

INTERLOCAL ENTITIES REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Johnny Anderson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts language related to property taxes levied and general obligation bonds issued by an interlocal entity.

Highlighted Provisions:

This bill:

- ▶ authorizes certain interlocal entities to issue general obligation bonds; and
- ▶ authorizes certain interlocal entities to levy ad valorem property taxes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-13-204 (Effective 05/12/15), as last amended by Laws of Utah 2014, Chapter 115

ENACTS:

11-13-218.5, Utah Code Annotated 1953

11-13-218.6, Utah Code Annotated 1953

11-13-218.7, Utah Code Annotated 1953

11-13-218.8, Utah Code Annotated 1953

11-13-218.9, Utah Code Annotated 1953



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

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

**11-13-204 (Effective 05/12/15). Powers and duties of interlocal entities --
Additional powers of energy services interlocal entities -- Length of term of agreement
and interlocal entity -- Notice to lieutenant governor -- Recording requirements -- Public
Service Commission.**

(1) (a) An interlocal entity:

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

(ii) may:

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

(B) sue and be sued;

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

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

(E) acquire real or personal property, or an undivided, fractional, or other interest in
real or personal property, necessary or convenient for the purposes contemplated in the
agreement creating the interlocal entity and sell, lease, or otherwise dispose of that property;

(F) directly or by contract with another:

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

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

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

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

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

(I) sell or contract for the sale of the services, output, product, or other benefits

59 provided by the interlocal entity to:

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

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

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

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

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

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

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

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

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

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

86 (2) An energy services interlocal entity:

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

89 (i) Part 3, Project Entity Provisions; or

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

92 (b) may:

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

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

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

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

106 (3) Notwithstanding Section 11-13-216, an agreement creating an interlocal entity or
107 an amendment to that agreement may provide that the agreement may continue and the
108 interlocal entity may remain in existence until the latest to occur of:

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

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

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

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

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

- 121 (i) within 30 days after the date of the agreement, jointly file with the lieutenant
122 governor:
- 123 (A) a copy of a notice of an impending boundary action, as defined in Section
124 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and
- 125 (B) if less than all of the territory of any Utah public agency that is a party to the
126 agreement is included within the interlocal entity, a copy of an approved final local entity plat,
127 as defined in Section 67-1a-6.5; and
- 128 (ii) upon the lieutenant governor's issuance of a certificate of creation under Section
129 67-1a-6.5:
- 130 (A) if the interlocal entity is located within the boundary of a single county, submit to
131 the recorder of that county:
- 132 (I) the original:
- 133 (Aa) notice of an impending boundary action;
- 134 (Bb) certificate of creation; and
- 135 (Cc) approved final local entity plat, if an approved final local entity plat was required
136 to be filed with the lieutenant governor under Subsection (4)(a)(i)(B); and
- 137 (II) a certified copy of the agreement approving the creation of the interlocal entity; or
- 138 (B) if the interlocal entity is located within the boundaries of more than a single
139 county:
- 140 (I) submit to the recorder of one of those counties:
- 141 (Aa) the original of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb), and
142 (Cc); and
- 143 (Bb) a certified copy of the agreement approving the creation of the interlocal entity;
144 and
- 145 (II) submit to the recorder of each other county:
- 146 (Aa) a certified copy of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb),
147 and (Cc); and
- 148 (Bb) a certified copy of the agreement approving the creation of the interlocal entity.
- 149 (b) Upon the lieutenant governor's issuance of a certificate of creation under Section
150 67-1a-6.5, the interlocal entity is created.
- 151 (c) Until the documents listed in Subsection (4)(a)(ii) are recorded in the office of the

152 recorder of each county in which the property is located, a newly created interlocal entity may
153 not charge or collect a fee for service provided to property within the interlocal entity.

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

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

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

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

161 (7) (a) An energy services interlocal entity created before July 1, 2003, that is
162 comprised solely of Utah municipalities and that, for a minimum of 50 years before July 1,
163 2010, provided retail electric service to customers outside the municipal boundaries of its
164 members, may provide retail electric service outside the municipal boundaries of its members
165 if:

166 (i) the energy services interlocal entity:

167 (A) enters into a written agreement with each public utility holding a certificate of
168 public convenience and necessity issued by the Public Service Commission to provide service
169 within an agreed upon geographic area for the energy services interlocal entity to be
170 responsible to provide electric service in the agreed upon geographic area outside the municipal
171 boundaries of the members of the energy services interlocal entity; and

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

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

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

183 energy services interlocal entity.

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

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

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

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

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

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

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

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

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

212 (e) Nothing in this section:

213 (i) gives the Public Service Commission jurisdiction over the provision of retail

214 electric service by an energy services interlocal entity within the municipal boundaries of its
215 members; or

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

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

222 (g) (i) An energy services interlocal entity described in Subsection (7)(a) retains its
223 authority to provide electric service to the extent authorized by Sections 11-13-202 and
224 11-13-203 and Subsections 11-13-204 (1) through (5).

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

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

230 **11-13-218.5. General obligation bonds.**

231 (1) (a) Only an interlocal entity in which each member of the interlocal entity is a
232 municipality, county, special service district, or local district may issue general obligation
233 bonds.

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

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

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

243 (a) to construct and equip facilities required for the operation of a sewage system; or

244 (b) to construct and equip facilities required for the operation of a system, or one or

245 more components of a system, for the collection, storage, retention, control, conservation,
246 treatment, supplying, distribution, or reclamation of water, including storm, flood, sewage,
247 irrigation, and culinary water, whether the system is operated on a wholesale or retail level or
248 both.

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

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

253 (5) An interlocal entity may not issue general obligation bonds if the issuance of the
254 bonds will cause the outstanding principal amount of all of the interlocal entity's general
255 obligation bonds to exceed by .12 the amount that results from multiplying the fair market
256 value of the taxable property within the interlocal entity, as determined under Subsection
257 11-14-301(3)(b).

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

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

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

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

265 **11-13-218.6. Levy to pay for general obligation bonds.**

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

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

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

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

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

276 (1) shall:

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

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

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

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

285 **11-13-218.7. Property tax levy -- Time for setting -- Computation of total levy --**
286 **Apportionment of proceeds -- Maximum levy.**

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

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

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

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

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

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

301 **11-13-218.8. Certification of resolution setting levy.**

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

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

306 **11-13-218.9. Property tax levy -- Amount in budget as basis for determining**

307 **property tax levy.**

308 From the effective date of the budget or of an amendment enacted prior to the date on
309 which property taxes are levied, the amount stated as the amount of estimated revenue from
310 property taxes for the payment principal and interest on general obligation bonds issued by the
311 interlocal entity shall constitute the basis for determining the property tax levy to be set by the
312 governing body for the corresponding tax year.

Legislative Review Note

as of 2-11-15 11:37 AM

Office of Legislative Research and General Counsel