

## HB0341S01 compared with HB0341

~~deleted text~~ shows text that was in HB0341 but was deleted in HB0341S01.

inserted text shows text that was not in HB0341 but was inserted into HB0341S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Merrill F. Nelson proposes the following substitute bill:

### INTERLOCAL COOPERATION ACT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Merrill F. Nelson**

Senate Sponsor: \_\_\_\_\_

---

#### 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.

## HB0341S01 compared with HB0341

### 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

**11-13-301**, as last amended by Laws of Utah 2012, Chapter 345

**11-13-304**, as last amended by Laws of Utah 2012, Chapter 345

**11-13-401**, as enacted by Laws of Utah 2015, Chapter 265

**11-13-502**, as enacted by Laws of Utah 2015, Chapter 265

**63A-3-401**, as last amended by Laws of Utah 2015, Chapter 38

#### ENACTS:

**11-13-601**, Utah Code Annotated 1953

**11-13-602**, Utah Code Annotated 1953

**11-13-604**, Utah Code Annotated 1953

**11-13-605**, Utah Code Annotated 1953

**11-13-606**, Utah Code Annotated 1953

**11-13-607**, Utah Code Annotated 1953

**11-13-608**, Utah Code Annotated 1953

#### RENUMBERS AND AMENDS:

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

---

---

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

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

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

As used in this chapter:

(1) (a) "Additional project capacity" means electric generating capacity provided by a generating unit that first produces electricity on or after May 6, 2002, and that is constructed or

## **HB0341S01 compared with HB0341**

installed at or adjacent to the site of a project that first produced electricity before May 6, 2002, regardless of whether:

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

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

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

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

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

(a) the state;

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

(c) a prosecution district.

(4) "Commercial project entity" means a project entity, defined in Subsection ~~[(17)]~~ (18), that:

(a) has no taxing authority; and

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

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

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

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

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

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

(8) (a) "Estimated electric requirements," when used with respect to a qualified energy

## HB0341S01 compared with HB0341

services interlocal entity, includes any of the following that meets the requirements of Subsection (8)(b):

- (i) generation capacity;
- (ii) generation output; or
- (iii) an electric energy production facility.

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

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

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

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

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

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

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

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

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

~~[(11)]~~ (12) "Interlocal entity" means:

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

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

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

## HB0341S01 compared with HB0341

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

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

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

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

(i) means an electric generation and transmission facility owned by a Utah interlocal entity or an electric interlocal entity; and

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

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

(i) facilities that provide additional project capacity;

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

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

~~[(17)]~~ (18) "Project entity" means a Utah interlocal entity or an electric interlocal entity that owns a project as defined in this section.

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

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

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

(c) any agency of the United States;

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

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

~~[(19)]~~ (20) "Qualified energy services interlocal entity" means an energy services

## HB0341S01 compared with HB0341

interlocal entity that at the time that the energy services interlocal entity acquires its interest in facilities providing additional project capacity has at least five members that are Utah public agencies.

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

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

(b) is provided by a facility that is ~~[constructed, reconstructed, converted, repowered, or installed in a location]~~ on, adjacent to ~~[or]~~, in proximity to, or interconnected with the site of a project, regardless of whether:

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

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

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

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

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

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

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

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

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

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

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

## HB0341S01 compared with HB0341

- (b) the legislative body of the public agency if the agreement:
  - (i) requires the public agency to adjust its budget for a current or future fiscal year;
  - (ii) includes an out-of-state public agency as a party;
  - (iii) provides for the public agency to acquire or construct:
    - (A) a facility; or
    - (B) an improvement to real property;
  - (iv) provides for the public agency to acquire or transfer title to real property;
  - (v) provides for the public agency to issue bonds;
  - (vi) creates an interlocal entity; or
  - (vii) provides for the public agency to share taxes or other revenues; or
- (c) if the public agency is a public agency under Subsection 11-13-103~~[(+8)]~~(19)(b), the director or other head of the applicable state department, division, or agency.

(2) If an agreement is required under Subsection (1) to be approved by the public agency's legislative body, the resolution or ordinance approving the agreement shall:

- (a) specify the effective date of the agreement; and
- (b) if the agreement creates an interlocal entity:
  - (i) declare that it is the legislative body's intent to create an interlocal entity;
  - (ii) describe the public purposes for which the interlocal entity is created; and
  - (iii) describe the powers, duties, and functions of the interlocal entity.

(3) The officer or body required under Subsection (1) to approve an agreement shall, before the agreement may take effect, submit the agreement to the attorney authorized to represent the public agency for review as to proper form and compliance with applicable law.

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

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

- (1) Each project entity:
  - (a) shall:
    - (i) except for construction of facilities ~~[to provide]~~ providing replacement project capacity, before undertaking the construction of a project and before undertaking the construction of facilities to provide additional project capacity, offer to sell or make available at least 50% of the generation output of or electric energy produced by the project or additional project capacity, respectively;

## **HB0341S01 compared with HB0341**

(ii) establish rules and procedures for an offer under Subsection (1)(a)(i) that provide at least 60 days for a prospective power purchaser to accept the offer before the offer is considered rejected; and

(iii) make each offer under Subsection (1)(a)(i):

(A) under a long-term arrangement that may be an undivided ownership interest, a participation interest, a power sales agreement, or otherwise; and

(B) to one or more power purchasers in the state that supply electric energy at wholesale or retail; and

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

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

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

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

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

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

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

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

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

(1) Before proceeding with the construction of any electrical generating plant or transmission line, each interlocal entity and each out-of-state public agency shall first obtain from the public service commission a certificate, after hearing, that public convenience and necessity requires such construction and in addition that such construction will in no way



## **HB0341S01 compared with HB0341**

impair the public convenience and necessity of electrical consumers of the state of Utah at the present time or in the future.

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

- (a) a project for which a feasibility study was initiated prior to the effective date;
- (b) any facilities providing additional project capacity;
- (c) any facilities providing replacement project capacity; or
- (d) transmission lines required for the delivery of electricity from a project described in

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

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

### **11-13-401. Application.**

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

(2) This part does not apply to:

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

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

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

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

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

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

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

## **Part 6. Taxed Interlocal Entities**

### **11-13-601. Title.**

This part is known as "Taxed Interlocal Entities."

## HB0341S01 compared with HB0341

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

### **11-13-602. Definitions.**

As used in this part:

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

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

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

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

(a) a director or an officer of a taxed interlocal entity in:

(i) the organization agreement of the taxed interlocal entity; or

(ii) an agreement executed by the director or the officer and the taxed interlocal entity;

or

(b) a director or an officer of a segment in:

(i) the organizing resolution of the segment; or

(ii) an agreement executed by the director or the officer and the segment.

(4) "Governing body" means the body established in an organizing resolution to govern a segment.

(5) "Governmental law" means:

(a) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(b) Title 63A, Chapter 3, Division of Finance;

(c) Title 63G, Chapter 6a, Utah Procurement Code;

(d) a law imposing an obligation on a taxed interlocal entity similar to an obligation imposed by a law described in Subsection (5)(a), (b), or (c);

(e) an amendment to or replacement or renumbering of a law described in Subsection (5)(a), (b), (c), or (d); or

(f) a law superseding a law described in Subsection (5)(a), (b), (c), or (d).

(6) "Indexed office" means the address identified under Subsection 63G-7-401(5)(a)(i) by a segment's associated entity in the associated entity's statement described in Subsection 63G-7-401(5).

(7) "Organization agreement" means an agreement, as amended, that creates a taxed

## HB0341S01 compared with HB0341

interlocal entity.

(8) "Organizing resolution" means a resolution described in Subsection 11-13-604(1) that creates a segment.

(9) "Principal county" means the county in which the indexed office of a segment's associated entity is located.

(10) "Project" means:

(a) the same as that term is defined in Section 11-13-103; or

(b) facilities, improvements, or contracts undertaken by a taxed interlocal entity in accordance with Subsection 11-13-204(2).

~~(10)~~ (11) "Public asset" means:

(a) an asset used by a public entity;

(b) tax revenue;

(c) state funds; or

(d) public funds.

~~(11)~~ (12) "Segment" means a segment created in accordance with Section 11-13-604.

~~(12)~~ (13) "Taxed interlocal entity" means:

(a) a project entity that:

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

Project Entity Provisions;

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

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

(b) an interlocal entity that:

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

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

## HB0341S01 compared with HB0341

property conveyed by the interlocal entity; and

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

(~~13~~14) (a) "Use" means to use, own, manage, hold, keep safe, maintain, invest, deposit, administer, receive, expend, appropriate, disburse, or have custody.

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

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

**~~11-13-315~~.            11-13-603. Taxed interlocal entity.**

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

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

~~[(b) "Governmental law" means:]~~

~~[(i) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;]~~

~~[(ii) Title 63A, Chapter 3, Division of Finance;]~~

~~[(iii) Title 63G, Chapter 6a, Utah Procurement Code;]~~

~~[(iv) a law imposing an obligation on a taxed interlocal entity similar to an obligation imposed by a law described in Subsection (1)(b)(i), (ii), or (iii);]~~

~~[(v) an amendment to or replacement or renumbering of a law described in Subsection (1)(b)(i), (ii), (iii), or (iv); or]~~

~~[(vi) a law superseding a law described in Subsection (1)(b)(i), (ii), (iii), or (iv).]~~

~~[(c) "Public asset" means:]~~

~~[(i) an asset used by a public entity;]~~

~~[(ii) tax revenue;]~~

~~[(iii) state funds; or]~~

~~[(iv) public funds.]~~

~~[(d) (i) "Taxed interlocal entity" means a project entity that:]~~

~~[(A) is not exempt from a tax or fee in lieu of taxes imposed in accordance with Part 3, Project Entity Provisions;]~~

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

## HB0341S01 compared with HB0341

~~or office, political subdivision, or other public agency or office other than a payment that does not materially exceed the greater of the fair market value and the cost of a service provided or property conveyed by the project entity; and]~~

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

~~[(ii) "Taxed interlocal entity" includes an interlocal entity that:]~~

~~[(A) was created before 1981 for the purpose of providing power supply at wholesale to its members;]~~

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

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

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

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

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

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

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

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

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

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

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

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

~~[(6)] (2)~~ A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter

## HB0341S01 compared with HB0341

6a, Utah Procurement Code.

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

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

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

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

(B) financial statements that are equivalent to the financial statements described in Subsection (3)(b)(i)(A) and, at the time the financial statements were created, were in compliance with generally accepted accounting principles that are applicable to taxed interlocal entities; and

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

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

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

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

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

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

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

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

## HB0341S01 compared with HB0341

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

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

- ~~[(i)]~~ (a) Part 4, Governance;
- ~~[(ii)]~~ (b) Part 5, Fiscal Procedures for Interlocal Entities;
- ~~[(iii)]~~ (c) Subsection 11-13-204(1)(a)(i) or (ii)(J);
- ~~[(iv)]~~ (d) Subsection 11-13-206(1)(f);
- ~~[(v)]~~ (e) Subsection 11-13-218(5)(a);
- ~~[(vi)]~~ (f) Section 11-13-225;
- ~~[(vii)]~~ (g) Section 11-13-226; or
- ~~[(viii)]~~ (h) Section 53-2a-605.

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

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

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

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

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

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

(1) (a) To the extent authorized in a taxed interlocal entity's organization agreement ~~or~~ by a majority of the public entities that are parties to a taxed interlocal entity's organization agreement, the governing board of a taxed interlocal entity may by resolution establish or

## HB0341S01 compared with HB0341

provide for the establishment of one or more segments that have separate rights, powers, privileges, authority ~~or by a majority of the public entities that are parties to a taxed interlocal entity's organization agreement~~, or duties with respect to, as specified in the segment's organizing resolution, the taxed interlocal entity's:

- (i) property;
- (ii) ~~{projects}~~assets;
- (iii) projects;
- (~~{iii}~~iv) undertakings;
- (~~{iv}~~v) opportunities;
- (~~{v}~~vi) actions;
- (~~{vi}~~vii) debts;
- (~~{vii}~~viii) liabilities;
- (~~{viii}~~ix) obligations; or
- (~~{ix}~~x) any combination of the items listed in Subsections (1)(a)(i) through (viii).

(b) To the extent provided in the organization agreement of a segment's associated entity, a segment may have a separate purpose from the associated entity.

(c) The name of a segment shall:

- (i) contain the name of the segment's associated entity; and
- (ii) be distinguishable from the name of any other segment established by the

associated entity.

(2) Notwithstanding any other provision of law, the debts, liabilities, and obligations incurred, contracted for, arising out of the conduct of or otherwise existing with respect to a particular segment are only enforceable or chargeable against the assets of that segment, and not against the assets of the segment's associated entity generally or any other segment established by the segment's associated entity if:

- (a) the segment is established by or in accordance with an organizing resolution;
- (b) separate records are maintained for the segment to the extent necessary to avoid the segment's records constituting a fraud upon the segment's creditors;

(c) the assets associated with the segment are held and accounted for separately from the assets of any other segment established by the associated entity to the extent necessary to avoid the segment's accounting for the segment's assets constituting a fraud upon the segment's



## HB0341S01 compared with HB0341

creditors;

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

(e) a notice of limitation on liabilities of the segment is recorded in accordance with Section 11-13-605.

(3) Except as otherwise provided in the segment's organizing resolution, a segment that satisfies the conditions described in Subsections (2)(a) through (e):

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

(b) may:

(A) in its own name, contract, hold title to property, grant liens and security interests, and sue and be sued;

(B) exercise all **or any part of the** powers, privileges, rights, authority, and capacity of the segment's associated entity; and

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

(4) Except as otherwise provided in the organization agreement of the segment's associated entity or in the segment's organizing resolution, a segment is governed by the organization agreement of the segment's associated entity.

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

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

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

(i) the powers delegated to the segment;

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

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

(iv) the segment's purpose;

## HB0341S01 compared with HB0341

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

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

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

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

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

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

(7) A segment may not:

(a) transfer the segment's property or other assets to the segment's associated entity or to another segment established by the segment's associated entity if the transfer impairs the ability of the segment to pay the segment's debts that exist at the time of the transfer, unless the segment's associated entity or the other segment gives fair value for the property or asset; or

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

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

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

(10) (a) To the extent an associated entity is a taxpayer as defined in Section 59-8-103, the associated entity shall pay tax on the associated entity's gross receipts at the rate of tax that

## HB0341S01 compared with HB0341

would apply if all gross receipts of the associated entity and the associated entity's segments, in the aggregate, were the gross receipts of a single taxpayer.

(b) Each segment of an associated entity ~~that is a taxpayer as defined in Section 59-8-103~~ shall pay tax on the segment's gross receipts each period described in Subsection 59-8-105(1) at the same rate of tax as the rate of tax paid by the segment's associated entity for the same period.

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

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

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

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

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

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

(i) state:

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

(B) the associated entity's indexed office;

(C) the associated entity's principal county; and

(D) that the liabilities of each segment established by the associated entity, regardless of when the segment is created, are limited in accordance with the provisions of this part; and

(ii) be acknowledged by a director or an officer of the associated entity.

(b) A notice of limitation on liabilities of a segment is not required to refer to a particular segment.

(2) (a) The requirements described in Section 57-3-105 do not apply to a notice of limitation on liabilities of a segment.

(b) A county recorder shall record a notice of limitation on liabilities of a segment that:

(i) is submitted to the county recorder for recording; and

(ii) satisfies the requirements described in Subsection (1)(a).

(3) A recorded notice of limitation on liabilities of a segment does not create any interest in or otherwise encumber the property described in the notice.

(4) Title 38, Chapter 9, Wrongful Lien Act, and Title 38, Chapter 9a, Wrongful Lien

## HB0341S01 compared with HB0341

Injunctions, do not apply to a notice of limitation on liabilities of a segment.

(5) A notice of limitation on liabilities of a segment that is recorded in accordance with this part in the principal county of the segment's associated entity constitutes notice for all purposes of the limitation on liabilities of the segment, regardless of whether the segment is established at the time the notice is recorded.

Section 12. Section **11-13-606** is enacted to read:

### **11-13-606. Members of a segment.**

(1) Except as otherwise provided by a segment's organizing resolution in accordance with Subsection (2), a segment's associated entity is the sole member of the segment.

(2) A segment's organizing resolution may provide that a segment's membership includes a public agency other than the segment's associated entity only if the organizing resolution provides:

(a) the relative rights, powers, and duties of the segment's members;

(b) whether the members exercise the members' rights and powers and discharge the members' duties in one or more classes or groups;

(c) the method by which a member's membership in the segment is terminated;

(d) the effect of a member's termination; and

(e) the effect of the termination of the last member's membership in the segment, including the effect on the existence of the segment.

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

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

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

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

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

## **HB0341S01 compared with HB0341**

member of the taxed interlocal entity, or a member of the segment.

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

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

(i) a breach of a fiduciary duty;

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

(iii) improper financial benefit; or

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

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

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

(i) any fiduciary duty;

(ii) any other duty specified in:

(A) the organization agreement or bylaws of the taxed interlocal entity;

(B) the organizing resolution or bylaws of the segment; or

(C) any contract between the director or the officer and the taxed interlocal entity or the segment; and

(iii) each duty that applies to a taxed interlocal entity under Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

(b) Each fiduciary duty of a director or an officer of a segment shall be consistent with the fiduciary duties of a director or an officer of the segment's associated entity.

(5) (a) Nothing in this section nor any action taken by a taxed interlocal entity, a segment, a director or an officer of a taxed interlocal entity, or a director or an officer of a segment constitutes a waiver of any immunity or defense available under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(b) Subsections (1)(a) and (b) and (2)(b) apply only to the extent that the taxed interlocal entity, the segment, the director or the officer of the taxed interlocal entity, or the

## HB0341S01 compared with HB0341

director or the officer of the segment is subject to liability under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Section 14. Section **11-13-608** is enacted to read:

### **11-13-608. Termination of associated entity or segment.**

(1) The termination of a segment does not affect the segment's or the segment's associated entity's limitation on liabilities under this part.

(2) A segment is terminated upon the termination of the segment's associated entity.

(3) (a) Subject to Subsection (3)(b), the termination of a segment's associated entity or a segment may not affect the liability of the governing board, the governing body, a member of the governing board, a member of the governing body, an officer, an official, a contractor, or an employee for an action authorized:

(i) before the termination of the associated entity or the segment by the governing board of the terminated associated entity or by the governing body of the terminated segment;  
or

(ii) after the termination of the associated entity or the segment by:

(A) a majority of individuals serving as members of the governing board of the terminated associated entity at the time the associated entity is terminated; or

(B) a majority of the individuals serving as members of the governing body of the terminated segment at the time the segment is terminated.

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

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

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

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

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

As used in this part:

(1) "Board" means the Utah Transparency Advisory Board created under Section 63A-3-403.

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

## **HB0341S01 compared with HB0341**

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

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

(c) "Independent entity" does not include:

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

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

(4) "Participating local entity" means each of the following local entities, if the entity meets the size or budget thresholds established by the board under Subsection 63A-3-403(3)(e):

(a) a county;

(b) a municipality;

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

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

(e) a school district;

(f) a charter school;

(g) except for a taxed interlocal entity [~~described~~] as defined in Section [~~11-13-315~~] 11-13-602, an interlocal entity as defined in Section 11-13-103; and

(h) except for a taxed interlocal entity [~~described~~] as defined in Section [~~11-13-315~~] 11-13-602, an entity that is part of an entity described in Subsections (4)(a) through (g), if the entity is considered a component unit of the entity described in Subsections (4)(a) through (g) under the governmental accounting standards issued by the Governmental Accounting Standards Board.

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

(b) "Participating state entity" includes an entity that is part of an entity described in Subsection (5)(a), if the entity is considered a component unit of the entity described in

## **HB0341S01 compared with HB0341**

Subsection (5)(a) under the governmental accounting standards issued by the Governmental Accounting Standards Board.

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

†

~~Legislative Review Note~~

~~Office of Legislative Research and General Counsel†~~