



28           **10-1-203. License fees and taxes -- Application information to be transmitted to the**  
29 **county auditor.**

30           (1) [~~For the purpose of~~] As used in this section[~~,"business"~~]:

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

34           (b) (i) "Charge for mobile telecommunications service" means an amount described in  
35 Subsection (1)(b)(ii) levied and collected on:

36           (A) a customer:

37           (I) for a mobile telecommunications service; and

38           (II) whose place of primary use is within the municipality; or

39           (B) a home service provider providing mobile telecommunications service to a customer  
40 whose place of primary use is within the municipality.

41           (ii) The following amounts apply to Subsection (1)(b)(i):

42           (A) a tax, including a tax imposed on the basis of gross revenues;

43           (B) a license;

44           (C) a fee;

45           (D) a license fee;

46           (E) a license tax; or

47           (F) an amount similar to Subsections (1)(b)(ii)(A) through (E).

48           (c) "Customer" means:

49           (i) (A) except as provided in Subsection (1)(c)(i)(B), a person that contracts with a home  
50 service provider for mobile telecommunications service; or

51           (B) notwithstanding Subsection (1)(c)(i)(A), the end user of the mobile

52 telecommunications service if the person described in Subsection (1)(c)(i)(A) is not the end user  
53 of the mobile telecommunications service.

54           (ii) "Customer" does not include:

55           (A) a reseller of mobile telecommunications service; or

56           (B) a serving carrier under an arrangement to serve a customer outside the home service  
57 provider's licensed service area.

58           (d) "Home service provider" is as defined in the Mobile Telecommunications Sourcing

59 Act, 4 U.S.C. Sec. 124.

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

62 (f) "Place of primary use" is as defined in the Mobile Telecommunications Sourcing Act,  
63 4 U.S.C. Sec. 124.

64 (g) "Telephone service" does not include mobile telecommunications service.

65 (2) [~~Except as provided in~~] Subject to Subsections (3) through [~~(5)] (6), the governing~~

66 body of a municipality may license for the purpose of regulation and revenue any business within

67 the limits of the municipality and may regulate that business by ordinance.

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

69 a municipal energy sales or use tax as provided in Part 3, Municipal Energy Sales and Use Tax

70 Act, except a municipality may not levy or collect a franchise tax or fee as defined in Subsection

71 10-1-303(7) on an energy supplier other than the municipal energy sales and use tax provided in

72 Part 3, Municipal Energy Sales and Use Tax Act.

73 (b) (i) Subsection (3)(a) does not affect the validity of a franchise agreement as defined

74 in Subsection 10-1-303(6), that is in effect on July 1, 1997, or a future franchise.

75 (ii) A franchise agreement as defined in Subsection 10-1-303(6) in effect on January 1,

76 1997, or a future franchise shall remain in full force and effect.

77 (c) A municipality that collects a contractual franchise fee pursuant to a franchise

78 agreement as defined in Subsection 10-1-303(6) with an energy supplier that is in effect on July

79 1, 1997, may continue to collect that fee as provided in Subsection 10-1-310(2).

80 (d) (i) Subject to the requirements of Subsection (3)(d)(ii), a franchise agreement as

81 defined in Subsection 10-1-303(6) between a municipality and an energy supplier may contain a

82 provision that:

83 (A) requires the energy supplier by agreement to pay a contractual franchise fee that is

84 otherwise prohibited under Part 3, Municipal Energy Sales and Use Tax Act; and

85 (B) imposes the contractual franchise fee on or after the day on which Part 3, Municipal

86 Energy Sales and Use Tax Act is:

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

88 reduced; and

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

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

93 (4) Subject to ~~[the provisions of]~~ Title 11, Chapter 26, Local Taxation of Utilities  
94 Limitation, a municipality may impose upon, charge, or collect from a public utility engaged in the  
95 business of supplying telephone service or other person or entity engaged in the business of  
96 supplying telephone service any tax, license, fee, license fee, license tax, or similar charge, or any  
97 combination of any of these, based upon the gross revenues of the utility, person, or entity derived  
98 from sales or use or both sales and use of the telephone service within the municipality.

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

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

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

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

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

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

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

111 (i) "Municipal services" include:

112 (A) public utilities; or

113 (B) services for:

114 (I) police;

115 (II) fire;

116 (III) storm water runoff;

117 (IV) traffic control;

118 (V) parking;

119 (VI) transportation;

120 (VII) beautification; or

121 (VIII) snow removal.

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

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

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

126 (C) that charges a fee for parking.

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

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

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

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

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

141 (6) (a) Subject to Title 11, Chapter 26, Local Taxation of Utilities Limitation, and  
142 Subsection (6)(c), if the requirements of Subsection (6)(b) are met, a municipality may by  
143 ordinance raise revenue by levying and collecting a charge for mobile telecommunications service.

144 (b) A municipality may levy and collect a charge for mobile telecommunications service  
145 in accordance with Subsection (6)(a) if:

146 (i) on or before July 1, 2001, the municipality by ordinance levied and collected a charge  
147 for mobile telecommunications service;

148 (ii) the charge for mobile telecommunications service does not exceed \$1 per month for  
149 each telephone number assigned to a customer whose place of primary use is within the  
150 municipality; and

151 (iii) on or before July 1, 2002, the ordinance described in Subsection (6)(b)(i) complies

152 with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

153 (c) Beginning on July 1, 2002, through June 30, 2003, a municipality that does not meet  
154 the requirements of Subsection (6)(b) may not levy or collect a charge for mobile  
155 telecommunications service.

156 (d) Beginning on July 1, 2003, a municipality may not levy or collect a charge for mobile  
157 telecommunications service under this section.

158 (e) The Revenue and Taxation Interim Committee shall, during the 2002 interim, study  
159 the taxes or fees that the state or political subdivisions of the state impose on telecommunications  
160 equipment, facilities, or services.

161 [~~(6)~~] (7) All license fees and taxes shall be uniform in respect to the class upon which  
162 [they] the fees and taxes are imposed.

163 [~~(7)~~] (8) The governing body shall transmit the information from each approved business  
164 license application to the county assessor within 60 days following the approval of the application.

165 [~~(8)~~] (9) If challenged in court, an ordinance enacted by a municipality before January 1,  
166 1994, imposing a business license fee or tax on rental dwellings under this section shall be upheld  
167 unless the business license fee or tax is found to impose an unreasonable burden on the fee or tax  
168 payer.

169 Section 2. Section **54-8b-2** is amended to read:

170 **54-8b-2. Definitions.**

171 As used in this chapter:

172 (1) (a) "Aggregator" means any person or entity that:

173 (i) is not a telecommunications corporation;

174 (ii) in the ordinary course of its business makes operator assisted services available to the  
175 public or to customers and transient users of its business or property through an operator service  
176 provider; and

177 (iii) receives from an operator service provider by contract, tariff, or otherwise,  
178 commissions or compensation for calls delivered from the aggregator's location to the operator  
179 service provider.

180 (b) "Aggregator" may include any hotel, motel, hospital, educational institution,  
181 government agency, or coin or coinless telephone service provider so long as that entity qualifies  
182 under Subsection (1)(a).

183 (2) "Certificate" means a certificate of public convenience and necessity issued by the  
184 commission authorizing a telecommunications corporation to provide specified public  
185 telecommunications services within a defined geographic service territory in the state.

186 (3) "Division" means the Division of Public Utilities established in Section 54-4a-1.

187 (4) "Essential facility or service" means any portion, component, or function of the  
188 network or service offered by a provider of local exchange services:

189 (a) that is necessary for a competitor to provide a public telecommunications service;

190 (b) that cannot be reasonably duplicated; and

191 (c) for which there is no adequate economic alternative to the competitor in terms of  
192 quality, quantity, and price.

193 (5) "Federal Telecommunications Act" means the Federal Telecommunications Act of  
194 1996, Pub. L. No. 104-104, 110 Stat. 56.

195 (6) "Incumbent telephone corporation" means a telephone corporation, its successors or  
196 assigns, which, as of May 1, 1995, held a certificate to provide local exchange services in a defined  
197 geographic service territory in the state.

198 (7) "Intrastate telecommunications service" means any public telecommunications service  
199 in which the information transmitted originates and terminates within the boundaries of this state.

200 (8) "Local exchange service" means the provision of telephone lines to customers with the  
201 associated transmission of two-way interactive, switched voice communication within the  
202 geographic area encompassing one or more local communities as described in maps, tariffs, or rate  
203 schedules filed with and approved by the commission.

204 (9) "Mobile telecommunications service" means a mobile telecommunications service:

205 (a) that is defined as a mobile telecommunications service in the Mobile

206 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124; and

207 (b) in which the information transmitted originates and terminates in one state.

208 [~~9~~] (10) (a) "New public telecommunications service" means a service offered by a  
209 telecommunications corporation which that corporation has never offered before.

210 (b) "New public telecommunications service" does not include:

211 (i) a tariff, price list, or competitive contract that involves a new method of pricing any  
212 existing public telecommunications service;

213 (ii) a package of public telecommunications services that includes an existing public

214 telecommunications service; or

215 (iii) a public telecommunications service that is a direct replacement for:

216 (A) a fully regulated service;

217 (B) an existing service offered pursuant to a tariff, price list, or competitive contract; or

218 (C) an essential facility or an essential service [~~as defined in Section 54-8b-2~~].

219 ~~[(10)]~~ (11) "Operator assisted services" means services which assist callers in the  
220 placement or charging of a telephone call, either through live intervention or automated  
221 intervention.

222 ~~[(11)]~~ (12) "Operator service provider" means any person or entity that provides, for a fee  
223 to a caller, operator assisted services.

224 ~~[(12)]~~ (13) "Price-regulated service" means any public telecommunications service  
225 governed by Section 54-8b-2.3.

226 ~~[(13)]~~ (14) "Public telecommunications service" means the two-way transmission of signs,  
227 signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio,  
228 lightwaves, or other electromagnetic means offered to the public generally.

229 ~~[(14)]~~ (15) "Same or substitutable" with reference to a public telecommunications service  
230 means that the service is comparable to another service in terms of function, price, and quality to  
231 an end user customer.

232 ~~[(15)]~~ (16) "Substantial compliance" with reference to a rule or order of the commission  
233 means satisfaction of all material obligations in a manner consistent with the rule or order.

234 ~~[(16)]~~ (17) "Telecommunications corporation" means any corporation or person, and their  
235 lessees, trustees, receivers, or trustees appointed by any court, owning, controlling, operating,  
236 managing, or reselling a public telecommunications service.

237 ~~[(17)]~~ (18) "Total service long-run incremental cost" means the forward-looking  
238 incremental cost to a telecommunications corporation caused by providing the entire quantity of  
239 a public telecommunications service, network function, or group of public telecommunications  
240 services or network functions, by using forward-looking technology, reasonably available, without  
241 assuming relocation of existing plant and equipment. The "long-run" means a period of time long  
242 enough so that cost estimates are based on the assumption that all inputs are variable.

243 Section 3. Section **54-8b-15** is amended to read:

244 **54-8b-15. Universal Public Telecommunications Service Support Fund --**



245 **Established.**

246 (1) For purposes of this section:

247 (a) "Basic telephone service" means local exchange service and may include such other  
248 functions and elements, if any, as the commission determines to be eligible for support by the fund.

249 (b) "Fund" means the Universal Public Telecommunications Service Support Fund  
250 established in this section.

251 (2) The commission shall establish an expendable trust fund known as the Universal  
252 Public Telecommunications Service Support Fund, which is to be implemented by January 1,  
253 1998.

254 (3) The commission shall:

255 (a) institute a proceeding within 30 days of the effective date of this section to establish  
256 rules governing the administration of the fund; and

257 (b) issue those rules by October 1, 1997.

258 (4) The rules in Subsection (3) shall:

259 (a) include rules governing the mechanics of phasing out the trust fund established under  
260 Section 54-8b-12;

261 (b) specify the relationship between the payments made to the trust fund in Section  
262 54-8b-12 and the payments made to the fund established in this section; and

263 (c) be consistent with the Federal Telecommunications Act.

264 (5) Operation of the fund shall be nondiscriminatory and competitively and technologically  
265 neutral in the collection and distribution of funds, neither providing a competitive advantage for,  
266 nor imposing a competitive disadvantage upon, any telecommunications provider operating in the  
267 state.

268 (6) The fund shall be designed to:

269 (a) promote equitable cost recovery of basic telephone service through the imposition of  
270 just and reasonable rates for telecommunications access and usage; and

271 (b) preserve and promote universal service within the state by ensuring that customers  
272 have access to affordable basic telephone service.

273 (7) To the extent not funded by a federal universal service fund or other federal  
274 jurisdictional revenues or by the fund established pursuant to Section 54-8b-12, the fund shall be  
275 used to defray the costs, as determined by the commission, of any qualifying telecommunications

276 corporation in providing public telecommunications services to:

277 (a) customers that qualify for a commission-approved lifeline program; and

278 (b) customers, where the basic telephone service rate considered affordable by the

279 commission in a particular geographic area is less than the costs, as determined by the commission

280 for that geographic area, of basic telephone service.

281 (8) The fund shall be portable among qualifying telecommunications corporations.

282 Requirements to qualify for funds under this section shall be defined by rules established by the

283 commission.

284 (9) As necessary to accomplish the purposes of this section, the fund shall provide a

285 mechanism for specific, predictable, and sufficient funds in addition to those provided under the

286 federal universal service fund.

287 (10) (a) ~~Each~~ Subject to Subsection (10)(b):

288 (i) each telecommunications corporation that provides intrastate public telecommunication  
289 service shall contribute to the fund on an equitable and nondiscriminatory basis~~[-];~~

290 ~~[(b) For]~~ (ii) for purposes of funding the fund, the commission shall have the authority

291 to require all corporations that provide intrastate telecommunication services in this state to

292 contribute monies to the fund through explicit charges determined by the commission~~[-];~~

293 ~~[(c) Any]~~ (iii) any charge described in Subsection ~~[(b)]~~ (10)(a)(ii) ~~[shall]~~ may not apply

294 to wholesale services, including access and interconnection~~[- Charges]; and~~

295 (iv) charges associated with being a provider of public telecommunications service shall

296 be in the form of end-user surcharges applied to intrastate retail rates.

297 (b) A telecommunications corporation that provides mobile telecommunications service

298 shall contribute to the fund only to the extent permitted by the Mobile Telecommunications

299 Sourcing Act, 4 U.S.C. Sec. 116 et seq.

300 ~~[(d)]~~ (c) In establishing any surcharge under this section, the commission is not limited by  
301 the restrictions in Subsection 54-8b-12(2).

302 (11) Nothing in this section shall be construed to enlarge or reduce the commission's

303 jurisdiction or authority, as provided in other provisions of this title.

304 (12) Any telecommunications corporation failing to make contributions to this fund or

305 failing to comply with the directives of the commission concerning its books, records, or other

306 information required to administer this section shall be subject to applicable penalties.

307 (13) The commission shall have a bill prepared for the 1998 General Session of the  
308 Legislature to place in statute as much of the regulation implemented by rule pursuant to the act  
309 the commission believes is practicable.

310 Section 4. Section **59-12-102** is amended to read:

311 **59-12-102. Definitions.**

312 As used in this chapter:

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

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

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

317 (3) "Authorized carrier" means:

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

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

323 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock,  
324 the holder of a certificate issued by the United States Interstate Commerce Commission.

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

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

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

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

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

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

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

336 (5) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels  
337 that does not constitute industrial use under Subsection (13) or residential use under Subsection

338 (22).

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

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

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

347 (7) "Component part" includes:

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

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

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

353 (d) feed, seeds, and seedlings.

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

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

357 (i) (A) made by a school; or

358 (B) made by a school student;

359 (ii) that are for the purpose of raising funds for the school to purchase equipment,  
360 materials, or provide transportation; and

361 (iii) that are part of an officially sanctioned school activity.

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

364 (i) that is conducted in accordance with a formal policy adopted by the school or school  
365 district governing the authorization and supervision of fundraising activities;

366 (ii) that does not directly or indirectly compensate an individual teacher or other  
367 educational personnel by direct payment, commissions, or payment in kind; and

368 (iii) the net or gross revenues from which are deposited in a dedicated account controlled

369 by the school or school district.

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

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

372 (A) (I) improve impaired human hearing; or

373 (II) correct impaired human hearing; and

374 (B) (I) be worn in the human ear; or

375 (II) affixed behind the human ear;

376 (ii) an instrument or device that is surgically implanted into the cochlea; or

377 (iii) a telephone amplifying device.

378 (b) "Hearing aid" does not include:

379 (i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device  
380 having an electronic component that is designed to be worn on the body;

381 (ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system  
382 designed to be used by one individual, including:

383 (A) a personal amplifying system;

384 (B) a personal FM system;

385 (C) a television listening system; or

386 (D) a device or system similar to a device or system described in Subsections

387 (10)(b)(ii)(A) through (C); or

388 (iii) an assistive listening device or system designed to be used by more than one  
389 individual, including:

390 (A) a device or system installed in:

391 (I) an auditorium;

392 (II) a church;

393 (III) a conference room;

394 (IV) a synagogue; or

395 (V) a theater; or

396 (B) a device or system similar to a device or system described in Subsections

397 (10)(b)(iii)(A)(I) through (V).

398 (11) (a) "Hearing aid accessory" means a hearing aid:

399 (i) component;

- 400 (ii) attachment; or  
401 (iii) accessory.  
402 (b) "Hearing aid accessory" includes:  
403 (i) a hearing aid neck loop;  
404 (ii) a hearing aid cord;  
405 (iii) a hearing aid ear mold;  
406 (iv) hearing aid tubing;  
407 (v) a hearing aid ear hook; or  
408 (vi) a hearing aid remote control.  
409 (c) "Hearing aid accessory" does not include:  
410 (i) a component, attachment, or accessory designed to be used only with an:  
411 (A) instrument or device described in Subsection (10)(b)(i); or  
412 (B) assistive listening device or system described in Subsection (10)(b)(ii) or (iii); or  
413 (ii) a hearing aid battery.  
414 (12) (a) "Home medical equipment and supplies" means equipment and supplies that:  
415 (i) a licensed physician prescribes or authorizes in writing as necessary for the treatment  
416 of a medical illness or injury or as necessary to mitigate an impairment resulting from illness or  
417 injury;  
418 (ii) are used exclusively by the person for whom they are prescribed to serve a medical  
419 purpose; and  
420 (iii) are listed as eligible for payment under Title XVIII of the federal Social Security Act  
421 or under the state plan for medical assistance under Title XIX of the federal Social Security Act.  
422 (b) "Home medical equipment and supplies" does not include:  
423 (i) equipment and supplies purchased by, for, or on behalf of any health care facility, as  
424 defined in Subsection (12)(c), doctor, nurse, or other health care provider for use in their  
425 professional practice;  
426 (ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or  
427 (iii) hearing aids or hearing aid accessories.  
428 (c) For purposes of Subsection (12)(b)(i), "health care facility" includes:  
429 (i) a clinic;  
430 (ii) a doctor's office; and

- 431 (iii) a health care facility as defined in Section 26-21-2.
- 432 (13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other
- 433 fuels:
- 434 (a) in mining or extraction of minerals;
- 435 (b) in agricultural operations to produce an agricultural product up to the time of harvest
- 436 or placing the agricultural product into a storage facility, including:
- 437 (i) commercial greenhouses;
- 438 (ii) irrigation pumps;
- 439 (iii) farm machinery;
- 440 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 441 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 442 (v) other farming activities;
- 443 (c) in manufacturing tangible personal property at an establishment described in SIC Codes
- 444 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office
- 445 of the President, Office of Management and Budget; or
- 446 (d) by a scrap recycler if:
- 447 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one
- 448 or more of the following items into prepared grades of processed materials for use in new products:
- 449 (A) iron;
- 450 (B) steel;
- 451 (C) nonferrous metal;
- 452 (D) paper;
- 453 (E) glass;
- 454 (F) plastic;
- 455 (G) textile; or
- 456 (H) rubber; and
- 457 (ii) the new products under Subsection (13)(d)(i) would otherwise be made with
- 458 nonrecycled materials.
- 459 (14) "Manufactured home" means any manufactured home or mobile home as defined in
- 460 Title 58, Chapter 56, Utah Uniform Building Standards Act.
- 461 (15) For purposes of Subsection 59-12-104(14), "manufacturing facility" means:

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

465 (b) a scrap recycler if:

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

468 (A) iron;

469 (B) steel;

470 (C) nonferrous metal;

471 (D) paper;

472 (E) glass;

473 (F) plastic;

474 (G) textile; or

475 (H) rubber; and

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

478 (16) (a) "Medicine" means:

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

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

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

487 (b) "Medicine" does not include:

488 (i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

489 (ii) any alcoholic beverage.

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

492 [~~(17)~~] (18) "Olympic merchandise" means tangible personal property bearing an Olympic



493 designation, emblem, insignia, mark, logo, service mark, symbol, terminology, trademark, or other  
494 copyrighted or protected material, including:

495 (a) one or more of the following terms:

496 (i) "Olympic";

497 (ii) "Olympiad"; or

498 (iii) "Citius Altius Fortius";

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

501 (c) the emblem of the International Olympic Committee Corporation;

502 (d) a United States Olympic Committee designation, emblem, insignia, mark, logo, service  
503 mark, symbol, terminology, trademark, or other copyrighted or protected material;

504 (e) any emblem of the Olympic Winter Games of 2002 that is officially designated by the  
505 Salt Lake Organizing Committee of the Olympic Winter Games of 2002; or

506 (f) the mascot of the Olympic Winter Games of 2002.

507 [~~18~~] (19) (a) "Other fuels" means products that burn independently to produce heat or  
508 energy.

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

511 [~~19~~] (20) "Person" includes any individual, firm, partnership, joint venture, association,  
512 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,  
513 municipality, district, or other local governmental entity of the state, or any group or combination  
514 acting as a unit.

515 [~~20~~] (21) "Purchase price" means the amount paid or charged for tangible personal  
516 property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash  
517 discounts taken or any excise tax imposed on the purchase price by the federal government.

518 [~~21~~] (22) "Regularly rented" means:

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

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

522 [~~22~~] (23) "Residential use" means the use in or around a home, apartment building,  
523 sleeping quarters, and similar facilities or accommodations.

524            [~~(23)~~] (24) (a) "Retail sale" means any sale within the state of tangible personal property  
525 or any other taxable transaction under Subsection 59-12-103(1), other than resale of such property,  
526 item, or service by a retailer or wholesaler to a user or consumer.

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

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

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

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

540            [~~(24)~~] (25) (a) "Retailer" means any person engaged in a regularly organized retail business  
541 in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and  
542 who is selling to the user or consumer and not for resale.

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

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

548            (d) For purposes of this chapter the commission may regard as retailers the following if  
549 they determine it is necessary for the efficient administration of this chapter: salesmen,  
550 representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or  
551 employers under whom they operate or from whom they obtain the tangible personal property sold  
552 by them, irrespective of whether they are making sales on their own behalf or on behalf of these  
553 dealers, distributors, supervisors, or employers, except that:

554            (i) a printer's facility with which a retailer has contracted for printing shall not be

555 considered to be a salesman, representative, peddler, canvasser, or agent of the retailer; and

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

562 [~~(25)~~] (26) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise,  
563 in any manner, of tangible personal property or any other taxable transaction under Subsection  
564 59-12-103(1), for consideration. It includes:

565 (a) installment and credit sales;

566 (b) any closed transaction constituting a sale;

567 (c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

568 (d) any transaction if the possession of property is transferred but the seller retains the title  
569 as security for the payment of the price; and

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

573 [~~(26)~~] (27) (a) "Sales relating to schools" means the following sales by, amounts paid to,  
574 or amounts charged by a school:

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

577 (A) the sale of:

578 (I) textbooks;

579 (II) textbook fees;

580 (III) laboratory fees;

581 (IV) laboratory supplies; or

582 (V) safety equipment;

583 (B) the sale of clothing that:

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

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

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

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

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

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

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

595 (ii) except as provided in Subsection [~~(26)~~] (27)(a)(i)(B), clothing; or

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

598 (A) other than a:

599 (I) school;

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

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

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

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

607 [~~(27)~~] (28) For purposes of this section and Section 59-12-104, "school" means:

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

609 (i) is a:

610 (A) public school; or

611 (B) private school; and

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

613 (b) a public school district.

614 [~~(28)~~] (29) (a) "Semiconductor fabricating or processing materials" means tangible  
615 personal property:

616 (i) used primarily in the process of:

- 617 (A) (I) manufacturing a semiconductor; or  
 618 (II) fabricating a semiconductor; or  
 619 (B) maintaining an environment suitable for a semiconductor; or  
 620 (ii) consumed primarily in the process of:  
 621 (A) (I) manufacturing a semiconductor; or  
 622 (II) fabricating a semiconductor; or  
 623 (B) maintaining an environment suitable for a semiconductor.  
 624 (b) "Semiconductor fabricating or processing materials" includes a chemical, catalyst, or  
 625 other material used to:  
 626 (i) produce or induce in a semiconductor a:  
 627 (A) chemical change; or  
 628 (B) physical change;  
 629 (ii) remove impurities from a semiconductor; or  
 630 (iii) improve the marketable condition of a semiconductor.  
 631 [~~29~~] (30) "Senior citizen center" means a facility having the primary purpose of  
 632 providing services to the aged as defined in Section 62A-3-101.  
 633 [~~30~~] (31) "State" means the state of Utah, its departments, and agencies.  
 634 [~~31~~] (32) "Storage" means any keeping or retention of tangible personal property or any  
 635 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale  
 636 in the regular course of business.  
 637 [~~32~~] (33) (a) "Tangible personal property" means:  
 638 (i) all goods, wares, merchandise, produce, and commodities;  
 639 (ii) all tangible or corporeal things and substances which are dealt in or capable of being  
 640 possessed or exchanged;  
 641 (iii) water in bottles, tanks, or other containers; and  
 642 (iv) all other physically existing articles or things, including property severed from real  
 643 estate.  
 644 (b) "Tangible personal property" does not include:  
 645 (i) real estate or any interest or improvements in real estate;  
 646 (ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;  
 647 (iii) insurance certificates or policies;

- 648 (iv) personal or governmental licenses;
- 649 (v) water in pipes, conduits, ditches, or reservoirs;
- 650 (vi) currency and coinage constituting legal tender of the United States or of a foreign
- 651 nation; and
- 652 (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not
- 653 constituting legal tender of any nation, with a gold, silver, or platinum content of not less than
- 654 80%.

655 [~~33~~] (34) (a) "Telephone corporation" means a corporation that:

- 656 (i) owns, controls, operates, or manages a telephone service; and
- 657 (ii) engages in an activity described in Subsection [~~33~~] (34)(a)(i) for the shared use with
- 658 or resale to any person of the telephone service.

659 (b) A corporation described in Subsection [~~33~~] (34)(a) is a telephone corporation whether

660 or not the Public Service Commission of Utah regulates:

- 661 (i) the corporation; or
- 662 (ii) the telephone service that the corporation owns, controls, operates, or manages.

663 [~~34~~] (35) (a) For purposes of Subsection [~~33~~] (34) and Section 59-12-103, "telephone

664 service" means a two-way transmission:

- 665 (i) by:
  - 666 (A) wire;
  - 667 (B) radio;
  - 668 (C) lightwave; or
  - 669 (D) other electromagnetic means; and
- 670 (ii) of one or more of the following:
  - 671 (A) a sign;
  - 672 (B) a signal;
  - 673 (C) writing;
  - 674 (D) an image;
  - 675 (E) sound;
  - 676 (F) a message;
  - 677 (G) data; or
  - 678 (H) other information of any nature.

679 (b) "Telephone service" includes:

680 (i) cellular telephone service;

681 (ii) private communications service; or

682 (iii) automated digital telephone answering service.

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

686 ~~[(35)]~~ (36) (a) "Use" means the exercise of any right or power over tangible personal  
687 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property,  
688 item, or service.

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

691 ~~[(36)]~~ (37) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle, as  
692 defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and any  
693 vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both. "Vehicle,"  
694 for purposes of Subsection 59-12-104(36) only, also includes any locomotive, freight car, railroad  
695 work equipment, or other railroad rolling stock.

696 ~~[(37)]~~ (38) "Vehicle dealer" means a person engaged in the business of buying, selling, or  
697 exchanging vehicles as defined in Subsection ~~[(36)]~~ (37).

698 ~~[(38)]~~ (39) (a) "Vendor" means any person receiving any payment or consideration upon  
699 a sale of tangible personal property or any other taxable transaction under Subsection  
700 59-12-103(1), or to whom the payment or consideration is payable.

701 (b) "Vendor" does not mean a printer's facility described in Subsection ~~[(24)]~~ (25)(d).

702 Section 5. Section **59-12-103** is amended to read:

703 **59-12-103. Sales and use tax base -- Rate -- Use of sales and use tax revenues.**

704 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged  
705 for the following transactions:

706 (a) retail sales of tangible personal property made within the state;

707 (b) amounts paid to common carriers or to telephone corporations or telegraph  
708 corporations, whether the corporations are municipally or privately owned, for:

709 (i) all transportation;

710 (ii) [~~intrastate~~] telephone service, other than mobile telecommunications service, that  
711 originates and terminates within the boundaries of this state; [or]

712 (iii) mobile telecommunications service that originates and terminates within the  
713 boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing  
714 Act, 4 U.S.C. Sec. 116 et seq.; or

715 [~~(iii)~~] (iv) telegraph service;

716 (c) sales of the following for commercial use:

717 (i) gas;

718 (ii) electricity;

719 (iii) heat;

720 (iv) coal;

721 (v) fuel oil; or

722 (vi) other fuels;

723 (d) sales of the following for residential use:

724 (i) gas;

725 (ii) electricity;

726 (iii) heat;

727 (iv) coal;

728 (v) fuel oil; or

729 (vi) other fuels;

730 (e) sales of meals;

731 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or user  
732 fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions,  
733 concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests,  
734 sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts,  
735 billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages,  
736 skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water  
737 slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any  
738 other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

739 (g) amounts paid or charged for services:

740 (i) for repairs or renovations of tangible personal property; or



741 (ii) to install tangible personal property in connection with other tangible personal  
742 property;

743 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for cleaning  
744 or washing of tangible personal property;

745 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations  
746 and services that are regularly rented for less than 30 consecutive days;

747 (j) amounts paid or charged for laundry or dry cleaning services;

748 (k) amounts paid or charged for leases or rentals of tangible personal property if:

749 (i) the tangible personal property's situs is in this state;

750 (ii) the lessee took possession of the tangible personal property in this state; or

751 (iii) within this state the tangible personal property is:

752 (A) stored;

753 (B) used; or

754 (C) otherwise consumed;

755 (l) amounts paid or charged for tangible personal property if within this state the tangible  
756 personal property is:

757 (i) stored;

758 (ii) used; or

759 (iii) consumed; and

760 (m) amounts paid or charged for prepaid telephone calling cards.

761 (2) (a) Except as provided in Subsections (2)(b) and (c), beginning on July 1, 2001, a state  
762 tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

763 (i) a state tax imposed on the transaction at a rate of 4.75%; and

764 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the  
765 transaction under this chapter other than this part.

766 (b) Notwithstanding Subsection (2)(a), beginning on July 1, 2001, a state tax and a local  
767 tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

768 (i) a state tax imposed on the transaction at a rate of 2%; and

769 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the  
770 transaction under this chapter other than this part.

771 (c) Notwithstanding Subsections (2)(a) and (b), beginning on July 1, 2001, if a vendor

772 collects a tax under Subsection 59-12-107(1)(b) on a transaction described in Subsection (1), a  
773 state tax and a local tax is imposed on the transaction equal to the sum of:

774 (i) a state tax imposed on the transaction at a rate of:

775 (A) 4.75% for a transaction other than a transaction described in Subsection (1)(d); or

776 (B) 2% for a transaction described in Subsection (1)(d); and

777 (ii) except as provided in Subsection (2)(d), a local tax imposed on the transaction at a rate  
778 equal to the sum of the following tax rates:

779 (A) (I) the lowest tax rate imposed by a county, city, or town under Section 59-12-204, but  
780 only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-204;

781 or

782 (II) the lowest tax rate imposed by a county, city, or town under Section 59-12-205, but  
783 only if all of the counties, cities, and towns in the state impose the tax under Section 59-12-205;

784 and

785 (B) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the state  
786 impose the tax under Section 59-12-1102.

787 (d) Tax rates authorized under the following do not apply to Subsection (2)(c)(ii):

788 (i) Subsection (2)(a)(i);

789 (ii) Subsection (2)(b)(i);

790 (iii) Subsection (2)(c)(i);

791 (iv) Section 59-12-301;

792 (v) Section 59-12-352;

793 (vi) Section 59-12-353;

794 (vii) Section 59-12-401;

795 (viii) Section 59-12-402;

796 (ix) Section 59-12-501;

797 (x) Section 59-12-502;

798 (xi) Section 59-12-603;

799 (xii) Section 59-12-703;

800 (xiii) Section 59-12-802;

801 (xiv) Section 59-12-804;

802 (xv) Section 59-12-1001;

803 (xvi) Section 59-12-1201; or

804 (xvii) Section 59-12-1302.

805 (3) (a) Except as provided in Subsections (4) through (9), the state taxes described in  
806 Subsections (2)(a)(i), (2)(b)(i), and (2)(c)(i) shall be deposited into the General Fund.

807 (b) The local taxes described in Subsections (2)(a)(ii) and (2)(b)(ii) shall be distributed to  
808 a county, city, or town as provided in this chapter.

809 (c) (i) Notwithstanding any provision of this chapter, each county, city, or town in the state  
810 shall receive the county's, city's, or town's proportionate share of the revenues generated by the  
811 local tax described in Subsection (2)(c)(ii) as provided in Subsection (3)(c)(ii).

812 (ii) The commission shall determine a county's, city's, or town's proportionate share of the  
813 revenues under Subsection (3)(c)(i) by:

814 (A) calculating an amount equal to:

815 (I) the population of the county, city, or town; divided by

816 (II) the total population of the state; and

817 (B) multiplying the amount determined under Subsection (3)(c)(ii)(A) by the total amount  
818 of revenues generated by the local tax under Subsection (2)(c)(ii) for all counties, cities, and towns.

819 (iii) (A) Except as provided in Subsection (3)(c)(iii)(B), population figures for purposes  
820 of this section shall be derived from the most recent official census or census estimate of the  
821 United States Census Bureau.

822 (B) Notwithstanding Subsection (3)(c)(iii)(A), if a needed population estimate is not  
823 available from the United States Census Bureau, population figures shall be derived from the  
824 estimate from the Utah Population Estimates Committee created by executive order of the  
825 governor.

826 (C) For purposes of this section, the population of a county may only include the  
827 population of the unincorporated areas of the county.

828 (4) (a) Notwithstanding Subsection (3)(a), there shall be deposited in an Olympics special  
829 revenue fund or funds as determined by the Division of Finance under Section 51-5-4, for the use  
830 of the Utah Sports Authority created under Title 63A, Chapter 7, Utah Sports Authority Act:

831 (i) from January 1, 1990, through December 31, 1999, the amount of sales and use tax  
832 generated by a 1/64% tax rate on the taxable transactions under Subsection (1);

833 (ii) from January 1, 1990, through June 30, 1999, the amount of revenue generated by a

834 1/64% tax rate under Section 59-12-204 or Section 59-12-205 on the taxable transactions under  
835 Subsection (1); and

836 (iii) interest earned on the amounts under Subsections (4)(a)(i) and (ii).

837 (b) These funds shall be used:

838 (i) by the Utah Sports Authority as follows:

839 (A) to the extent funds are available, to transfer directly to a debt service fund or to  
840 otherwise reimburse to the state any amount expended on debt service or any other cost of any  
841 bonds issued by the state to construct any public sports facility as defined in Section 63A-7-103;

842 (B) to pay for the actual and necessary operating, administrative, legal, and other expenses  
843 of the Utah Sports Authority, but not including protocol expenses for seeking and obtaining the  
844 right to host the Winter Olympic Games;

845 (C) as otherwise appropriated by the Legislature; and

846 (D) unless the Legislature appropriates additional funds from the Olympics Special  
847 Revenue Fund to the Utah Sports Authority, the Utah Sports Authority may not expend, loan, or  
848 pledge in the aggregate more than:

849 (I) \$59,000,000 of sales and use tax deposited into the Olympics Special Revenue Fund  
850 under Subsection (4)(a);

851 (II) the interest earned on the amount described in Subsection (4)(b)(i)(D)(I); and

852 (III) the revenues deposited into the Olympics Special Revenue Fund that are not sales and  
853 use taxes deposited under Subsection (4)(a) or interest on the sales and use taxes;

854 (ii) to pay salary, benefits, or administrative costs associated with the State Olympic  
855 Officer under Subsection 63A-10-103(3), except that the salary, benefits, or administrative costs  
856 may not be paid from the sales and use tax revenues generated by municipalities or counties and  
857 deposited under Subsection (4)(a)(ii).

858 (c) A payment of salary, benefits, or administrative costs under Subsection 63A-10-103(3)  
859 is not considered an expenditure of the Utah Sports Authority.

860 (d) If the Legislature appropriates additional funds under Subsection (4)(b)(i)(D), the  
861 authority may not expend, loan, pledge, or enter into any agreement to expend, loan, or pledge the  
862 appropriated funds unless the authority:

863 (i) contracts in writing for the full reimbursement of the monies to the Olympics Special  
864 Revenue Fund by a public sports entity or other person benefitting from the expenditure; and

865 (ii) obtains a security interest that secures payment or performance of the obligation to  
866 reimburse.

867 (e) A contract or agreement entered into in violation of Subsection (4)(d) is void.

868 (5) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales  
869 and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection  
870 (1) shall be used as provided in Subsections (5)(b) through (g).

871 (b) (i) Beginning on July 1, 2001, \$2,300,000 each year shall be transferred as dedicated  
872 credits to the Department of Natural Resources to:

873 (A) implement the measures described in Subsections 63-34-14(4)(a) through (d) to protect  
874 sensitive plant and animal species; or

875 (B) award grants, up to the amount authorized by the Legislature in an appropriations act,  
876 to political subdivisions of the state to implement the measures described in Subsections  
877 63-34-14(4)(a) through (d) to protect sensitive plant and animal species.

878 (ii) Money transferred to the Department of Natural Resources under Subsection (5)(b)(i)  
879 may not be used to assist the United States Fish and Wildlife Service or any other person to list or  
880 attempt to have listed a species as threatened or endangered under the Endangered Species Act of  
881 1973, 16 U.S.C. Sec. 1531 et seq.

882 (iii) At the end of each fiscal year:

883 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
884 Conservation and Development Fund created in Section 73-10-24;

885 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
886 Program Subaccount created in Section 73-10c-5; and

887 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
888 Program Subaccount created in Section 73-10c-5.

889 (c) Five hundred thousand dollars each year shall be deposited in the Agriculture Resource  
890 Development Fund created in Section 4-18-6.

891 (d) (i) One hundred thousand dollars each year shall be transferred as dedicated credits to  
892 the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the  
893 adjudication of water rights.

894 (ii) At the end of each fiscal year:

895 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources

896 Conservation and Development Fund created in Section 73-10-24;

897 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
898 Program Subaccount created in Section 73-10c-5; and

899 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
900 Program Subaccount created in Section 73-10c-5.

901 (e) Fifty percent of the remaining amount generated by the 1/16% tax rate shall be  
902 deposited in the Water Resources Conservation and Development Fund created in Section  
903 73-10-24 for use by the Division of Water Resources. In addition to the uses allowed of the fund  
904 under Section 73-10-24, the fund may also be used to:

905 (i) provide a portion of the local cost share, not to exceed in any fiscal year 50% of the  
906 funds made available to the Division of Water Resources under this section, of potential project  
907 features of the Central Utah Project;

908 (ii) conduct hydrologic and geotechnical investigations by the Department of Natural  
909 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of  
910 quantifying surface and ground water resources and describing the hydrologic systems of an area  
911 in sufficient detail so as to enable local and state resource managers to plan for and accommodate  
912 growth in water use without jeopardizing the resource;

913 (iii) fund state required dam safety improvements; and

914 (iv) protect the state's interest in interstate water compact allocations, including the hiring  
915 of technical and legal staff.

916 (f) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be  
917 deposited in the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use  
918 by the Water Quality Board to fund wastewater projects.

919 (g) Twenty-five percent of the remaining amount generated by the 1/16% tax rate shall be  
920 deposited in the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use  
921 by the Division of Drinking Water to:

922 (i) provide for the installation and repair of collection, treatment, storage, and distribution  
923 facilities for any public water system, as defined in Section 19-4-102;

924 (ii) develop underground sources of water, including springs and wells; and

925 (iii) develop surface water sources.

926 (6) (a) Notwithstanding Subsection (3)(a), beginning on July 1, 2001, the amount of sales

927 and use tax generated annually by a 1/16% tax rate on the taxable transactions under Subsection  
928 (1) shall be used as provided in Subsections (6)(b) through (d).

929 (b) (i) Five hundred thousand dollars each year shall be deposited in the Transportation  
930 Corridor Preservation Revolving Loan Fund created in Section 72-2-117.

931 (ii) At least 50% of the money deposited in the Transportation Corridor Preservation  
932 Revolving Loan Fund under Subsection (6)(b)(i) shall be used to fund loan applications made by  
933 the Department of Transportation at the request of local governments.

934 (c) From July 1, 1997, through June 30, 2006, \$500,000 each year shall be transferred as  
935 nonlapsing dedicated credits to the Department of Transportation for the State Park Access  
936 Highways Improvement Program created in Section 72-3-207.

937 (d) The remaining amount generated by the 1/16% tax rate shall be deposited in the class  
938 B and class C roads account to be expended as provided in Title 72, Chapter 2, Transportation  
939 Finances Act, for the use of class B and C roads.

940 (7) (a) Notwithstanding Subsection (3)(a), beginning on January 1, 2000, the Division of  
941 Finance shall deposit into the Centennial Highway Fund created in Section 72-2-118 a portion of  
942 the state sales and use tax under Subsection (2) equal to the revenues generated by a 1/64% tax rate  
943 on the taxable transactions under Subsection (1).

944 (b) Except for sales and use taxes deposited under Subsection (8), beginning on July 1,  
945 1999, the revenues generated by the 1/64% tax rate:

946 (i) retained under Subsection 59-12-204(7)(a) shall be retained by the counties, cities, or  
947 towns as provided in Section 59-12-204; and

948 (ii) retained under Subsection 59-12-205(4)(a) shall be distributed to each county, city, and  
949 town as provided in Section 59-12-205.

950 (8) Notwithstanding Subsection (3)(a), beginning on July 1, 1999, the commission shall  
951 deposit into the Airport to University of Utah Light Rail Restricted Account created in Section  
952 17A-2-1064 the portion of the sales and use tax under Sections 59-12-204 and 59-12-205 that is:

953 (a) generated by a city or town that will have constructed within its boundaries the Airport  
954 to University of Utah Light Rail described in the Transportation Equity Act for the 21st Century,  
955 Pub. L. No. 105-178, Sec. 3030(c)(2)(B)(i)(II), 112 Stat. 107; and

956 (b) equal to the revenues generated by a 1/64% tax rate on the taxable items and services  
957 under Subsection (1).

958 (9) (a) Notwithstanding Subsection (3)(a), for fiscal years beginning on or after fiscal year  
 959 2002-03, the commission shall on or before September 30 of each year deposit the difference  
 960 described in Subsection (9)(b) into the Remote Sales Restricted Account created in Section  
 961 59-12-103.2 if that difference is greater than \$0.

962 (b) The difference described in Subsection (9)(a) is equal to the difference between:

963 (i) the total amount of revenues under Subsection (2)(c)(i) the commission received from  
 964 vendors collecting a tax under Subsection 59-12-107(1)(b) for the fiscal year immediately  
 965 preceding the September 30 described in Subsection (9)(a); and

966 (ii) the total amount of revenues under Subsection (2)(c)(i) the commission estimates that  
 967 the commission received from vendors described in Subsection 59-12-107(1)(b) for fiscal year  
 968 2000-01.

969 (10) (a) For purposes of amounts paid or charged as admission or user fees relating to the  
 970 Olympic Winter Games of 2002, the amounts are considered to be paid or charged on the day on  
 971 which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 or a person  
 972 designated by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 sends  
 973 a purchaser confirmation of the purchase of an admission or user fee described in Subsection  
 974 (1)(f).

975 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
 976 commission shall make rules defining what constitutes sending a purchaser confirmation under  
 977 Subsection (10)(a).

978 Section 6. Section **59-12-207** is amended to read:

979 **59-12-207. Report of tax collections -- Point of sale when retailer has no permanent**  
 980 **place of business or more than one place of business is determined by rule of commission --**  
 981 **Public utilities -- Mobile telecommunications service.**

982 ~~[AH]~~ (1) Except as provided in Subsection (4), all sales and use taxes collected under this  
 983 part shall be reported to the commission on forms ~~[which]~~ that accurately identify the location  
 984 where the sale or use transaction was consummated. ~~[H]~~

985 (2) Except as provided in Subsection (4), if a retailer has no permanent place of business  
 986 in the state or has more than one place of business, the place or places at which the retail sales are  
 987 consummated for the purposes of this part shall be determined under rules of the commission. ~~[In~~  
 988 ~~those counties where the taxes herein authorized are imposed,]~~



989           (3) (a) Except as provided in Subsection (4), a public [utilities] utility as defined [by Title  
 990 54, are] in Section 54-2-1 is not obligated to determine the place or places within any county where  
 991 public utility services are rendered[~~, and the~~].

992           (b) The commission shall apportion the sales and use taxes collected under this part from  
 993 public utility services to cities and towns within the respective counties[~~, revenues arising from~~  
 994 such services];

995           (i) on an equitable basis [pursuant to an appropriate]; and

996           (ii) in accordance with a formula and [under] rules [to be] prescribed [and adopted by it]  
 997 by the commission.

998           (4) Notwithstanding Subsections (1) through (3), mobile telecommunications service is  
 999 subject to the sourcing rules provided in the Mobile Telecommunications Sourcing Act, 4 U.S.C.  
 1000 Sec. 116 et seq.

1001           Section 7. Section **69-2-2** is amended to read:

1002           **69-2-2. Definitions.**

1003           As used in this chapter:

1004           [~~(3)~~] (1) "911 emergency telephone service" means a communication system which  
 1005 provides citizens with rapid direct access to public emergency operation centers by dialing the  
 1006 telephone number "911" with the objective of reducing the response time to situations requiring  
 1007 law enforcement, fire, medical, rescue, and other emergency services.

1008           [~~(1)~~] (2) "Local exchange service" means the provision of public telecommunications  
 1009 services by a wireline common carrier to customers within a geographic area encompassing one  
 1010 or more local communities as described in the carrier's service territory maps, tariffs, price lists,  
 1011 or rate schedules filed with and approved by the Public Service Commission.

1012           [~~(2)~~] (3) "Local exchange service switched access line" means the transmission facility and  
 1013 local switching equipment used by a wireline common carrier to connect a customer location to  
 1014 a carrier's local exchange switching network for providing two-way interactive voice, or voice  
 1015 capable, services.

1016           (4) "Mobile telecommunications service" is as defined in Section 54-8b-2.

1017           [~~(4)~~] (5) "Public agency" means any county, city, town, special service district, or public  
 1018 authority located within the state which provides or has authority to provide fire fighting, law  
 1019 enforcement, ambulance, medical, or other emergency services.

1020           ~~[(5)]~~ (6) "Public safety agency" means a functional division of a public agency which  
1021 provides fire fighting, law enforcement, medical, or other emergency services.

1022           ~~[(6)]~~ (7) "Radio communications access line" means the radio equipment and assigned  
1023 customer identification number used to connect a mobile or fixed radio customer in Utah to a radio  
1024 communication service provider's network for two-way interactive voice, or voice capable,  
1025 services.

1026           ~~[(7)]~~ (8) "Radio communications service" means a public telecommunications service  
1027 providing the capability of two-way interactive telecommunications between mobile and fixed  
1028 radio customers, and between mobile or fixed radio customers and the local exchange service  
1029 network customers of a wireline common carrier. Radio communications service providers  
1030 include corporations, persons or entities offering cellular telephone service, enhanced specialized  
1031 mobile radio service, rural radio service, radio common carrier services, personal communications  
1032 services, and any equivalent wireless public telecommunications service, as defined in 47 CFR,  
1033 parts 20, 21, 22, 24, and 90.

1034           ~~[(8)]~~ (9) "Wireline common carrier" means a public telecommunications service provider  
1035 that primarily uses metallic or nonmetallic cables and wires for connecting customers to its local  
1036 exchange service networks.

1037           Section 8. Section **69-2-5** is amended to read:

1038           **69-2-5. Funding for 911 emergency telephone service.**

1039           (1) In providing funding of 911 emergency telephone service, any public agency  
1040 establishing a 911 emergency telephone service may:

1041           (a) seek assistance from the federal or state government, to the extent constitutionally  
1042 permissible, in the form of loans, advances, grants, subsidies, and otherwise, directly or indirectly;

1043           (b) seek funds appropriated by local governmental taxing authorities for the funding of  
1044 public safety agencies; and

1045           (c) seek gifts, donations, or grants from individuals, corporations, or other private entities.

1046           (2) For purposes of providing funding of 911 emergency telephone service, special service  
1047 districts may raise funds as provided in Section 17A-2-1322 and may borrow money and incur  
1048 indebtedness as provided in Section 17A-2-1316.

1049           (3) (a) ~~[The]~~ Except as provided in Subsection (3)(b), and subject to Subsection (3)(f), the  
1050 governing authority of any public agency providing 911 emergency telephone service may levy

1051 monthly an emergency services telephone charge on each local exchange service switched access  
1052 line and each revenue producing radio communications access line with a billing address within  
1053 the boundaries of the area served by the public agency[~~, except as provided in Subsection (3)(b)~~].

1054 (b) ~~[Access]~~ Notwithstanding Subsection (3)(a), access lines provided for public coin  
1055 telephone service are exempt from emergency telephone charges.

1056 (c) The amount of the charge levied under this section may not exceed 53 cents per month  
1057 for each local exchange service switched access line and 53 cents per month for each radio  
1058 communications access line.

1059 (d) Notification of intent to levy the charge shall be given to the Public Service  
1060 Commission at least 30 days prior to the effective date.

1061 (e) ~~[An]~~ Subject to Subsection (3)(f), an emergency services telephone charge levied under  
1062 this section shall be billed and collected by the corporation, person, or entity that provides the local  
1063 exchange service switched access line services or radio communications access line services and  
1064 remitted to the public agency providing 911 emergency telephone service in the billed customer  
1065 location area as directed by the public agency.

1066 (f) An emergency services telephone charge on a mobile telecommunications service may  
1067 be levied, billed, and collected only to the extent permitted by the Mobile Telecommunications  
1068 Sourcing Act, 4 U.S.C. Sec. 116 et seq.

1069 (4) (a) Any money received by the public agency for the provision of 911 emergency  
1070 telephone service shall be deposited in a special emergency telephone service fund.

1071 (b) (i) The money in the emergency telephone service fund shall be expended by the public  
1072 agency to pay the costs of establishing, installing, maintaining, and operating a 911 emergency  
1073 telephone system or integrating a 911 system into an established public safety dispatch center,  
1074 including contracting with the providers of local exchange service, radio communications service,  
1075 and vendors of appropriate terminal equipment as necessary to implement the 911 emergency  
1076 telephone service.

1077 (ii) Revenues derived for the funding of 911 emergency telephone service may only be  
1078 used for that portion of costs related to the operation of the 911 emergency telephone system when  
1079 such a system is integrated with any public safety dispatch system.

1080 Section 9. Section **69-2-5.5** is amended to read:

1081 **69-2-5.5. Emergency services telephone charge to fund the Poison Control Center.**

1082 (1) [~~There~~] Subject to Subsection (13), there is imposed an emergency services telephone  
1083 charge of 7 cents per month on each local exchange service switched access line and each revenue  
1084 producing radio communications access line that is subject to an emergency services telephone  
1085 charge levied by a public agency under Section 69-2-5.

1086 (2) The emergency services telephone charge imposed under this section shall be:

1087 (a) subject to Subsection (13), billed and collected by the corporation, person, or entity that  
1088 provides local exchange service switched access line services or radio communications access line  
1089 services and remitted monthly to the State Tax Commission; and

1090 (b) deposited into the General Fund as dedicated credits to pay for:

1091 (i) costs of establishing, installing, maintaining, and operating the University of Utah  
1092 Poison Control Center; and

1093 (ii) expenses of the State Tax Commission to administer and enforce the collection of the  
1094 emergency services telephone charges.

1095 (3) Funds for the University of Utah Poison Control Center program are nonlapsing.

1096 (4) Emergency services telephone charges remitted to the State Tax Commission pursuant  
1097 to Subsection (2) shall be accompanied by the form prescribed by the commission.

1098 (5) The State Tax Commission may make rules to administer and enforce the collection  
1099 of emergency services telephone charges imposed under this section.

1100 (6) A provider of local exchange service switched access line services or radio  
1101 communications access line services who fails to comply with this section is subject to penalties  
1102 and interest as provided in Sections 59-1-401 and 59-1-402.

1103 (7) (a) Except as provided in Subsections (8) through (11), and subject to Subsection (13),  
1104 the State Tax Commission shall assess a charge imposed under this section within three years after  
1105 a provider of local exchange service switched access line services or radio communications access  
1106 line services files a return.

1107 (b) Except as provided in Subsections (8) through (11), if the commission does not assess  
1108 a charge imposed under this section within the three-year period provided in Subsection (7)(a), the  
1109 commission may not commence a proceeding to collect the charge.

1110 (8) Notwithstanding Subsection (7), and subject to Subsection (13), the State Tax  
1111 Commission may assess a charge at any time if a provider of local exchange service switched  
1112 access line services or radio communications access line services:

- 1113 (a) files a false or fraudulent return with intent to evade; or  
1114 (b) does not file a return.
- 1115 (9) Notwithstanding Subsection (7), beginning on July 1, 1998, the State Tax Commission  
1116 may extend the period to make an assessment or commence a proceeding to collect the charge  
1117 imposed under this section if:
- 1118 (a) the three-year period under Subsection (7) has not expired; and  
1119 (b) the commission and the provider of local exchange service switched access line  
1120 services or radio communications access line services sign a written agreement:
- 1121 (i) authorizing the extension; and  
1122 (ii) providing for the length of the extension.
- 1123 (10) If the State Tax Commission delays an audit at the request of a provider of local  
1124 exchange service switched access line services or radio communications access line services, the  
1125 commission may make an assessment as provided in Subsection (11) if:
- 1126 (a) the provider of local exchange service switched access line services or radio  
1127 communications access line services subsequently refuses to agree to an extension request by the  
1128 commission; and  
1129 (b) the three-year period under Subsection (7) expires before the commission completes  
1130 the audit.
- 1131 (11) An assessment under Subsection (10) shall be:
- 1132 (a) for the time period for which the State Tax Commission could not make an assessment  
1133 because of the expiration of the three-year period; and  
1134 (b) in an amount equal to the difference between:
- 1135 (i) the commission's estimate of the amount of the charge the provider of local exchange  
1136 service switched access line services or radio communications access line services would have  
1137 been assessed for the time period described in Subsection (11)(a); and  
1138 (ii) the amount of the charge the provider of local exchange service switched access line  
1139 services or radio communications access line services actually paid for the time period described  
1140 in Subsection (11)(a).
- 1141 (12) (a) Except as provided in Subsection (12)(b), the State Tax Commission may not  
1142 make a credit or refund unless the provider of local exchange service switched access line services  
1143 or radio communications access line services files a claim with the commission within three years

1144 of the date of overpayment.

1145 (b) Notwithstanding Subsection (12)(a), beginning on July 1, 1998, the commission shall  
1146 extend the period for a provider of local exchange service switched access line services or radio  
1147 communications access line services to file a claim under Subsection (12)(a) if:

1148 (i) the three-year period under Subsection (12)(a) has not expired; and

1149 (ii) the commission and the provider of local exchange service switched access line  
1150 services or radio communications access line services sign a written agreement:

1151 (A) authorizing the extension; and

1152 (B) providing for the length of the extension.

1153 (13) An emergency services telephone charge under this section on a mobile  
1154 telecommunications service may be imposed, billed, and collected only to the extent permitted by  
1155 the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

1156 Section 10. **Effective date.**

1157 This act takes effect on July 1, 2002, and applies to customer bills issued after August 1,  
1158 2002, in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec 116 et seq.

**Legislative Review Note****as of 1-29-02 4:25 PM**

This legislation includes a requirement that allows a municipality to levy and collect a \$1 charge for mobile telecommunications service if on or before July 1, 2001, the municipality by ordinance levied and collected the charge. A municipality that does not meet this and other requirements established in the legislation may not levy and collect such a charge. This legislation arguably creates classes of municipalities on the basis of the date a municipality enacted an ordinance to levy and collect the charge, and treats the taxing authority of these classes of municipalities differently. If these classifications are challenged as being special legislation or a violation of equal protection or uniform operation of the laws principles, a court is likely to uphold these classifications if the court finds that the classifications are rational and related to a reasonable statutory objective.

Additionally, the legislation provides that beginning on July 1, 2003, a municipality may not levy and collect the above charge on mobile telecommunications service. This prohibition could potentially be subject to challenge because it is unclear whether a municipality is given direct power to tax under Utah Constitution Article XI, Section 5, or whether under Utah Constitution Article XIII, Section 5, a municipality may only tax if the Legislature by statute delegates this power to the municipality. If a court finds that a municipality does not have direct power to tax and may only tax if the Legislature grants this power to the municipality by statute, the prohibition would likely be upheld.

**Office of Legislative Research and General Counsel**