

**STATE AND LOCAL TAXES, FEES, AND  
CHARGES RELATED TO  
TELECOMMUNICATIONS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Curtis S. Bramble**

**This act modifies the Utah Municipal Code to enact the Municipal Telecommunications License Tax Act and to make technical changes. As enacted, the Municipal Telecommunications License Tax Act authorizes a municipality to levy and collect a municipal telecommunications license tax by ordinance. The act provides for the collection, administration, and enforcement of the tax through the State Tax Commission. This act limits a municipality's authority to impose other telecommunications taxes or fees. This act provides for reporting of tax rate related information. This act addresses customer remedies. The act addresses how bundled transactions are taxed under the Municipal Telecommunications License Tax Act. This act addresses rights-of-way provisions. This act modifies provisions related to the charge that may be imposed for emergency telephone services. This act addresses how the location of a transaction for telephone service and mobile telecommunications service is determined under the Sales and Use Tax Act. This act provides an effective date.**

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

AMENDS:

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

**11-26-1**, as last amended by Chapter 9, Laws of Utah 2001

**59-1-403**, as last amended by Chapters 52 and 175, Laws of Utah 2002

**59-12-102**, as last amended by Chapters 77, 117, 192 and 320, Laws of Utah 2002

**59-12-207**, as last amended by Chapters 157 and 320, Laws of Utah 2002

**69-2-5**, as last amended by Chapter 320, Laws of Utah 2002

**69-2-5.5**, as last amended by Chapter 320, Laws of Utah 2002

**72-7-102**, as last amended by Chapter 347, Laws of Utah 2000

**72-7-108**, as last amended by Chapter 347, Laws of Utah 2000

ENACTS:

**10-1-401**, Utah Code Annotated 1953

**10-1-402**, Utah Code Annotated 1953

**10-1-403**, Utah Code Annotated 1953

**10-1-404**, Utah Code Annotated 1953

**10-1-405**, Utah Code Annotated 1953

**10-1-406**, Utah Code Annotated 1953

**10-1-407**, Utah Code Annotated 1953

**10-1-408**, Utah Code Annotated 1953

**10-1-409**, Utah Code Annotated 1953

**10-1-410**, Utah Code Annotated 1953

REPEALS:

**11-26-3**, as last amended by Chapter 262, Laws of Utah 2000

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

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

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

(1) For the purpose of this section[;]:

(a) "business" means any enterprise carried on for the purpose of gain or economic profit, except that the acts of employees rendering services to employers are not included in this definition[-];

(b) "telecommunications provider" is as defined in Section 10-1-402; and

(c) "telecommunications tax or fee" is as defined in Section 10-1-402.

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

(3) (a) The governing body of a municipality may raise revenue by levying and collecting

a municipal energy sales or use tax as provided in Part 3, Municipal Energy Sales and Use Tax Act, except a municipality may not levy or collect a franchise tax or fee [~~as defined in Subsection 10-1-303(7)~~] on an energy supplier other than the municipal energy sales and use tax provided in Part 3, Municipal Energy Sales and Use Tax Act.

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

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

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

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

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

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

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

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

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

~~[(4) Subject to the provisions of Title 11, Chapter 26, Local Taxation of Utilities Limitation, a municipality may impose upon, charge, or collect from a public utility engaged in the business of supplying telephone service or other person or entity engaged in the business of supplying telephone service any tax, license, fee, license fee, license tax, or similar charge, or any~~

~~combination of any of these, based upon the gross revenues of the utility, person, or entity derived from sales or use or both sales and use of the telephone service within the municipality.]~~

(4) (a) Subject to Subsection (4)(b), beginning July 1, 2004, the governing body of a municipality may raise revenue by levying and providing for the collection of a municipal telecommunications license tax as provided in Part 4, Municipal Telecommunications License Tax Act.

(b) A municipality may not levy or collect a telecommunications tax or fee on a telecommunications provider except as provided in Part 4, Municipal Telecommunications License Tax Act.

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

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

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

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

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

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

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

(i) "Municipal services" include:

(A) public utilities; or

(B) services for:

(I) police;

(II) fire;

(III) storm water runoff;

(IV) traffic control;

- (V) parking;
- (VI) transportation;
- (VII) beautification; or
- (VIII) snow removal.

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

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

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

(C) that charges a fee for parking.

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

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

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

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

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

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

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

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

Section 2. Section **10-1-401** is enacted to read:

**Part 4. Municipal Telecommunications License Tax Act**

**10-1-401. Title.**

This part is known as the "Municipal Telecommunications License Tax Act."

Section 3. Section **10-1-402** is enacted to read:

**10-1-402. Definitions.**

As used in this part:

(1) "Commission" means the State Tax Commission.

(2) (a) Subject to Subsections (2)(b) and (c), "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.

(b) For purposes of this section and Section 10-1-407, "customer" means:

(i) the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or

(ii) if the end user is not the person described in Subsection (2)(b)(i), the end user of telecommunications service.

(c) "Customer" does not include a reseller:

(i) of telecommunications service; or

(ii) for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

(3) (a) "End user" means the person who uses a telecommunications service.

(b) For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.

(4) "Gross receipts from telecommunications service" means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:

(a) a tax, fee, or charge:

(i) imposed by a governmental entity;

(ii) separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and

(iii) imposed only on a telecommunications provider;

(b) sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or

(c) interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

(5) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(6) "Municipality" means a city or town.

(7) "Place of primary use":

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

(i) the residential street address of the customer; or

(ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(8) Notwithstanding where a call is billed or paid, "service address" means:

(a) if the location described in this Subsection (8)(a) is known, the location of the telecommunications equipment:

(i) to which a call is charged; and

(ii) from which the call originates or terminates;

(b) if the location described in Subsection (8)(a) is not known but the location described in this Subsection (8)(b) is known, the location of the origination point of the signal of the telecommunications service first identified by:

(i) the telecommunications system of the telecommunications provider; or

(ii) if the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or

(c) if the locations described in Subsection (8)(a) or (b) are not known, the location of a customer's place of primary use.

(9) (a) Subject to Subsections (9)(b) and (9)(c), "telecommunications provider" means a person that:

(i) owns, controls, operates, or manages a telecommunications service; or

(ii) engages in an activity described in Subsection (9)(a)(i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (9)(a) is a telecommunications provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

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

(c) "Telecommunications provider" does not include an aggregator as defined in Section 54-8b-2.

(10) "Telecommunications service" means:

(a) telephone service, as defined in Section 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and

(b) mobile telecommunications service, as defined in Section 59-12-102:

(i) that originates and terminates within the boundaries of one state; and

(ii) only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(11) (a) Except as provided in Subsection (11)(b), "telecommunications tax or fee"

means any of the following imposed by a municipality on a telecommunications provider:

- (i) a tax;
- (ii) a license;
- (iii) a fee;
- (iv) a license fee;
- (v) a license tax;
- (vi) a franchise fee; or
- (vii) a charge similar to a tax, license, or fee described in Subsections (11)(a)(i) through (vi).

(b) "Telecommunications tax or fee" does not include:

- (i) the municipal telecommunications license tax authorized by this part; or
- (ii) a tax, fee, or charge, including a tax imposed under Title 59, Revenue and Taxation, that is imposed:

- (A) on telecommunications providers; and
- (B) on persons who are not telecommunications providers.

Section 4. Section **10-1-403** is enacted to read:

**10-1-403. Municipality may levy municipal telecommunications license tax --**

**Recovery from customers -- Annexation.**

(1) (a) Subject to the provisions of this section, beginning July 1, 2004, a municipality may levy on and provide that there is collected from a telecommunications provider a municipal telecommunications license tax on the telecommunications provider's gross receipts from telecommunications service that are attributed to the municipality in accordance with Section 10-1-407.

(b) To levy and provide for the collection of a municipal telecommunications license tax under this part, the municipality shall adopt an ordinance that complies with the requirements of Section 10-1-404.

(c) A municipal telecommunications license tax imposed under this part shall be at a rate of up to 4% of the telecommunications provider's gross receipts from telecommunications service

that are attributed to the municipality in accordance with Section 10-1-407.

(2) A telecommunications provider may recover the amounts paid in municipal telecommunications license taxes from the customers of the telecommunications provider within the municipality imposing the municipal telecommunications license tax through a charge that is separately identified in the statement of the transaction with the customer as the recovery of a tax.

(3) (a) For purposes of this Subsection (3):

(i) "Annexation" means an annexation to a municipality under Title 10, Chapter 2, Part 4, Annexation.

(ii) "Annexing area" means an area that is annexed into a municipality.

(b) (i) If, on or after July 1, 2004, a municipality enacts or repeals a tax under this part or changes the rate of the tax, the enactment, repeal, or change shall take effect:

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

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(b)(ii) from the municipality.

(ii) The notice described in Subsection (3)(b)(i)(B) shall state:

(A) that the municipality will enact or repeal a tax under this part or change the rate of the tax;

(B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and

(D) if the municipality enacts the municipal telecommunications license tax or changes the rate of the tax, the new rate of the tax.

(c) (i) If, for an annexation that occurs on or after July 1, 2004, the annexation will result in a change in the rate of the tax under this part for an annexing area, the change shall take effect:

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

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (3)(c)(ii) from the municipality that annexes the annexing area.

(ii) The notice described in Subsection (3)(c)(i)(B) shall state:

(A) that the annexation described in Subsection (3)(c)(i) will result in a change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);

(C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and

(D) the new rate of the tax described in Subsection (3)(c)(ii)(A).

Section 5. Section **10-1-404** is enacted to read:

**10-1-404. Municipal telecommunications license tax ordinance provisions.**

An ordinance required by Subsection 10-1-403(1) shall include a provision that:

(1) levies a municipal telecommunications license tax:

(a) on the gross receipts from telecommunications service attributed to the municipality in accordance with Section 10-1-407;

(b) at a rate:

(i) not to exceed the rate specified in Subsection 10-1-403(1)(c); and

(ii) subject to the requirements of Section 10-1-407; and

(c) beginning on a date:

(i) on or after July 1, 2004; and

(ii) subject to the requirements of Section 10-1-403;

(2) on or before the effective date of the ordinance, the municipality shall enter into the uniform interlocal agreement with the commission described in Section 10-1-405 under which the commission collects, enforces, and administers the municipal telecommunications license tax;

(3) exempts a municipality from the limitation on the rate that may be imposed under Subsection (1)(b)(i) if the exemption from the limitation on the rate that may be imposed under Subsection (1)(b)(i) is approved by a majority vote of the voters in the municipality that vote in:

(a) a municipal general election;

(b) a regular general election; or

(c) a local special election; and

(4) incorporates the provisions of Section 10-1-408.

Section 6. Section **10-1-405** is enacted to read:

**10-1-405. Collection of taxes by commission -- Uniform interlocal agreement --**

**Charge for services.**

(1) Subject to the other provisions of this section, the commission shall collect, enforce, and administer any municipal telecommunications license tax imposed under this part pursuant to:

(a) the same procedures used in the administration, collection, and enforcement of the state sales and use tax under:

(i) Title 59, Chapter 1, General Taxation Policies; and

(ii) Title 59, Chapter 12, Part 1, Tax Collection:

(A) except for Sections 59-12-104, 59-12-104.1, and 59-12-104.2; and

(B) except that for purposes of Section 59-12-110, the term "taxpayer" may include a customer from whom a municipal telecommunications license tax is recovered in accordance with Subsection 10-1-403(2); and

(b) a uniform interlocal agreement:

(i) between:

(A) the municipality that imposes the municipal telecommunications license tax; and

(B) the commission;

(ii) that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;

(iii) that complies with Subsection (2)(a); and

(iv) that is developed by rule in accordance with Subsection (2)(b).

(2) (a) The uniform interlocal agreement described in Subsection (1) shall provide that the commission shall:

(i) transmit monies collected under this part:

(A) monthly; and

(B) by electronic funds transfer by the commission to the municipality;

(ii) conduct audits of the municipal telecommunications license tax;

(iii) charge the municipality for the commission's services under this section in an

amount:

(A) sufficient to reimburse the commission for the cost to the commission in rendering the services; and

(B) that may not exceed an amount equal to 1.5% of the municipal telecommunications license tax imposed by the ordinance of the municipality; and

(iv) collect, enforce, and administer the municipal telecommunications license tax authorized under this part pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall develop a uniform interlocal agreement that meets the requirements of this section.

(3) The administrative fee charged under Subsection (2)(a) shall be:

(a) deposited in the Sales and Use Tax Administrative Fees Account; and

(b) used for administration of municipal telecommunications license taxes under this part.

Section 7. Section **10-1-406** is enacted to read:

**10-1-406. Limitation of other telecommunications taxes or fees.**

(1) Subject to the other provisions of this section, a municipality may not levy or collect a telecommunications tax or fee on a person except for a telecommunications tax or fee imposed by the municipality:

(a) on a telecommunications provider to recover the management costs of the municipality caused by the activities of the telecommunications provider in the right-of-way of a municipality if the telecommunications tax or fee:

(i) is imposed in accordance with Section 72-7-102; and

(ii) is not related to:

(A) a municipality's loss of use of a highway as a result of the activities of the telecommunications provider in a right-of-way; or

(B) increased deterioration of a highway as a result of the activities of the

telecommunications provider in a right-of-way; or

(b) on a person that:

(i) is not subject to a municipal telecommunications license tax under this part; and

(ii) locates telecommunications facilities, as defined in Section 72-7-108, in the municipality.

(2) Subsection (1)(a) may not be interpreted as exempting a telecommunications provider from complying with any ordinance:

(a) related to excavation, construction, or installation of a telecommunications facility; and

(b) that addresses the safety and quality standards of the municipality for excavation, construction, or installation.

(3) A telecommunications tax or fee imposed under Subsection (1)(b) shall be imposed:

(a) by ordinance; and

(b) on a competitively neutral basis.

Section 8. Section **10-1-407** is enacted to read:

**10-1-407. Attributing the gross receipts from telecommunications service to a municipality -- Rate impact.**

(1) The gross receipts from a telecommunications service are attributed to a municipality if the gross receipts are from a transaction for telecommunications service that is located within the municipality:

(a) for purposes of sales and use taxes under Title 59, Chapter 12, Sales and Use Tax Act; and

(b) determined in accordance with Section 59-12-207.

(2) (a) The rate imposed on the gross receipts for telecommunications service shall be determined in accordance with Subsection (2)(b) if the location of a transaction for telecommunications service is determined under Subsection (1) to be a municipality other than the municipality in which is located:

(i) for telecommunications service other than mobile telecommunications service, the

customer's service address; or

(ii) for mobile telecommunications service, the customer's primary place of use.

(b) The rate imposed on the gross receipts for telecommunications service described in

Subsection (2)(a) shall be the lower of:

(i) the rate imposed by the taxing jurisdiction in which the transaction is located under

Subsection (1); or

(ii) the rate imposed by the municipality in which it is located:

(A) for telecommunications service other than mobile telecommunications service, the

customer's service address; or

(B) for mobile telecommunications service, the customer's primary place of use.

Section 9. Section **10-1-408** is enacted to read:

**10-1-408. Procedure for taxes erroneously recovered from customers.**

A customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer municipal telecommunications license taxes authorized by this part:

(1) unless the customer provides the telecommunications provider written notice that:

(a) the customer requests a refund of the amounts paid by the customer pursuant to

Subsection 10-1-403(2); and

(b) contains the information necessary to determine the validity of the request described in Subsection (1)(a); and

(2) before 60 days from the day on which the telecommunications provider receives the written notice required by Subsection (1).

Section 10. Section **10-1-409** is enacted to read:

**10-1-409. Report on rate information.**

(1) (a) In accordance with this section, the commission shall submit a report to the Legislature on or before February 16, 2004, that specifies the percentage calculated under Subsection (1)(b) for each municipality that as of July 1, 2003 has imposed a tax, fee, or charge under:

(i) Section 10-1-203 in effect as of July 1, 2003; and

(ii) Title 11, Chapter 26, Local Taxation of Utilities Limitation, in effect as of July 1, 2003.

(b) The percentage for each municipality described in Subsection (1)(a) shall be calculated by:

(i) determining, on the basis of the report required by Subsection (2)(a), the revenues received by the municipality during the period beginning July 1, 2003 and ending December 31, 2003 under:

(A) Section 10-1-203 in effect as of July 1, 2003; and

(B) Title 11, Chapter 26, Local Taxation of Utilities Limitation, in effect as of July 1, 2003;

(ii) dividing the number calculated under Subsection (1)(b)(i) by the aggregate for all telecommunications providers of the gross receipts from telecommunications service attributed to the municipality:

(A) as if the municipal telecommunications license tax authorized by this part had been imposed by the municipality;

(B) during the period beginning July 1, 2003 and ending December 31, 2003; and

(C) on the basis of the report required by Subsection (2)(b);

(iii) rounding the number calculated under Subsection (1)(b)(ii) up to the nearest .01%;

and

(iv) adding .01% to the number calculated under Subsection (1)(b)(iii).

(c) The report required by this Subsection (1) shall be submitted to:

(i) (A) the Revenue and Taxation Standing Committee of the:

(I) House of Representatives; and

(II) Senate; and

(B) the Office of Legislative Research and General Counsel; and

(ii) provide information to the Legislature for the Legislature to evaluate whether the maximum rate authorized by this part for the municipal telecommunications license tax should

be modified.

(d) The commission shall provide a copy of the report submitted under this Subsection (1) to the Utah League of Cities and Towns on February 16, 2004.

(2) By no later than January 31, 2004 each:

(a) municipality described in Subsection (1)(a) shall file a report with the commission certifying:

(i) the revenues received by the municipality during the period beginning July 1, 2003 and ending December 31, 2003 under:

(A) Section 10-1-203 in effect as of July 1, 2003; and

(B) Title 11, Chapter 26, Local Taxation of Utilities Limitation, in effect as of July 1, 2003; and

(b) telecommunications provider providing telecommunications service in this state shall file a report with the commission stating the gross receipts from telecommunications service received by the telecommunications provider for each municipality described in Subsection (1)(a):

(i) as if the municipal telecommunications license tax had been imposed by the municipality;

(ii) for the period beginning July 1, 2003 and ending December 31, 2003; and

(iii) that are attributed to the municipality.

Section 11. Section **10-1-410** is enacted to read:

**10-1-410. Transactions consisting of telecommunications service and nontelecommunications services.**

(1) For purposes of this section, "nontelecommunications services" means services or tangible personal property that are:

(a) not telecommunications service; and

(b) provided by a telecommunications provider to a customer.

(2) Except to the extent prohibited by federal law, if a telecommunications provider provides nontelecommunications services to a customer as part of the same transaction in which

the telecommunications provider provides telecommunications service, the gross receipts from the nontelecommunications services provided by the telecommunications provider are subject to a tax under this part unless:

(a) the charge for the nontelecommunications services is separately identified in the statement of the transaction with the customer of the telecommunications service; or

(b) from the books and records of the telecommunications provider that are kept in the regular course of business, the telecommunications provider can reasonably identify the portion of the total charge for the transaction that is attributable to:

(i) the nontelecommunications services; and

(ii) the telecommunications service.

Section 12. Section **11-26-1** is amended to read:

**11-26-1. Definitions -- Ceiling on local charges based on gross revenues of public service provider.**

(1) As used in this chapter:

~~[(a) (i) "Exchange access services" means telephone exchange lines or channels, and services provided in connection with them, which are necessary to provide access from the premises of a subscriber to the local switched public telecommunications network of the public utility to effect communication or the transfer of information.]~~

~~[(ii) "Exchange access services" does not include:]~~

~~[(A) private line services;]~~

~~[(B) long distance toll services;]~~

~~[(C) carrier access services;]~~

~~[(D) telephonic services that are not regulated by the Utah Public Service Commission; and]~~

~~[(E) services that emulate functions available in customer premises equipment.]~~

~~[(b)]~~ (a) "Local charge" means one or more of the following charges paid by a public service provider to a county or municipality:

(i) a tax;

- (ii) a license;
- (iii) a fee;
- (iv) a license fee;
- (v) a license tax; or
- (vi) a charge similar to Subsections (1)~~[(b)]~~(a)(i) through (v).

(b) "Municipality" means:

- (i) a city; or
- (ii) a town.

(c) "Public service provider" means~~[-(i) a public utility; or -(ii)]~~ a person ~~[or entity]~~ engaged in the business of supplying~~[-(A) telephone service; or -(B)]~~ taxable energy as defined in Section 10-1-303.

(2) A county or a municipality may not impose upon, charge, or collect from a public service provider local charges:

- (a) imposed on the basis of the gross revenues of the public service provider;
- (b) derived from sales, use, or both sales and use of the service within the county or municipality; and
- (c) in a total amount that is greater than 6% of gross revenues.

(3) The determination of gross revenues under this section may not include:

- (a) the sale of gas or electricity as special fuel for motor vehicles; or

~~[(b) the sale of telephone service provided by a public utility regulated by the Utah Public Service Commission other than:]~~

~~[(i) exchange access services;]~~

~~[(ii) extended area service;]~~

~~[(iii) customer access line charges; and]~~

~~[(iv) any services for which a tax or other charge was being paid pursuant to this section as of January 1, 1992; or]~~

~~[(e)]~~ (b) a local charge.

(4) This section may not be construed to:

(a) affect or limit the power of counties or municipalities to impose sales and use taxes under:

- (i) Title 59, Chapter 12, [~~Part 2, Local~~] Sales and Use Tax Act[;]; or
- (ii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

(b) grant any county or municipality the power to impose a local charge not otherwise provided for by law.

(5) This section takes precedence over any conflicting provision of law.

Section 13. Section **59-1-403** is amended to read:

**59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

(1) (a) Except as provided in this section, any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

- (i) a tax commissioner;
- (ii) an agent, clerk, or other officer or employee of the commission; or
- (iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) Except as provided in Subsection (1)(c), an official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:

- (i) in accordance with judicial order;
- (ii) on behalf of the commission in any action or proceeding under:
  - (A) this title; or
  - (B) other law under which persons are required to file returns with the commission;
- (iii) on behalf of the commission in any action or proceeding to which the commission is

a party; or

(iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may

admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review a tax based on the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

(i) the United States Internal Revenue Service; or

(ii) the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the

identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the Solid and Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as requested by the executive secretary, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

(e) Notwithstanding Subsection (1), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:

- (i) Chapter 13, Part 2, Motor Fuel; or
- (ii) Chapter 13, Part 4, Aviation Fuel.

(f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

(g) Notwithstanding Subsection (1), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

(h) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

- (A) reported to the commission under Section 59-14-212; or
- (B) related to a violation under Section 59-14-211; and

(ii) upon request provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through(c) and Subsection 59-14-212(1)(g).

(i) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified by the committee or office.

(j) Notwithstanding Subsection (1), the commission shall at the request of the Legislature provide to the Legislature the total amount of sales or uses exempt under Subsection 59-12-104(52) reported to the commission in accordance with Section 59-12-105.

(k) Notwithstanding Subsection (1), the commission shall make the list required by Subsection 59-14-408(3) available for public inspection.

(l) Notwithstanding Subsection (1), the commission shall comply with the reporting requirements of Section 10-1-409.

(4) (a) Reports and returns shall be preserved for at least three years.

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the person described in Subsection (5)(a) is an officer or employee of the state, the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(6) This part does not apply to the property tax.

Section 14. Section **59-12-102** is amended to read:

**59-12-102. Definitions.**

As used in this chapter:

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

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

(2) "Area agency on aging" is as defined in Section 62A-3-101.

(3) "Authorized carrier" means:

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

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

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

(4) (a) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" means:

(i) a coin-operated amusement, skill, or ride device;

(ii) that is not controlled through vendor-assisted, over-the-counter, sales of tokens; and

(iii) includes a music machine, pinball machine, billiard machine, video game machine, arcade machine, and a mechanical or electronic skill game or ride.

(b) For purposes of Subsection 59-12-104(43), "coin-operated amusement device" does not mean a coin-operated amusement device possessing a coinage mechanism that:

(i) accepts and registers multiple denominations of coins; and

(ii) allows the vendor to collect the sales and use tax at the time an amusement device is activated and operated by a person inserting coins into the device.

(5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (13) or residential use under Subsection [~~(23)~~] (24).

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

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

(ii) For purposes of Subsection (6)(b)(i), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(7) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;  
(b) baling ties and twine used in the baling of hay and straw;  
(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(8) "Construction materials" means any tangible personal property that will be converted into real property.

(9) (a) "Fundraising sales" means sales:

(i) (A) made by a school; or  
(B) made by a school student;  
(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and  
(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (9)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;  
(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and  
(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(10) (a) "Hearing aid" means:

(i) an instrument or device having an electronic component that is designed to:

- (A) (I) improve impaired human hearing; or
- (II) correct impaired human hearing; and
- (B) (I) be worn in the human ear; or
- (II) affixed behind the human ear;
- (ii) an instrument or device that is surgically implanted into the cochlea; or
- (iii) a telephone amplifying device.
- (b) "Hearing aid" does not include:
  - (i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device having an electronic component that is designed to be worn on the body;
  - (ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system designed to be used by one individual, including:
    - (A) a personal amplifying system;
    - (B) a personal FM system;
    - (C) a television listening system; or
    - (D) a device or system similar to a device or system described in Subsections (10)(b)(ii)(A) through (C); or
    - (iii) an assistive listening device or system designed to be used by more than one individual, including:
      - (A) a device or system installed in:
        - (I) an auditorium;
        - (II) a church;
        - (III) a conference room;
        - (IV) a synagogue; or
        - (V) a theater; or
      - (B) a device or system similar to a device or system described in Subsections (10)(b)(iii)(A)(I) through (V).
- (11) (a) "Hearing aid accessory" means a hearing aid:
  - (i) component;

(ii) attachment; or

(iii) accessory.

(b) "Hearing aid accessory" includes:

(i) a hearing aid neck loop;

(ii) a hearing aid cord;

(iii) a hearing aid ear mold;

(iv) hearing aid tubing;

(v) a hearing aid ear hook; or

(vi) a hearing aid remote control.

(c) "Hearing aid accessory" does not include:

(i) a component, attachment, or accessory designed to be used only with an:

(A) instrument or device described in Subsection (10)(b)(i); or

(B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or

(ii) a hearing aid battery.

(12) (a) Except as provided in Subsection (12)(c), "home medical equipment or supplies" means equipment or supplies that:

(i) a licensed physician prescribes or authorizes in writing as necessary:

(A) for the treatment of a medical illness or injury; or

(B) to mitigate an impairment resulting from illness or injury;

(ii) are used exclusively by the person for whom they are prescribed to serve a medical purpose; and

(iii) are listed as eligible for payment under:

(A) Title XVIII [~~of the federal~~], Social Security Act; or

(B) the state plan for medical assistance under Title XIX [~~of the federal~~], Social Security Act.

(b) "Home medical equipment or supplies" includes parts used in the repairs or renovations of equipment or supplies described in Subsection (12)(a).

(c) Notwithstanding Subsection (12)(a), "home medical equipment or supplies" does not

include:

- (i) equipment or supplies purchased by, for, or on behalf of any:
  - (A) health care facility, as defined in Subsection (12)(d); or
  - (B) one or more of the following for use in a professional practice:
    - (I) a doctor;
    - (II) a nurse; or
    - (III) another health care provider;
- (ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or
- (iii) hearing aids or hearing aid accessories.
- (d) For purposes of Subsection (12)(c)(i)(A), "health care facility" includes:
  - (i) a clinic;
  - (ii) a doctor's office; or
  - (iii) a health care facility as defined in Section 26-21-2.
- (13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other

fuels:

- (a) in mining or extraction of minerals;
- (b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:
  - (i) commercial greenhouses;
  - (ii) irrigation pumps;
  - (iii) farm machinery;
  - (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered under Title 41, Chapter 1a, Part 2, Registration; and
  - (v) other farming activities;
- (c) in manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or
- (d) by a scrap recycler if:

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

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;
- (F) plastic;
- (G) textile; or
- (H) rubber; and

(ii) the new products under Subsection (13)(d)(i) would otherwise be made with nonrecycled materials.

(14) "Manufactured home" means any manufactured home or mobile home as defined in Title 58, Chapter 56, Utah Uniform Building Standards Act.

(15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

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

(b) a scrap recycler if:

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

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;

- (F) plastic;
- (G) textile; or
- (H) rubber; and

(ii) the new products under Subsection (15)(b)(i) would otherwise be made with nonrecycled materials.

(16) (a) "Medicine" means:

(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;

(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and

(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.

(b) "Medicine" does not include:

- (i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or
- (ii) any alcoholic beverage.

(17) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(18) "Olympic merchandise" means tangible personal property bearing an Olympic designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material, including:

(a) one or more of the following terms:

- (i) "Olympic";
- (ii) "Olympiad"; or
- (iii) "Citius Altius Fortius";

(b) the symbol of the International Olympic Committee, consisting of five interlocking rings;

- (c) the emblem of the International Olympic Committee Corporation;
- (d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other copyrighted or protected material;
- (e) any emblem of the Olympic Winter Games of 2002 that is officially designated by the Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or
- (f) the mascot of the Olympic Winter Games of 2002.

(19) (a) "Other fuels" means products that burn independently to produce heat or energy.

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

(20) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(21) "Place of primary use":

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

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

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

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

~~[(21)]~~ (22) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on the purchase price by the federal government.

~~[(22)]~~ (23) "Regularly rented" means:

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

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

~~[(23)]~~ (24) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

~~[(24)]~~ (25) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), other than resale of such property, item, or service by a retailer or wholesaler to a user or consumer.

(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if the sales have an average monthly sales value of \$125 or more.

(c) "Retail sale" does not include, and no additional sales or use tax shall be assessed against, those transactions where a purchaser of tangible personal property pays applicable sales or use taxes on its initial nonexempt purchases of property and then enters into a sale-leaseback transaction by which title to such property is transferred by the purchaser-lessee to a lessor for consideration, provided:

(i) the transaction is intended as a form of financing for the property to the purchaser-lessee; and

(ii) pursuant to generally accepted accounting principles, the purchaser-lessee is required to capitalize the subject property for financial reporting purposes, and account for the lease payments as payments made under a financing arrangement.

~~[(25)]~~ (26) (a) "Retailer" means any person engaged in a regularly organized retail business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

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

(c) "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

(d) For purposes of this chapter the commission may regard as retailers the following if they determine it is necessary for the efficient administration of this chapter: salesmen,

representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of these dealers, distributors, supervisors, or employers, except that:

(i) a printer's facility with which a retailer has contracted for printing shall not be considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

(ii) the ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being deemed to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

~~[(26)]~~ (27) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration. It includes:

- (a) installment and credit sales;
- (b) any closed transaction constituting a sale;
- (c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;
- (d) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and
- (e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

~~[(27)]~~ (28) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

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

(A) the sale of:

(I) textbooks;

(II) textbook fees;

(III) laboratory fees;

(IV) laboratory supplies; or

(V) safety equipment;

(B) the sale of clothing that:

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

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

(C) sales of food if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund dedicated to school meals; or

(D) transportation charges for official school activities; or

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

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

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

(ii) except as provided in Subsection [~~(27)~~] (28)(a)(i)(B), clothing; or

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

(A) other than a:

(I) school;

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

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

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

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

~~[(28)]~~ (29) For purposes of this section and Section 59-12-104, "school" means:

- (a) an elementary school or a secondary school that:
  - (i) is a:
    - (A) public school; or
    - (B) private school; and
  - (ii) provides instruction for one or more grades kindergarten through 12; or
- (b) a public school district.

~~[(29)]~~ (30) (a) "Semiconductor fabricating or processing materials" means tangible personal property:

- (i) used primarily in the process of:
  - (A) (I) manufacturing a semiconductor; or
  - (II) fabricating a semiconductor; or
  - (B) maintaining an environment suitable for a semiconductor; or
- (ii) consumed primarily in the process of:
  - (A) (I) manufacturing a semiconductor; or
  - (II) fabricating a semiconductor; or
  - (B) maintaining an environment suitable for a semiconductor.
- (b) "Semiconductor fabricating or processing materials" includes:
  - (i) parts used in the repairs or renovations of tangible personal property described in

Subsection ~~[(29)]~~ (30)(a); or

- (ii) a chemical, catalyst, or other material used to:
  - (A) produce or induce in a semiconductor a:
    - (I) chemical change; or
    - (II) physical change;
  - (B) remove impurities from a semiconductor; or
  - (C) improve the marketable condition of a semiconductor.

~~[(30)]~~ (31) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

~~[(31)]~~ (32) "State" means the state of Utah, its departments, and agencies.

~~[(32)]~~ (33) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

~~[(33)]~~ (34) (a) "Tangible personal property" means:

- (i) all goods, wares, merchandise, produce, and commodities;
- (ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;
- (iii) water in bottles, tanks, or other containers; and
- (iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

- (i) real estate or any interest or improvements in real estate;
- (ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;
- (iii) insurance certificates or policies;
- (iv) personal or governmental licenses;
- (v) water in pipes, conduits, ditches, or reservoirs;
- (vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and
- (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

~~[(34)]~~ (35) (a) ~~[For purposes of Subsection (35) and Section 59-12-103, "telephone]~~  
"Telephone service" means a two-way transmission:

- (i) by:
  - (A) wire;

- (B) radio;
- (C) lightwave; or
- (D) other electromagnetic means; and
- (ii) of one or more of the following:
  - (A) a sign;
  - (B) a signal;
  - (C) writing;
  - (D) an image;
  - (E) sound;
  - (F) a message;
  - (G) data; or
  - (H) other information of any nature.

(b) "Telephone service" includes:

- (i) cellular telephone service;
- (ii) private communications service; or
- (iii) automated digital telephone answering service.

(c) "Telephone service" does not include a service or a transaction that a state or a political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet Tax Freedom Act, Pub. L. No. 105-277.

(36) Notwithstanding where a call is billed or paid, "telephone service address" means:

(a) if the location described in this Subsection (36)(a) is known, the location of the telephone service equipment:

- (i) to which a call is charged; and
- (ii) from which the call originates or terminates;

(b) if the location described in Subsection (36)(a) is not known but the location described in this Subsection (36)(b) is known, the location of the origination point of the signal of the telephone service first identified by:

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

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

(c) if the locations described in Subsection (36)(a) or (b) are not known, the location of a purchaser's primary place of use.

~~[(35)]~~ (37) (a) "Telephone service provider" means a person that:

(i) owns, controls, operates, or manages a telephone service; ~~[and]~~ or

(ii) engages in an activity described in Subsection ~~[(35)]~~ (37)(a)(i) for the shared use with or resale to any person of the telephone service.

(b) A person described in Subsection ~~[(35)]~~ (37)(a) is a telephone service provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

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

~~[(36)]~~ (38) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

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

~~[(37)]~~ (39) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both.

"Vehicle," for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad work equipment, or other railroad rolling stock.

~~[(38)]~~ (40) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging vehicles as defined in Subsection ~~[(37)]~~ (39).

~~[(39)]~~ (41) (a) "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), or to whom the payment or consideration is payable.

(b) "Vendor" does not mean a printer's facility described in Subsection ~~[(25)]~~ (26)(d).

Section 15. Section **59-12-207** is amended to read:

**59-12-207. Report of tax collections -- Point of sale when retailer has no permanent place of business or more than one place of business is determined by rule of commission -- Public utilities -- Telephone telecommunications service.**

(1) Except as provided in Subsection (5), any sales and use taxes collected under this part shall be reported to the commission on forms that accurately identify the location where the transaction resulting in a tax under this chapter is consummated.

(2) Except as provided in Subsection (5), for purposes of this part, the location of where a transaction is consummated:

(a) is determined under rules of the commission if:

(i) a retailer has no permanent place of business in the state; or

(ii) has more than one place of business; and

(b) is where a purchaser receives the following products or services sold by a public utility, as defined in Section 54-2-1, to that purchaser:

(i) gas; or

(ii) electricity[~~;~~~~or~~].

~~[(iii) telephone services.]~~

(3) The form required under Subsection (1) shall:

(a) accompany the sales and use tax returns required under this chapter; and

(b) identify the location of any transaction consummated during the return filing period.

(4) Subject to Subsection (5) and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules regarding the determination of the location of where under Subsection (2)(a) a transaction is consummated.

(5) Notwithstanding Subsections (1) and (2)[~~;~~~~mobile telecommunications service is subject to the sourcing rules provided in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.~~] and except as provided in Subsection (6), the location of a transaction for telephone service taxed under this part shall be the county, city, or town within which is located the nine-digit zip code that is assigned by the United States Postal Service:

(a) for telephone service other than mobile telecommunications service, to the telephone service address for the transaction; and

(b) for mobile telecommunications service, to the place of primary use for the transaction.

(6) (a) For purposes of this Subsection (6):

(i) "Combined tax rate" means the sum of the tax rates imposed on a transaction described in Subsection 59-12-103(1) under:

(A) Subsection 59-12-103(2)(a)(i);

(B) Section 59-12-204;

(C) Section 59-12-205;

(D) Section 59-12-401;

(E) Section 59-12-402;

(F) Section 59-12-501;

(G) Section 59-12-502;

(H) Section 59-12-703;

(I) Section 59-12-802;

(J) Section 59-12-804;

(K) Section 59-12-1001;

(L) Section 59-12-1102;

(M) Section 59-12-1302; and

(N) Section 59-12-1402.

(ii) "Lowest combined tax rate" for a shared zip code means the lowest combined tax rate of the counties, cities, or towns within which the shared zip code is located.

(iii) "Shared zip code" means a nine-digit zip code assigned by the United States Postal Service that is located within two or more counties, cities, or towns.

(b) Notwithstanding Subsection (5), if the nine-digit zip code that is assigned to a telephone service address or a place of primary use is a shared zip code, the location of a transaction for telephone service shall be:

(i) if there is only one county, city, or town that imposes the lowest combined tax rate for the shared zip code, the county, city, or town that imposes the lowest combined tax rate; or

(ii) if two or more counties, cities, or towns impose the lowest combined tax rate for the shared zip code, the county, city, or town that:

(A) imposes the lowest combined tax rate for the shared zip code; and

(B) of the counties, cities, or towns that impose the lowest combined tax rate, has located within the county, city, or town the largest number of street addresses within the shared zip code.

(c) A telephone service provider shall collect sales and use taxes imposed under this chapter at the combined tax rate imposed within the county, city, or town in which the transaction for telephone service is located under Subsection (6)(b) notwithstanding the following:

(i) Section 59-12-204;

(ii) Section 59-12-205;

(iii) Section 59-12-401;

(iv) Section 59-12-402;

(v) Section 59-12-501;

(vi) Section 59-12-502;

(vii) Section 59-12-703;

(viii) Section 59-12-802;

(ix) Section 59-12-804;

(x) Section 59-12-1001;

(xi) Section 59-12-1102;

(xii) Section 59-12-1302; and

(xiii) Section 59-12-1402.

Section 16. Section **69-2-5** is amended to read:

**69-2-5. Funding for 911 emergency telephone service.**

(1) In providing funding of 911 emergency telephone service, any public agency establishing a 911 emergency telephone service may:

(a) seek assistance from the federal or state government, to the extent constitutionally permissible, in the form of loans, advances, grants, subsidies, and otherwise, directly or indirectly;

(b) seek funds appropriated by local governmental taxing authorities for the funding of public safety agencies; and

(c) seek gifts, donations, or grants from individuals, corporations, or other private entities.

(2) For purposes of providing funding of 911 emergency telephone service, special service districts may raise funds as provided in Section 17A-2-1322 and may borrow money and incur indebtedness as provided in Section 17A-2-1316.

(3) (a) Except as provided in Subsection (3)(b)[;] and subject to [~~Subsection (3)(f), the governing authority of any public agency providing~~] the other provisions of this Subsection (3) a county, city, or town within which 911 emergency telephone service is provided may levy monthly an emergency services telephone charge on:

(i) each local exchange service switched access line within the boundaries of the county, city, or town; and

(ii) each revenue producing radio communications access line with a billing address within the boundaries of the [~~area served by the public agency~~] county, city, or town.

(b) Notwithstanding Subsection (3)(a), an access [~~lines~~] line provided for public coin telephone service [~~are~~] is exempt from emergency telephone charges.

(c) The amount of the charge levied under this section may not exceed:

(i) 53 cents per month for each local exchange service switched access line; and

(ii) 53 cents per month for each radio communications access line.

(d) (i) For purposes of this Subsection (3)(d) the following terms shall be defined as provided in Section 59-12-102:

(A) "mobile telecommunications service";

(B) "primary place of use";

(C) "service address"; and

(D) "telephone service."

(ii) An access line described in Subsection (3)(a) is considered to be within the boundaries of a county, city, or town if the telephone services provided over the access line are located within the county, city, or town:

(A) for purposes of sales and use taxes under Title 59, Chapter 12, Sales and Use Tax Act; and

(B) determined in accordance with Section 59-12-207.

(iii) The rate imposed on an access line under this section shall be determined in accordance with Subsection (3)(d)(iv) if the location of an access line described in Subsection (3)(a) is determined under Subsection (3)(d)(ii) to be a county, city, or town other than county, city, or town in which is located:

(A) for telephone service other than mobile telecommunications service, the purchaser's service address; or

(B) for mobile telecommunications service, the purchaser's primary place of use.

(iv) The rate imposed on an access line under this section shall be the lower of:

(A) the rate imposed by the county, city, or town in which the access line is located under Subsection (3)(d)(ii); or

(B) the rate imposed by the county, city, or town in which it is located:

(I) for telephone service other than mobile telecommunications service, the purchaser's service address; or

(II) for mobile telecommunications service, the purchaser's primary place of use.

~~[(d)]~~ (e) (i) [Notification of intent to levy the charge shall be given to] A county, city, or town shall notify the Public Service Commission of the intent to levy the charge under this Subsection (3) at least 30 days prior to the effective date of the charge being levied.

(ii) For purposes of this Subsection (3)(e):

(A) "Annexation" means an annexation to:

(I) a city or town under Title 10, Chapter 2, Part 4, Annexation; or

(II) a county under Title 17, Chapter 2, Annexation to County.

(B) "Annexing area" means an area that is annexed into a county, city, or town.

(iii) (A) If, on or after July 1, 2003, a county, city, or town enacts or repeals a charge under this section, the enactment or repeal shall take effect:

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

(II) after a 75-day period beginning on the date the State Tax Commission receives notice meeting the requirements of Subsection (3)(e)(iii)(B) from the county, city, or town.

(B) The notice described in Subsection (3)(e)(iii)(A) shall state:

(I) that the county, city, or town will enact or repeal a charge under this section;

(II) the statutory authority for the charge described in Subsection (3)(e)(iii)(B)(I); and

(III) the effective date of the charge described in Subsection (3)(e)(iii)(B)(I).

(iv) (A) If, for an annexation that occurs on or after July 1, 2003, the annexation will result in a change in a charge imposed under this section being imposed in an annexing area, the change shall take effect:

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

(II) after a 75-day period beginning on the date the State Tax Commission receives notice meeting the requirements of Subsection (3)(e)(iv)(B) from the county, city, or town that annexes the annexing area.

(B) The notice described in Subsection (3)(e)(iv)(A) shall state:

(I) that the annexation described in Subsection (3)(e)(iv)(A) will result in a change in the charge being imposed under this section for the annexing area;

(II) the statutory authority for the charge described in Subsection (3)(e)(iv)(B)(I); and

(III) the effective date of the charge described in Subsection (3)(e)(iv)(B)(I).

~~(e)~~ (f) Subject to Subsection (3)~~(f)~~ (g), an emergency services telephone charge levied under this section shall:

(i) be billed and collected by the ~~[corporation,] person[, or entity]~~ that provides the:

(A) local exchange service switched access line services; or

(B) radio communications access line services; and

(ii) remitted to the ~~[public agency providing 911 emergency telephone service in the~~

~~billed customer location area as directed by the public agency]~~ State Tax Commission.

~~[(f)]~~ (g) An emergency services telephone charge on a mobile telecommunications service may be levied, billed, and collected only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(h) The State Tax Commission shall:

(i) collect, enforce, and administer the charge imposed under this Subsection (3) pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use taxes under:

(A) Title 59, Chapter 1, General Taxation Policies; and

(B) Title 59, Chapter 12, Part 1, Tax Collection, except for Sections 59-12-104, 59-12-104.1, and 59-12-104.2;

(ii) transmit monies collected under this Subsection (3):

(A) monthly; and

(B) by electronic funds transfer by the commission to the county, city, or town that imposes the charge; and

(iii) charge the county, city, or town for the State Tax Commission's services under this Subsection (3) in an amount:

(A) sufficient to reimburse the State Tax Commission for the cost to the State Tax Commission in rendering the services; and

(B) that may not exceed an amount equal to 1.5% of the charges imposed under this Subsection (3).

(4) (a) Any money received by ~~[the]~~ a public agency for the provision of 911 emergency telephone service shall be deposited in a special emergency telephone service fund.

(b) (i) The money in the emergency telephone service fund described in Subsection (4)(a) shall be expended by the public agency to pay the costs of establishing, installing, maintaining, and operating a 911 emergency telephone system or integrating a 911 system into an established public safety dispatch center, including contracting with the providers of local exchange service, radio communications service, and vendors of appropriate terminal equipment as necessary to

implement the 911 emergency telephone service.

(ii) Revenues derived for the funding of 911 emergency telephone service may only be used for that portion of costs related to the operation of the 911 emergency telephone system when such a system is integrated with any public safety dispatch system.

Section 17. Section **69-2-5.5** is amended to read:

**69-2-5.5. Emergency services telephone charge to fund the Poison Control Center.**

(1) Subject to Subsection (13), there is imposed an emergency services telephone charge of 7 cents per month on each local exchange service switched access line and each revenue producing radio communications access line that is subject to an emergency services telephone charge levied by a ~~[public agency]~~ county, city, or town under Section 69-2-5.

(2) The emergency services telephone charge imposed under this section shall be:

(a) subject to Subsection (13), billed and collected by the ~~[corporation,]~~ person~~[-or entity]~~ that provides:

(i) local exchange service switched access line services; or

(ii) radio communications access line services ~~[and]~~;

(b) remitted ~~[monthly]~~ to the State Tax Commission at the same time as the person remits to the State Tax Commission monies collected by the person under Title 59, Chapter 12, Sales and Use Tax Act; and

~~[(b)]~~ (c) deposited into the General Fund as dedicated credits to pay for:

(i) costs of establishing, installing, maintaining, and operating the University of Utah Poison Control Center; and

(ii) expenses of the State Tax Commission to administer and enforce the collection of the emergency services telephone charges.

(3) Funds for the University of Utah Poison Control Center program are nonlapsing.

(4) Emergency services telephone charges remitted to the State Tax Commission pursuant to Subsection (2) shall be accompanied by the form prescribed by the commission.

(5) The State Tax Commission may make rules to administer and enforce the collection of emergency services telephone charges imposed under this section.

(6) A provider of local exchange service switched access line services or radio communications access line services who fails to comply with this section is subject to penalties and interest as provided in Sections 59-1-401 and 59-1-402.

(7) (a) Except as provided in Subsections (8) through (11), and subject to Subsection (13), the State Tax Commission shall assess a charge imposed under this section within three years after a provider of local exchange service switched access line services or radio communications access line services files a return.

(b) Except as provided in Subsections (8) through (11), if the commission does not assess a charge imposed under this section within the three-year period provided in Subsection (7)(a), the commission may not commence a proceeding to collect the charge.

(8) Notwithstanding Subsection (7), and subject to Subsection (13), the State Tax Commission may assess a charge at any time if a provider of local exchange service switched access line services or radio communications access line services:

- (a) files a false or fraudulent return with intent to evade; or
- (b) does not file a return.

(9) Notwithstanding Subsection (7), beginning on July 1, 1998, the State Tax Commission may extend the period to make an assessment or commence a proceeding to collect the charge imposed under this section if:

- (a) the three-year period under Subsection (7) has not expired; and
- (b) the commission and the provider of local exchange service switched access line services or radio communications access line services sign a written agreement:
  - (i) authorizing the extension; and
  - (ii) providing for the length of the extension.

(10) If the State Tax Commission delays an audit at the request of a provider of local exchange service switched access line services or radio communications access line services, the commission may make an assessment as provided in Subsection (11) if:

- (a) the provider of local exchange service switched access line services or radio communications access line services subsequently refuses to agree to an extension request by the

commission; and

(b) the three-year period under Subsection (7) expires before the commission completes the audit.

(11) An assessment under Subsection (10) shall be:

(a) for the time period for which the State Tax Commission could not make an assessment because of the expiration of the three-year period; and

(b) in an amount equal to the difference between:

(i) the commission's estimate of the amount of the charge the provider of local exchange service switched access line services or radio communications access line services would have been assessed for the time period described in Subsection (11)(a); and

(ii) the amount of the charge the provider of local exchange service switched access line services or radio communications access line services actually paid for the time period described in Subsection (11)(a).

(12) (a) Except as provided in Subsection (12)(b), the State Tax Commission may not make a credit or refund unless the provider of local exchange service switched access line services or radio communications access line services files a claim with the commission within three years of the date of overpayment.

(b) Notwithstanding Subsection (12)(a), beginning on July 1, 1998, the commission shall extend the period for a provider of local exchange service switched access line services or radio communications access line services to file a claim under Subsection (12)(a) if:

(i) the three-year period under Subsection (12)(a) has not expired; and

(ii) the commission and the provider of local exchange service switched access line services or radio communications access line services sign a written agreement:

(A) authorizing the extension; and

(B) providing for the length of the extension.

(13) An emergency services telephone charge under this section on a mobile telecommunications service may be imposed, billed, and collected only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(14) (a) (i) For purposes of this Subsection (14) and except as provided in Subsection (14)(a)(ii), "bad debt" is as defined in Section 166, Internal Revenue Code.

(ii) "Bad debt" does not include:

(A) amounts not subject to the charge imposed under this section that are included in the purchase price for:

(I) local exchange service switched access line service; or

(II) radio communications access line service;

(B) financing charges or interest;

(C) the charge imposed under this section on:

(I) a local exchange service switched access line; or

(II) a radio communications access line;

(D) uncollectible amounts on tangible personal property that remains in the possession of the vendor until the full purchase price is paid;

(E) expenses incurred in attempting to collect any debt; and

(F) amounts uncollected on repossessed property.

(b) The State Tax Commission shall allow a credit for amounts remitted to the State Tax Commission under this section that constitute bad debt.

Section 18. Section **72-7-102** is amended to read:

**72-7-102. Excavations, structures, or objects prohibited within right-of-way except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty for violation.**

(1) As used in this section, "management costs" means the reasonable, direct, and actual costs a highway authority incurs in exercising authority over the highways under its jurisdiction.

(2) Except as provided in Subsection (3) and Section 54-4-15, a person may not:

(a) dig or excavate, within the right-of-way of any state highway, county road, or city street; or

(b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or

character within the right-of-way.

(3) (a) A highway authority having jurisdiction over the right-of-way may allow excavating, installation of utilities and other facilities or access under rules made by the highway authority and in compliance with federal, state, and local law as applicable.

(b) (i) The rules may require a permit for any excavation or installation and may require a surety bond or other security.

(ii) The application for a permit for excavation or installation on a state highway shall be accompanied by a fee established under Subsection (4)(f).

(iii) The permit may be revoked and the surety bond or other security may be forfeited for cause.

(4) (a) Except as provided in Section 72-7-108 with respect to the department concerning the interstate highway system, a highway authority may require compensation from a utility service provider for access to the right-of-way of a highway only as provided in this section.

(b) A highway authority may recover from a utility service provider, only those management costs caused by the utility service provider's activities in the right-of-way of a highway under the jurisdiction of the highway authority.

(c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a competitively neutral basis.

(ii) If a highway authority's management costs cannot be attributed to only one entity, the management costs shall be allocated among all privately owned and government agencies using the highway right-of-way for utility service purposes, including the highway authority itself. The allocation shall reflect proportionately the management costs incurred by the highway authority as a result of the various utility uses of the highway.

(d) A highway authority may not use the compensation authority granted under this Subsection (4) as a basis for generating revenue for the highway authority that is in addition to its management costs.

(e) (i) A utility service provider that is assessed management costs or a franchise fee by a highway authority is entitled to recover those management costs.

(ii) If the highway authority that assesses the management costs or franchise fees is a political subdivision of the state and the utility service provider serves customers within the boundaries of that highway authority, the management costs may be recovered from those customers.

(f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall adopt a schedule of fees to be assessed for management costs incurred in connection with issuing and administering a permit on a state highway under this section.

(g) In addition to the requirements of this Subsection (4), a telecommunications tax or fee imposed by a municipality on a telecommunications provider, as defined in Section 10-1-402, is subject to Section 10-1-406.

(5) Permit fees collected by the department under this section shall be deposited with the state treasurer and credited to the Transportation Fund.

(6) Nothing in this section shall affect the authority of a municipality under:

(a) Section 10-1-203;

(b) Section 11-26-1 [and];

(c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act[-]; or

(d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

(7) A person who violates the provisions of Subsection (2) is guilty of a class B misdemeanor.

Section 19. Section **72-7-108** is amended to read:

**72-7-108. Longitudinal telecommunication access in the interstate highway system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.**

(1) As used in this section:

(a) "Longitudinal access" means access to or use of any part of a right-of-way of a highway on the interstate system that extends generally parallel to the right-of-way for a total of 30 or more linear meters.

(b) "Statewide telecommunications purposes" means the further development of the statewide network that meets the telecommunications needs of state agencies and enhances the

learning purposes of higher and public education.

(c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, or other equipment, system, and device used to transmit, receive, produce, or distribute via wireless, wireline, electronic, or optical signal for communication purposes.

(2) (a) Except as provided in Subsection (4), the department may allow a telecommunication facility provider longitudinal access to the right-of-way of a highway on the interstate system for the installation, operation, and maintenance of a telecommunication facility.

(b) The department shall enter into an agreement with a telecommunication facility provider and issue a permit before granting it any longitudinal access under this section.

(i) Except as specifically provided by the agreement, a property interest in a right-of-way may not be granted under the provisions of this section.

(ii) An agreement entered into by the department under this section shall:

- (A) specify the terms and conditions for the renegotiation of the agreement;
- (B) specify maintenance responsibilities for each telecommunication facility;
- (C) be nonexclusive; and
- (D) be limited to a maximum term of 30 years.

(3) (a) The department shall require compensation from a telecommunication facility provider under this section for longitudinal access to the right-of-way of a highway on the interstate system.

(b) The compensation charged shall be:

- (i) fair and reasonable;
- (ii) competitively neutral;
- (iii) nondiscriminatory;
- (iv) open to public inspection;
- (v) established to promote access by multiple telecommunication facility providers;
- (vi) established for zones of the state, with zones determined based upon factors that

include population density, distance, numbers of telecommunication subscribers, and the impact upon private right-of-way users;

(vii) established to encourage the deployment of digital infrastructure within the state;

(viii) set after the department conducts a market analysis to determine the fair and reasonable values of the right-of-way based upon adjacent property values;

(ix) a lump sum payment or annual installment, at the option of the telecommunications facility provider; and

(x) set in accordance with Subsection (3)(f).

(c) (i) The compensation charged may be cash, in-kind compensation, or a combination of cash and in-kind compensation.

(ii) In-kind compensation requires the agreement of both the telecommunication facility provider and the department.

(iii) The department shall, in consultation with the Telecommunications Advisory Council created in Section 72-7-109, determine the present value of any in-kind compensation based upon the incremental cost to the telecommunication facility provider.

(iv) The value of in-kind compensation or a combination of cash and in-kind compensation shall be equal to or greater than the amount of cash compensation that would be charged if the compensation is cash only.

(d) (i) The department shall provide for the proportionate sharing of costs among the department and telecommunications providers for joint trenching or trench sharing based on the amount of conduit innerduct space that is authorized in the agreement for the trench.

(ii) If two or more telecommunications facility providers are required to share a single trench, each telecommunications facility provider in the trench shall share the cost and benefits of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively neutral, and nondiscriminatory basis.

(e) The market analysis under Subsection (3)(b)(viii) shall be conducted at least every five years and any adjustments warranted shall apply only to agreements entered after the date of the new market analysis.

(f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall establish a schedule of rates of compensation for any longitudinal access granted under this section.

(4) The department may not grant any longitudinal access under this section that results in a significant compromise of the safe, efficient, and convenient use of the interstate system for the traveling public.

(5) The department may not pay any cost of relocation of a telecommunication facility granted longitudinal access to the right-of-way of a highway on the interstate system under this section.

(6) (a) Monetary compensation collected by the department in accordance with this section shall be deposited with the state treasurer and credited to the Transportation Fund.

(b) Any telecommunications capacity acquired as in-kind compensation shall be used:

(i) exclusively for statewide telecommunications purposes and may not be sold or leased in competition with telecommunication or Internet service providers; and

(ii) as determined by the department after consultation with the Telecommunications Advisory Council created in Section 72-7-109.

(7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall make rules:

(a) governing the installation, operation, and maintenance of a telecommunication facility granted longitudinal access under this section;

(b) specifying the procedures for establishing an agreement for longitudinal access for a telecommunication facility provider;

(c) providing for the relocation or removal of a telecommunication facility for:

(i) needed changes to a highway on the interstate system;

(ii) expiration of an agreement; or

(iii) a breach of an agreement; and

(d) providing an opportunity for all interested providers to apply for access within open right-of-way segments.

(8) (a) Except for a right-of-way of a highway on the interstate system, nothing in this section shall be construed to allow a highway authority to require compensation from a telecommunication facility provider for longitudinal access to the right-of-way of a highway under the highway authority's jurisdiction.

(b) Nothing in this section shall affect the authority of a municipality under:

(i) Section 10-1-203;

(ii) Section 11-26-1 [and];

(iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act[-]; or

(iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

(9) Compensation paid to the department under Subsection (3) may not be used by any person as evidence of the market or other value of the access for any other purpose, including condemnation proceedings, other litigation, or the application of rates of taxation or the establishment of franchise fees relating to longitudinal access rights.

**Section 20. Repealer.**

This act repeals:

**Section 11-26-3, Local charge on certain revenues of public utility or telephone service suppliers -- Notice and hearing requirements.**

**Section 21. Effective date.**

This act takes effect on July 1, 2003 except the following take effect on July 1, 2004:

(1) the amendments in this act to:

(a) Section 10-1-203;

(b) Section 11-26-1;

(c) Section 72-7-102;

(d) Section 72-7-108; and

(2) the repeal of Section 11-26-3.