

1 **LOCAL OPTION FUNDING FOR REGIONALLY SIGNIFICANT**
2 **TRANSPORTATION INFRASTRUCTURE**

3 2006 FOURTH SPECIAL SESSION

4 STATE OF UTAH

5
6 **LONG TITLE**

7 **General Description:**

8 This bill modifies the County Powers, the Sales and Use Tax Act, and Transportation
9 Finances Act to address transportation funding for counties.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ prohibits a county legislative body from using property taxes to fund fixed
- 13 guideways;
- 14 ▶ provides definitions;
- 15 ▶ authorizes a county legislative body to impose a local option sales and use tax of up
- 16 to .25% beginning on or after April 1, 2007 for certain transportation uses;
- 17 ▶ requires a county imposing the tax to establish a prioritization process with
- 18 weighted criteria;
- 19 ▶ requires at least 25% of the revenues collected in a county of the first or second
- 20 class to be expended on corridor preservation;
- 21 ▶ provides the purposes for which revenues collected for the tax may be expended;
- 22 ▶ provides procedures and requirements for imposing the tax;
- 23 ▶ establishes the duties of the State Tax Commission to administer, collect, and
- 24 enforce the tax; and
- 25 ▶ makes technical changes.

26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill provides an effective date.

30 This bill provides revisor instructions.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **59-12-102 (Effective 01/01/07)**, as last amended by Chapter 9, Laws of Utah 2006,

34 Third Special Session

35 **72-2-117.5**, as enacted by Chapter 284, Laws of Utah 2005

36 **72-2-121**, as last amended by Chapter 329, Laws of Utah 2006

37 ENACTS:

38 **17-50-322**, Utah Code Annotated 1953

39 **59-12-1701**, Utah Code Annotated 1953

40 **59-12-1702**, Utah Code Annotated 1953

41 **59-12-1703**, Utah Code Annotated 1953

42 **59-12-1704**, Utah Code Annotated 1953

43 **59-12-1705**, Utah Code Annotated 1953

44



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

46 Section 1. Section **17-50-322** is enacted to read:

47 **17-50-322. County funding for a fixed guideway.**

48 (1) For purposes of this section, "fixed guideway" means a public transit facility that
49 uses and occupies:

50 (a) rail for the use of public transit; or

51 (b) a separate right-of-way for the use of public transit.

52 (2) Beginning on January 1, 2007, a county legislative body may not levy a property
53 tax or expend revenues from uniform fees or any tax or fee imposed in lieu of a property tax, to
54 purchase, erect, repair, rebuild, maintain, or otherwise fund a fixed guideway.

55 Section 2. Section **59-12-102 (Effective 01/01/07)** is amended to read:

56 **59-12-102 (Effective 01/01/07). Definitions.**

57 As used in this chapter:

58 (1) (a) "Admission or user fees" includes season passes.

59 (b) "Admission or user fees" does not include annual membership dues to private
60 organizations.

61 (2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in
62 Section 59-12-102.1.

- 63 (3) "Agreement combined tax rate" means the sum of the tax rates:
64 (a) listed under Subsection (4); and
65 (b) that are imposed within a local taxing jurisdiction.
- 66 (4) "Agreement sales and use tax" means a tax imposed under:
67 (a) Subsection 59-12-103(2)(a)(i) or (2)(b)(iii)(A);
68 (b) Section 59-12-204;
69 (c) Section 59-12-401;
70 (d) Section 59-12-402;
71 (e) Section 59-12-501;
72 (f) Section 59-12-502;
73 (g) Section 59-12-703;
74 (h) Section 59-12-802;
75 (i) Section 59-12-804;
76 (j) Section 59-12-1001;
77 (k) Section 59-12-1102;
78 (l) Section 59-12-1302;
79 (m) Section 59-12-1402; or
80 (n) Section 59-12-1503.
- 81 (5) "Aircraft" is as defined in Section 72-10-102.
- 82 (6) "Alcoholic beverage" means a beverage that:
83 (a) is suitable for human consumption; and
84 (b) contains .5% or more alcohol by volume.
- 85 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 86 (8) "Assisted amusement device" means an amusement device, skill device, or ride
87 device that is started and stopped by an individual:
88 (a) who is not the purchaser or renter of the right to use or operate the amusement
89 device, skill device, or ride device; and
90 (b) at the direction of the seller of the right to use the amusement device, skill device,
91 or ride device.
- 92 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or
93 washing of tangible personal property if the cleaning or washing labor is primarily performed

94 by an individual:

95 (a) who is not the purchaser of the cleaning or washing of the tangible personal
96 property; and

97 (b) at the direction of the seller of the cleaning or washing of the tangible personal
98 property.

99 (10) "Authorized carrier" means:

100 (a) in the case of vehicles operated over public highways, the holder of credentials
101 indicating that the vehicle is or will be operated pursuant to both the International Registration
102 Plan and the International Fuel Tax Agreement;

103 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
104 certificate or air carrier's operating certificate; or

105 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
106 stock, the holder of a certificate issued by the United States Surface Transportation Board.

107 (11) (a) Except as provided in Subsection (11)(b), "biomass energy" means any of the
108 following that is used as the primary source of energy to produce fuel or electricity:

109 (i) material from a plant or tree; or

110 (ii) other organic matter that is available on a renewable basis, including:

111 (A) slash and brush from forests and woodlands;

112 (B) animal waste;

113 (C) methane produced:

114 (I) at landfills; or

115 (II) as a byproduct of the treatment of wastewater residuals;

116 (D) aquatic plants; and

117 (E) agricultural products.

118 (b) "Biomass energy" does not include:

119 (i) black liquor;

120 (ii) treated woods; or

121 (iii) biomass from municipal solid waste other than methane produced:

122 (A) at landfills; or

123 (B) as a byproduct of the treatment of wastewater residuals.

124 (12) (a) "Bundled transaction" means the sale of two or more items of tangible personal

125 property if:

126 (i) one or more of the items of tangible personal property is food and food ingredients;

127 and

128 (ii) the items of tangible personal property are:

129 (A) distinct and identifiable; and

130 (B) sold for one price that is not itemized.

131 (b) "Bundled transaction" does not include the sale of tangible personal property if the
132 sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of
133 tangible personal property included in the transaction.

134 (c) For purposes of Subsection (12)(a)(ii)(A), tangible personal property that is distinct
135 and identifiable does not include:

136 (i) packaging that:

137 (A) accompanies the sale of the tangible personal property; and

138 (B) is incidental or immaterial to the sale of the tangible personal property;

139 (ii) tangible personal property provided free of charge with the purchase of another
140 item of tangible personal property; or

141 (iii) an item of tangible personal property included in the definition of "purchase
142 price."

143 (d) For purposes of Subsection (12)(c)(ii), an item of tangible personal property is
144 provided free of charge with the purchase of another item of tangible personal property if the
145 sales price of the purchased item of tangible personal property does not vary depending on the
146 inclusion of the tangible personal property provided free of charge.

147 (13) "Certified automated system" means software certified by the governing board of
148 the agreement in accordance with Section 59-12-102.1 that:

149 (a) calculates the agreement sales and use tax imposed within a local taxing
150 jurisdiction:

151 (i) on a transaction; and

152 (ii) in the states that are members of the agreement;

153 (b) determines the amount of agreement sales and use tax to remit to a state that is a
154 member of the agreement; and

155 (c) maintains a record of the transaction described in Subsection (13)(a)(i).

156 (14) "Certified service provider" means an agent certified:

157 (a) by the governing board of the agreement in accordance with Section 59-12-102.1;

158 and

159 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
160 use tax other than the seller's obligation under Section 59-12-107.4 to remit a tax on the seller's
161 own purchases.

162 (15) (a) Subject to Subsection (15)(b), "clothing" means all human wearing apparel
163 suitable for general use.

164 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
165 commission shall make rules:

166 (i) listing the items that constitute "clothing"; and

167 (ii) that are consistent with the list of items that constitute "clothing" under the
168 agreement.

169 (16) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

170 (17) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
171 fuels that does not constitute industrial use under Subsection [~~(38)~~] (39) or residential use
172 under Subsection [~~(75)~~] (76).

173 (18) (a) "Common carrier" means a person engaged in or transacting the business of
174 transporting passengers, freight, merchandise, or other property for hire within this state.

175 (b) (i) "Common carrier" does not include a person who, at the time the person is
176 traveling to or from that person's place of employment, transports a passenger to or from the
177 passenger's place of employment.

178 (ii) For purposes of Subsection (18)(b)(i), in accordance with Title 63, Chapter 46a,
179 Utah Administrative Rulemaking Act, the commission may make rules defining what
180 constitutes a person's place of employment.

181 (19) "Component part" includes:

182 (a) poultry, dairy, and other livestock feed, and their components;

183 (b) baling ties and twine used in the baling of hay and straw;

184 (c) fuel used for providing temperature control of orchards and commercial
185 greenhouses doing a majority of their business in wholesale sales, and for providing power for
186 off-highway type farm machinery; and

- 187 (d) feed, seeds, and seedlings.
- 188 (20) "Computer" means an electronic device that accepts information:
- 189 (a) (i) in digital form; or
- 190 (ii) in a form similar to digital form; and
- 191 (b) manipulates that information for a result based on a sequence of instructions.
- 192 (21) "Computer software" means a set of coded instructions designed to cause:
- 193 (a) a computer to perform a task; or
- 194 (b) automatic data processing equipment to perform a task.
- 195 (22) "Construction materials" means any tangible personal property that will be
- 196 converted into real property.
- 197 (23) "Delivered electronically" means delivered to a purchaser by means other than
- 198 tangible storage media.
- 199 (24) (a) "Delivery charge" means a charge:
- 200 (i) by a seller of:
- 201 (A) tangible personal property; or
- 202 (B) services; and
- 203 (ii) for preparation and delivery of the tangible personal property or services described
- 204 in Subsection (24)(a)(i) to a location designated by the purchaser.
- 205 (b) "Delivery charge" includes a charge for the following:
- 206 (i) transportation;
- 207 (ii) shipping;
- 208 (iii) postage;
- 209 (iv) handling;
- 210 (v) crating; or
- 211 (vi) packing.
- 212 (25) "Dietary supplement" means a product, other than tobacco, that:
- 213 (a) is intended to supplement the diet;
- 214 (b) contains one or more of the following dietary ingredients:
- 215 (i) a vitamin;
- 216 (ii) a mineral;
- 217 (iii) an herb or other botanical;

- 218 (iv) an amino acid;
- 219 (v) a dietary substance for use by humans to supplement the diet by increasing the total
220 dietary intake; or
- 221 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
222 described in Subsections (25)(b)(i) through (v);
- 223 (c) (i) except as provided in Subsection (25)(c)(ii), is intended for ingestion in:
- 224 (A) tablet form;
- 225 (B) capsule form;
- 226 (C) powder form;
- 227 (D) softgel form;
- 228 (E) gelcap form; or
- 229 (F) liquid form; or
- 230 (ii) notwithstanding Subsection (25)(c)(i), if the product is not intended for ingestion in
231 a form described in Subsections (25)(c)(i)(A) through (F), is not represented:
- 232 (A) as conventional food; and
- 233 (B) for use as a sole item of:
- 234 (I) a meal; or
- 235 (II) the diet; and
- 236 (d) is required to be labeled as a dietary supplement:
- 237 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 238 (ii) as required by 21 C.F.R. Sec. 101.36.
- 239 (26) (a) "Direct mail" means printed material delivered or distributed by United States
240 mail or other delivery service:
- 241 (i) to:
- 242 (A) a mass audience; or
- 243 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 244 (ii) if the cost of the printed material is not billed directly to the recipients.
- 245 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
246 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 247 (c) "Direct mail" does not include multiple items of printed material delivered to a
248 single address.

249 (27) (a) "Drug" means a compound, substance, or preparation, or a component of a
250 compound, substance, or preparation that is:

251 (i) recognized in:

252 (A) the official United States Pharmacopoeia;

253 (B) the official Homeopathic Pharmacopoeia of the United States;

254 (C) the official National Formulary; or

255 (D) a supplement to a publication listed in Subsections (27)(a)(i)(A) through (C);

256 (ii) intended for use in the:

257 (A) diagnosis of disease;

258 (B) cure of disease;

259 (C) mitigation of disease;

260 (D) treatment of disease; or

261 (E) prevention of disease; or

262 (iii) intended to affect:

263 (A) the structure of the body; or

264 (B) any function of the body.

265 (b) "Drug" does not include:

266 (i) food and food ingredients;

267 (ii) a dietary supplement;

268 (iii) an alcoholic beverage; or

269 (iv) a prosthetic device.

270 (28) (a) Except as provided in Subsection (28)(c), "durable medical equipment" means
271 equipment that:

272 (i) can withstand repeated use;

273 (ii) is primarily and customarily used to serve a medical purpose;

274 (iii) generally is not useful to a person in the absence of illness or injury; and

275 (iv) is not worn in or on the body.

276 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
277 equipment described in Subsection (28)(a).

278 (c) Notwithstanding Subsection (28)(a), "durable medical equipment" does not include
279 mobility enhancing equipment.

- 280 (29) "Electronic" means:
- 281 (a) relating to technology; and
- 282 (b) having:
- 283 (i) electrical capabilities;
- 284 (ii) digital capabilities;
- 285 (iii) magnetic capabilities;
- 286 (iv) wireless capabilities;
- 287 (v) optical capabilities;
- 288 (vi) electromagnetic capabilities; or
- 289 (vii) capabilities similar to Subsections (29)(b)(i) through (vi).
- 290 (30) "Employee" is as defined in Section 59-10-401.
- 291 (31) "Fixed guideway" means a public transit facility that uses and occupies:
- 292 (a) rail for the use of public transit; or
- 293 (b) a separate right-of-way for the use of public transit.
- 294 [~~(31)~~] (32) (a) "Food and food ingredients" means substances:
- 295 (i) regardless of whether the substances are in:
- 296 (A) liquid form;
- 297 (B) concentrated form;
- 298 (C) solid form;
- 299 (D) frozen form;
- 300 (E) dried form; or
- 301 (F) dehydrated form; and
- 302 (ii) that are:
- 303 (A) sold for:
- 304 (I) ingestion by humans; or
- 305 (II) chewing by humans; and
- 306 (B) consumed for the substance's:
- 307 (I) taste; or
- 308 (II) nutritional value.
- 309 (b) "Food and food ingredients" includes an item described in Subsection [~~(62)~~]
- 310 (63)(b)(iii).

- 311 (c) "Food and food ingredients" does not include:
- 312 (i) an alcoholic beverage;
- 313 (ii) tobacco; or
- 314 (iii) prepared food.
- 315 [~~(32)~~] (33) (a) "Fundraising sales" means sales:
- 316 (i) (A) made by a school; or
- 317 (B) made by a school student;
- 318 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 319 materials, or provide transportation; and
- 320 (iii) that are part of an officially sanctioned school activity.
- 321 (b) For purposes of Subsection [~~(32)~~] (33)(a)(iii), "officially sanctioned school activity"
- 322 means a school activity:
- 323 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 324 district governing the authorization and supervision of fundraising activities;
- 325 (ii) that does not directly or indirectly compensate an individual teacher or other
- 326 educational personnel by direct payment, commissions, or payment in kind; and
- 327 (iii) the net or gross revenues from which are deposited in a dedicated account
- 328 controlled by the school or school district.
- 329 [~~(33)~~] (34) "Geothermal energy" means energy contained in heat that continuously
- 330 flows outward from the earth that is used as the sole source of energy to produce electricity.
- 331 [~~(34)~~] (35) "Governing board of the agreement" means the governing board of the
- 332 agreement that is:
- 333 (a) authorized to administer the agreement; and
- 334 (b) established in accordance with the agreement.
- 335 [~~(35)~~] (36) (a) "Hearing aid" means:
- 336 (i) an instrument or device having an electronic component that is designed to:
- 337 (A) (I) improve impaired human hearing; or
- 338 (II) correct impaired human hearing; and
- 339 (B) (I) be worn in the human ear; or
- 340 (II) affixed behind the human ear;
- 341 (ii) an instrument or device that is surgically implanted into the cochlea; or

- 342 (iii) a telephone amplifying device.
- 343 (b) "Hearing aid" does not include:
- 344 (i) except as provided in Subsection [~~(35)~~] (36)(a)(i)(B) or [~~(35)~~] (36)(a)(ii), an
- 345 instrument or device having an electronic component that is designed to be worn on the body;
- 346 (ii) except as provided in Subsection [~~(35)~~] (36)(a)(iii), an assistive listening device or
- 347 system designed to be used by one individual, including:
- 348 (A) a personal amplifying system;
- 349 (B) a personal FM system;
- 350 (C) a television listening system; or
- 351 (D) a device or system similar to a device or system described in Subsections [~~(35)~~
- 352 (36)(b)(ii)(A) through (C); or
- 353 (iii) an assistive listening device or system designed to be used by more than one
- 354 individual, including:
- 355 (A) a device or system installed in:
- 356 (I) an auditorium;
- 357 (II) a church;
- 358 (III) a conference room;
- 359 (IV) a synagogue; or
- 360 (V) a theater; or
- 361 (B) a device or system similar to a device or system described in Subsections [~~(35)~~
- 362 (36)(b)(iii)(A)(I) through (V).
- 363 [~~(36)~~] (37) (a) "Hearing aid accessory" means a hearing aid:
- 364 (i) component;
- 365 (ii) attachment; or
- 366 (iii) accessory.
- 367 (b) "Hearing aid accessory" includes:
- 368 (i) a hearing aid neck loop;
- 369 (ii) a hearing aid cord;
- 370 (iii) a hearing aid ear mold;
- 371 (iv) hearing aid tubing;
- 372 (v) a hearing aid ear hook; or

- 373 (vi) a hearing aid remote control.
- 374 (c) "Hearing aid accessory" does not include:
- 375 (i) a component, attachment, or accessory designed to be used only with an:
- 376 (A) instrument or device described in Subsection [~~(35)~~] (36)(b)(i); or
- 377 (B) assistive listening device or system described in Subsection [~~(35)~~] (36)(b)(ii) or
- 378 (iii); or
- 379 (ii) a hearing aid battery.
- 380 [~~(37)~~] (38) "Hydroelectric energy" means water used as the sole source of energy to
- 381 produce electricity.
- 382 [~~(38)~~] (39) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
- 383 or other fuels:
- 384 (a) in mining or extraction of minerals;
- 385 (b) in agricultural operations to produce an agricultural product up to the time of
- 386 harvest or placing the agricultural product into a storage facility, including:
- 387 (i) commercial greenhouses;
- 388 (ii) irrigation pumps;
- 389 (iii) farm machinery;
- 390 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 391 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 392 (v) other farming activities;
- 393 (c) in manufacturing tangible personal property at an establishment described in SIC
- 394 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 395 Executive Office of the President, Office of Management and Budget;
- 396 (d) by a scrap recycler if:
- 397 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 398 one or more of the following items into prepared grades of processed materials for use in new
- 399 products:
- 400 (A) iron;
- 401 (B) steel;
- 402 (C) nonferrous metal;
- 403 (D) paper;

- 404 (E) glass;
- 405 (F) plastic;
- 406 (G) textile; or
- 407 (H) rubber; and
- 408 (ii) the new products under Subsection [~~(38)~~] (39)(d)(i) would otherwise be made with
- 409 nonrecycled materials; or
- 410 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 411 cogeneration facility as defined in Section 54-2-1.
- 412 [~~(39)~~] (40) (a) Except as provided in Subsection [~~(39)~~] (40)(b), "installation charge"
- 413 means a charge for installing tangible personal property.
- 414 (b) Notwithstanding Subsection [~~(39)~~] (40)(a), "installation charge" does not include a
- 415 charge for repairs or renovations of tangible personal property.
- 416 [~~(40)~~] (41) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 417 personal property for:
- 418 (i) (A) a fixed term; or
- 419 (B) an indeterminate term; and
- 420 (ii) consideration.
- 421 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 422 amount of consideration may be increased or decreased by reference to the amount realized
- 423 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 424 Code.
- 425 (c) "Lease" or "rental" does not include:
- 426 (i) a transfer of possession or control of property under a security agreement or
- 427 deferred payment plan that requires the transfer of title upon completion of the required
- 428 payments;
- 429 (ii) a transfer of possession or control of property under an agreement that requires the
- 430 transfer of title:
- 431 (A) upon completion of required payments; and
- 432 (B) if the payment of an option price does not exceed the greater of:
- 433 (I) \$100; or
- 434 (II) 1% of the total required payments; or

435 (iii) providing tangible personal property along with an operator for a fixed period of
436 time or an indeterminate period of time if the operator is necessary for equipment to perform as
437 designed.

438 (d) For purposes of Subsection [~~(40)~~] (41)(c)(iii), an operator is necessary for
439 equipment to perform as designed if the operator's duties exceed the:

- 440 (i) set-up of tangible personal property;
- 441 (ii) maintenance of tangible personal property; or
- 442 (iii) inspection of tangible personal property.

443 [~~(41)~~] (42) "Load and leave" means delivery to a purchaser by use of a tangible storage
444 media if the tangible storage media is not physically transferred to the purchaser.

445 [~~(42)~~] (43) "Local taxing jurisdiction" means a:

- 446 (a) county that is authorized to impose an agreement sales and use tax;
- 447 (b) city that is authorized to impose an agreement sales and use tax; or
- 448 (c) town that is authorized to impose an agreement sales and use tax.

449 [~~(43)~~] (44) "Manufactured home" is as defined in Section 58-56-3.

450 [~~(44)~~] (45) For purposes of Section 59-12-104, "manufacturing facility" means:

451 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
452 Industrial Classification Manual of the federal Executive Office of the President, Office of
453 Management and Budget;

454 (b) a scrap recycler if:

455 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
456 one or more of the following items into prepared grades of processed materials for use in new
457 products:

- 458 (A) iron;
- 459 (B) steel;
- 460 (C) nonferrous metal;
- 461 (D) paper;
- 462 (E) glass;
- 463 (F) plastic;
- 464 (G) textile; or
- 465 (H) rubber; and

466 (ii) the new products under Subsection [~~(44)~~] (45)(b)(i) would otherwise be made with
467 nonrecycled materials; or

468 (c) a cogeneration facility as defined in Section 54-2-1.

469 [~~(45)~~] (46) "Member of the immediate family of the producer" means a person who is
470 related to a producer described in Subsection 59-12-104(20)(a) as a:

471 (a) child or stepchild, regardless of whether the child or stepchild is:

472 (i) an adopted child or adopted stepchild; or

473 (ii) a foster child or foster stepchild;

474 (b) grandchild or stepgrandchild;

475 (c) grandparent or stepgrandparent;

476 (d) nephew or stepnephew;

477 (e) niece or stepniece;

478 (f) parent or stepparent;

479 (g) sibling or stepsibling;

480 (h) spouse;

481 (i) person who is the spouse of a person described in Subsections [~~(45)~~] (46)(a) through
482 (g); or

483 (j) person similar to a person described in Subsections [~~(45)~~] (46)(a) through (i) as
484 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
485 Administrative Rulemaking Act.

486 [~~(46)~~] (47) "Mobile home" is as defined in Section 58-56-3.

487 [~~(47)~~] (48) "Mobile telecommunications service" is as defined in the Mobile
488 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

489 [~~(48)~~] (49) (a) Except as provided in Subsection [~~(48)~~] (49)(c), "mobility enhancing
490 equipment" means equipment that is:

491 (i) primarily and customarily used to provide or increase the ability to move from one
492 place to another;

493 (ii) appropriate for use in a:

494 (A) home; or

495 (B) motor vehicle; and

496 (iii) not generally used by persons with normal mobility.

497 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
498 the equipment described in Subsection [~~(48)~~] (49)(a).

499 (c) Notwithstanding Subsection [~~(48)~~] (49)(a), "mobility enhancing equipment" does
500 not include:

501 (i) a motor vehicle;

502 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
503 vehicle manufacturer;

504 (iii) durable medical equipment; or

505 (iv) a prosthetic device.

506 [~~(49)~~] (50) "Model 1 seller" means a seller that has selected a certified service provider
507 as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales
508 and use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
509 seller's own purchases.

510 [~~(50)~~] (51) "Model 2 seller" means a seller that:

511 (a) except as provided in Subsection [~~(50)~~] (51)(b), has selected a certified automated
512 system to perform the seller's sales tax functions for agreement sales and use taxes; and

513 (b) notwithstanding Subsection [~~(50)~~] (51)(a), retains responsibility for remitting all of
514 the sales tax:

515 (i) collected by the seller; and

516 (ii) to the appropriate local taxing jurisdiction.

517 [~~(51)~~] (52) (a) Subject to Subsection [~~(51)~~] (52)(b), "model 3 seller" means a seller that
518 has:

519 (i) sales in at least five states that are members of the agreement;

520 (ii) total annual sales revenues of at least \$500,000,000;

521 (iii) a proprietary system that calculates the amount of tax:

522 (A) for an agreement sales and use tax; and

523 (B) due to each local taxing jurisdiction; and

524 (iv) entered into a performance agreement with the governing board of the agreement.

525 (b) For purposes of Subsection [~~(51)~~] (52)(a), "model 3 seller" includes an affiliated
526 group of sellers using the same proprietary system.

527 [~~(52)~~] (53) "Modular home" means a modular unit as defined in Section 58-56-3.

528 ~~[(53)]~~ (54) "Motor vehicle" is as defined in Section 41-1a-102.

529 ~~[(54)]~~ (55) "Oil shale" means a group of fine black to dark brown shales containing
530 bituminous material that yields petroleum upon distillation.

531 ~~[(55)]~~ (56) (a) "Other fuels" means products that burn independently to produce heat or
532 energy.

533 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
534 personal property.

535 ~~[(56)]~~ (57) "Pawnbroker" is as defined in Section 13-32a-102.

536 ~~[(57)]~~ (58) "Pawn transaction" is as defined in Section 13-32a-102.

537 ~~[(58)]~~ (59) (a) "Permanently attached to real property" means that for tangible personal
538 property attached to real property:

539 (i) the attachment of the tangible personal property to the real property:
540 (A) is essential to the use of the tangible personal property; and
541 (B) suggests that the tangible personal property will remain attached to the real
542 property in the same place over the useful life of the tangible personal property; or
543 (ii) if the tangible personal property is detached from the real property, the detachment
544 would:

545 (A) cause substantial damage to the tangible personal property; or
546 (B) require substantial alteration or repair of the real property to which the tangible
547 personal property is attached.

548 (b) "Permanently attached to real property" includes:

549 (i) the attachment of an accessory to the tangible personal property if the accessory is:
550 (A) essential to the operation of the tangible personal property; and
551 (B) attached only to facilitate the operation of the tangible personal property;

552 (ii) a temporary detachment of tangible personal property from real property for a
553 repair or renovation if the repair or renovation is performed where the tangible personal
554 property and real property are located; or

555 (iii) an attachment of the following tangible personal property to real property,
556 regardless of whether the attachment to real property is only through a line that supplies water,
557 electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by
558 rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

559 (A) property attached to oil, gas, or water pipelines, other than the property listed in
560 Subsection [~~58~~] (59)(c)(iii);

561 (B) a hot water heater;

562 (C) a water softener system; or

563 (D) a water filtration system, other than a water filtration system manufactured as part
564 of a refrigerator.

565 (c) "Permanently attached to real property" does not include:

566 (i) the attachment of portable or movable tangible personal property to real property if
567 that portable or movable tangible personal property is attached to real property only for:

568 (A) convenience;

569 (B) stability; or

570 (C) for an obvious temporary purpose;

571 (ii) the detachment of tangible personal property from real property other than the
572 detachment described in Subsection [~~58~~] (59)(b)(ii); or

573 (iii) an attachment of the following tangible personal property to real property if the
574 attachment to real property is only through a line that supplies water, electricity, gas, telephone,
575 cable, or supplies a similar item as determined by the commission by rule made in accordance
576 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

577 (A) a refrigerator;

578 (B) a washer;

579 (C) a dryer;

580 (D) a stove;

581 (E) a television;

582 (F) a computer;

583 (G) a telephone; or

584 (H) tangible personal property similar to Subsections [~~58~~] (59)(c)(iii)(A) through (G)
585 as determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
586 Administrative Rulemaking Act.

587 [~~59~~] (60) "Person" includes any individual, firm, partnership, joint venture,
588 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
589 city, municipality, district, or other local governmental entity of the state, or any group or

590 combination acting as a unit.

591 ~~[(60)]~~ (61) "Place of primary use":

592 (a) for telephone service other than mobile telecommunications service, means the
593 street address representative of where the purchaser's use of the telephone service primarily
594 occurs, which shall be:

595 (i) the residential street address of the purchaser; or

596 (ii) the primary business street address of the purchaser; or

597 (b) for mobile telecommunications service, is as defined in the Mobile

598 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

599 ~~[(61)]~~ (62) "Postproduction" means an activity related to the finishing or duplication of
600 a medium described in Subsection 59-12-104(56)(a).

601 ~~[(62)]~~ (63) (a) "Prepared food" means:

602 (i) food:

603 (A) sold in a heated state; or

604 (B) heated by a seller;

605 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
606 item; or

607 (iii) except as provided in Subsection ~~[(62)]~~ (63)(c), food sold with an eating utensil
608 provided by the seller, including a:

609 (A) plate;

610 (B) knife;

611 (C) fork;

612 (D) spoon;

613 (E) glass;

614 (F) cup;

615 (G) napkin; or

616 (H) straw.

617 (b) "Prepared food" does not include:

618 (i) food that a seller only:

619 (A) cuts;

620 (B) repackages; or

- 621 (C) pasteurizes; or
- 622 (ii) (A) the following:
- 623 (I) raw egg;
- 624 (II) raw fish;
- 625 (III) raw meat;
- 626 (IV) raw poultry; or
- 627 (V) a food containing an item described in Subsections [~~(62)~~] (63)(b)(ii)(A)(I) through
- 628 (IV); and
- 629 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 630 Food and Drug Administration's Food Code that a consumer cook the items described in
- 631 Subsection [~~(62)~~] (63)(b)(ii)(A) to prevent food borne illness; or
- 632 (iii) the following if sold without eating utensils provided by the seller:
- 633 (A) food and food ingredients sold by a seller if the seller's proper primary
- 634 classification under the 2002 North American Industry Classification System of the federal
- 635 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 636 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 637 Manufacturing;
- 638 (B) food and food ingredients sold in an unheated state:
- 639 (I) by weight or volume; and
- 640 (II) as a single item; or
- 641 (C) a bakery item, including:
- 642 (I) a bagel;
- 643 (II) a bar;
- 644 (III) a biscuit;
- 645 (IV) bread;
- 646 (V) a bun;
- 647 (VI) a cake;
- 648 (VII) a cookie;
- 649 (VIII) a croissant;
- 650 (IX) a danish;
- 651 (X) a donut;

652 (XI) a muffin;

653 (XII) a pastry;

654 (XIII) a pie;

655 (XIV) a roll;

656 (XV) a tart;

657 (XVI) a torte; or

658 (XVII) a tortilla.

659 (c) Notwithstanding Subsection [~~(62)~~] (63)(a)(iii), an eating utensil provided by the
660 seller does not include the following used to transport the food:

661 (i) a container; or

662 (ii) packaging.

663 [~~(63)~~] (64) "Prescription" means an order, formula, or recipe that is issued:

664 (a) (i) orally;

665 (ii) in writing;

666 (iii) electronically; or

667 (iv) by any other manner of transmission; and

668 (b) by a licensed practitioner authorized by the laws of a state.

669 [~~(64)~~] (65) (a) Except as provided in Subsection [~~(64)~~] (65)(b)(ii) or (iii), "prewritten
670 computer software" means computer software that is not designed and developed:

671 (i) by the author or other creator of the computer software; and

672 (ii) to the specifications of a specific purchaser.

673 (b) "Prewritten computer software" includes:

674 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
675 software is not designed and developed:

676 (A) by the author or other creator of the computer software; and

677 (B) to the specifications of a specific purchaser;

678 (ii) notwithstanding Subsection [~~(64)~~] (65)(a), computer software designed and
679 developed by the author or other creator of the computer software to the specifications of a
680 specific purchaser if the computer software is sold to a person other than the purchaser; or

681 (iii) notwithstanding Subsection [~~(64)~~] (65)(a) and except as provided in Subsection

682 [~~(64)~~] (65)(c), prewritten computer software or a prewritten portion of prewritten computer

683 software:

684 (A) that is modified or enhanced to any degree; and

685 (B) if the modification or enhancement described in Subsection [~~(64)~~] (65)(b)(iii)(A) is
686 designed and developed to the specifications of a specific purchaser.

687 (c) Notwithstanding Subsection [~~(64)~~] (65)(b)(iii), "prewritten computer software"
688 does not include a modification or enhancement described in Subsection [~~(64)~~] (65)(b)(iii) if
689 the charges for the modification or enhancement are:

690 (i) reasonable; and

691 (ii) separately stated on the invoice or other statement of price provided to the
692 purchaser.

693 [~~(65)~~] (66) (a) "Prosthetic device" means a device that is worn on or in the body to:

694 (i) artificially replace a missing portion of the body;

695 (ii) prevent or correct a physical deformity or physical malfunction; or

696 (iii) support a weak or deformed portion of the body.

697 (b) "Prosthetic device" includes:

698 (i) parts used in the repairs or renovation of a prosthetic device; or

699 (ii) replacement parts for a prosthetic device.

700 (c) "Prosthetic device" does not include:

701 (i) corrective eyeglasses;

702 (ii) contact lenses;

703 (iii) hearing aids; or

704 (iv) dental prostheses.

705 [~~(66)~~] (67) (a) "Protective equipment" means an item:

706 (i) for human wear; and

707 (ii) that is:

708 (A) designed as protection:

709 (I) to the wearer against injury or disease; or

710 (II) against damage or injury of other persons or property; and

711 (B) not suitable for general use.

712 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
713 commission shall make rules:

- 714 (i) listing the items that constitute "protective equipment"; and
715 (ii) that are consistent with the list of items that constitute "protective equipment"
716 under the agreement.
- 717 [~~(67)~~] (68) (a) "Purchase price" and "sales price" mean the total amount of
718 consideration:
- 719 (i) valued in money; and
720 (ii) for which tangible personal property or services are:
721 (A) sold;
722 (B) leased; or
723 (C) rented.
- 724 (b) "Purchase price" and "sales price" include:
725 (i) the seller's cost of the tangible personal property or services sold;
726 (ii) expenses of the seller, including:
727 (A) the cost of materials used;
728 (B) a labor cost;
729 (C) a service cost;
730 (D) interest;
731 (E) a loss;
732 (F) the cost of transportation to the seller; or
733 (G) a tax imposed on the seller; or
734 (iii) a charge by the seller for any service necessary to complete the sale.
- 735 (c) "Purchase price" and "sales price" do not include:
736 (i) a discount:
737 (A) in a form including:
738 (I) cash;
739 (II) term; or
740 (III) coupon;
741 (B) that is allowed by a seller;
742 (C) taken by a purchaser on a sale; and
743 (D) that is not reimbursed by a third party; or
744 (ii) the following if separately stated on an invoice, bill of sale, or similar document

745 provided to the purchaser:

746 (A) the amount of a trade-in;

747 (B) the following from credit extended on the sale of tangible personal property or
748 services:

749 (I) interest charges;

750 (II) financing charges; or

751 (III) carrying charges;

752 (C) a tax or fee legally imposed directly on the consumer;

753 (D) a delivery charge; or

754 (E) an installation charge.

755 [~~(68)~~] (69) "Purchaser" means a person to whom:

756 (a) a sale of tangible personal property is made; or

757 (b) a service is furnished.

758 [~~(69)~~] (70) "Regularly rented" means:

759 (a) rented to a guest for value three or more times during a calendar year; or

760 (b) advertised or held out to the public as a place that is regularly rented to guests for
761 value.

762 [~~(70)~~] (71) "Renewable energy" means:

763 (a) biomass energy;

764 (b) hydroelectric energy;

765 (c) geothermal energy;

766 (d) solar energy; or

767 (e) wind energy.

768 [~~(71)~~] (72) (a) "Renewable energy production facility" means a facility that:

769 (i) uses renewable energy to produce electricity; and

770 (ii) has a production capacity of 20 kilowatts or greater.

771 (b) A facility is a renewable energy production facility regardless of whether the
772 facility is:

773 (i) connected to an electric grid; or

774 (ii) located on the premises of an electricity consumer.

775 [~~(72)~~] (73) "Rental" is as defined in Subsection [~~(40)~~] (41).

776 [~~(73)~~] (74) "Repairs or renovations of tangible personal property" means:

777 (a) a repair or renovation of tangible personal property that is not permanently attached
778 to real property; or

779 (b) attaching tangible personal property to other tangible personal property if the other
780 tangible personal property to which the tangible personal property is attached is not
781 permanently attached to real property.

782 [~~(74)~~] (75) "Research and development" means the process of inquiry or
783 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
784 process of preparing those devices, technologies, or applications for marketing.

785 [~~(75)~~] (76) "Residential use" means the use in or around a home, apartment building,
786 sleeping quarters, and similar facilities or accommodations.

787 [~~(76)~~] (77) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
788 other than:

789 (a) resale;

790 (b) sublease; or

791 (c) subrent.

792 [~~(77)~~] (78) (a) "Retailer" means any person engaged in a regularly organized business
793 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1),
794 and who is selling to the user or consumer and not for resale.

795 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
796 engaged in the business of selling to users or consumers within the state.

797 [~~(78)~~] (79) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
798 otherwise, in any manner, of tangible personal property or any other taxable transaction under
799 Subsection 59-12-103(1), for consideration.

800 (b) "Sale" includes:

801 (i) installment and credit sales;

802 (ii) any closed transaction constituting a sale;

803 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
804 chapter;

805 (iv) any transaction if the possession of property is transferred but the seller retains the
806 title as security for the payment of the price; and

807 (v) any transaction under which right to possession, operation, or use of any article of
808 tangible personal property is granted under a lease or contract and the transfer of possession
809 would be taxable if an outright sale were made.

810 ~~[(79)]~~ (80) "Sale at retail" is as defined in Subsection ~~[(76)]~~ (77).

811 ~~[(80)]~~ (81) "Sale-leaseback transaction" means a transaction by which title to tangible
812 personal property that is subject to a tax under this chapter is transferred:

813 (a) by a purchaser-lessee;

814 (b) to a lessor;

815 (c) for consideration; and

816 (d) if:

817 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
818 of the tangible personal property;

819 (ii) the sale of the tangible personal property to the lessor is intended as a form of
820 financing:

821 (A) for the property; and

822 (B) to the purchaser-lessee; and

823 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
824 is required to:

825 (A) capitalize the property for financial reporting purposes; and

826 (B) account for the lease payments as payments made under a financing arrangement.

827 ~~[(81)]~~ (82) "Sales price" is as defined in Subsection ~~[(67)]~~ (68).

828 ~~[(82)]~~ (83) (a) "Sales relating to schools" means the following sales by, amounts paid
829 to, or amounts charged by a school:

830 (i) sales that are directly related to the school's educational functions or activities
831 including:

832 (A) the sale of:

833 (I) textbooks;

834 (II) textbook fees;

835 (III) laboratory fees;

836 (IV) laboratory supplies; or

837 (V) safety equipment;

838 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
839 that:

840 (I) a student is specifically required to wear as a condition of participation in a
841 school-related event or school-related activity; and

842 (II) is not readily adaptable to general or continued usage to the extent that it takes the
843 place of ordinary clothing;

844 (C) sales of the following if the net or gross revenues generated by the sales are
845 deposited into a school district fund or school fund dedicated to school meals:

846 (I) food and food ingredients; or

847 (II) prepared food; or

848 (D) transportation charges for official school activities; or

849 (ii) amounts paid to or amounts charged by a school for admission to a school-related
850 event or school-related activity.

851 (b) "Sales relating to schools" does not include:

852 (i) bookstore sales of items that are not educational materials or supplies;

853 (ii) except as provided in Subsection [~~82~~] (83)(a)(i)(B):

854 (A) clothing;

855 (B) clothing accessories or equipment;

856 (C) protective equipment; or

857 (D) sports or recreational equipment; or

858 (iii) amounts paid to or amounts charged by a school for admission to a school-related
859 event or school-related activity if the amounts paid or charged are passed through to a person:

860 (A) other than a:

861 (I) school;

862 (II) nonprofit organization authorized by a school board or a governing body of a
863 private school to organize and direct a competitive secondary school activity; or

864 (III) nonprofit association authorized by a school board or a governing body of a
865 private school to organize and direct a competitive secondary school activity; and

866 (B) that is required to collect sales and use taxes under this chapter.

867 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
868 commission may make rules defining the term "passed through."

869 [~~(83)~~] (84) For purposes of this section and Section 59-12-104, "school" means:

870 (a) an elementary school or a secondary school that:

871 (i) is a:

872 (A) public school; or

873 (B) private school; and

874 (ii) provides instruction for one or more grades kindergarten through 12; or

875 (b) a public school district.

876 [~~(84)~~] (85) "Seller" means a person that makes a sale, lease, or rental of:

877 (a) tangible personal property; or

878 (b) a service.

879 [~~(85)~~] (86) (a) "Semiconductor fabricating, processing, research, or development

880 materials" means tangible personal property:

881 (i) used primarily in the process of:

882 (A) (I) manufacturing a semiconductor;

883 (II) fabricating a semiconductor; or

884 (III) research or development of a:

885 (Aa) semiconductor; or

886 (Bb) semiconductor manufacturing process; or

887 (B) maintaining an environment suitable for a semiconductor; or

888 (ii) consumed primarily in the process of:

889 (A) (I) manufacturing a semiconductor;

890 (II) fabricating a semiconductor; or

891 (III) research or development of a:

892 (Aa) semiconductor; or

893 (Bb) semiconductor manufacturing process; or

894 (B) maintaining an environment suitable for a semiconductor.

895 (b) "Semiconductor fabricating, processing, research, or development materials"

896 includes:

897 (i) parts used in the repairs or renovations of tangible personal property described in

898 Subsection [~~(85)~~] (86)(a); or

899 (ii) a chemical, catalyst, or other material used to:

- 900 (A) produce or induce in a semiconductor a:
- 901 (I) chemical change; or
- 902 (II) physical change;
- 903 (B) remove impurities from a semiconductor; or
- 904 (C) improve the marketable condition of a semiconductor.
- 905 ~~[(86)]~~ (87) "Senior citizen center" means a facility having the primary purpose of
- 906 providing services to the aged as defined in Section 62A-3-101.
- 907 ~~[(87)]~~ (88) "Simplified electronic return" means the electronic return:
- 908 (a) described in Section 318(C) of the agreement; and
- 909 (b) approved by the governing board of the agreement.
- 910 ~~[(88)]~~ (89) "Solar energy" means the sun used as the sole source of energy for
- 911 producing electricity.
- 912 ~~[(89)]~~ (90) (a) "Sports or recreational equipment" means an item:
- 913 (i) designed for human use; and
- 914 (ii) that is:
- 915 (A) worn in conjunction with:
- 916 (I) an athletic activity; or
- 917 (II) a recreational activity; and
- 918 (B) not suitable for general use.
- 919 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 920 commission shall make rules:
- 921 (i) listing the items that constitute "sports or recreational equipment"; and
- 922 (ii) that are consistent with the list of items that constitute "sports or recreational
- 923 equipment" under the agreement.
- 924 ~~[(90)]~~ (91) "State" means the state of Utah, its departments, and agencies.
- 925 ~~[(91)]~~ (92) "Storage" means any keeping or retention of tangible personal property or
- 926 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
- 927 except sale in the regular course of business.
- 928 ~~[(92)]~~ (93) (a) "Tangible personal property" means personal property that:
- 929 (i) may be:
- 930 (A) seen;

- 931 (B) weighed;
932 (C) measured;
933 (D) felt; or
934 (E) touched; or
935 (ii) is in any manner perceptible to the senses.

936 (b) "Tangible personal property" includes:

- 937 (i) electricity;
938 (ii) water;
939 (iii) gas;
940 (iv) steam; or
941 (v) prewritten computer software.

942 [~~(93)~~] (94) "Tar sands" means impregnated sands that yield mixtures of liquid
943 hydrocarbon and require further processing other than mechanical blending before becoming
944 finished petroleum products.

945 [~~(94)~~] (95) (a) "Telecommunications enabling or facilitating equipment, machinery, or
946 software" means an item listed in Subsection [~~(94)~~] (95)(b) if that item is purchased or leased
947 primarily to enable or facilitate one or more of the following to function:

- 948 (i) telecommunications switching or routing equipment, machinery, or software; or
949 (ii) telecommunications transmission equipment, machinery, or software.

950 (b) The following apply to Subsection [~~(94)~~] (95)(a):

- 951 (i) a pole;
952 (ii) software;
953 (iii) a supplementary power supply;
954 (iv) temperature or environmental equipment or machinery;
955 (v) test equipment;
956 (vi) a tower; or
957 (vii) equipment, machinery, or software that functions similarly to an item listed in

958 Subsections [~~(94)~~] (95)(b)(i) through (vi) as determined by the commission by rule made in
959 accordance with Subsection [~~(94)~~] (95)(c).

960 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
961 commission may by rule define what constitutes equipment, machinery, or software that

962 functions similarly to an item listed in Subsections [~~(94)~~] (95)(b)(i) through (vi).

963 [~~(95)~~] (96) "Telecommunications equipment, machinery, or software required for 911
964 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
965 Sec. 20.18.

966 [~~(96)~~] (97) "Telecommunications maintenance or repair equipment, machinery, or
967 software" means equipment, machinery, or software purchased or leased primarily to maintain
968 or repair one or more of the following, regardless of whether the equipment, machinery, or
969 software is purchased or leased as a spare part or as an upgrade or modification to one or more
970 of the following:

971 (a) telecommunications enabling or facilitating equipment, machinery, or software;

972 (b) telecommunications switching or routing equipment, machinery, or software; or

973 (c) telecommunications transmission equipment, machinery, or software.

974 [~~(97)~~] (98) (a) "Telecommunications switching or routing equipment, machinery, or
975 software" means an item listed in Subsection [~~(97)~~] (98)(b) if that item is purchased or leased
976 primarily for switching or routing:

977 (i) voice communications;

978 (ii) data communications; or

979 (iii) telephone service.

980 (b) The following apply to Subsection [~~(97)~~] (98)(a):

981 (i) a bridge;

982 (ii) a computer;

983 (iii) a cross connect;

984 (iv) a modem;

985 (v) a multiplexer;

986 (vi) plug in circuitry;

987 (vii) a router;

988 (viii) software;

989 (ix) a switch; or

990 (x) equipment, machinery, or software that functions similarly to an item listed in
991 Subsections [~~(97)~~] (98)(b)(i) through (ix) as determined by the commission by rule made in
992 accordance with Subsection [~~(97)~~] (98)(c).

993 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
994 commission may by rule define what constitutes equipment, machinery, or software that
995 functions similarly to an item listed in Subsections ~~[(97)]~~ (98)(b)(i) through (ix).

996 ~~[(98)]~~ (99) (a) "Telecommunications transmission equipment, machinery, or software"
997 means an item listed in Subsection ~~[(98)]~~ (99)(b) if that item is purchased or leased primarily
998 for sending, receiving, or transporting:

- 999 (i) voice communications;
1000 (ii) data communications; or
1001 (iii) telephone service.
- 1002 (b) The following apply to Subsection ~~[(98)]~~ (99)(a):
- 1003 (i) an amplifier;
1004 (ii) a cable;
1005 (iii) a closure;
1006 (iv) a conduit;
1007 (v) a controller;
1008 (vi) a duplexer;
1009 (vii) a filter;
1010 (viii) an input device;
1011 (ix) an input/output device;
1012 (x) an insulator;
1013 (xi) microwave machinery or equipment;
1014 (xii) an oscillator;
1015 (xiii) an output device;
1016 (xiv) a pedestal;
1017 (xv) a power converter;
1018 (xvi) a power supply;
1019 (xvii) a radio channel;
1020 (xviii) a radio receiver;
1021 (xix) a radio transmitter;
1022 (xx) a repeater;
1023 (xxi) software;

1024 (xxii) a terminal;
1025 (xxiii) a timing unit;
1026 (xxiv) a transformer;
1027 (xxv) a wire; or
1028 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
1029 Subsections [~~98~~] (99)(b)(i) through (xxv) as determined by the commission by rule made in
1030 accordance with Subsection [~~98~~] (99)(c).

1031 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1032 commission may by rule define what constitutes equipment, machinery, or software that
1033 functions similarly to an item listed in Subsections [~~98~~] (99)(b)(i) through (xxv).

1034 [~~99~~] (100) (a) "Telephone service" means a two-way transmission:

1035 (i) by:

1036 (A) wire;

1037 (B) radio;

1038 (C) lightwave; or

1039 (D) other electromagnetic means; and

1040 (ii) of one or more of the following:

1041 (A) a sign;

1042 (B) a signal;

1043 (C) writing;

1044 (D) an image;

1045 (E) sound;

1046 (F) a message;

1047 (G) data; or

1048 (H) other information of any nature.

1049 (b) "Telephone service" includes:

1050 (i) mobile telecommunications service;

1051 (ii) private communications service; or

1052 (iii) automated digital telephone answering service.

1053 (c) "Telephone service" does not include a service or a transaction that a state or a
1054 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet

1055 Tax Freedom Act, Pub. L. No. 105-277.

1056 ~~[(100)]~~ (101) Notwithstanding where a call is billed or paid, "telephone service
1057 address" means:

1058 (a) if the location described in this Subsection ~~[(100)]~~ (101)(a) is known, the location
1059 of the telephone service equipment:

1060 (i) to which a call is charged; and

1061 (ii) from which the call originates or terminates;

1062 (b) if the location described in Subsection ~~[(100)]~~ (101)(a) is not known but the
1063 location described in this Subsection ~~[(100)]~~ (101)(b) is known, the location of the origination
1064 point of the signal of the telephone service first identified by:

1065 (i) the telecommunications system of the seller; or

1066 (ii) if the system used to transport the signal is not that of the seller, information
1067 received by the seller from its service provider; or

1068 (c) if the locations described in Subsection ~~[(100)]~~ (101)(a) or (b) are not known, the
1069 location of a purchaser's primary place of use.

1070 ~~[(101)]~~ (102) (a) "Telephone service provider" means a person that:

1071 (i) owns, controls, operates, or manages a telephone service; and

1072 (ii) engages in an activity described in Subsection ~~[(101)]~~ (102)(a)(i) for the shared use
1073 with or resale to any person of the telephone service.

1074 (b) A person described in Subsection ~~[(101)]~~ (102)(a) is a telephone service provider
1075 whether or not the Public Service Commission of Utah regulates:

1076 (i) that person; or

1077 (ii) the telephone service that the person owns, controls, operates, or manages.

1078 ~~[(102)]~~ (103) "Tobacco" means:

1079 (a) a cigarette;

1080 (b) a cigar;

1081 (c) chewing tobacco;

1082 (d) pipe tobacco; or

1083 (e) any other item that contains tobacco.

1084 ~~[(103)]~~ (104) "Unassisted amusement device" means an amusement device, skill

1085 device, or ride device that is started and stopped by the purchaser or renter of the right to use or

1086 operate the amusement device, skill device, or ride device.

1087 ~~[(104)]~~ (105) (a) "Use" means the exercise of any right or power over tangible personal
1088 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
1089 property, item, or service.

1090 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
1091 the regular course of business and held for resale.

1092 ~~[(105)]~~ (106) (a) Subject to Subsection ~~[(105)]~~ (106)(b), "vehicle" means the following
1093 that are required to be titled, registered, or titled and registered:

1094 (i) an aircraft as defined in Section 72-10-102;

1095 (ii) a vehicle as defined in Section 41-1a-102;

1096 (iii) an off-highway vehicle as defined in Section 41-22-2; or

1097 (iv) a vessel as defined in Section 41-1a-102.

1098 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

1099 (i) a vehicle described in Subsection ~~[(105)]~~ (106)(a); or

1100 (ii) (A) a locomotive;

1101 (B) a freight car;

1102 (C) railroad work equipment; or

1103 (D) other railroad rolling stock.

1104 ~~[(106)]~~ (107) "Vehicle dealer" means a person engaged in the business of buying,
1105 selling, or exchanging a vehicle as defined in Subsection ~~[(105)]~~ (106).

1106 ~~[(107)]~~ (108) (a) Except as provided in Subsection ~~[(107)]~~ (108)(b), "waste energy
1107 facility" means a facility that generates electricity:

1108 (i) using as the primary source of energy waste materials that would be placed in a
1109 landfill or refuse pit if it were not used to generate electricity, including:

1110 (A) tires;

1111 (B) waste coal; or

1112 (C) oil shale; and

1113 (ii) in amounts greater than actually required for the operation of the facility.

1114 (b) "Waste energy facility" does not include a facility that incinerates:

1115 (i) municipal solid waste;

1116 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or

- 1117 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 1118 [~~(108)~~] (109) "Watercraft" means a vessel as defined in Section 73-18-2.
- 1119 [~~(109)~~] (110) "Wind energy" means wind used as the sole source of energy to produce
1120 electricity.
- 1121 [~~(110)~~] (111) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
1122 geographic location by the United States Postal Service.
- 1123 Section 3. Section **59-12-1701** is enacted to read:
- 1124 **Part 17. County Option Sales and Use Tax for Transportation Act**
- 1125 **59-12-1701. Title.**
- 1126 This part is known as the "County Option Sales and Use Tax for Transportation Act."
- 1127 Section 4. Section **59-12-1702** is enacted to read:
- 1128 **59-12-1702. Definitions.**
- 1129 As used in this part:
- 1130 (1) "Annexation" means an annexation to a county under Title 17, Chapter 2,
1131 Annexation to County.
- 1132 (2) "Annexing area" means an area that is annexed into a county.
- 1133 (3) "Council of governments" is as defined in Subsection 72-2-117(1)(a).
- 1134 (4) "Fixed guideway" means a public transit facility that uses and occupies:
- 1135 (a) rail for the use of public transit; or
- 1136 (b) a separate right-of-way for the use of public transit.
- 1137 (5) "Metropolitan planning organization" is as defined in Section 72-1-208.5.
- 1138 (6) (a) "Regionally significant transportation facility" means:
- 1139 (i) a principal arterial highway as defined in Subsection 72-4-102.5(1)(g);
- 1140 (ii) a minor arterial highway as defined in Subsection 72-4-102.5(1)(f);
- 1141 (iii) a major collector highway:
- 1142 (A) as defined in Subsection 72-4-102.5(1)(d); and
- 1143 (B) in a rural area;
- 1144 (iv) a fixed guideway that:
- 1145 (A) extends across two or more cities or unincorporated areas; or
- 1146 (B) is an extension to an existing fixed guideway; or
- 1147 (v) an airport of regional significance.

1148 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1149 Transportation Commission may by rule define "an airport of regional significance."

1150 Section 5. Section **59-12-1703** is enacted to read:

1151 **59-12-1703. Opinion question election -- Base -- Rate -- Imposition of tax -- Use of**
1152 **tax revenues -- Administration, collection, and enforcement of tax by commission --**
1153 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

1154 (1) (a) Beginning on or after April 1, 2007, and subject to the other provisions of this
1155 part, a county legislative body may impose a sales and use tax of up to .25%:

1156 (i) on the transactions:

1157 (A) described in Subsection 59-12-103(1); and

1158 (B) within the county, including the cities and towns within the county;

1159 (ii) for the purposes described in Subsection (4); and

1160 (iii) in addition to any other sales and use tax authorized under this chapter.

1161 (b) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a
1162 tax under this section on:

1163 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses
1164 are exempt from taxation under Section 59-12-104; or

1165 (ii) any amounts paid or charged by a seller that collects a tax under Subsection
1166 59-12-107(1)(b).

1167 (c) For purposes of this Subsection (1), the location of a transaction shall be
1168 determined in accordance with Section 59-12-207.

1169 (2) (a) Except as provided in Subsection (2)(d), before imposing a tax under this part, a
1170 county legislative body shall:

1171 (i) obtain approval from a majority of the members of the county legislative body to
1172 impose the tax; and

1173 (ii) submit an opinion question to the county's registered voters voting on the
1174 imposition of the tax so that each registered voter has the opportunity to express the registered
1175 voter's opinion on whether a tax should be imposed under this part.

1176 (b) The opinion question required by Subsection (2)(a)(ii) shall state the following:

1177 "Shall (insert the name of the county), Utah, be authorized to impose a (insert the
1178 amount of the sales and use tax up to .25%) sales and use tax for corridor preservation,

1179 congestion mitigation, or to expand capacity for transportation of regional significance?"

1180 (c) Except as provided in Subsection (2)(d), the election required by this Subsection (2)
1181 shall be held:

1182 (i) at a regular general election conducted in accordance with the procedures and
1183 requirements of Title 20A, Election Code, governing regular elections; or

1184 (ii) at a special election called by the county legislative body that is:

1185 (A) held only on the date of a municipal general election as provided in Subsection
1186 20A-1-202(1); and

1187 (B) authorized in accordance with the procedures and requirements of Section
1188 20A-1-203.

1189 (d) Notwithstanding Subsection (2)(a) or (c), if a county seeks to impose a tax under
1190 this part on or after April 1, 2007, but on or before December 31, 2007, the county legislative
1191 body shall:

1192 (i) obtain the approval required by Subsection (2)(a)(i) within 5 calendar days of the
1193 effective date of this bill;

1194 (ii) direct the county clerk to submit the opinion question required by Subsection
1195 (2)(a)(ii) during the November 7, 2006 general election; and

1196 (iii) hold the election required by this section on November 7, 2006.

1197 (3) If a county legislative body determines that a majority of the county's registered
1198 voters voting on the imposition of the tax have voted in favor of the imposition of the tax in
1199 accordance with Subsection (2), the county legislative body shall impose the tax in accordance
1200 with this section.

1201 (4) (a) Subject to Subsections (5) and (6), the revenues generated by a tax under this
1202 part may only be expended for:

1203 (i) a project or service:

1204 (A) relating to a regionally significant transportation facility;

1205 (B) for the portion of the project or service that is performed within the county;

1206 (C) for new capacity or congestion mitigation if the project or service is performed
1207 within a county:

1208 (I) of the first class;

1209 (II) of the second class; or

1210 (III) that is part of an area metropolitan planning organization;
1211 (D) that is part of:
1212 (I) the county and municipal master plan; and
1213 (II) (Aa) the statewide long range plan; or
1214 (Bb) the regional transportation plan of the area metropolitan planning organization if a
1215 metropolitan planning organization exists for the area; and
1216 (E) that is on a priority list:
1217 (I) created by the county's council of governments in accordance with Subsection (5);
1218 and
1219 (II) approved by the county legislative body in accordance with Subsection (6); or
1220 (ii) corridor preservation for a project described in Subsection (4)(a)(i) as provided in
1221 Subsection (7)(b).
1222 (b) A regionally significant transportation facility project or service described in
1223 Subsection (4)(a)(i)(A) shall have a first year priority designation on a Statewide
1224 Transportation Improvement Program or Transportation Improvement Program if the project or
1225 service described in Subsection (4)(a)(i) is a:
1226 (i) a principal arterial highway as defined in Section 72-4-102.5;
1227 (ii) a minor arterial highway as defined in Section 72-4-102.5; or
1228 (iii) a major collector highway:
1229 (A) as defined in Section 72-4-102.5; and
1230 (B) in a rural area.
1231 (c) Notwithstanding the designated use of revenues in Subsection (4)(a), of the
1232 revenues generated by the tax imposed under this section by any county of the first or second
1233 class, 25% or more shall be expended for the purpose described in Subsection (4)(a)(ii).
1234 (d) For purposes of this Subsection (4), the revenues a county will receive from a tax
1235 under this part do not include amounts retained by the commission in accordance with
1236 Subsection (7).
1237 (5) (a) The county's council of governments shall create a priority list of regionally
1238 significant transportation facility projects described in Subsection (4)(a) using the process
1239 described in Subsection (5)(b) and present the priority list to the county's legislative body for
1240 approval as described in Subsection (6).

1241 (b) Subject to Sections 59-12-1704 and 59-12-1705, a council of governments shall
1242 establish a council of governments endorsement process which includes prioritization and
1243 application procedures for use of the revenues a county will receive from a tax under this part.

1244 (6) (a) The council of governments shall submit the priority list described in
1245 Subsection (5) to the county's legislative body and obtain approval of the list from a majority of
1246 the members of the county legislative body.

1247 (b) A county's council of governments may only submit one priority list per calendar
1248 year.

1249 (c) A county legislative body may only consider and approve one priority list per
1250 calendar year.

1251 (7) (a) (i) Except as provided in Subsections (7)(a)(ii) and (7)(b), revenues described in
1252 Subsection (4) shall be transmitted:

1253 (A) by the commission;

1254 (B) to the county;

1255 (C) monthly; and

1256 (D) by electronic funds transfer.

1257 (ii) A county may request that the commission transfer a portion the revenues described
1258 in Subsection (4):

1259 (A) directly to a public transit district:

1260 (I) organized under Title 17A, Chapter 2, Part 10, Utah Public Transit District Act; and

1261 (II) designated by the county; and

1262 (B) by providing written notice to the commission:

1263 (I) requesting the revenues to be transferred directly to a public transit district as

1264 provided in Subsection (7)(a)(ii)(A); and

1265 (II) designating the public transit district to which the revenues are requested to be
1266 transferred.

1267 (b) (i) Except as provided in Subsection (7)(b)(ii), revenues generated by a tax under
1268 this part that are allocated for a purpose described in Subsection (4)(a)(ii) shall be:

1269 (A) deposited in or transferred to the Local Transportation Corridor Preservation Fund
1270 created by Section 72-2-117.5; and

1271 (B) expended as provided in Section 72-2-117.5.

1272 (ii) In a county of the first class, revenues generated by a tax under this part that are
1273 allocated for a purpose described in Subsection (4)(a)(ii) shall be:

1274 (A) deposited in or transferred to the Public Transportation System Tax Highway Fund
1275 created by Section 72-2-121; and

1276 (B) expended as provided in Section 72-2-121.

1277 (8) (a) (i) Except as provided in Subsection (8)(b), the tax authorized under this part
1278 shall be administered, collected, and enforced in accordance with:

1279 (A) the same procedures used to administer, collect, and enforce the tax under:

1280 (I) Part 1, Tax Collection; or

1281 (II) Part 2, Local Sales and Use Tax Act; and

1282 (B) Chapter 1, General Taxation Policies.

1283 (ii) A tax under this part is not subject to Subsections 59-12-205(2) through (7).

1284 (b) (i) The commission may retain an amount of tax collected under this part of not to
1285 exceed the lesser of:

1286 (A) 1.5%; or

1287 (B) an amount equal to the cost to the commission of administering this part.

1288 (ii) Any amount the commission retains under Subsection (8)(b)(i) shall be:

1289 (A) placed in the Sales and Use Tax Administrative Fees Account; and

1290 (B) used as provided in Subsection 59-12-206(2).

1291 (9) (a) (i) Except as provided in Subsection (9)(b) or (c), if, on or after April 1, 2007, a
1292 county enacts or repeals a tax under this part, the enactment or repeal shall take effect:

1293 (A) on the first day of a calendar quarter; and

1294 (B) after a 90-day period beginning on the date the commission receives notice meeting
1295 the requirements of Subsection (9)(a)(ii) from the county.

1296 (ii) The notice described in Subsection (9)(a)(i)(B) shall state:

1297 (A) that the county will enact or repeal a tax under this part;

1298 (B) the statutory authority for the tax described in Subsection (9)(a)(ii)(A);

1299 (C) the effective date of the tax described in Subsection (9)(a)(ii)(A); and

1300 (D) if the county enacts the tax described in Subsection (9)(a)(ii)(A), the rate of the tax.

1301 (b) (i) For a transaction described in Subsection (9)(b)(iii), if the billing period for the
1302 transaction begins before the effective date of the enactment of the tax under Subsection (1),

1303 the enactment of a tax shall take effect on the first day of the first billing period that begins
1304 after the effective date of the enactment of the tax.

1305 (ii) For a transaction described in Subsection (9)(b)(iii), if the billing period for the
1306 transaction begins before the effective date of the repeal of the tax imposed under Subsection
1307 (1), the repeal of a tax shall take effect on the first day of the last billing period that began
1308 before the effective date of the repeal of the tax.

1309 (iii) Subsections (9)(b)(i) and (ii) apply to transactions subject to a tax under:

1310 (A) Subsection 59-12-103(1)(b);

1311 (B) Subsection 59-12-103(1)(c);

1312 (C) Subsection 59-12-103(1)(d);

1313 (D) Subsection 59-12-103(1)(e);

1314 (E) Subsection 59-12-103(1)(f);

1315 (F) Subsection 59-12-103(1)(g);

1316 (G) Subsection 59-12-103(1)(h);

1317 (H) Subsection 59-12-103(1)(i);

1318 (I) Subsection 59-12-103(1)(j); or

1319 (J) Subsection 59-12-103(1)(k).

1320 (c) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
1321 sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in
1322 Subsection (9)(a)(i) takes effect:

1323 (A) on the first day of a calendar quarter; and

1324 (B) beginning 60 days after the effective date of the enactment or repeal under
1325 Subsection (9)(a)(i).

1326 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1327 the commission may by rule define the term "catalogue sale."

1328 (d) (i) Except as provided in Subsection (9)(e) or (f), if, for an annexation that occurs
1329 on or after April 1, 2007, the annexation will result in the enactment or repeal of a tax under
1330 this part for an annexing area, the enactment or repeal shall take effect:

1331 (A) on the first day of a calendar quarter; and

1332 (B) after a 90-day period beginning on the date the commission receives notice meeting
1333 the requirements of Subsection (9)(d)(ii) from the county that annexes the annexing area.

- 1334 (ii) The notice described in Subsection (9)(d)(i)(B) shall state:
1335 (A) that the annexation described in Subsection (9)(d)(i)(B) will result in an enactment
1336 or repeal of a tax under this part for the annexing area;
1337 (B) the statutory authority for the tax described in Subsection (9)(d)(ii)(A);
1338 (C) the effective date of the tax described in Subsection (9)(d)(ii)(A); and
1339 (D) the rate of the tax described in Subsection (9)(d)(ii)(A).
1340 (e) (i) For a transaction described in Subsection (9)(e)(iii), if the billing period for the
1341 transaction begins before the effective date of the enactment of the tax under Subsection (1),
1342 the enactment of a tax shall take effect on the first day of the first billing period that begins
1343 after the effective date of the enactment of the tax.
1344 (ii) For a transaction described in Subsection (9)(e)(iii), if the billing period for the
1345 transaction begins before the effective date of the repeal of the tax imposed under Subsection
1346 (1), the repeal of a tax shall take effect on the first day of the last billing period that began
1347 before the effective date of the repeal of the tax.
1348 (iii) Subsections (9)(e)(i) and (ii) apply to transactions subject to a tax under:
1349 (A) Subsection 59-12-103(1)(b);
1350 (B) Subsection 59-12-103(1)(c);
1351 (C) Subsection 59-12-103(1)(d);
1352 (D) Subsection 59-12-103(1)(e);
1353 (E) Subsection 59-12-103(1)(f);
1354 (F) Subsection 59-12-103(1)(g);
1355 (G) Subsection 59-12-103(1)(h);
1356 (H) Subsection 59-12-103(1)(i);
1357 (I) Subsection 59-12-103(1)(j); or
1358 (J) Subsection 59-12-103(1)(k).
1359 (f) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
1360 sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in
1361 Subsection (9)(d)(i) takes effect:
1362 (A) on the first day of a calendar quarter; and
1363 (B) beginning 60 days after the effective date of the enactment or repeal under
1364 Subsection (9)(d)(i).

1365 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1366 the commission may by rule define the term "catalogue sale."

1367 Section 6. Section **59-12-1704** is enacted to read:

1368 **59-12-1704. Written project prioritization process for new transportation**
1369 **capacity projects -- Rulemaking.**

1370 (1) The council of governments shall develop a written prioritization process for the
1371 prioritization of projects to be funded by revenues a county will receive from a tax under this
1372 part.

1373 (2) The following shall be included in the written prioritization process under
1374 Subsection (1):

1375 (a) a definition of the type of projects to which the written prioritization process
1376 applies;

1377 (b) specification of a weighted criteria system that is used to rank proposed projects
1378 and how the weighted criteria system will be used to determine which projects will be
1379 prioritized;

1380 (c) specification of the data that is necessary to apply the weighted ranking criteria; and

1381 (d) any other provisions the council of governments considers appropriate.

1382 Section 7. Section **59-12-1705** is enacted to read:

1383 **59-12-1705. Project selection using the written prioritization process -- Public**
1384 **comment -- Report.**

1385 (1) Except as provided in Subsection (4), in determining priorities and funding levels
1386 of projects to be funded by the revenues a county will receive from a tax under this part, the
1387 council of governments shall use the weighted criteria system adopted in the written
1388 prioritization process under Section 59-12-1704 to create a priority list of regionally significant
1389 transportation facility projects as described in Subsection 59-12-1703(5).

1390 (2) Prior to finalizing priorities and funding levels of projects, the council of
1391 governments shall conduct a public meeting on:

1392 (a) the written prioritization process; and

1393 (b) the merits of the projects that will be prioritized under this section.

1394 (3) The council of governments shall make the weighted criteria system ranking for
1395 each project publicly available prior to the public hearings held under Subsection (2).

1396 (4) (a) If the council of governments prioritizes a project over another project with a
1397 higher rank under the weighted criteria system, the council of governments shall identify the
1398 change at a meeting held under this section on the merits of prioritizing the project above
1399 higher ranked projects.

1400 (b) The council of governments shall make the reasons for the prioritization under
1401 Subsection (4)(a) publicly available.

1402 Section 8. Section **72-2-117.5** is amended to read:

1403 **72-2-117.5. Local Transportation Corridor Preservation Fund -- Distribution.**

1404 (1) As used in this section:

1405 (a) "council of governments" means a decision-making body in each county composed
1406 of the county governing body and the mayors of each municipality in the county; and

1407 (b) "metropolitan planning organization" has the same meaning as defined in Section
1408 72-1-208.5.

1409 (2) There is created the Local Transportation Corridor Preservation Fund within the
1410 Transportation Fund.

1411 (3) The fund shall be funded from the following sources:

1412 (a) a local option transportation corridor preservation fee imposed under Section
1413 41-1a-1222;

1414 (b) appropriations made to the fund by the Legislature;

1415 (c) contributions from other public and private sources for deposit into the fund;

1416 (d) interest earnings on cash balances;

1417 (e) all monies collected from rents and sales of real property acquired with fund

1418 monies; [~~and~~]

1419 (f) proceeds from general obligation bonds, revenue bonds, or other obligations issued
1420 as authorized by Title 63B, Bonds[-]; and

1421 (g) the portion of the sales and use tax described in Subsection 59-12-1703(4)(a)(ii)
1422 and required by Subsection 59-12-1703(7)(b)(i) to be deposited into the fund.

1423 (4) (a) All monies appropriated to the Local Transportation Corridor Preservation Fund
1424 are nonlapsing.

1425 (b) The Tax Commission shall provide the department with sufficient data for the
1426 department to allocate the revenues;

- 1427 (i) provided under Subsection (3)(a) to each county imposing a local option
1428 transportation corridor preservation fee under Section 41-1a-1222[-]; and
1429 (ii) provided under Subsection 59-12-1703(4)(a)(ii) to each county imposing a county
1430 option sales and use tax for transportation.
- 1431 (c) The monies allocated under Subsection (4)(b):
1432 (i) shall be used for the purposes provided in this section for each county; and
1433 (ii) are allocated to each county as provided in this section:
1434 (A) with the condition that the state will not be charged for any asset purchased with
1435 the monies allocated under Subsection (4)(b); and
1436 (B) are considered a local matching contribution for the purposes described under
1437 Section 72-2-123 if used on a state highway.
- 1438 (d) Administrative costs of the department to implement this section shall be paid from
1439 the fund.
- 1440 (5) (a) The department shall authorize the expenditure of fund monies to allow a
1441 highway authority to acquire real property or any interests in real property for state, county, and
1442 municipal transportation corridors subject to:
1443 (i) monies available in the fund to each county under Subsection (4)(b); and
1444 (ii) the provisions of this section.
- 1445 (b) Fund monies may be used to pay interest on debts incurred in accordance with this
1446 section.
- 1447 (c) (i) (A) Fund monies may be used to pay maintenance costs of properties acquired
1448 under this section but limited to a total of 5% of the purchase price of the property.
1449 (B) Any additional maintenance cost shall be paid from funds other than under this
1450 section.
- 1451 (C) Revenue generated by any property acquired under this section is excluded from
1452 the limitations under this Subsection (5)(c)(i).
- 1453 (ii) Fund monies may be used to pay direct costs of acquisition of properties acquired
1454 under this section.
- 1455 (d) Fund monies allocated under Subsection (4)(b) may be used by a county highway
1456 authority for countywide transportation planning if:
1457 (i) the county is not included in a metropolitan planning organization;

1458 (ii) the transportation planning is part of the county's continuing, cooperative, and
1459 comprehensive process for transportation planning, corridor preservation, right-of-way
1460 acquisition, and project programming;

1461 (iii) no more than four years allocation every 20 years to each county is used for
1462 transportation planning under this Subsection (5)(d); and

1463 (iv) the county otherwise qualifies to use the fund monies as provided under this
1464 section.

1465 (e) (i) Fund monies allocated under Subsection (4)(b) may be used by a county
1466 highway authority for transportation corridor planning that is part of the corridor elements of an
1467 ongoing work program of transportation projects.

1468 (ii) The transportation corridor planning under Subsection (5)(e)(i) shall be under the
1469 direction of:

1470 (A) the metropolitan planning organization if the county is within the boundaries of a
1471 metropolitan planning organization; or

1472 (B) the department if the county is not within the boundaries of a metropolitan
1473 planning organization.

1474 (6) (a) (i) The Local Transportation Corridor Preservation Fund shall be used to
1475 preserve transportation corridors, promote long-term statewide transportation planning, save on
1476 acquisition costs, and promote the best interests of the state in a manner which minimizes
1477 impact on prime agricultural land.

1478 (ii) The Local Transportation Corridor Preservation Fund may not be used for a
1479 transportation corridor that is primarily a recreational trail as defined under Section
1480 63-11a-101.

1481 (b) (i) The department shall develop and implement a program to educate highway
1482 authorities on the objectives, application process, use, and responsibilities of the Local
1483 Transportation Corridor Preservation Fund as provided under this section to promote the most
1484 efficient and effective use of fund monies including priority use on designated high priority
1485 corridor preservation projects.

1486 (ii) The department shall develop a model transportation corridor property acquisition
1487 policy or ordinance that meets federal requirements for the benefit of a highway authority to
1488 acquire real property or any interests in real property under this section.

1489 (c) The department shall authorize the expenditure of fund monies after determining
1490 that the expenditure is being made in accordance with this section from applications that are:

- 1491 (i) made by a highway authority; and
1492 (ii) endorsed by the council of governments.

1493 (7) (a) (i) A council of governments may establish a council of governments
1494 endorsement process which includes prioritization and application procedures for use of the
1495 monies allocated to each county under this section.

1496 (ii) The endorsement process under Subsection (7)(a)(i) may include review or
1497 endorsement of the preservation project by the:

1498 (A) metropolitan planning organization if the county is within the boundaries of a
1499 metropolitan planning organization; or

1500 (B) the department if the county is not within the boundaries of a metropolitan
1501 planning organization.

1502 (b) All fund monies shall be prioritized by each highway authority and council of
1503 governments based on considerations, including:

1504 (i) areas with rapidly expanding population;
1505 (ii) the willingness of local governments to complete studies and impact statements
1506 that meet department standards;

1507 (iii) the preservation of corridors by the use of local planning and zoning processes;

1508 (iv) the availability of other public and private matching funds for a project;

1509 (v) the cost-effectiveness of the preservation projects;

1510 (vi) long and short-term maintenance costs for property acquired; and

1511 (vii) whether the transportation corridor is included as part of:

1512 (A) the county and municipal master plan; and

1513 (B) (I) the statewide long range plan; or

1514 (II) the regional transportation plan of the area metropolitan planning organization if
1515 one exists for the area.

1516 (8) (a) Unless otherwise provided by written agreement with another highway
1517 authority, the highway authority that holds the deed to the property is responsible for
1518 maintenance of the property.

1519 (b) The transfer of ownership for property acquired under this section from one

1520 highway authority to another shall include a recorded deed for the property and a written
1521 agreement between the highway authorities.

1522 (9) (a) The proceeds from any bonds or other obligations secured by revenues of the
1523 Local Transportation Corridor Preservation Fund shall be used for the purposes authorized for
1524 funds under this section.

1525 (b) The highway authority shall pledge the necessary part of the revenues of the Local
1526 Transportation Corridor Preservation Fund to the payment of principal and interest on the
1527 bonds or other obligations.

1528 (10) (a) A highway authority may not apply for monies under this section unless the
1529 highway authority has:

1530 (i) a transportation corridor property acquisition policy or ordinance in effect that
1531 meets federal requirements for the acquisition of real property or any interests in real property
1532 under this section; and

1533 (ii) an access management policy or ordinance in effect that meets the requirements
1534 under Subsection 72-2-117(9).

1535 (b) The provisions of Subsection (10)(a)(i) do not apply if the highway authority has a
1536 written agreement with the department for the acquisition of real property or any interests in
1537 real property under this section.

1538 Section 9. Section **72-2-121** is amended to read:

1539 **72-2-121. Public Transportation System Tax Highway Fund.**

1540 (1) There is created a special revenue fund entitled the Public Transportation System
1541 Tax Highway Fund.

1542 (2) The fund consists of monies generated from the following revenue sources:

1543 (a) any voluntary contributions received for new construction, major renovations, and
1544 improvements to Interstate 15 and state highways within a county of the first class; ~~and~~

1545 (b) the portion of the sales and use tax described in Subsection 59-12-502(5)(a)(ii)
1546 deposited in or transferred to the fund through an interlocal agreement[-]; and

1547 (c) the portion of the sales and use tax described in Subsection 59-12-1703(4)(a)(ii)
1548 and required by Subsection 59-12-1703(7)(b)(ii) to be deposited in or transferred to the fund.

1549 (3) (a) The fund shall earn interest.

1550 (b) All interest earned on fund monies shall be deposited into the fund.

1551 (4) The executive director may use fund monies, as prioritized by the Transportation
1552 Commission[-];

1553 (a) for the portion of the monies generated from the revenue sources described in
1554 Subsections (2)(a) and (b), only for new construction, major renovations, and improvements to
1555 Interstate 15 and state highways within a county of the first class and to pay any debt service
1556 and bond issuance costs related to those projects[-]; and

1557 (b) for the portion of the monies generated from the revenue sources described in
1558 Subsection (2)(c), only for state highway corridor preservation for new capacity projects within
1559 a county of the first class and to pay any debt service and bond issuance costs related to those
1560 projects.

1561 Section 10. **Effective date.**

1562 If approved by two-thirds of all the members elected to each house, this bill takes effect
1563 upon approval by the governor, or the day following the constitutional time limit of Utah
1564 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
1565 the date of veto override, except that the amendments to Section 59-12-102 (Effective
1566 01/01/07) take effect on January 1, 2007.

1567 Section 11. **Revisor instructions.**

1568 It is the intent of the Legislature that, in preparing the Utah Code database for
1569 publication, the Office of Legislative Research and General Counsel shall replace the reference
1570 in Subsection 59-12-1703(2)(d)(i) to "the effective date of this bill" with the actual effective
1571 date of this bill.

Legislative Review Note

as of 9-12-06 3:28 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel