

INTERLOCAL COOPERATION ACT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill modifies and enacts provisions of the Interlocal Cooperation Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes a taxed interlocal entity to establish one or more segments that are treated as separate interlocal entities and may have separate rights, powers, privileges, or duties;
- ▶ provides for a limitation on the liabilities of a segment;
- ▶ addresses the members of a segment, the liabilities of directors and officers of a taxed interlocal entity or of a segment, and the termination of a segment; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-13-103, as last amended by Laws of Utah 2015, Chapter 265

11-13-202.5, as last amended by Laws of Utah 2015, Chapter 265



- 28 **11-13-301**, as last amended by Laws of Utah 2012, Chapter 345
- 29 **11-13-304**, as last amended by Laws of Utah 2012, Chapter 345
- 30 **11-13-401**, as enacted by Laws of Utah 2015, Chapter 265
- 31 **11-13-502**, as enacted by Laws of Utah 2015, Chapter 265
- 32 **63A-3-401**, as last amended by Laws of Utah 2015, Chapter 38

33 ENACTS:

- 34 **11-13-601**, Utah Code Annotated 1953
- 35 **11-13-602**, Utah Code Annotated 1953
- 36 **11-13-604**, Utah Code Annotated 1953
- 37 **11-13-605**, Utah Code Annotated 1953
- 38 **11-13-606**, Utah Code Annotated 1953
- 39 **11-13-607**, Utah Code Annotated 1953
- 40 **11-13-608**, Utah Code Annotated 1953

41 RENUMBERS AND AMENDS:

- 42 **11-13-603**, (Renumbered from 11-13-315, as last amended by Laws of Utah 2015,
- 43 Chapters 265 and 308)



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

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

47 **11-13-103. Definitions.**

48 As used in this chapter:

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

53 (i) the owners of the new generating unit are the same as or different from the owner of
54 the project; and

55 (ii) the purchasers of electricity from the new generating unit are the same as or
56 different from the purchasers of electricity from the project.

57 (b) "Additional project capacity" does not mean or include replacement project
58 capacity.

59 (2) "Board" means the Permanent Community Impact Fund Board created by Section
60 35A-8-304, and its successors.

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

62 (a) the state;

63 (b) a county, municipality, school district, local district, special service district, or other
64 political subdivision of the state; and

65 (c) a prosecution district.

66 (4) "Commercial project entity" means a project entity, defined in Subsection (17),

67 that:

68 (a) has no taxing authority; and

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

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

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

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

77 (6) "Electric interlocal entity" means an interlocal entity described in Subsection
78 11-13-203(3).

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

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

84 (i) generation capacity;

85 (ii) generation output; or

86 (iii) an electric energy production facility.

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

90 (9) (a) "Facilities providing replacement project capacity" means facilities that have
91 been, are being, or are proposed to be constructed, reconstructed, converted, repowered,
92 acquired, leased, used, or installed to provide replacement project capacity.

93 (b) "Facilities providing replacement project capacity" includes facilities that have
94 been, are being, or are proposed to be constructed, reconstructed, converted, repowered,
95 acquired, leased, used, or installed:

96 (i) to support and facilitate the construction, reconstruction, conversion, repowering,
97 installation, financing, operation, management, or use of replacement project capacity; or

98 (ii) for the distribution of power generated from existing capacity or replacement
99 project capacity to facilities located on real property in which the project entity that owns the
100 project has an ownership, leasehold, right-of-way, or permitted interest.

101 [~~9~~] (10) "Governing authority" means a governing board or joint administrator.

102 [~~10~~] (11) (a) "Governing board" means the body established in reliance on the
103 authority provided under Subsection 11-13-206(1)(b) to govern an interlocal entity.

104 (b) "Governing board" includes a board of directors described in an agreement, as
105 amended, that creates a project entity.

106 [~~b~~] (c) "Governing board" does not include a board as defined in Subsection (2).

107 [~~H~~] (12) "Interlocal entity" means:

108 (a) a Utah interlocal entity, an electric interlocal entity, or an energy services interlocal
109 entity; or

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

111 [~~12~~] (13) "Joint administrator" means an administrator or joint board described in
112 Section 11-13-207 to administer a joint or cooperative undertaking.

113 [~~13~~] (14) "Joint or cooperative undertaking" means an undertaking described in
114 Section 11-13-207 that is not conducted by an interlocal entity.

115 [~~14~~] (15) "Member" means a public agency that, with another public agency, creates
116 an interlocal entity under Section 11-13-203.

117 [~~15~~] (16) "Out-of-state public agency" means a public agency as defined in
118 Subsection [~~18~~] (19)(c), (d), or (e).

119 [~~16~~] (17) (a) "Project":

120 (i) means an electric generation and transmission facility owned by a Utah interlocal

121 entity or an electric interlocal entity; and

122 (ii) includes fuel or fuel transportation facilities and water facilities owned by that Utah
123 interlocal entity or electric interlocal entity and required for the generation and transmission
124 facility.

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

126 (i) facilities that provide additional project capacity;

127 (ii) facilities [~~that provide~~] providing replacement project capacity; and

128 (iii) additional generating, transmission, fuel, fuel transportation, water, or other
129 facilities added to a project.

130 [~~(17)~~] (18) "Project entity" means a Utah interlocal entity or an electric interlocal entity
131 that owns a project.

132 [~~(18)~~] (19) "Public agency" means:

133 (a) a city, town, county, school district, local district, special service district, an
134 interlocal entity, or other political subdivision of the state;

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

136 (c) any agency of the United States;

137 (d) any political subdivision or agency of another state or the District of Columbia
138 including any interlocal cooperation or joint powers agency formed under the authority of the
139 law of the other state or the District of Columbia; or

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

143 [~~(19)~~] (20) "Qualified energy services interlocal entity" means an energy services
144 interlocal entity that at the time that the energy services interlocal entity acquires its interest in
145 facilities providing additional project capacity has at least five members that are Utah public
146 agencies.

147 [~~(20)~~] (21) "Replacement project capacity" means electric generating capacity or
148 transmission capacity that:

149 (a) replaces all or a portion of the existing electric generating or transmission capacity
150 of a project; and

151 (b) is provided by a facility that is [~~constructed, reconstructed, converted, repowered,~~

152 ~~or installed in a location~~ on, adjacent to [~~or~~], in proximity to, or interconnected with the site of
 153 a project, regardless of whether:

154 (i) the capacity replacing existing capacity is less than or exceeds the generating or
 155 transmission capacity of the project [~~prior to~~] existing before installation of the capacity
 156 replacing existing capacity[.];

157 (ii) the capacity replacing existing capacity is owned by the project entity that is the
 158 owner of the project, a segment established by the project entity, or a person with whom the
 159 project entity or a segment established by the project entity has contracted; or

160 (iii) the facility that provides the capacity replacing existing capacity is constructed,
 161 reconstructed, converted, repowered, acquired, leased, used, or installed before or after any
 162 actual or anticipated reduction or modification to existing capacity of the project.

163 [~~(21)~~] (22) "Utah interlocal entity":

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

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

167 [~~(22)~~] (23) "Utah public agency" means a public agency under Subsection [~~(18)~~]
 168 (19)(a) or (b).

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

170 **11-13-202.5. Approval of certain agreements -- Review by attorney.**

171 (1) Each agreement under Section 11-13-202 and each agreement under Section
 172 11-13-212 shall be approved by:

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

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

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

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

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

179 (A) a facility; or

180 (B) an improvement to real property;

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

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

- 183 (vi) creates an interlocal entity; or
 184 (vii) provides for the public agency to share taxes or other revenues; or
 185 (c) if the public agency is a public agency under Subsection 11-13-103~~(18)~~(19)(b),
 186 the director or other head of the applicable state department, division, or agency.
 187 (2) If an agreement is required under Subsection (1) to be approved by the public
 188 agency's legislative body, the resolution or ordinance approving the agreement shall:
 189 (a) specify the effective date of the agreement; and
 190 (b) if the agreement creates an interlocal entity:
 191 (i) declare that it is the legislative body's intent to create an interlocal entity;
 192 (ii) describe the public purposes for which the interlocal entity is created; and
 193 (iii) describe the powers, duties, and functions of the interlocal entity.
 194 (3) The officer or body required under Subsection (1) to approve an agreement shall,
 195 before the agreement may take effect, submit the agreement to the attorney authorized to
 196 represent the public agency for review as to proper form and compliance with applicable law.

197 Section 3. Section **11-13-301** is amended to read:

198 **11-13-301. Project entity and generation output requirements.**

- 199 (1) Each project entity:
 200 (a) shall:
 201 (i) except for construction of facilities ~~[to provide]~~ providing replacement project
 202 capacity, before undertaking the construction of a project and before undertaking the
 203 construction of facilities to provide additional project capacity, offer to sell or make available
 204 at least 50% of the generation output of or electric energy produced by the project or additional
 205 project capacity, respectively;
 206 (ii) establish rules and procedures for an offer under Subsection (1)(a)(i) that provide at
 207 least 60 days for a prospective power purchaser to accept the offer before the offer is
 208 considered rejected; and
 209 (iii) make each offer under Subsection (1)(a)(i):
 210 (A) under a long-term arrangement that may be an undivided ownership interest, a
 211 participation interest, a power sales agreement, or otherwise; and
 212 (B) to one or more power purchasers in the state that supply electric energy at
 213 wholesale or retail; and

214 (b) may undertake construction of facilities [~~to provide~~] providing replacement project
215 capacity for its project.

216 (2) (a) The generation output or electric energy production available to power
217 purchasers in the state from a project shall be at least 5% of the total generation output or
218 electric energy production of the project.

219 (b) (i) Subject to Subsection (2)(b)(ii)(B), at least a majority of the generation capacity,
220 generation output, or electric energy production facilities providing additional project capacity
221 shall be:

222 (A) made available as needed to meet the estimated electric requirements of entities or
223 consumers within the state; and

224 (B) owned, purchased, or consumed by entities or consumers within the state.

225 (ii) (A) As used in this Subsection (2)(b)(ii), "default provision" means a provision
226 authorizing a nondefaulting party to succeed to or require the disposition of the rights and
227 interests of a defaulting party.

228 (B) The requirements of Subsection (2)(b)(i) do not apply to the extent that those
229 requirements are not met due to the operation of a default provision in an agreement providing
230 for ownership or other interests in facilities providing additional project capacity.

231 Section 4. Section **11-13-304** is amended to read:

232 **11-13-304. Certificate of public convenience and necessity required -- Exceptions.**

233 (1) Before proceeding with the construction of any electrical generating plant or
234 transmission line, each interlocal entity and each out-of-state public agency shall first obtain
235 from the public service commission a certificate, after hearing, that public convenience and
236 necessity requires such construction and in addition that such construction will in no way
237 impair the public convenience and necessity of electrical consumers of the state of Utah at the
238 present time or in the future.

239 (2) The requirement to obtain a certificate of public convenience and necessity applies
240 to each project initiated after the section's effective date but does not apply to:

241 (a) a project for which a feasibility study was initiated prior to the effective date;

242 (b) any facilities providing additional project capacity;

243 (c) any facilities providing replacement project capacity; or

244 (d) transmission lines required for the delivery of electricity from a project described in

245 Subsection (2)(a)₂ or facilities providing additional project capacity₂ or facilities providing
246 replacement project capacity within the corridor of a transmission line, with reasonable
247 deviation, of a project producing as of April 21, 1987.

248 Section 5. Section **11-13-401** is amended to read:

249 **11-13-401. Application.**

250 (1) Except as provided in Subsection (2), and notwithstanding any other provision of
251 law, this part applies to a governing authority created under this chapter.

252 (2) This part does not apply to:

253 (a) a taxed interlocal entity, as defined in Section [~~11-13-315~~] 11-13-602; or

254 (b) a project entity.

255 Section 6. Section **11-13-502** is amended to read:

256 **11-13-502. Application -- Conflicts with federal law -- Other applicable law.**

257 (1) This part does not apply to a taxed interlocal entity as defined in Section
258 [~~11-13-315~~] 11-13-602.

259 (2) Except as provided in Subsection (1), and notwithstanding any other provision of
260 law, this part governs an interlocal entity's fiscal procedures but only to the extent that the
261 provision does not conflict with or cause an interlocal entity to be noncompliant with federal
262 law.

263 (3) An interlocal entity is subject to Title 51, Chapter 7, State Money Management Act.

264 Section 7. Section **11-13-601** is enacted to read:

265 **Part 6. Taxed Interlocal Entities**

266 **11-13-601. Title.**

267 This part is known as "Taxed Interlocal Entities."

268 Section 8. Section **11-13-602** is enacted to read:

269 **11-13-602. Definitions.**

270 As used in this part:

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

272 (2) (a) "Associated entity" means a taxed interlocal entity that adopts a segment's
273 organizing resolution.

274 (b) "Associated entity" does not include any other segment.

275 (3) "Fiduciary duty" means a duty expressly designated as a fiduciary duty of:

- 276 (a) a director or an officer of a taxed interlocal entity in:
277 (i) the organization agreement of the taxed interlocal entity; or
278 (ii) an agreement executed by the director or the officer and the taxed interlocal entity;
279 or
280 (b) a director or an officer of a segment in:
281 (i) the organizing resolution of the segment; or
282 (ii) an agreement executed by the director or the officer and the segment.
283 (4) "Governing body" means the body established in an organizing resolution to govern
284 a segment.
285 (5) "Governmental law" means:
286 (a) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
287 Organizations, and Other Local Entities Act;
288 (b) Title 63A, Chapter 3, Division of Finance;
289 (c) Title 63G, Chapter 6a, Utah Procurement Code;
290 (d) a law imposing an obligation on a taxed interlocal entity similar to an obligation
291 imposed by a law described in Subsection (5)(a), (b), or (c);
292 (e) an amendment to or replacement or renumbering of a law described in Subsection
293 (5)(a), (b), (c), or (d); or
294 (f) a law superseding a law described in Subsection (5)(a), (b), (c), or (d).
295 (6) "Indexed office" means the address identified under Subsection [63G-7-401\(5\)\(a\)\(i\)](#)
296 by a segment's associated entity in the associated entity's statement described in Subsection
297 [63G-7-401\(5\)](#).
298 (7) "Organization agreement" means an agreement, as amended, that creates a taxed
299 interlocal entity.
300 (8) "Organizing resolution" means a resolution described in Subsection [11-13-604\(1\)](#)
301 that creates a segment.
302 (9) "Principal county" means the county in which the indexed office of a segment's
303 associated entity is located.
304 (10) "Public asset" means:
305 (a) an asset used by a public entity;
306 (b) tax revenue;

307 (c) state funds; or

308 (d) public funds.

309 (11) "Segment" means a segment created in accordance with Section 11-13-604.

310 (12) "Taxed interlocal entity" means:

311 (a) a project entity that:

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

313 Project Entity Provisions;

314 (ii) does not receive a payment of funds from a federal agency or office, state agency or
315 office, political subdivision, or other public agency or office other than a payment that does not
316 materially exceed the greater of the fair market value and the cost of a service provided or

317 property conveyed by the project entity; and

318 (iii) does not receive, expend, or have the authority to compel payment from tax
319 revenue; or

320 (b) an interlocal entity that:

321 (i) was created before 1981 for the purpose of providing power supply at wholesale to
322 its members;

323 (ii) does not receive a payment of funds from a federal agency or office, state agency or
324 office, political subdivision, or other public agency or office other than a payment that does not
325 materially exceed the greater of the fair market value and the cost of a service provided or
326 property conveyed by the interlocal entity; and

327 (iii) does not receive, expend, or have the authority to compel payment from tax
328 revenue.

329 (13) (a) "Use" means to use, own, manage, hold, keep safe, maintain, invest, deposit,
330 administer, receive, expend, appropriate, disburse, or have custody.

331 (b) "Use" includes, when constituting a noun, the corresponding nominal form of each
332 term in Subsection (13)(a), individually.

333 Section 9. Section **11-13-603**, which is renumbered from Section 11-13-315 is
334 renumbered and amended to read:

335 ~~[11-13-315].~~ **11-13-603. Taxed interlocal entity.**

336 ~~[(1) As used in this section:]~~

337 ~~[(a) "Asset" means funds, money, an account, real or personal property, or personnel.]~~

338 ~~[(b) "Governmental law" means:]~~
339 ~~[(i) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal~~
340 ~~Organizations, and Other Local Entities Act;]~~
341 ~~[(ii) Title 63A, Chapter 3, Division of Finance;]~~
342 ~~[(iii) Title 63G, Chapter 6a, Utah Procurement Code;]~~
343 ~~[(iv) a law imposing an obligation on a taxed interlocal entity similar to an obligation~~
344 ~~imposed by a law described in Subsection (1)(b)(i), (ii), or (iii);]~~
345 ~~[(v) an amendment to or replacement or renumbering of a law described in Subsection~~
346 ~~(1)(b)(i), (ii), (iii), or (iv); or]~~
347 ~~[(vi) a law superseding a law described in Subsection (1)(b)(i), (ii), (iii), or (iv).]~~
348 ~~[(c) "Public asset" means:]~~
349 ~~[(i) an asset used by a public entity;]~~
350 ~~[(ii) tax revenue;]~~
351 ~~[(iii) state funds; or]~~
352 ~~[(iv) public funds.]~~
353 ~~[(d) (i) "Taxed interlocal entity" means a project entity that:]~~
354 ~~[(A) is not exempt from a tax or fee in lieu of taxes imposed in accordance with Part 3,~~
355 ~~Project Entity Provisions;]~~
356 ~~[(B) does not receive a payment of funds from a federal agency or office, state agency~~
357 ~~or office, political subdivision, or other public agency or office other than a payment that does~~
358 ~~not materially exceed the greater of the fair market value and the cost of a service provided or~~
359 ~~property conveyed by the project entity; and]~~
360 ~~[(C) does not receive, expend, or have the authority to compel payment from tax~~
361 ~~revenue.]~~
362 ~~[(ii) "Taxed interlocal entity" includes an interlocal entity that:]~~
363 ~~[(A) was created before 1981 for the purpose of providing power supply at wholesale~~
364 ~~to its members;]~~
365 ~~[(B) does not receive a payment of funds from a federal agency or office, state agency~~
366 ~~or office, political subdivision, or other public agency or office other than a payment that does~~
367 ~~not materially exceed the greater of the fair market value and the cost of a service provided or~~
368 ~~property conveyed by the interlocal entity; and]~~

369 ~~[(C) does not receive, expend, or have the authority to compel payment from tax~~
 370 ~~revenue.]~~

371 ~~[(e) (i) "Use" means to use, own, manage, hold, keep safe, maintain, invest, deposit,~~
 372 ~~administer, receive, expend, appropriate, disburse, or have custody.]~~

373 ~~[(ii) "Use" includes, when constituting a noun, the corresponding nominal form of each~~
 374 ~~term in Subsection (1)(e)(i), individually.]~~

375 ~~[(2)] (1) Notwithstanding any other provision of law[;]:~~

376 ~~(a) the use of an asset by a taxed interlocal entity does not constitute the use of a public~~
 377 ~~asset[;];~~

378 ~~[(3) Notwithstanding any other provision of law,]~~

379 ~~(b) a taxed interlocal entity's use of an asset that was a public asset [prior to] before the~~
 380 ~~taxed interlocal entity's use of the asset does not constitute a taxed interlocal entity's use of a~~
 381 ~~public asset[;];~~

382 ~~[(4) Notwithstanding any other provision of law,]~~

383 ~~(c) an official of a project entity is not a public treasurer[;]; and~~

384 ~~[(5) Notwithstanding any other provision of law,]~~

385 ~~(d) a taxed interlocal entity's governing [body, as described in Section 11-13-206,]~~
 386 ~~board shall determine and direct the use of an asset by the taxed interlocal entity.~~

387 ~~[(6)] (2) A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter~~
 388 ~~6a, Utah Procurement Code.~~

389 ~~[(7)(a)] (3) (a) A taxed interlocal entity is not a participating local entity as defined in~~
 390 ~~Section 63A-3-401.~~

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

393 (i) the taxed interlocal entity's financial statements for and as of the end of the fiscal
 394 year and the prior fiscal year, including:

395 (A) the taxed interlocal entity's ~~[balance sheet]~~ statement of net position as of the end
 396 of the fiscal year and the prior fiscal year, and the related statements of revenues and expenses
 397 and of cash flows for the fiscal year; ~~[and]~~ or

398 (B) financial statements that are equivalent to the financial statements described in
 399 Subsection (3)(b)(i)(A) and, at the time the financial statements were created, were in

400 compliance with generally accepted accounting principles that are applicable to taxed interlocal
401 entities; and

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

405 (c) The taxed interlocal entity shall provide the information described in [~~Subsections~~
406 ~~(7)(b)(i) and(ii)~~] Subsection (3)(b):

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

408 (ii) within a reasonable time after the taxed interlocal entity's independent auditor
409 delivers to the taxed interlocal entity's governing [~~body~~] board the auditor's report with respect
410 to the financial statements for and as of the end of the fiscal year.

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

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

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

417 [~~(8)~~] (4) (a) A taxed interlocal entity's governing [~~body~~] board is not a governing board
418 as defined in Section 51-2a-102.

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

422 [~~(9)(a)~~] (5) Notwithstanding any other provision of law, a taxed interlocal entity is not
423 subject to the following provisions:

424 [~~(i)~~] (a) Part 4, Governance;

425 [~~(ii)~~] (b) Part 5, Fiscal Procedures for Interlocal Entities;

426 [~~(iii)~~] (c) Subsection 11-13-204(1)(a)(i) or (ii)(J);

427 [~~(iv)~~] (d) Subsection 11-13-206(1)(f);

428 [~~(v)~~] (e) Subsection 11-13-218(5)(a);

429 [~~(vi)~~] (f) Section 11-13-225;

430 [~~(vii)~~] (g) Section 11-13-226; or

431 ~~[(viii)]~~ (h) Section ~~53-2a-605~~.

432 ~~[(b)]~~ (6) (a) In addition to having the powers ~~[provided]~~ described in Subsection
433 ~~11-13-204~~(1)(a)(ii), a taxed interlocal entity may, for the regulation of the entity's affairs and
434 conduct of its business, adopt, amend, or repeal bylaws, policies, or procedures.

435 ~~[(c)]~~ (b) Nothing in Part 4, Governance, or Part 5, Fiscal Procedures for Interlocal
436 Entities, may be construed to limit the power or authority of a taxed interlocal entity.

437 ~~[(10)]~~ (7) (a) A governmental law enacted after May 12, 2015, is not applicable to, is
438 not binding upon, and does not have effect on a taxed interlocal entity unless the governmental
439 law expressly states the section of governmental law to be applicable to and binding upon the
440 taxed interlocal entity with the following words: "[Applicable section or subsection number]
441 constitutes an exception to Subsection ~~11-13-315~~(10) and is applicable to and binding upon a
442 taxed interlocal entity."

443 (b) Sections ~~11-13-601~~ through ~~11-13-608~~ constitute an exception to Subsection (7)(a)
444 and are applicable to and binding upon a taxed interlocal entity.

445 Section 10. Section ~~11-13-604~~ is enacted to read:

446 **11-13-604. Segments authorized.**

447 (1) (a) To the extent authorized in a taxed interlocal entity's organization agreement,
448 the governing board of a taxed interlocal entity may by resolution establish or provide for the
449 establishment of one or more segments that have separate rights, powers, privileges, authority,
450 or duties with respect to, as specified in the segment's organizing resolution, the taxed
451 interlocal entity's:

452 (i) property;

453 (ii) projects;

454 (iii) undertakings;

455 (iv) opportunities;

456 (v) actions;

457 (vi) debts;

458 (vii) liabilities;

459 (viii) obligations; or

460 (ix) any combination of the items listed in Subsections (1)(a)(i) through (viii).

461 (b) To the extent provided in the organization agreement of a segment's associated

462 entity, a segment may have a separate purpose from the associated entity.

463 (c) The name of a segment shall:

464 (i) contain the name of the segment's associated entity; and

465 (ii) be distinguishable from the name of any other segment established by the

466 associated entity.

467 (2) Notwithstanding any other provision of law, the debts, liabilities, and obligations

468 incurred, contracted for, arising out of the conduct of or otherwise existing with respect to a

469 particular segment are only enforceable or chargeable against the assets of that segment, and

470 not against the assets of the segment's associated entity generally or any other segment

471 established by the segment's associated entity if:

472 (a) the segment is established by or in accordance with an organizing resolution;

473 (b) separate records are maintained for the segment to the extent necessary to avoid the

474 segment's records constituting a fraud upon the segment's creditors;

475 (c) the assets associated with the segment are held and accounted for separately from

476 the assets of any other segment established by the associated entity to the extent necessary to

477 avoid the segment's accounting for the segment's assets constituting a fraud upon the segment's

478 creditors;

479 (d) the segment's organizing resolution provides for a limitation on liabilities of the

480 segment; and

481 (e) a notice of limitation on liabilities of the segment is recorded in accordance with

482 Section [11-13-605](#).

483 (3) Except as otherwise provided in the segment's organizing resolution, a segment that

484 satisfies the conditions described in Subsections (2)(a) through (e):

485 (a) is treated as a separate interlocal entity; and

486 (b) may:

487 (A) in its own name, contract, hold title to property, grant liens and security interests,

488 and sue and be sued;

489 (B) exercise all powers, privileges, rights, authority, and capacity of the segment's

490 associated entity; and

491 (C) engage in any action in which the segment's associated entity may engage.

492 (4) Except as otherwise provided in the organization agreement of the segment's

493 associated entity or in the segment's organizing resolution, a segment is governed by the
494 organization agreement of the segment's associated entity.

495 (5) Subject to Subsection (4), a segment's organizing resolution:

496 (a) may address any matter relating to the segment, including the segment's governance
497 or operation, to the extent that the organization agreement of a segment's associated entity does
498 not address the matter; and

499 (b) to the extent not addressed in the organization agreement of the segment's
500 associated entity, shall address the following matters:

501 (i) the powers delegated to the segment;

502 (ii) the manner in which the segment is to be governed, including whether the
503 segment's governing body is the same as the governing board of the segment's associated
504 entity;

505 (iii) subject to Subsection (6), if the segment's governing body is different from the
506 governing board of the segment's associated entity, the manner in which the members of the
507 segment's governing body are appointed or selected;

508 (iv) the segment's purpose;

509 (v) the manner of financing the segment's actions;

510 (vi) how the segment will establish and maintain a budget;

511 (vii) how to partially or completely terminate the segment and, upon a partial or
512 complete termination, how to dispose of the segment's property;

513 (viii) the process, conditions, and terms for withdrawal of a participating public agency
514 from the segment; and

515 (ix) voting rights, including whether voting is weighted, and, if so, the basis upon
516 which the vote weight is determined.

517 (6) An organizing resolution shall provide that if a segment's governing body is
518 different from the governing board of the segment's associated entity, the Utah public agencies
519 that are parties to the organization agreement of the segment's associated entity may appoint or
520 select members or the segment's governing body with a majority of the voting power.

521 (7) A segment may not:

522 (a) transfer the segment's property or other assets to the segment's associated entity or
523 to another segment established by the segment's associated entity if the transfer impairs the

524 ability of the segment to pay the segment's debts that exist at the time of the transfer, unless the
525 segment's associated entity or the other segment gives fair value for the property or asset; or

526 (b) assign a tax or other liability imposed against the segment to the segment's
527 associated entity or to another segment established by the segment's associated entity if the
528 assignment impairs a creditor's ability to collect the amount due when owed.

529 (8) If a segment and a segment's associated entity or another segment established by the
530 segment's associated entity are involved in a joint action or have a common interest in a
531 facility, the segment's or the segment's associated entity's maintenance of records and accounts
532 related to the joint action or common interest does not constitute a violation of Subsection
533 (2)(b) or (c).

534 (9) Except as otherwise provided in this part or where clearly not applicable, the
535 provisions of law that apply to a segment's associated entity also apply to the segment,
536 including Subsection 11-13-205(5) as if the segment were a separate legal or administrative
537 entity.

538 (10) (a) To the extent an associated entity is a taxpayer as defined in Section 59-8-103,
539 the associated entity shall pay tax on the associated entity's gross receipts at the rate of tax that
540 would apply if all gross receipts of the associated entity and the associated entity's segments, in
541 the aggregate, were the gross receipts of a single taxpayer.

542 (b) Each segment of an associated entity shall pay tax on the segment's gross receipts
543 each period described in Subsection 59-8-105(1) at the same rate of tax as the rate of tax paid
544 by the segment's associated entity for the same period.

545 (c) Notwithstanding Subsections (10)(a) and (b):

546 (i) an associated entity is not liable for the tax imposed on a segment; and

547 (ii) a segment of an associated entity is not liable for the tax imposed on the segment's
548 associated entity or on another segment of the segment's associated entity.

549 Section 11. Section 11-13-605 is enacted to read:

550 **11-13-605. Notice of limitation on liabilities of segments.**

551 (1) (a) A notice of limitation on liabilities of a segment described in Subsection
552 11-13-604(2)(e) shall:

553 (i) state:

554 (A) the name of the segment's associated entity;

- 555 (B) the associated entity's indexed office;
556 (C) the associated entity's principal county; and
557 (D) that the liabilities of each segment established by the associated entity, regardless
558 of when the segment is created, are limited in accordance with the provisions of this part; and
559 (ii) be acknowledged by a director or an officer of the associated entity.
560 (b) A notice of limitation on liabilities of a segment is not required to refer to a
561 particular segment.
562 (2) (a) The requirements described in Section 57-3-105 do not apply to a notice of
563 limitation on liabilities of a segment.
564 (b) A county recorder shall record a notice of limitation on liabilities of a segment that:
565 (i) is submitted to the county recorder for recording; and
566 (ii) satisfies the requirements described in Subsection (1)(a).
567 (3) A recorded notice of limitation on liabilities of a segment does not create any
568 interest in or otherwise encumber the property described in the notice.
569 (4) Title 38, Chapter 9, Wrongful Lien Act, and Title 38, Chapter 9a, Wrongful Lien
570 Injunctions, do not apply to a notice of limitation on liabilities of a segment.
571 (5) A notice of limitation on liabilities of a segment that is recorded in accordance with
572 this part in the principal county of the segment's associated entity constitutes notice for all
573 purposes of the limitation on liabilities of the segment, regardless of whether the segment is
574 established at the time the notice is recorded.
575 Section 12. Section **11-13-606** is enacted to read:
576 **11-13-606. Members of a segment.**
577 (1) Except as otherwise provided by a segment's organizing resolution in accordance
578 with Subsection (2), a segment's associated entity is the sole member of the segment.
579 (2) A segment's organizing resolution may provide that a segment's membership
580 includes a public agency other than the segment's associated entity only if the organizing
581 resolution provides:
582 (a) the relative rights, powers, and duties of the segment's members;
583 (b) whether the members exercise the members' rights and powers and discharge the
584 members' duties in one or more classes or groups;
585 (c) the method by which a member's membership in the segment is terminated;

586 (d) the effect of a member's termination; and
587 (e) the effect of the termination of the last member's membership in the segment,
588 including the effect on the existence of the segment.

589 Section 13. Section **11-13-607** is enacted to read:

590 **11-13-607. Limitations of liability for directors and officers.**

591 (1) A director or an officer of a taxed interlocal entity or a segment is not liable to the
592 taxed interlocal entity, the segment, a member of the taxed interlocal entity, a member of the
593 segment, a conservator, receiver, or successor-in-interest of the taxed interlocal entity, or a
594 conservator, receiver, or successor-in-interest of the segment for any action or failure to act as a
595 director or an officer, unless:

596 (a) the director or the officer breaches a fiduciary duty that the director or the officer
597 owes to the taxed interlocal entity, the segment, a member of the taxed interlocal entity, or a
598 member of the segment; and

599 (b) the breach described in Subsection (1)(a) constitutes gross negligence, willful
600 misconduct, or intentional infliction of harm on the taxed interlocal entity, the segment, a
601 member of the taxed interlocal entity, or a member of the segment.

602 (2) (a) Except as provided in Subsection (2)(b), a taxed interlocal entity or a segment
603 may limit or eliminate the liability of a director or an officer described in Subsection (1) for
604 monetary damages.

605 (b) A taxed interlocal entity or a segment may not limit or eliminate liability for a
606 director or an officer in accordance with Subsection (2)(a) for monetary damages arising out of:

607 (i) a breach of a fiduciary duty;

608 (ii) an intentional infliction of harm on the taxed interlocal entity, the segment, a
609 member of the taxed interlocal entity, or a member of the segment;

610 (iii) improper financial benefit; or

611 (iv) willful misconduct that constitutes an intentional violation of criminal law.

612 (3) The provisions of this section do not affect the liability of a director or an officer
613 for an act or omission that occurred before May 10, 2016.

614 (4) (a) The duties owed by a director or an officer of a taxed interlocal entity or a
615 segment consist of the following:

616 (i) any fiduciary duty;

- 617 (ii) any other duty specified in:
618 (A) the organization agreement or bylaws of the taxed interlocal entity;
619 (B) the organizing resolution or bylaws of the segment; or
620 (C) any contract between the director or the officer and the taxed interlocal entity or the
621 segment; and
622 (iii) each duty that applies to a taxed interlocal entity under Title 67, Chapter 16, Utah
623 Public Officers' and Employees' Ethics Act.
624 (b) Each fiduciary duty of a director or an officer of a segment shall be consistent with
625 the fiduciary duties of a director or an officer of the segment's associated entity.
626 (5) (a) Nothing in this section nor any action taken by a taxed interlocal entity, a
627 segment, a director or an officer of a taxed interlocal entity, or a director or an officer of a
628 segment constitutes a waiver of any immunity or defense available under Title 63G, Chapter 7,
629 Governmental Immunity Act of Utah.
630 (b) Subsections (1)(a) and (b) and (2)(b) apply only to the extent that the taxed
631 interlocal entity, the segment, the director or the officer of the taxed interlocal entity, or the
632 director or the officer of the segment is subject to liability under Title 63G, Chapter 7,
633 Governmental Immunity Act of Utah.
634 Section 14. Section **11-13-608** is enacted to read:
635 **11-13-608. Termination of associated entity or segment.**
636 (1) The termination of a segment does not affect the segment's or the segment's
637 associated entity's limitation on liabilities under this part.
638 (2) A segment is terminated upon the termination of the segment's associated entity.
639 (3) (a) Subject to Subsection (3)(b), the termination of a segment's associated entity or
640 a segment may not affect the liability of the governing board, the governing body, a member of
641 the governing board, a member of the governing body, an officer, an official, a contractor, or an
642 employee for an action authorized:
643 (i) before the termination of the associated entity or the segment by the governing
644 board of the terminated associated entity or by the governing body of the terminated segment;
645 or
646 (ii) after the termination of the associated entity or the segment by:
647 (A) a majority of individuals serving as members of the governing board of the

648 terminated associated entity at the time the associated entity is terminated; or

649 (B) a majority of the individuals serving as members of the governing body of the

650 terminated segment at the time the segment is terminated.

651 (b) Subsection (3)(a) applies to each action to:

652 (i) provide for the claims, debts, obligations, or liabilities of the terminated associated
653 entity or the terminated segment; or

654 (ii) otherwise wind up the affairs of the terminated associated entity or the terminated
655 segment.

656 Section 15. Section **63A-3-401** is amended to read:

657 **63A-3-401. Definitions.**

658 As used in this part:

659 (1) "Board" means the Utah Transparency Advisory Board created under Section
660 [63A-3-403](#).

661 (2) "Division" means the Division of Finance of the Department of Administrative
662 Services.

663 (3) (a) "Independent entity," except as provided in Subsection (3)(c), means the same
664 as that term is defined in Section [63E-1-102](#).

665 (b) "Independent entity" includes an entity that is part of an independent entity
666 described in this Subsection (3), if the entity is considered a component unit of the independent
667 entity under the governmental accounting standards issued by the Governmental Accounting
668 Standards Board.

669 (c) "Independent entity" does not include:

670 (i) the Workers' Compensation Fund created in Section [31A-33-102](#); or

671 (ii) the Utah State Retirement Office created in Section [49-11-201](#).

672 (4) "Participating local entity" means each of the following local entities, if the entity
673 meets the size or budget thresholds established by the board under Subsection

674 [63A-3-403](#)(3)(e):

675 (a) a county;

676 (b) a municipality;

677 (c) a local district under Title 17B, Limited Purpose Local Government Entities - Local
678 Districts;

679 (d) a special service district under Title 17D, Chapter 1, Special Service District Act;

680 (e) a school district;

681 (f) a charter school;

682 (g) except for a taxed interlocal entity [~~described~~] as defined in Section [~~11-13-315~~]

683 [11-13-602](#), an interlocal entity as defined in Section [11-13-103](#); and

684 (h) except for a taxed interlocal entity [~~described~~] as defined in Section [~~11-13-315~~]

685 [11-13-602](#), an entity that is part of an entity described in Subsections (4)(a) through (g), if the

686 entity is considered a component unit of the entity described in Subsections (4)(a) through (g)

687 under the governmental accounting standards issued by the Governmental Accounting

688 Standards Board.

689 (5) (a) "Participating state entity" means the state of Utah, including its executive,
690 legislative, and judicial branches, its departments, divisions, agencies, boards, commissions,
691 councils, committees, and institutions.

692 (b) "Participating state entity" includes an entity that is part of an entity described in
693 Subsection (5)(a), if the entity is considered a component unit of the entity described in
694 Subsection (5)(a) under the governmental accounting standards issued by the Governmental
695 Accounting Standards Board.

696 (6) "Public financial information" means records that are required to be made available
697 on the Utah Public Finance Website, a participating local entity's website, or an independent
698 entity's website as required by this part, and as the term "public financial information" is
699 defined by rule under Section [63A-3-404](#).

Legislative Review Note
Office of Legislative Research and General Counsel