

SB0154S01 compared with SB0154

{deleted text} shows text that was in SB0154 but was deleted in SB0154S01.

inserted text shows text that was not in SB0154 but was inserted into SB0154S01.

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Senator David P. Hinkins proposes the following substitute bill:

TAXED INTERLOCAL ENTITY AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: { } Carl R. Albrecht

LONG TITLE

General Description:

This bill modifies provisions relating to taxed interlocal entities.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "project," for purposes of taxed interlocal entities, to include fuel production facilities and energy storage facilities and to include a project entity's ownership interest in a Utah interlocal energy hub;
- ▶ defines "Utah interlocal energy hub";
- ▶ modifies the definition of "taxed interlocal entity" to expand the type of payment of funds a project entity and interlocal entity may receive without losing their status as a taxed interlocal entity; and
- ▶ provides that a segment is a project entity if the segment's associated entity is a

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project entity.

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 2018, Chapter 424

11-13-602, as enacted by Laws of Utah 2016, Chapter 382

11-13-604, as enacted by Laws of Utah 2016, Chapter 382

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 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

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(c) a prosecution district.

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

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(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.

(10) "Governing authority" means a governing board or joint administrator.

(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.

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

(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.

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

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

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

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

(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]~~ facilities, fuel production facilities, fuel transportation facilities ~~[and]~~, energy storage facilities, or water facilities that are:

(A) owned by that Utah interlocal entity or electric interlocal entity; and

(B) required for the generation and transmission facility.

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

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(i) facilities that provide additional project capacity;
(ii) facilities providing replacement project capacity; [~~and~~]
(iii) additional generating, transmission, fuel, fuel transportation, water, or other facilities added to a project[~~-~~]; and

(iv) a Utah interlocal energy hub, as defined in Section 11-13-602.

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

(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.

(20) "Qualified energy services interlocal entity" means an energy services 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.

(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 on, adjacent to, 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 existing before installation of the capacity replacing existing capacity;

(ii) the capacity replacing existing capacity is owned by the project entity that is the

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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.

(22) "Transportation reinvestment zone" means an area created by two or more public agencies by interlocal agreement to capture increased property or sales tax revenue generated by a transportation infrastructure project as described in Section 11-13-227.

(23) "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.

(24) "Utah public agency" means a public agency under Subsection (19)(a) or (b).

Section 2. Section **11-13-602** is amended 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:

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(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 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).

(11) "Public asset" means:

(a) an asset used by a public entity;

(b) tax revenue;

(c) state funds; or

(d) public funds.

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

(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,

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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) 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; or

(B) a grant that is subject to accountability requirements and that the project entity receives for purposes related to a Utah interlocal energy hub, including research and development of technology, financing, construction, installation, operation, and other actions that the project entity may take with respect to a project; 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) 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~~ or

(B) a loan, grant, guaranty, transferable tax credit, cost-sharing arrangement, or other funding arrangement for an advanced nuclear power facility, as defined in 26 U.S.C. Sec. 45J(d), for an advanced nuclear reactor, as defined in 42 U.S.C. Sec. 16271(b)(1), or for an advanced nuclear energy facility that is eligible for a guarantee under 42 U.S.C. Sec. 16513; and

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

(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.

(15) "Utah interlocal energy hub" means project entity-owned facilities that:

(a) are located within the state; and

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(b) facilitate the coordination of resources and participants in a multi-county or interstate region for:

(i) the generation of energy, including with hydrogen fuel;

(ii) the transmission of energy;

(iii) energy storage, including compressed air energy storage;

(iv) producing environmental benefits; or

(v) the production, storage, or transmission of fuel, including hydrogen fuel.

Section 3. Section **11-13-604** is amended 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 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) assets;

(iii) projects;

(iv) undertakings;

(v) opportunities;

(vi) actions;

(vii) debts;

(viii) liabilities;

(ix) obligations; or

(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

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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 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:

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

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

(iii) 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

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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;

(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 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

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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 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.

(11) Notwithstanding any other provision of law, a segment is a project entity if the segment's associated entity is a project entity.