii\)](#);

338 (2) Subsection [11-13-218.6\(1\)](#);

339 (3) Subsections [11-13-218.7\(1\)\(a\)](#), [\(1\)\(b\)](#), [\(2\)](#), and [\(2\)\(b\)](#);

340 (4) Section [11-13-218.8](#); and

341 (5) Section [11-13-218.9](#).