

INTERLOCAL COOPERATION ACT AMENDMENTS

2021 SECOND SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This bill amends provisions related to project entities and taxed interlocal entities.

Highlighted Provisions:

This bill:

- ▶ establishes a time after which a commercial project entity may no longer exercise eminent domain;
- ▶ clarifies that project entities and taxed interlocal entities are subject to audits by the Office of the Legislative Auditor General;
- ▶ establishes a time after which a taxed interlocal entity may no longer create a segment;
- ▶ removes a provision that states that certain governmental laws do not apply to taxed interlocal entities; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

11-13-314, as last amended by Laws of Utah 2014, Chapter 59



28 [11-13-602](#), as last amended by Laws of Utah 2020, Chapters 354 and 381

29 [11-13-603](#), as last amended by Laws of Utah 2021, Chapter 84

30 [11-13-604](#), as last amended by Laws of Utah 2020, Chapter 381

31 ENACTS:

32 [11-13-316](#), Utah Code Annotated 1953



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

35 Section 1. Section **11-13-314** is amended to read:

36 **11-13-314. Eminent domain authority of certain commercial project entities.**

37 (1) (a) Subject to [~~Subsection (2)] Subsections (2) and (3)~~, a commercial project entity
38 that existed as a project entity before January 1, 1980, may, with respect to a project or
39 facilities providing additional project capacity in which the commercial project entity has an
40 interest, acquire property within the state through eminent domain, subject to restrictions
41 imposed by Title 78B, Chapter 6, Part 5, Eminent Domain, and general law for the protection
42 of other communities.

43 (b) Subsection (1)(a) may not be construed to:

44 (i) give a project entity the authority to acquire water rights by eminent domain; or

45 (ii) diminish any other authority a project entity may claim to have under the law to
46 acquire property by eminent domain.

47 (2) Each project entity that intends to acquire property by eminent domain under
48 Subsection (1)(a) shall comply with the requirements of Section [78B-6-505](#).

49 (3) A commercial project entity that has not taken a final vote to approve the filing of
50 an eminent domain action as described in Subsection [78B-6-504\(2\)\(c\)](#) prior to November 10,
51 2021, may not exercise the authority described in Subsection (1).

52 Section 2. Section **11-13-316** is enacted to read:

53 **11-13-316. Project entity oversight.**

54 Notwithstanding any other provision of law, a project entity is a political subdivision
55 that:

56 (1) is subject to comprehensive and special purpose audits, examinations, and reviews
57 by the Office of the Legislative Auditor General; and

58 (2) is subject to the requirement to provide the Office of the Legislative Auditor

59 General with all records, documents, and reports necessary for the legislative auditor general or
 60 the office to fulfill the duties of the Office of the Legislative Auditor General.

61 Section 3. Section **11-13-602** is amended to read:

62 **11-13-602. Definitions.**

63 As used in this part:

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

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

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

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

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

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

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

72 or

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

74 (i) the organizing resolution of the segment; or

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

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

78 [~~(5) "Governmental law" means:~~]

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

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

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

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

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

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

88 [~~(6)~~] (5) "Indexed office" means the address identified under Subsection

89 [63G-7-401](#)(5)(a)(i) by a segment's associated entity in the associated entity's statement

90 described in Subsection [63G-7-401\(5\)](#).

91 ~~[(7)]~~ [\(6\)](#) "Organization agreement" means an agreement, as amended, that creates a
92 taxed interlocal entity.

93 ~~[(8)]~~ [\(7\)](#) "Organizing resolution" means a resolution described in Subsection
94 [11-13-604\(1\)](#) that creates a segment.

95 ~~[(9)]~~ [\(8\)](#) "Principal county" means the county in which the indexed office of a
96 segment's associated entity is located.

97 ~~[(10)]~~ [\(9\)](#) "Project" means:

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

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

101 ~~[(11)]~~ [\(10\)](#) "Public asset" means:

102 (a) an asset used by a public entity;

103 (b) tax revenue;

104 (c) state funds; or

105 (d) public funds.

106 ~~[(12)]~~ [\(11\)](#) "Segment" means a segment created in accordance with Section [11-13-604](#).

107 ~~[(13)]~~ [\(12\)](#) "Taxed interlocal entity" means:

108 (a) a project entity that:

109 (i) is not exempt from a tax or fee in lieu of taxes imposed in accordance with Part 3,
110 Project Entity Provisions;

111 (ii) does not receive a payment of funds from a federal agency or office, state agency or
112 office, political subdivision, or other public agency or office other than:

113 (A) a payment that does not materially exceed the greater of the fair market value and
114 the cost of a service provided or property conveyed by the project entity; or

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

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

121 (b) an interlocal entity that:

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

124 (ii) does not receive a payment of funds from a federal agency or office, state agency or
125 office, political subdivision, or other public agency or office other than:

126 (A) a payment that does not materially exceed the greater of the fair market value and
127 the cost of a service provided or property conveyed by the interlocal entity; or

128 (B) a loan, grant, guaranty, transferable tax credit, cost-sharing arrangement, or other
129 funding arrangement for an advanced nuclear power facility, as defined in 26 U.S.C. Sec.
130 45J(d), for an advanced nuclear reactor, as defined in 42 U.S.C. Sec. 16271(b)(1), or for an
131 advanced nuclear energy facility that is eligible for a guarantee under 42 U.S.C. Sec. 16513;
132 and

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

135 ~~[(14)]~~ (13) (a) "Use" means to use, own, manage, hold, keep safe, maintain, invest,
136 deposit, administer, receive, expend, appropriate, disburse, or have custody.

137 (b) "Use" includes, when constituting a noun, the corresponding nominal form of each
138 term in Subsection ~~[(14)]~~ (13)(a), individually.

139 ~~[(15)]~~ (14) "Utah interlocal energy hub" means project entity-owned facilities that:

140 (a) are located within the state; and

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

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

144 (ii) the transmission of energy;

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

146 (iv) producing environmental benefits; or

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

148 Section 4. Section **11-13-603** is amended to read:

149 **11-13-603. Taxed interlocal entity.**

150 (1) ~~[Notwithstanding]~~ Except for purposes of an audit, examination, or review by the
151 Office of the Legislative Auditor General as described in Subsection (7) and notwithstanding

152 any other provision of law:

153 (a) the use of an asset by a taxed interlocal entity does not constitute the use of a public
154 asset;

155 (b) a taxed interlocal entity's use of an asset that was a public asset before the taxed
156 interlocal entity's use of the asset does not constitute a taxed interlocal entity's use of a public
157 asset;

158 (c) an official of a project entity is not a public treasurer; and

159 (d) a taxed interlocal entity's governing board shall determine and direct the use of an
160 asset by the taxed interlocal entity.

161 (2) A taxed interlocal entity is not subject to the provisions of Title 63G, Chapter 6a,
162 Utah Procurement Code.

163 (3) (a) A taxed interlocal entity is not a participating local entity as defined in Section
164 [67-3-12](#).

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

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

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

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

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

179 (c) The taxed interlocal entity shall provide the information described in Subsection
180 (3)(b) within a reasonable time after the taxed interlocal entity's independent auditor delivers to
181 the taxed interlocal entity's governing board the auditor's report with respect to the financial
182 statements for and as of the end of the fiscal year.

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

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

187 (ii) the information described in Subsection (3)(b)(i) or (ii) does not constitute public
188 financial information as defined in Section 67-3-12.

189 (4) (a) A taxed interlocal entity's governing board is not a governing board as defined
190 in Section 51-2a-102.

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

194 (5) Notwithstanding any other provision of law, a taxed interlocal entity is not subject
195 to the following provisions:

196 (a) Part 4, Governance;

197 (b) Part 5, Fiscal Procedures for Interlocal Entities;

198 (c) Subsection 11-13-204(1)(a)(i) or (ii)(J);

199 (d) Subsection 11-13-206(1)(f);

200 (e) Subsection 11-13-218(5)(a);

201 (f) Section 11-13-225;

202 (g) Section 11-13-226; or

203 (h) Section 53-2a-605.

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

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

209 ~~[(7) (a) A governmental law enacted after May 12, 2015, is not applicable to, is not~~
210 ~~binding upon, and does not have effect on a taxed interlocal entity unless the governmental law~~
211 ~~expressly states the section of governmental law to be applicable to and binding upon the taxed~~
212 ~~interlocal entity with the following words: "[Applicable section or subsection number]~~
213 ~~constitutes an exception to Subsection 11-13-603(7)(a) and is applicable to and binding upon a~~

214 taxed interlocal entity."]

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

217 (7) Notwithstanding any other provision of law, a taxed interlocal entity is a political
218 subdivision that:

219 (a) is subject to comprehensive and special purpose audits, examinations, and reviews
220 by the Office of the Legislative Auditor General; and

221 (b) is subject to the requirement to provide the Office of the Legislative Auditor
222 General with all records, documents, and reports necessary for the legislative auditor general or
223 the office to fulfill the duties of the Office of the Legislative Auditor General.

224 Section 5. Section 11-13-604 is amended to read:

225 **11-13-604. Segments authorized.**

226 (1) (a) To the extent authorized in a taxed interlocal entity's organization agreement or
227 by a majority of the public entities that are parties to a taxed interlocal entity's organization
228 agreement, the governing board of a taxed interlocal entity may by resolution adopted on or
229 before November 10, 2021, establish or provide for the establishment of one or more segments
230 that have separate rights, powers, privileges, authority or by a majority of the public entities
231 that are parties to a taxed interlocal entity's organization agreement, or duties with respect to, as
232 specified in the segment's organizing resolution, the taxed interlocal entity's:

233 (i) property;

234 (ii) assets;

235 (iii) projects;

236 (iv) undertakings;

237 (v) opportunities;

238 (vi) actions;

239 (vii) debts;

240 (viii) liabilities;

241 (ix) obligations; or

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

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

245 (c) The name of a segment shall:

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

247 (ii) be distinguishable from the name of any other segment established by the
248 associated entity.

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

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

255 (b) separate records are maintained for the segment to the extent necessary to avoid the
256 segment's records constituting a fraud upon the segment's creditors;

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

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

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

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

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

268 (b) may:

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

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

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

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

276 organization agreement of the segment's associated entity.

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

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

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

283 (i) the powers delegated to the segment;

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

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

290 (iv) the segment's purpose;

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

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

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

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

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

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

303 (7) A segment may not:

304 (a) transfer the segment's property or other assets to the segment's associated entity or
305 to another segment established by the segment's associated entity if the transfer impairs the
306 ability of the segment to pay the segment's debts that exist at the time of the transfer, unless the

307 segment's associated entity or the other segment gives fair value for the property or asset; or

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

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

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

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

324 (b) Each segment of an associated entity that is a taxpayer as defined in Section
325 59-8-103 shall pay tax on the segment's gross receipts each period described in Subsection
326 59-8-105(1) at the same rate of tax as the rate of tax paid by the segment's associated entity for
327 the same period.

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

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

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

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

334 Section 6. **Effective date.**

335 If approved by two-thirds of all the members elected to each house, this bill takes effect
336 upon approval by the governor, or the day following the constitutional time limit of Utah
337 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,

338 the date of veto override.