

1 **INTERLOCAL COOPERATION ACT AMENDMENTS**

2 2021 SECOND SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Derrin R. Owens**

5 House Sponsor: Carl R. Albrecht

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

12 ▶ establishes a time after which a commercial project entity may no longer exercise
13 eminent domain;

14 ▶ clarifies that project entities and certain taxed interlocal entities are subject to audits
15 by the Office of the Legislative Auditor General;

16 ▶ establishes a time after which a taxed interlocal entity that is a project entity may no
17 longer create a segment;

18 ▶ modifies a provision that states that certain governmental laws do not apply to taxed
19 interlocal entities; and

20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides a special effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **11-13-314**, as last amended by Laws of Utah 2014, Chapter 59

28 **11-13-603**, as last amended by Laws of Utah 2021, Chapter 84

29 **11-13-604**, as last amended by Laws of Utah 2020, Chapter 381

30 ENACTS:

31 **11-13-316**, Utah Code Annotated 1953



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

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

35 **11-13-314. Eminent domain authority of certain commercial project entities.**

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

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

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

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

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

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

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

52 **11-13-316. Project entity oversight.**

53 (1) Notwithstanding any other provision of law, a project entity is a political
54 subdivision that:

55 (a) pursuant to Utah Constitution, Article VI, Section 33, is subject to the authority of
56 the legislative auditor to conduct audits of any funds, functions, and accounts in any political
57 subdivision of this state; and

58 **(b)** 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 described in Subsection (1)(a).

61 **(2)** Subsection (1) takes precedence over Section [36-12-15](#).

62 Section 3. Section **11-13-603** is amended to read:

63 **11-13-603. Taxed interlocal entity.**

64 **(1)** ~~[Notwithstanding]~~ Except for purposes of an audit, examination, or review by the
65 Office of the Legislative Auditor General as described in Subsection (8) and notwithstanding
66 any other provision of law:

67 **(a)** the use of an asset by a taxed interlocal entity does not constitute the use of a public
68 asset;

69 **(b)** a taxed interlocal entity's use of an asset that was a public asset before the taxed
70 interlocal entity's use of the asset does not constitute a taxed interlocal entity's use of a public
71 asset;

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

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

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

77 **(3) (a)** A taxed interlocal entity is not a participating local entity as defined in Section
78 [67-3-12](#).

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

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

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

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

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

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

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

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

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

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

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

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

110 (a) Part 4, Governance;

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

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

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

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

115 (f) Section 11-13-225;

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

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

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

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

123 (7) (a) A governmental law enacted after May 12, 2015, and on or before November
124 10, 2021, is not applicable to, is not binding upon, and does not have effect on a taxed
125 interlocal entity that is a project entity unless the governmental law expressly states the section
126 of governmental law to be applicable to and binding upon the taxed interlocal entity with the
127 following words: "[Applicable section or subsection number] constitutes an exception to
128 Subsection 11-13-603(7)(a) and is applicable to and binding upon a taxed interlocal entity."

129 (b) A governmental law enacted after May 12, 2015, is not applicable to, is not binding
130 upon, and does not have effect on a taxed interlocal entity that is an energy services interlocal
131 entity unless the governmental law expressly states the section of governmental law to be
132 applicable to and binding upon the energy services interlocal entity with the following words:
133 "[Applicable section or subsection number] constitutes an exception to Subsection
134 11-13-603(7)(a) and is applicable to and binding upon an energy services interlocal entity."

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

138 (8) (a) Notwithstanding any other provision of law, a taxed interlocal entity that is a
139 project entity is a political subdivision that:

140 (i) pursuant to Utah Constitution, Article VI, Section 33, is subject to the authority of
141 the legislative auditor to conduct audits of any funds, functions, and accounts in any political

142 subdivision of this state; and

143 (ii) is subject to the requirement to provide the Office of the Legislative Auditor
144 General with all records, documents, and reports necessary of the legislative auditor general or
145 the office to fulfill the duties described in Subsection (8)(a)(i).

146 (b) Subsection (8)(a) takes precedence over Section 36-12-15.

147 Section 4. Section 11-13-604 is amended to read:

148 **11-13-604. Segments authorized.**

149 (1) (a) (i) ~~[(i)]~~ If a taxed interlocal entity is a project entity, and to the extent
150 authorized in a taxed interlocal entity's organization agreement or by a majority of the public
151 entities that are parties to a taxed interlocal entity's organization agreement, the governing
152 board of a taxed interlocal entity may by resolution adopted on or before November 10, 2021,
153 establish or provide for the establishment of one or more segments that have separate rights,
154 powers, privileges, authority or by a majority of the public entities that are parties to a taxed
155 interlocal entity's organization agreement, or duties with respect to, as specified in the
156 segment's organizing resolution, the taxed interlocal entity's:

- 157 ~~[(i)]~~ (A) property;
- 158 ~~[(ii)]~~ (B) assets;
- 159 ~~[(iii)]~~ (C) projects;
- 160 ~~[(iv)]~~ (D) undertakings;
- 161 ~~[(v)]~~ (E) opportunities;
- 162 ~~[(vi)]~~ (F) actions;
- 163 ~~[(vii)]~~ (G) debts;
- 164 ~~[(viii)]~~ (H) liabilities;
- 165 ~~[(ix)]~~ (I) obligations; or
- 166 ~~[(x)]~~ (J) any combination of the items listed in Subsections (1)(a)(i)(A) through ~~[(viii)]~~
- 167 (H).

168 (ii) If a taxed interlocal entity is not a project entity, and to the extent authorized in a
169 taxed interlocal entity's organization agreement, the governing board of a taxed interlocal entity

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

174 (A) property;

175 (B) assets;

176 (C) projects;

177 (D) undertakings;

178 (E) opportunities;

179 (F) actions;

180 (G) debts;

181 (H) liabilities;

182 (I) obligations; or

183 (J) any combination of the items listed in Subsections (1)(b)(ii)(A) through (H).

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

186 (c) The name of a segment shall:

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

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

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

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

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

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

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

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

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

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

209 (b) may:

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

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

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

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

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

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

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

224 (i) the powers delegated to the segment;

225 (ii) the manner in which the segment is to be governed, including whether the

226 segment's governing body is the same as the governing board of the segment's associated
227 entity;

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

231 (iv) the segment's purpose;

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

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

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

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

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

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

244 (7) A segment may not:

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

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

252 (8) If a segment and a segment's associated entity or another segment established by the
253 segment's associated entity are involved in a joint action or have a common interest in a

254 facility, the segment's or the segment's associated entity's maintenance of records and accounts
255 related to the joint action or common interest does not constitute a violation of Subsection
256 (2)(b) or (c).

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

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

265 (b) Each segment of an associated entity that is a taxpayer as defined in Section
266 59-8-103 shall pay tax on the segment's gross receipts each period described in Subsection
267 59-8-105(1) at the same rate of tax as the rate of tax paid by the segment's associated entity for
268 the same period.

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

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

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

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

275 **Section 5. Effective date.**

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