

HB0330S01 compared with HB0330

~~deleted text~~ shows text that was in HB0330 but was deleted in HB0330S01.

inserted text shows text that was not in HB0330 but was inserted into HB0330S01.

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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:

~~None~~ This bill provides a coordination clause.

Utah Code Sections Affected:

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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

11-13-218.8, Utah Code Annotated 1953

11-13-218.9, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

11-13-218.5, Utah Code Annotated 1953

11-13-218.6, Utah Code Annotated 1953

11-13-218.7, Utah Code Annotated 1953

11-13-218.8, Utah Code Annotated 1953

11-13-218.9, Utah Code Annotated 1953

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

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

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

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

(1) (a) An interlocal entity:

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

(ii) may:

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

(B) sue and be sued;

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

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

(E) acquire real or personal property, or an undivided, fractional, or other interest in

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real or personal property, necessary or convenient for the purposes contemplated in the agreement creating the interlocal entity and sell, lease, or otherwise dispose of that property;

(F) directly or by contract with another:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) (A) If a public agency that is a member of the interlocal entity is an institution of higher education, the interlocal entity shall adopt the policies of the Board of Regents.

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

(2) An energy services interlocal entity:

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

(i) Part 3, Project Entity Provisions; or

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

(b) may:

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

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

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

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

(3) Notwithstanding Section 11-13-216, an agreement creating an interlocal entity or

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an amendment to that agreement may provide that the agreement may continue and the interlocal entity may remain in existence until the latest to occur of:

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

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

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

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

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

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

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

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

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

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

(I) the original:

(Aa) notice of an impending boundary action;

(Bb) certificate of creation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the energy services interlocal entity:

(A) enters into a written agreement with each public utility holding a certificate of public convenience and necessity issued by the Public Service Commission to provide service

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within an agreed upon geographic area for the energy services interlocal entity to be responsible to provide electric service in the agreed upon geographic area outside the municipal boundaries of the members of the energy services interlocal entity; and

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

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

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

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

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

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

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

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

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

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

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

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

(e) Nothing in this section:

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

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

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

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

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

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

11-13-218.5. General obligation bonds.

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(1) (a) ~~{Only an}~~ An interlocal entity ~~{in which}~~ may only issue general obligation bonds if:

(i) each member of the interlocal entity is a municipality, county, special service district, or local district ~~{may issue general obligation bonds}~~;

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

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

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

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

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

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

(a) to construct and equip public safety facilities ~~{required for the operation of a sewage system}~~; or

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

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

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

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

(a) the issuance of the bonds will cause the outstanding principal amount of all ~~{of}~~ the

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interlocal entity's general obligation bonds to exceed ~~by .12 the~~an amount that results from multiplying the fair market value of the taxable property within the interlocal entity, as determined under Subsection 11-14-301(3)(b) by .12; or

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

(ii) for each member, the amount calculated in accordance with Subsection (5)(b)(i) when added to the existing general obligation debt of the member would exceed the debt limit fixed by law for that member entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

From the effective date of the budget or of an amendment enacted prior to the date on which property taxes are levied, the amount stated as the amount of estimated revenue from

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property taxes for the payment principal and interest on general obligation bonds issued by the interlocal entity shall constitute the basis for determining the property tax levy to be set by the governing body for the corresponding tax year.

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Legislative Review Note

as of ~~2-11-15 11:37 AM~~

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

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

- (1) Subsection 11-13-218.5(1)(a)(ii);
- (2) Subsection 11-13-218.6(1);
- (3) Subsections 11-13-218.7(1)(a), (1)(b), (2), and (2)(b);
- (4) Section 11-13-218.8; and
- (5) Section 11-13-218.9.