

1                               **TAXATION OF MOBILE**  
2                               **TELECOMMUNICATIONS SERVICE AND TASK**  
3                               **FORCE ON TELECOMMUNICATIONS**  
4                               **TAXATION**

5                               2001 GENERAL SESSION

6                               STATE OF UTAH

7                               **Sponsor: Curtis S. Bramble**

8   **This act amends the Revenue and Taxation Code and the Utah Municipal Code to prohibit**  
9   **cities or towns from imposing a charge on mobile telecommunications service for a one-year**  
10 **period beginning on July 1, 2001. The act creates the Task Force on Telecommunications**  
11 **Taxation. The act provides for the membership of the task force, task force chairs,**  
12 **compensation of task force members, task force duties and responsibilities, the task force**  
13 **meeting schedule, task force reporting requirements, and staff support. The act requires the**  
14 **task force to follow interim rules. The act appropriates \$45,000 from the General Fund for**  
15 **fiscal year 2000-01 to the Senate, the House of Representatives, and the Office of Legislative**  
16 **Research and General Counsel to fund the task force. Certain provisions of this legislation**  
17 **are repealed on June 30, 2002.**

18 This act affects sections of Utah Code Annotated 1953 as follows:

19 AMENDS:

20       **10-1-203**, as last amended by Chapter 172, Laws of Utah 2000

21 ENACTS:

22       **59-1-1201**, Utah Code Annotated 1953

23       **59-1-1202**, Utah Code Annotated 1953

24       **59-1-1203**, Utah Code Annotated 1953

25       **59-1-1204**, Utah Code Annotated 1953

26       **59-1-1205**, Utah Code Annotated 1953

27       **59-1-1206**, Utah Code Annotated 1953



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

29 Section 1. Section **10-1-203** is amended to read:

30 **10-1-203. License fees and taxes -- Application information to be transmitted to the**  
31 **county auditor.**

32 (1) For the purpose of this section, "business" means any enterprise carried on for the  
33 purpose of gain or economic profit, except that the acts of employees rendering services to  
34 employers are not included in this definition.

35 (2) Except as provided in Subsections (3) through (5), the governing body of a  
36 municipality may license for the purpose of regulation and revenue any business within the limits  
37 of the municipality and may regulate that business by ordinance.

38 (3) (a) The governing body of a municipality may raise revenue by levying and collecting  
39 a municipal energy sales or use tax as provided in Part 3, Municipal Energy Sales and Use Tax  
40 Act, except a municipality may not levy or collect a franchise tax [~~or fee~~] as defined in Subsection  
41 10-1-303(7) or fee on an energy supplier other than the municipal energy sales and use tax  
42 provided in Part 3, Municipal Energy Sales and Use Tax Act.

43 (b) (i) Subsection (3)(a) does not affect the validity of a franchise agreement as defined  
44 in Subsection 10-1-303(6), that is in effect on July 1, 1997, or a future franchise.

45 (ii) A franchise agreement as defined in Subsection 10-1-303(6) in effect on January 1,  
46 1997, or a future franchise shall remain in full force and effect.

47 (c) A municipality that collects a contractual franchise fee pursuant to a franchise  
48 agreement as defined in Subsection 10-1-303(6) with an energy supplier that is in effect on July  
49 1, 1997, may continue to collect that fee as provided in Subsection 10-1-310(2).

50 (d) (i) Subject to the requirements of Subsection (3)(d)(ii), a franchise agreement as  
51 defined in Subsection 10-1-303(6) between a municipality and an energy supplier may contain a  
52 provision that:

53 (A) requires the energy supplier by agreement to pay a contractual franchise fee that is  
54 otherwise prohibited under Part 3, Municipal Energy Sales and Use Tax Act; and

55 (B) imposes the contractual franchise fee on or after the day on which Part 3, Municipal  
56 Energy Sales and Use Tax is:

57 (I) repealed, invalidated, or the maximum allowable rate provided in Section 10-1-305 is  
58 reduced; and

59 (II) is not superseded by a law imposing a substantially equivalent tax.

60 (ii) A municipality may not charge a contractual franchise fee under the provisions  
61 permitted by Subsection (3)(b)(i) unless the municipality charges an equal contractual franchise  
62 fee or a tax on all energy suppliers.

63 (4) [~~Subject to the provisions of~~] Except as provided in Section 59-1-1203, and subject to  
64 Title 11, Chapter 26, Local Taxation of Utilities Limitation, a municipality may impose upon,  
65 charge, or collect from a public utility engaged in the business of supplying telephone service or  
66 other person or entity engaged in the business of supplying telephone service any tax, license, fee,  
67 license fee, license tax, or similar charge, or any combination of any of these, based upon the gross  
68 revenues of the utility, person, or entity derived from sales or use or both sales and use of the  
69 telephone service within the municipality.

70 (5) (a) The governing body of a municipality may by ordinance raise revenue by levying  
71 and collecting a license fee or tax on:

72 (i) a parking service business in an amount that is less than or equal to:

73 (A) \$1 per vehicle that parks at the parking service business; or

74 (B) 2% of the gross receipts of the parking service business;

75 (ii) a public assembly facility in an amount that is less than or equal to \$1 per ticket  
76 purchased from the public assembly facility; and

77 (iii) subject to the limitations of Subsections (5)(c) and (d), a business that causes  
78 disproportionate costs of municipal services or for which the municipality provides an enhanced  
79 level of municipal services in an amount that is reasonably related to the costs of the municipal  
80 services provided by the municipality.

81 (b) For purposes of this Subsection (5):

82 (i) "Municipal services" include:

83 (A) public utilities; or

84 (B) services for:

85 (I) police;

86 (II) fire;

87 (III) storm water runoff;

88 (IV) traffic control;

89 (V) parking;

- 90 (VI) transportation;
- 91 (VII) beautification; or
- 92 (VIII) snow removal.

93 (ii) "Parking service business" means a business:

94 (A) that primarily provides off-street parking services for a public facility that is wholly  
95 or partially funded by public moneys;

96 (B) that provides parking for one or more vehicles; and

97 (C) that charges a fee for parking.

98 (iii) "Public assembly facility" means a business operating an assembly facility that:

99 (A) is wholly or partially funded by public moneys; and

100 (B) requires a person attending an event at the assembly facility to purchase a ticket.

101 (c) Before the governing body of a municipality imposes a license fee or tax on a business  
102 that causes disproportionate costs of municipal services under Subsection (5)(a)(iii), the governing  
103 body of the municipality shall adopt an ordinance defining for purposes of the tax under  
104 Subsection (5)(a)(iii) what constitutes disproportionate costs and what amounts are reasonably  
105 related to the costs of the municipal services provided by the municipality.

106 (d) Before the governing body of a municipality imposes a license fee or tax on a business  
107 for which it provides an enhanced level of municipal services under Subsection (5)(a)(iii), the  
108 governing body of the municipality shall adopt an ordinance defining for purposes of the tax under  
109 Subsection (5)(a)(iii) what constitutes the basic level of municipal services in the municipality and  
110 what amounts are reasonably related to the costs of providing an enhanced level of municipal  
111 services in the municipality.

112 (6) All license fees and taxes shall be uniform in respect to the class upon which they are  
113 imposed.

114 (7) The governing body shall transmit the information from each approved business license  
115 application to the county assessor within 60 days following the approval of the application.

116 (8) If challenged in court, an ordinance enacted by a municipality before January 1, 1994,  
117 imposing a business license fee or tax on rental dwellings under this section shall be upheld unless  
118 the business license fee or tax is found to impose an unreasonable burden on the fee or tax payer.

119 Section 2. Section **59-1-1201** is enacted to read:

120 **Part 12. Taxation of Telecommunications Act**

121 **59-1-1201. Title.**122 This part is known as the "Taxation of Telecommunications Act."123 Section 3. Section **59-1-1202** is enacted to read:124 **59-1-1202. Definitions.**125 As used in this part:126 (1) "Charge" means one or more of the following amounts:127 (a) a tax, including a tax imposed on the basis of gross revenues;128 (b) a license;129 (c) a fee;130 (d) a license fee;131 (e) a license tax;132 (f) an amount similar to Subsections (1)(a) through (e).133 (2) (a) "Customer" means:134 (i) except as provided in Subsection (2)(a)(ii), a person that contracts with a home service  
135 provider for mobile telecommunications service; or136 (ii) notwithstanding Subsection (2)(a)(i), the end user of the mobile telecommunications  
137 service if the person described in Subsection (2)(a)(i) is not the end user of the mobile  
138 telecommunications service.139 (b) "Customer" does not include:140 (i) a reseller of mobile telecommunications service; or141 (ii) a serving carrier under an arrangement to serve a customer outside the home service  
142 provider's licensed service area.143 (3) "Home service provider" means a facilities-based carrier or reseller with which a  
144 customer or an end user contracts for the provision of mobile telecommunications service.145 (4) ~~§ [-ta)]~~ § "Mobile telecommunications service" means **§ ONE OR MORE OF THE**  
145a **FOLLOWING: (a) § commercial mobile radio service as**  
146 **defined in 47 C.F.R. Sec. 20.3 § [:] ;**147 **[~~(b)~~ "Mobile telecommunications service" does not include:]**148 **[~~(ii)~~ (b) § a pager service using mobile devices that does not allow for two-way voice**  
149 **communication;**150 **§ [~~(ii)~~] (c) § narrowband personal communications services; § [~~and~~]**151 **[~~(iii)~~] (d) § short message services § [:] ; OR****(e) A SERVICE SIMILAR TO SUBSECTIONS (4)(a) THROUGH (d). §**

152 (5) "Task force" means the Task Force on Telecommunications Taxation.

153 Section 4. Section **59-1-1203** is enacted to read:

154 **59-1-1203. Prohibition on county, city, or town imposing a tax on mobile**  
155 **telecommunications service.**

156 (1) Except as provided in Subsection (2), beginning on July 1, 2001, through June 30,  
157 2002, a city or town may not impose a charge on:

158 (a) a customer for a mobile telecommunications service; or

159 (b) a home service provider for a mobile telecommunications service.

160 (2) This section may not be interpreted to limit the authority of a city or town to impose  
161 a tax under Chapter 12, Sales and Use Tax Act.

162 Section 5. Section **59-1-1204** is enacted to read:

163 **59-1-1204. Task Force on Telecommunications Taxation -- Creation -- Membership**  
164 **-- Chairs -- Interim rules followed -- Compensation.**

165 (1) There is created the Task Force on Telecommunications Taxation consisting of the  
166 following nine members:

167 (a) three members of the Senate appointed by the president of the Senate, no more that two  
168 of whom may be from the same political party; and

169 (b) six members of the House of Representatives appointed by the speaker of the House  
170 of Representatives, no more than four of whom may be from the same political party.

171 (2) (a) The president of the Senate shall designate a member of the Senate appointed under  
172 Subsection (1)(a) as a cochair of the task force.

173 (b) The speaker of the House of Representatives shall designate a member of the House  
174 of Representatives appointed under Subsection (1)(a) as a cochair of the task force.

175 (3) If the Legislative Management Committee authorizes the task force to establish a  
176 subcommittee, the cochairs of the task force may appoint legislators or persons who are not  
177 legislators to the subcommittee.

178 (4) In conducting its business, the task force shall comply with the rules of legislative  
179 interim committees.

180 (5) (a) Legislators on the task force shall receive compensation and expenses in accordance  
181 with Section 36-2-2 and Legislative Joint Rule 15.03.

182 (b) (i) A member of a subcommittee of the task force who is not a legislator or a

183 government employee may not receive compensation or benefits for the member's services, but  
 184 may receive per diem and expenses incurred in the performance of the member's official duties at  
 185 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

186 (ii) A member of a subcommittee of the task force may decline to receive per diem and  
 187 expenses for their services.

188 Section 6. Section **59-1-1205** is enacted to read:

189 **59-1-1205. Duties and responsibilities -- Meeting schedule -- Task force reporting**  
 190 **requirements -- Staff support.**

191 (1) The task force shall:

192 (a) study the overall structure of the taxes or fees that the state or political subdivisions of  
 193 the state impose on telecommunications equipment, facilities, or services;

194 (b) study individual taxes or fees that the state or political subdivisions of the state impose  
 195 on telecommunications equipment, facilities, or services, including:

196 (i) a sales and use tax;

197 (ii) a franchise tax;

198 (iii) a fee imposed on telecommunications companies for the use of:

199 (A) rights-of-way § , **OTHER THAN RIGHTS-OF-WAY OWNED AND OPERATED BY THE**  
 199a **STATE § ; or**

200 (B) other publicly owned property;

201 (iv) a charge imposed on telecommunications companies for other purposes; or

202 (v) other taxes or fees as determined by the task force;

203 (c) study the telecommunications tax policy of:

204 (i) the state; and

205 (ii) political subdivisions of the state;

206 (d) make recommendations regarding whether the telecommunications tax policy or tax  
 207 structure should be changed with respect to:

208 (i) the state; or

209 (ii) a political subdivision of the state;

210 (e) study short-term and long-term impacts of any proposed changes to the  
 211 telecommunications tax structure of:

212 (i) the state; or

213 (ii) a political subdivision of the state.

214 (2) The task force may study any other issue as determined by the task force relating to:

215 (a) the telecommunications tax structure of:

216 (i) the state; or

217 (ii) a political subdivision of the state; or

218 (b) state or local revenue sources that depend on the telecommunications industry.

219 (3) The task force shall meet no more than eight times during the 2001 interim.

220 (4) The task force shall report its findings and recommendations on the issues the task  
221 force studies in accordance with this section:

222 (a) to the Revenue and Taxation Interim Committee; and

223 (b) on or before the October interim meeting.

224 (5) The Office of Legislative Research and General Counsel shall provide staff support to  
225 the task force.

226 (6) The task force may request information from the governor's Office of Planning and  
227 Budget, the Utah League of Cities and Towns, and the Utah Association of Counties in conducting  
228 the study required by this section.

229 Section 7. Section **59-1-1206** is enacted to read:

230 **59-1-1206. Appropriation.**

231 There is appropriated from the General Fund for fiscal year 2000-01 to pay for the task  
232 force:

233 (1) \$5,000 to the Senate to pay for the compensation and expenses of senators on the task  
234 force;

235 (2) \$10,000 to the House of Representatives to pay for the compensation and expenses of  
236 representatives on the task force; and

237 (3) \$30,000 to the Office of Legislative Research and General Counsel to pay for staffing  
238 the task force.

239 Section 8. **Repeal date.**

240 Sections 59-1-1201 through 59-1-1206 are repealed on June 30, 2002.



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**Legislative Review Note****as of 2-12-01 10:28 AM**

This legislation prohibits for a one-year period a city or town from imposing certain charges on a customer or home service provider for mobile telecommunications service. This prohibition could potentially be subject to challenge because it is unclear whether a city is given direct power to tax under Utah Constitution Article XI, Section 5, or whether under Utah Constitution Article XIII, Section 5, a city may only tax if the Legislature by statute delegates this power to the city. If a court finds that a city does not have direct power to tax and may only tax if the Legislature grants this power to the city by statute, the prohibition would likely be upheld.

**Office of Legislative Research and General Counsel**