

**INTERLOCAL ENTITIES REVISIONS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Johnny Anderson**

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

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**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) ~~Ĥ→ [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.] An interlocal entity may issue general obligation bonds only if:~~

233a ~~(i) each member of the interlocal entity is a municipality, county, special service district,~~  
233b ~~or local district;~~

233c ~~(ii) the interlocal entity governing body is composed entirely of elected officials~~  
233d ~~appointed, respectively, by a member described in Subsection (1)(a)(i); and~~

233e ~~(iii) the interlocal entity has not issued any bonds currently in default. ←Ĥ~~

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 Ĥ→ public safety ←Ĥ facilities Ĥ→ [required for the operation  
243a of a sewage system] ←Ĥ ; 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  $\hat{H} \rightarrow$  ~~by .12 the~~ an  $\leftarrow \hat{H}$  amount that results from multiplying the fair  
 255a market

256 value of the taxable property within the interlocal entity, as determined under Subsection  
 257 [11-14-301\(3\)\(b\)](#)  $\hat{H} \rightarrow$  , by .12  $\leftarrow \hat{H}$  .

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.

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**Legislative Review Note**

**as of 2-11-15 11:37 AM**

**Office of Legislative Research and General Counsel**