

Senator Curtis S. Bramble proposes the following substitute bill:

**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



- 26 **59-12-207**, as last amended by Chapters 157 and 320, Laws of Utah 2002
- 27 **69-2-5**, as last amended by Chapter 320, Laws of Utah 2002
- 28 **69-2-5.5**, as last amended by Chapter 320, Laws of Utah 2002
- 29 **72-7-102**, as last amended by Chapter 347, Laws of Utah 2000
- 30 **72-7-108**, as last amended by Chapter 347, Laws of Utah 2000

31 ENACTS:

- 32 **10-1-401**, Utah Code Annotated 1953
- 33 **10-1-402**, Utah Code Annotated 1953
- 34 **10-1-403**, Utah Code Annotated 1953
- 35 **10-1-404**, Utah Code Annotated 1953
- 36 **10-1-405**, Utah Code Annotated 1953
- 37 **10-1-406**, Utah Code Annotated 1953
- 38 **10-1-407**, Utah Code Annotated 1953
- 39 **10-1-408**, Utah Code Annotated 1953
- 40 **10-1-409**, Utah Code Annotated 1953
- 41 **10-1-410**, Utah Code Annotated 1953

42 REPEALS:

- 43 **11-26-3**, as last amended by Chapter 262, Laws of Utah 2000

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

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

46 **10-1-203. License fees and taxes -- Application information to be transmitted to**
47 **the county auditor.**

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

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

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

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

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

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

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

64 (ii) A franchise agreement as defined in Subsection 10-1-303(6) in effect on January 1,
65 1997, or a future franchise shall remain in full force and effect.

66 (c) A municipality that collects a contractual franchise fee pursuant to a franchise
67 agreement as defined in Subsection 10-1-303(6) with an energy supplier that is in effect on July
68 1, 1997, may continue to collect that fee as provided in Subsection 10-1-310(2).

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

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

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

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

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

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

82 [~~(4) Subject to the provisions of Title 11, Chapter 26, Local Taxation of Utilities~~
83 ~~Limitation, a municipality may impose upon, charge, or collect from a public utility engaged in~~
84 ~~the business of supplying telephone service or other person or entity engaged in the business of~~
85 ~~supplying telephone service any tax, license, fee, license fee, license tax, or similar charge, or~~
86 ~~any combination of any of these, based upon the gross revenues of the utility, person, or entity~~
87 ~~derived from sales or use or both sales and use of the telephone service within the~~

88 ~~municipality.]~~

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

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

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

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

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

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

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

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

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

108 (i) "Municipal services" include:

109 (A) public utilities; or

110 (B) services for:

111 (I) police;

112 (II) fire;

113 (III) storm water runoff;

114 (IV) traffic control;

115 (V) parking;

116 (VI) transportation;

117 (VII) beautification; or

118 (VIII) snow removal.

- 119 (ii) "Parking service business" means a business:
120 (A) that primarily provides off-street parking services for a public facility that is
121 wholly or partially funded by public moneys;
122 (B) that provides parking for one or more vehicles; and
123 (C) that charges a fee for parking.
- 124 (iii) "Public assembly facility" means a business operating an assembly facility that:
125 (A) is wholly or partially funded by public moneys; and
126 (B) requires a person attending an event at the assembly facility to purchase a ticket.
- 127 (c) Before the governing body of a municipality imposes a license fee or tax on a
128 business that causes disproportionate costs of municipal services under Subsection (5)(a)(iii),
129 the governing body of the municipality shall adopt an ordinance defining for purposes of the
130 tax under Subsection (5)(a)(iii) what constitutes disproportionate costs and what amounts are
131 reasonably related to the costs of the municipal services provided by the municipality.
- 132 (d) Before the governing body of a municipality imposes a license fee or tax on a
133 business for which it provides an enhanced level of municipal services under Subsection
134 (5)(a)(iii), the governing body of the municipality shall adopt an ordinance defining for
135 purposes of the tax under Subsection (5)(a)(iii) what constitutes the basic level of municipal
136 services in the municipality and what amounts are reasonably related to the costs of providing
137 an enhanced level of municipal services in the municipality.
- 138 (6) All license fees and taxes shall be uniform in respect to the class upon which they
139 are imposed.
- 140 (7) The governing body shall transmit the information from each approved business
141 license application to the county assessor within 60 days following the approval of the
142 application.
- 143 (8) If challenged in court, an ordinance enacted by a municipality before January 1,
144 1994, imposing a business license fee or tax on rental dwellings under this section shall be
145 upheld unless the business license fee or tax is found to impose an unreasonable burden on the
146 fee or tax payer.

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

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

149 **10-1-401. Title.**

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

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

152 **10-1-402. Definitions.**

153 As used in this part:

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

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

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

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

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

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

164 (i) of telecommunications service; or

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

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

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

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

174 (a) a tax, fee, or charge:

175 (i) imposed by a governmental entity;

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

178 (iii) imposed only on a telecommunications provider;

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

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

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

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

186 (7) "Place of primary use":

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

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

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

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

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

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

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

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

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

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

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

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

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

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

211 (ii) engages in an activity described in Subsection (9)(a)(i) for the shared use with or

212 resale to any person of the telecommunications service.

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

215 (i) that person; or

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

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

220 (10) "Telecommunications service" means:

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

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

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

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

228 (11) (a) Except as provided in Subsection (11)(b), "telecommunications tax or fee"
229 means any of the following imposed by a municipality on a telecommunications provider:

230 (i) a tax;

231 (ii) a license;

232 (iii) a fee;

233 (iv) a license fee;

234 (v) a license tax;

235 (vi) a franchise fee; or

236 (vii) a charge similar to a tax, license, or fee described in Subsections (11)(a)(i)
237 through (vi).

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

239 (i) the municipal telecommunications license tax authorized by this part; or

240 (ii) a tax, fee, or charge, including a tax imposed under Title 59, Revenue and
241 Taxation, that is imposed:

242 (A) on telecommunications providers; and

243 (B) on persons who are not telecommunications providers.

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

245 **10-1-403. Municipality may levy municipal telecommunications license tax --**

246 **Recovery from customers -- Annexation.**

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

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

255 (c) A municipal telecommunications license tax imposed under this part shall be at a
256 rate of up to 4% of the telecommunications provider's gross receipts from telecommunications
257 service that are attributed to the municipality in accordance with Section 10-1-407.

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

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

264 (i) "Annexation" means an annexation to a municipality under Title 10, Chapter 2, Part
265 4, Annexation.

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

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

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

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

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

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

274 the tax;

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

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

277 (D) if the municipality enacts the municipal telecommunications license tax or changes

278 the rate of the tax, the new rate of the tax.

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

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

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

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

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

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

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

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

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

292 **10-1-404. Municipal telecommunications license tax ordinance provisions.**

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

294 (1) levies a municipal telecommunications license tax:

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

297 (b) at a rate:

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

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

300 (c) beginning on a date:

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

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

303 (2) on or before the effective date of the ordinance, the municipality shall enter into the
304 uniform interlocal agreement with the commission described in Section 10-1-405 under which

305 the commission collects, enforces, and administers the municipal telecommunications license
306 tax;

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

311 (a) a municipal general election;

312 (b) a regular general election; or

313 (c) a local special election; and

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

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

316 **10-1-405. Collection of taxes by commission -- Uniform interlocal agreement --**

317 **Charge for services.**

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

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

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

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

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

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

329 (b) a uniform interlocal agreement:

330 (i) between:

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

332 (B) the commission;

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

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

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

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

338 (i) transmit monies collected under this part:

339 (A) monthly; and

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

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

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

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

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

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

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

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

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

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

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

359 **10-1-406. Limitation of other telecommunications taxes or fees.**

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

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

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

367 (ii) is not related to:

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

370 (B) increased deterioration of a highway as a result of the activities of the
371 telecommunications provider in a right-of-way; or

372 (b) on a person that:

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

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

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

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

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

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

384 (a) by ordinance; and

385 (b) on a competitively neutral basis.

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

387 **10-1-407. Attributing the gross receipts from telecommunications service to a**
388 **municipality -- Rate impact.**

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

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

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

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

398 the municipality in which is located:

399 (i) for telecommunications service other than mobile telecommunications service, the
400 customer's service address; or

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

402 (b) The rate imposed on the gross receipts for telecommunications service described in
403 Subsection (2)(a) shall be the lower of:

404 (i) the rate imposed by the taxing jurisdiction in which the transaction is located under
405 Subsection (1); or

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

407 (A) for telecommunications service other than mobile telecommunications service, the
408 customer's service address; or

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

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

411 **10-1-408. Procedure for taxes erroneously recovered from customers.**

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

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

416 (a) the customer requests a refund of the amounts paid by the customer pursuant to
417 Subsection 10-1-403(2); and

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

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

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

423 **10-1-409. Report on rate information.**

424 (1) (a) In accordance with this section, the commission shall submit a report to the
425 Legislature on or before February 16, 2004, that specifies the percentage calculated under

426 Subsection (1)(b) for each municipality that as of July 1, 2003 has imposed a tax, fee, or charge
427 under:

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

429 (ii) Title 11, Chapter 26, Local Taxation of Utilities Limitation, in effect as of July 1,
430 2003.

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

433 (i) determining, on the basis of the report required by Subsection (2)(a), the revenues
434 received by the municipality during the period beginning July 1, 2003 and ending December
435 31, 2003 under:

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

437 (B) Title 11, Chapter 26, Local Taxation of Utilities Limitation, in effect as of July 1,
438 2003;

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

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

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

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

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

447 and

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

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

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

451 (I) House of Representatives; and

452 (II) Senate; and

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

454 (ii) provide information to the Legislature for the Legislature to evaluate whether the
455 maximum rate authorized by this part for the municipal telecommunications license tax should
456 be modified.

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

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

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

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

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

465 (B) Title 11, Chapter 26, Local Taxation of Utilities Limitation, in effect as of July 1,
466 2003; and

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

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

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

474 (iii) that are attributed to the municipality.

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

476 **10-1-410. Transactions consisting of telecommunications service and**
477 **nontelecommunications services.**

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

480 (a) not telecommunications service; and

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

482 (2) Except to the extent prohibited by federal law, if a telecommunications provider
483 provides nontelecommunications services to a customer as part of the same transaction in
484 which the telecommunications provider provides telecommunications service, the gross
485 receipts from the nontelecommunications services provided by the telecommunications
486 provider are subject to a tax under this part unless:

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

489 (b) from the books and records of the telecommunications provider that are kept in the
490 regular course of business, the telecommunications provider can reasonably identify the portion

491 of the total charge for the transaction that is attributable to:

492 (i) the nontelecommunications services; and

493 (ii) the telecommunications service.

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

495 **11-26-1. Definitions -- Ceiling on local charges based on gross revenues of public**
 496 **service provider.**

497 (1) As used in this chapter:

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

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

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

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

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

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

507 ~~and]~~

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

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

511 (i) a tax;

512 (ii) a license;

513 (iii) a fee;

514 (iv) a license fee;

515 (v) a license tax; or

516 (vi) a charge similar to Subsections (1)[~~(b)~~](a)(i) through (v).

517 (b) "Municipality" means:

518 (i) a city; or

519 (ii) a town.

520 (c) "Public service provider" means[~~:(i) a public utility; or (ii)] a person [or entity]~~

521 engaged in the business of supplying[~~:(A) telephone service; or (B)] taxable energy as defined~~

522 in Section 10-1-303.

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

525 (a) imposed on the basis of the gross revenues of the public service provider;

526 (b) derived from sales, use, or both sales and use of the service within the county or
527 municipality; and

528 (c) in a total amount that is greater than 6% of gross revenues.

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

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

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

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

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

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

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

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

539 (4) This section may not be construed to:

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

542 (i) Title 59, Chapter 12, ~~[Part 2, Local]~~ Sales and Use Tax Act[;]; or

543 (ii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

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

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

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

548 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

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

552 (i) a tax commissioner;

553 (ii) an agent, clerk, or other officer or employee of the commission; or
554 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
555 town.

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

559 (i) in accordance with judicial order;

560 (ii) on behalf of the commission in any action or proceeding under:

561 (A) this title; or

562 (B) other law under which persons are required to file returns with the commission;

563 (iii) on behalf of the commission in any action or proceeding to which the commission
564 is a party; or

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

567 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
568 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
569 pertinent to the action or proceeding.

570 (2) This section does not prohibit:

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

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

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

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

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

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

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

584 (i) the United States Internal Revenue Service; or

585 (ii) the revenue service of any other state.

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

593 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
594 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
595 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
596 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
597 due.

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

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

606 (i) Chapter 13, Part 2, Motor Fuel; or

607 (ii) Chapter 13, Part 4, Aviation Fuel.

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

610 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
611 manufacturer and reported to the commission for the previous calendar year under Section
612 59-14-407; and

613 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
614 manufacturer for which a tax refund was granted during the previous calendar year under

615 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

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

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

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

622 (A) reported to the commission under Section 59-14-212; or

623 (B) related to a violation under Section 59-14-211; and

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

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

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

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

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

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

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

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

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

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

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

647 **59-12-102. Definitions.**

648 As used in this chapter:

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

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

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

653 (3) "Authorized carrier" means:

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

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

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

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

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

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

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

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

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

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

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

676 (6) (a) "Common carrier" means a person engaged in or transacting the business of

677 transporting passengers, freight, merchandise, or other property for hire within this state.

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

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

684 (7) "Component part" includes:

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

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

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

690 (d) feed, seeds, and seedlings.

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

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

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

695 (B) made by a school student;

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

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

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

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

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

705 (iii) the net or gross revenues from which are deposited in a dedicated account
706 controlled by the school or school district.

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

- 708 (i) an instrument or device having an electronic component that is designed to:
- 709 (A) (I) improve impaired human hearing; or
- 710 (II) correct impaired human hearing; and
- 711 (B) (I) be worn in the human ear; or
- 712 (II) affixed behind the human ear;
- 713 (ii) an instrument or device that is surgically implanted into the cochlea; or
- 714 (iii) a telephone amplifying device.
- 715 (b) "Hearing aid" does not include:
- 716 (i) except as provided in Subsection (10)(a)(i)(B) or (10)(a)(ii), an instrument or device
- 717 having an electronic component that is designed to be worn on the body;
- 718 (ii) except as provided in Subsection (10)(a)(iii), an assistive listening device or system
- 719 designed to be used by one individual, including:
- 720 (A) a personal amplifying system;
- 721 (B) a personal FM system;
- 722 (C) a television listening system; or
- 723 (D) a device or system similar to a device or system described in Subsections
- 724 (10)(b)(ii)(A) through (C); or
- 725 (iii) an assistive listening device or system designed to be used by more than one
- 726 individual, including:
- 727 (A) a device or system installed in:
- 728 (I) an auditorium;
- 729 (II) a church;
- 730 (III) a conference room;
- 731 (IV) a synagogue; or
- 732 (V) a theater; or
- 733 (B) a device or system similar to a device or system described in Subsections
- 734 (10)(b)(iii)(A)(I) through (V).
- 735 (11) (a) "Hearing aid accessory" means a hearing aid:
- 736 (i) component;
- 737 (ii) attachment; or
- 738 (iii) accessory.

739 (b) "Hearing aid accessory" includes:

740 (i) a hearing aid neck loop;

741 (ii) a hearing aid cord;

742 (iii) a hearing aid ear mold;

743 (iv) hearing aid tubing;

744 (v) a hearing aid ear hook; or

745 (vi) a hearing aid remote control.

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

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

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

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

750 (ii) a hearing aid battery.

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

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

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

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

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

758 (iii) are listed as eligible for payment under:

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

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

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

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

766 (i) equipment or supplies purchased by, for, or on behalf of any:

767 (A) health care facility, as defined in Subsection (12)(d); or

768 (B) one or more of the following for use in a professional practice:

769 (I) a doctor;

- 770 (II) a nurse; or
771 (III) another health care provider;
772 (ii) eyeglasses, contact lenses, or equipment to correct impaired vision; or
773 (iii) hearing aids or hearing aid accessories.
774 (d) For purposes of Subsection (12)(c)(i)(A), "health care facility" includes:
775 (i) a clinic;
776 (ii) a doctor's office; or
777 (iii) a health care facility as defined in Section 26-21-2.
778 (13) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
779 other fuels:
780 (a) in mining or extraction of minerals;
781 (b) in agricultural operations to produce an agricultural product up to the time of
782 harvest or placing the agricultural product into a storage facility, including:
783 (i) commercial greenhouses;
784 (ii) irrigation pumps;
785 (iii) farm machinery;
786 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
787 registered under Title 41, Chapter 1a, Part 2, Registration; and
788 (v) other farming activities;
789 (c) in manufacturing tangible personal property at an establishment described in SIC
790 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
791 Executive Office of the President, Office of Management and Budget; or
792 (d) by a scrap recycler if:
793 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
794 one or more of the following items into prepared grades of processed materials for use in new
795 products:
796 (A) iron;
797 (B) steel;
798 (C) nonferrous metal;
799 (D) paper;
800 (E) glass;

801 (F) plastic;
802 (G) textile; or
803 (H) rubber; and
804 (ii) the new products under Subsection (13)(d)(i) would otherwise be made with
805 nonrecycled materials.

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

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

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

812 (b) a scrap recycler if:

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

816 (A) iron;

817 (B) steel;

818 (C) nonferrous metal;

819 (D) paper;

820 (E) glass;

821 (F) plastic;

822 (G) textile; or

823 (H) rubber; and

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

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

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

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

832 direction of a physician; and

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

835 (b) "Medicine" does not include:

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

837 (ii) any alcoholic beverage.

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

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

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

844 (i) "Olympic";

845 (ii) "Olympiad"; or

846 (iii) "Citius Altius Fortius";

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

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

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

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

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

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

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

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

863 (21) "Place of primary use":

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

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

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

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

871 ~~[(21)]~~ (22) "Purchase price" means the amount paid or charged for tangible personal
872 property or any other taxable transaction under Subsection 59-12-103(1), excluding only cash
873 discounts taken or any excise tax imposed on the purchase price by the federal government.

874 ~~[(22)]~~ (23) "Regularly rented" means:

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

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

878 ~~[(23)]~~ (24) "Residential use" means the use in or around a home, apartment building,
879 sleeping quarters, and similar facilities or accommodations.

880 ~~[(24)]~~ (25) (a) "Retail sale" means any sale within the state of tangible personal
881 property or any other taxable transaction under Subsection 59-12-103(1), other than resale of
882 such property, item, or service by a retailer or wholesaler to a user or consumer.

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

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

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

893 (ii) pursuant to generally accepted accounting principles, the purchaser-lessee is

894 required to capitalize the subject property for financial reporting purposes, and account for the
895 lease payments as payments made under a financing arrangement.

896 ~~[(25)]~~ (26) (a) "Retailer" means any person engaged in a regularly organized retail
897 business in tangible personal property or any other taxable transaction under Subsection
898 59-12-103(1), and who is selling to the user or consumer and not for resale.

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

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

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

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

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

918 ~~[(26)]~~ (27) "Sale" means any transfer of title, exchange, or barter, conditional or
919 otherwise, in any manner, of tangible personal property or any other taxable transaction under
920 Subsection 59-12-103(1), for consideration. It includes:

921 (a) installment and credit sales;

922 (b) any closed transaction constituting a sale;

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

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

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

930 [~~(27)~~] (28) (a) "Sales relating to schools" means the following sales by, amounts paid
931 to, or amounts charged by a school:

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

934 (A) the sale of:

935 (I) textbooks;

936 (II) textbook fees;

937 (III) laboratory fees;

938 (IV) laboratory supplies; or

939 (V) safety equipment;

940 (B) the sale of clothing that:

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

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

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

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

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

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

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

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

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

955 (A) other than a:

- 956 (I) school;
- 957 (II) nonprofit organization authorized by a school board or a governing body of a
- 958 private school to organize and direct a competitive secondary school activity; or
- 959 (III) nonprofit association authorized by a school board or a governing body of a
- 960 private school to organize and direct a competitive secondary school activity; and
- 961 (B) that is required to collect sales and use taxes under this chapter.
- 962 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 963 commission may make rules defining the term "passed through."
- 964 [~~28~~] (29) For purposes of this section and Section 59-12-104, "school" means:
- 965 (a) an elementary school or a secondary school that:
- 966 (i) is a:
- 967 (A) public school; or
- 968 (B) private school; and
- 969 (ii) provides instruction for one or more grades kindergarten through 12; or
- 970 (b) a public school district.
- 971 [~~29~~] (30) (a) "Semiconductor fabricating or processing materials" means tangible
- 972 personal property:
- 973 (i) used primarily in the process of:
- 974 (A) (I) manufacturing a semiconductor; or
- 975 (II) fabricating a semiconductor; or
- 976 (B) maintaining an environment suitable for a semiconductor; or
- 977 (ii) consumed primarily in the process of:
- 978 (A) (I) manufacturing a semiconductor; or
- 979 (II) fabricating a semiconductor; or
- 980 (B) maintaining an environment suitable for a semiconductor.
- 981 (b) "Semiconductor fabricating or processing materials" includes:
- 982 (i) parts used in the repairs or renovations of tangible personal property described in
- 983 Subsection [~~29~~] (30)(a); or
- 984 (ii) a chemical, catalyst, or other material used to:
- 985 (A) produce or induce in a semiconductor a:
- 986 (I) chemical change; or

987 (II) physical change;

988 (B) remove impurities from a semiconductor; or

989 (C) improve the marketable condition of a semiconductor.

990 ~~[(30)]~~ (31) "Senior citizen center" means a facility having the primary purpose of
991 providing services to the aged as defined in Section 62A-3-101.

992 ~~[(31)]~~ (32) "State" means the state of Utah, its departments, and agencies.

993 ~~[(32)]~~ (33) "Storage" means any keeping or retention of tangible personal property or
994 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
995 except sale in the regular course of business.

996 ~~[(33)]~~ (34) (a) "Tangible personal property" means:

997 (i) all goods, wares, merchandise, produce, and commodities;

998 (ii) all tangible or corporeal things and substances which are dealt in or capable of
999 being possessed or exchanged;

1000 (iii) water in bottles, tanks, or other containers; and

1001 (iv) all other physically existing articles or things, including property severed from real
1002 estate.

1003 (b) "Tangible personal property" does not include:

1004 (i) real estate or any interest or improvements in real estate;

1005 (ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

1006 (iii) insurance certificates or policies;

1007 (iv) personal or governmental licenses;

1008 (v) water in pipes, conduits, ditches, or reservoirs;

1009 (vi) currency and coinage constituting legal tender of the United States or of a foreign
1010 nation; and

1011 (vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not
1012 constituting legal tender of any nation, with a gold, silver, or platinum content of not less than
1013 80%.

1014 ~~[(34)]~~ (35) (a) ~~[For purposes of Subsection (35) and Section 59-12-103, "telephone]~~
1015 "Telephone service" means a two-way transmission:

1016 (i) by:

1017 (A) wire;

- 1018 (B) radio;
- 1019 (C) lightwave; or
- 1020 (D) other electromagnetic means; and
- 1021 (ii) of one or more of the following:
- 1022 (A) a sign;
- 1023 (B) a signal;
- 1024 (C) writing;
- 1025 (D) an image;
- 1026 (E) sound;
- 1027 (F) a message;
- 1028 (G) data; or
- 1029 (H) other information of any nature.
- 1030 (b) "Telephone service" includes:
- 1031 (i) cellular telephone service;
- 1032 (ii) private communications service; or
- 1033 (iii) automated digital telephone answering service.
- 1034 (c) "Telephone service" does not include a service or a transaction that a state or a
- 1035 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 1036 Tax Freedom Act, Pub. L. No. 105-277.
- 1037 (36) Notwithstanding where a call is billed or paid, "telephone service address" means:
- 1038 (a) if the location described in this Subsection (36)(a) is known, the location of the
- 1039 telephone service equipment:
- 1040 (i) to which a call is charged; and
- 1041 (ii) from which the call originates or terminates;
- 1042 (b) if the location described in Subsection (36)(a) is not known but the location
- 1043 described in this Subsection (36)(b) is known, the location of the origination point of the signal
- 1044 of the telephone service first identified by:
- 1045 (i) the telecommunications system of the seller; or
- 1046 (ii) if the system used to transport the signal is not that of the seller, information
- 1047 received by the seller from its service provider; or
- 1048 (c) if the locations described in Subsection (36)(a) or (b) are not known, the location of

1049 a purchaser's primary place of use.

1050 [~~35~~] (37) (a) "Telephone service provider" means a person that:

1051 (i) owns, controls, operates, or manages a telephone service; [~~and~~] or

1052 (ii) engages in an activity described in Subsection [~~35~~] (37)(a)(i) for the shared use

1053 with or resale to any person of the telephone service.

1054 (b) A person described in Subsection [~~35~~] (37)(a) is a telephone service provider

1055 whether or not the Public Service Commission of Utah regulates:

1056 (i) that person; or

1057 (ii) the telephone service that the person owns, controls, operates, or manages.

1058 [~~36~~] (38) (a) "Use" means the exercise of any right or power over tangible personal

1059 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that

1060 property, item, or service.

1061 (b) "Use" does not include the sale, display, demonstration, or trial of that property in

1062 the regular course of business and held for resale.

1063 [~~37~~] (39) "Vehicle" means any aircraft, as defined in Section 72-10-102; any vehicle,

1064 as defined in Section 41-1a-102; any off-highway vehicle, as defined in Section 41-22-2; and

1065 any vessel, as defined in Section 41-1a-102; that is required to be titled, registered, or both.

1066 "Vehicle," for purposes of Subsection 59-12-104(36) only, also includes any locomotive,

1067 freight car, railroad work equipment, or other railroad rolling stock.

1068 [~~38~~] (40) "Vehicle dealer" means a person engaged in the business of buying, selling,

1069 or exchanging vehicles as defined in Subsection [~~37~~] (39).

1070 [~~39~~] (41) (a) "Vendor" means any person receiving any payment or consideration

1071 upon a sale of tangible personal property or any other taxable transaction under Subsection

1072 59-12-103(1), or to whom the payment or consideration is payable.

1073 (b) "Vendor" does not mean a printer's facility described in Subsection [~~25~~] (26)(d).

1074 Section 15. Section **59-12-207** is amended to read:

1075 **59-12-207. Report of tax collections -- Point of sale when retailer has no**

1076 **permanent place of business or more than one place of business is determined by rule of**

1077 **commission -- Public utilities -- Telephone telecommunications service.**

1078 (1) Except as provided in Subsection (5), any sales and use taxes collected under this

1079 part shall be reported to the commission on forms that accurately identify the location where

1080 the transaction resulting in a tax under this chapter is consummated.

1081 (2) Except as provided in Subsection (5), for purposes of this part, the location of
1082 where a transaction is consummated:

1083 (a) is determined under rules of the commission if:

1084 (i) a retailer has no permanent place of business in the state; or

1085 (ii) has more than one place of business; and

1086 (b) is where a purchaser receives the following products or services sold by a public
1087 utility, as defined in Section 54-2-1, to that purchaser:

1088 (i) gas; or

1089 (ii) electricity[; ~~or~~].

1090 [~~(iii) telephone services.~~]

1091 (3) The form required under Subsection (1) shall:

1092 (a) accompany the sales and use tax returns required under this chapter; and

1093 (b) identify the location of any transaction consummated during the return filing
1094 period.

1095 (4) Subject to Subsection (5) and in accordance with Title 63, Chapter 46a, Utah
1096 Administrative Rulemaking Act, the commission shall make rules regarding the determination
1097 of the location of where under Subsection (2)(a) a transaction is consummated.

1098 (5) Notwithstanding Subsections (1) and (2)[; ~~mobile telecommunications service is~~
1099 ~~subject to the sourcing rules provided in the Mobile Telecommunications Sourcing Act, 4~~
1100 ~~U.S.C. Sec. 116 et seq.~~] and except as provided in Subsection (6), the location of a transaction
1101 for telephone service taxed under this part shall be the county, city, or town within which is
1102 located the nine-digit zip code that is assigned by the United States Postal Service:

1103 (a) for telephone service other than mobile telecommunications service, to the
1104 telephone service address for the transaction; and

1105 (b) for mobile telecommunications service, to the place of primary use for the
1106 transaction.

1107 (6) (a) For purposes of this Subsection (6):

1108 (i) "Combined tax rate" means the sum of the tax rates imposed on a transaction
1109 described in Subsection 59-12-103(1) under:

1110 (A) Subsection 59-12-103(2)(a)(i);

1111 (B) Section 59-12-204;

1112 (C) Section 59-12-205;

1113 (D) Section 59-12-401;

1114 (E) Section 59-12-402;

1115 (F) Section 59-12-501;

1116 (G) Section 59-12-502;

1117 (H) Section 59-12-703;

1118 (I) Section 59-12-802;

1119 (J) Section 59-12-804;

1120 (K) Section 59-12-1001;

1121 (L) Section 59-12-1102;

1122 (M) Section 59-12-1302; and

1123 (N) Section 59-12-1402.

1124 (ii) "Lowest combined tax rate" for a shared zip code means the lowest combined tax
1125 rate of the counties, cities, or towns within which the shared zip code is located.

1126 (iii) "Shared zip code" means a nine-digit zip code assigned by the United States Postal
1127 Service that is located within two or more counties, cities, or towns.

1128 (b) Notwithstanding Subsection (5), if the nine-digit zip code that is assigned to a
1129 telephone service address or a place of primary use is a shared zip code, the location of a
1130 transaction for telephone service shall be:

1131 (i) if there is only one county, city, or town that imposes the lowest combined tax rate
1132 for the shared zip code, the county, city, or town that imposes the lowest combined tax rate; or

1133 (ii) if two or more counties, cities, or towns impose the lowest combined tax rate for
1134 the shared zip code, the county, city, or town that:

1135 (A) imposes the lowest combined tax rate for the shared zip code; and

1136 (B) of the counties, cities, or towns that impose the lowest combined tax rate, has
1137 located within the county, city, or town the largest number of street addresses within the shared
1138 zip code.

1139 (c) A telephone service provider shall collect sales and use taxes imposed under this
1140 chapter at the combined tax rate imposed within the county, city, or town in which the
1141 transaction for telephone service is located under Subsection (6)(b) notwithstanding the

1142 following:

1143 (i) Section 59-12-204;

1144 (ii) Section 59-12-205;

1145 (iii) Section 59-12-401;

1146 (iv) Section 59-12-402;

1147 (v) Section 59-12-501;

1148 (vi) Section 59-12-502;

1149 (vii) Section 59-12-703;

1150 (viii) Section 59-12-802;

1151 (ix) Section 59-12-804;

1152 (x) Section 59-12-1001;

1153 (xi) Section 59-12-1102;

1154 (xii) Section 59-12-1302; and

1155 (xiii) Section 59-12-1402.

1156 Section 16. Section **69-2-5** is amended to read:

1157 **69-2-5. Funding for 911 emergency telephone service.**

1158 (1) In providing funding of 911 emergency telephone service, any public agency
1159 establishing a 911 emergency telephone service may:

1160 (a) seek assistance from the federal or state government, to the extent constitutionally
1161 permissible, in the form of loans, advances, grants, subsidies, and otherwise, directly or
1162 indirectly;

1163 (b) seek funds appropriated by local governmental taxing authorities for the funding of
1164 public safety agencies; and

1165 (c) seek gifts, donations, or grants from individuals, corporations, or other private
1166 entities.

1167 (2) For purposes of providing funding of 911 emergency telephone service, special
1168 service districts may raise funds as provided in Section 17A-2-1322 and may borrow money
1169 and incur indebtedness as provided in Section 17A-2-1316.

1170 (3) (a) Except as provided in Subsection (3)(b)[;] and subject to [~~Subsection (3)(f), the~~
1171 ~~governing authority of any public agency providing~~] the other provisions of this Subsection (3)
1172 a county, city, or town within which 911 emergency telephone service is provided may levy

1173 monthly an emergency services telephone charge on:

1174 (i) each local exchange service switched access line within the boundaries of the
1175 county, city, or town; and

1176 (ii) each revenue producing radio communications access line with a billing address
1177 within the boundaries of the [~~area served by the public agency~~] county, city, or town.

1178 (b) Notwithstanding Subsection (3)(a), an access [lines] line provided for public coin
1179 telephone service [~~are~~] is exempt from emergency telephone charges.

1180 (c) The amount of the charge levied under this section may not exceed:

1181 (i) 53 cents per month for each local exchange service switched access line; and

1182 (ii) 53 cents per month for each radio communications access line.

1183 (d) (i) For purposes of this Subsection (3)(d) the following terms shall be defined as
1184 provided in Section 59-12-102:

1185 (A) mobile telecommunications service;

1186 (B) primary place of use;

1187 (C) service address; and

1188 (D) telephone service.

1189 (ii) An access line described in Subsection (3)(a) is considered to be within the
1190 boundaries of a county, city, or town if the telephone services provided over the access line are
1191 located within the county, city, or town:

1192 (A) for purposes of sales and use taxes under Title 59, Chapter 12, Sales and Use Tax
1193 Act; and

1194 (B) determined in accordance with Section 59-12-207.

1195 (iii) Subsection (3)(d)(iv) applies if the location of an access line described in
1196 Subsection (3)(a) is determined under Subsection (3)(d)(ii) to be a county, city or town other
1197 than county, city, or town in which is located:

1198 (I) for telephone service other than mobile telecommunications service, the purchaser's
1199 service address; or

1200 (II) for mobile telecommunications service, the purchaser's primary place of use.

1201 (iv) (A) If the county, city, or town in which an access line is located under Subsection
1202 (3)(d)(iii) does not impose a charge under this section, a charge may not be collected from that
1203 access line.

1204 (B) If the county, city, or town in which an access line is located under Subsection
1205 (3)(d)(iii) imposes a charge under this section, a charge may not be collected from that access
1206 charge if the county, city, or town in which is located the following does not impose the charge:

1207 (I) for telephone service other than mobile telecommunications service, the purchaser's
1208 service address; or

1209 (II) for mobile telecommunications service, the purchaser's primary place of use.

1210 ~~[(d)]~~ (e) (i) [Notification of intent to levy the charge shall be given to] A county, city,
1211 or town shall notify the Public Service Commission of the intent to levy the charge under this
1212 Subsection (3) at least 30 days prior to the effective date of the charge being levied.

1213 (ii) For purposes of this Subsection (3)(e):

1214 (A) "Annexation" means an annexation to:

1215 (I) a city or town under Title 10, Chapter 2, Part 4, Annexation; or

1216 (I) a county under Title 17, Chapter 2, Annexation to County.

1217 (B) "Annexing area" means an area that is annexed into a county, city, or town.

1218 (iii) (A) If, on or after July 1, 2003, a county, city, or town enacts or repeals a charge
1219 under this section, the enactment or repeal shall take effect:

1220 (I) on the first day of a calendar quarter; and

1221 (II) after a 75-day period beginning on the date the State Tax Commission receives
1222 notice meeting the requirements of Subsection (3)(e)(iii)(B) from the county, city, or town.

1223 (B) The notice described in Subsection (3)(e)(iii)(A) shall state:

1224 (I) that the county, city, or town will enact or repeal a charge under this section;

1225 (II) the statutory authority for the charge described in Subsection (3)(e)(iii)(B)(I); and

1226 (III) the effective date of the charge described in Subsection (3)(e)(iii)(B)(I).

1227 (iv) (A) If, for an annexation that occurs on or after July 1, 2003, the annexation will
1228 result in a change in a charge imposed under this section being imposed in an annexing area,
1229 the change shall take effect:

1230 (I) on the first day of a calendar quarter; and

1231 (II) after a 75-day period beginning on the date the State Tax Commission receives
1232 notice meeting the requirements of Subsection (3)(e)(iv)(B) from the county, city, or town that

1233 annexes the annexing area.

1234 (B) The notice described in Subsection (3)(e)(iv)(A) shall state:

1235 (I) that the annexation described in Subsection (3)(e)(iv)(A) will result in a change in
1236 the charge being imposed under this section for the annexing area;

1237 (II) the statutory authority for the charge described in Subsection (3)(e)(iv)(B)(I); and
1238 (III) the effective date of the charge described in Subsection (3)(e)(iv)(B)(I).

1239 ~~[(e)]~~ (f) Subject to Subsection (3)~~[(f)]~~ (g), an emergency services telephone charge
1240 levied under this section shall:

1241 (i) be billed and collected by the ~~[corporation,] person[, or entity]~~ that provides the:

1242 (A) local exchange service switched access line services; or

1243 (B) radio communications access line services; and

1244 (ii) remitted to the ~~[public agency providing 911 emergency telephone service in the~~
1245 ~~billed customer location area as directed by the public agency]~~ State Tax Commission.

1246 ~~[(f)]~~ (g) An emergency services telephone charge on a mobile telecommunications
1247 service may be levied, billed, and collected only to the extent permitted by the Mobile
1248 Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

1249 (h) The State Tax Commission shall:

1250 (i) collect, enforce, and administer the charge imposed under this Subsection (3)
1251 pursuant to the same procedures used in the administration, collection, and enforcement of the
1252 state sales and use taxes under:

1253 (A) Title 59, Chapter 1, General Taxation Policies; and

1254 (B) Title 59, Chapter 12, Part 1, Tax Collection, except for Sections 59-12-104,
1255 59-12-104.1, and 59-12-104.2;

1256 (ii) transmit monies collected under this Subsection (3):

1257 (A) monthly; and

1258 (B) by electronic funds transfer by the commission to the county, city, or town that
1259 imposes the charge; and

1260 (iii) charge the county, city, or town for the State Tax Commission's services under this
1261 Subsection (3) in an amount:

1262 (A) sufficient to reimburse the State Tax Commission for the cost to the State Tax
1263 Commission in rendering the services; and

1264 (B) that may not exceed an amount equal to 1.5% of the charges imposed under this
1265 Subsection (3).

1266 (4) (a) Any money received by ~~the~~ a public agency for the provision of 911
1267 emergency telephone service shall be deposited in a special emergency telephone service fund.

1268 (b) (i) The money in the emergency telephone service fund described in Subsection
1269 (4)(a) shall be expended by the public agency to pay the costs of establishing, installing,
1270 maintaining, and operating a 911 emergency telephone system or integrating a 911 system into
1271 an established public safety dispatch center, including contracting with the providers of local
1272 exchange service, radio communications service, and vendors of appropriate terminal
1273 equipment as necessary to implement the 911 emergency telephone service.

1274 (ii) Revenues derived for the funding of 911 emergency telephone service may only be
1275 used for that portion of costs related to the operation of the 911 emergency telephone system
1276 when such a system is integrated with any public safety dispatch system.

1277 Section 17. Section **69-2-5.5** is amended to read:

1278 **69-2-5.5. Emergency services telephone charge to fund the Poison Control**
1279 **Center.**

1280 (1) Subject to Subsection (13), there is imposed an emergency services telephone
1281 charge of 7 cents per month on each local exchange service switched access line and each
1282 revenue producing radio communications access line that is subject to an emergency services
1283 telephone charge levied by a ~~public agency~~ county, city, or town under Section 69-2-5.

1284 (2) The emergency services telephone charge imposed under this section shall be:

1285 (a) subject to Subsection (13), billed and collected by the ~~corporation,~~ person~~, or~~
1286 ~~entity~~ that provides:

1287 (i) local exchange service switched access line services; or

1288 (ii) radio communications access line services ~~and~~;

1289 (b) remitted ~~monthly~~ to the State Tax Commission at the same time as the person
1290 remits to the State Tax Commission monies collected by the person under Title 59, Chapter 12,
1291 Sales and Use Tax Act; and

1292 ~~(b)~~ (c) deposited into the General Fund as dedicated credits to pay for:

1293 (i) costs of establishing, installing, maintaining, and operating the University of Utah
1294 Poison Control Center; and

1295 (ii) expenses of the State Tax Commission to administer and enforce the collection of
1296 the emergency services telephone charges.

1297 (3) Funds for the University of Utah Poison Control Center program are nonlapsing.

1298 (4) Emergency services telephone charges remitted to the State Tax Commission
1299 pursuant to Subsection (2) shall be accompanied by the form prescribed by the commission.

1300 (5) The State Tax Commission may make rules to administer and enforce the collection
1301 of emergency services telephone charges imposed under this section.

1302 (6) A provider of local exchange service switched access line services or radio
1303 communications access line services who fails to comply with this section is subject to
1304 penalties and interest as provided in Sections 59-1-401 and 59-1-402.

1305 (7) (a) Except as provided in Subsections (8) through (11), and subject to Subsection
1306 (13), the State Tax Commission shall assess a charge imposed under this section within three
1307 years after a provider of local exchange service switched access line services or radio
1308 communications access line services files a return.

1309 (b) Except as provided in Subsections (8) through (11), if the commission does not
1310 assess a charge imposed under this section within the three-year period provided in Subsection
1311 (7)(a), the commission may not commence a proceeding to collect the charge.

1312 (8) Notwithstanding Subsection (7), and subject to Subsection (13), the State Tax
1313 Commission may assess a charge at any time if a provider of local exchange service switched
1314 access line services or radio communications access line services:

1315 (a) files a false or fraudulent return with intent to evade; or

1316 (b) does not file a return.

1317 (9) Notwithstanding Subsection (7), beginning on July 1, 1998, the State Tax
1318 Commission may extend the period to make an assessment or commence a proceeding to
1319 collect the charge imposed under this section if:

1320 (a) the three-year period under Subsection (7) has not expired; and

1321 (b) the commission and the provider of local exchange service switched access line
1322 services or radio communications access line services sign a written agreement:

1323 (i) authorizing the extension; and

1324 (ii) providing for the length of the extension.

1325 (10) If the State Tax Commission delays an audit at the request of a provider of local
1326 exchange service switched access line services or radio communications access line services,
1327 the commission may make an assessment as provided in Subsection (11) if:

1328 (a) the provider of local exchange service switched access line services or radio
1329 communications access line services subsequently refuses to agree to an extension request by
1330 the commission; and

1331 (b) the three-year period under Subsection (7) expires before the commission
1332 completes the audit.

1333 (11) An assessment under Subsection (10) shall be:

1334 (a) for the time period for which the State Tax Commission could not make an
1335 assessment because of the expiration of the three-year period; and

1336 (b) in an amount equal to the difference between:

1337 (i) the commission's estimate of the amount of the charge the provider of local
1338 exchange service switched access line services or radio communications access line services
1339 would have been assessed for the time period described in Subsection (11)(a); and

1340 (ii) the amount of the charge the provider of local exchange service switched access
1341 line services or radio communications access line services actually paid for the time period
1342 described in Subsection (11)(a).

1343 (12) (a) Except as provided in Subsection (12)(b), the State Tax Commission may not
1344 make a credit or refund unless the provider of local exchange service switched access line
1345 services or radio communications access line services files a claim with the commission within
1346 three years of the date of overpayment.

1347 (b) Notwithstanding Subsection (12)(a), beginning on July 1, 1998, the commission
1348 shall extend the period for a provider of local exchange service switched access line services or
1349 radio communications access line services to file a claim under Subsection (12)(a) if:

1350 (i) the three-year period under Subsection (12)(a) has not expired; and

1351 (ii) the commission and the provider of local exchange service switched access line
1352 services or radio communications access line services sign a written agreement:

1353 (A) authorizing the extension; and

1354 (B) providing for the length of the extension.

1355 (13) An emergency services telephone charge under this section on a mobile
1356 telecommunications service may be imposed, billed, and collected only to the extent permitted
1357 by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

1358 (14) (a) (i) For purposes of this Subsection (14) and except as provided in Subsection

1359 (14)(a)(ii), "bad debt" is as defined in Section 166, Internal Revenue Code.

1360 (ii) "Bad debt" does not include:

1361 (A) amounts not subject to the charge imposed under this section that are included in
1362 the purchase price for:

1363 (I) local exchange service switched access line service; or

1364 (II) radio communications access line service;

1365 (B) financing charges or interest;

1366 (C) the charge imposed under this section on:

1367 (I) a local exchange service switched access line; or

1368 (II) a radio communications access line;

1369 (D) uncollectible amounts on tangible personal property that remains in the possession
1370 of the vendor until the full purchase price is paid;

1371 (E) expenses incurred in attempting to collect any debt; and

1372 (F) amounts uncollected on repossessed property.

1373 (b) The State Tax Commission shall allow a credit for amounts remitted to the State
1374 Tax Commission under this section that constitute bad debt.

1375 Section 18. Section **72-7-102** is amended to read:

1376 **72-7-102. Excavations, structures, or objects prohibited within right-of-way**
1377 **except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty**
1378 **for violation.**

1379 (1) As used in this section, "management costs" means the reasonable, direct, and
1380 actual costs a highway authority incurs in exercising authority over the highways under its
1381 jurisdiction.

1382 (2) Except as provided in Subsection (3) and Section 54-4-15, a person may not:

1383 (a) dig or excavate, within the right-of-way of any state highway, county road, or city
1384 street; or

1385 (b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit,
1386 sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or
1387 character within the right-of-way.

1388 (3) (a) A highway authority having jurisdiction over the right-of-way may allow
1389 excavating, installation of utilities and other facilities or access under rules made by the

1390 highway authority and in compliance with federal, state, and local law as applicable.

1391 (b) (i) The rules may require a permit for any excavation or installation and may
1392 require a surety bond or other security.

1393 (ii) The application for a permit for excavation or installation on a state highway shall
1394 be accompanied by a fee established under Subsection (4)(f).

1395 (iii) The permit may be revoked and the surety bond or other security may be forfeited
1396 for cause.

1397 (4) (a) Except as provided in Section 72-7-108 with respect to the department
1398 concerning the interstate highway system, a highway authority may require compensation from
1399 a utility service provider for access to the right-of-way of a highway only as provided in this
1400 section.

1401 (b) A highway authority may recover from a utility service provider, only those
1402 management costs caused by the utility service provider's activities in the right-of-way of a
1403 highway under the jurisdiction of the highway authority.

1404 (c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a
1405 competitively neutral basis.

1406 (ii) If a highway authority's management costs cannot be attributed to only one entity,
1407 the management costs shall be allocated among all privately owned and government agencies
1408 using the highway right-of-way for utility service purposes, including the highway authority
1409 itself. The allocation shall reflect proportionately the management costs incurred by the
1410 highway authority as a result of the various utility uses of the highway.

1411 (d) A highway authority may not use the compensation authority granted under this
1412 Subsection (4) as a basis for generating revenue for the highway authority that is in addition to
1413 its management costs.

1414 (e) (i) A utility service provider that is assessed management costs or a franchise fee by
1415 a highway authority is entitled to recover those management costs.

1416 (ii) If the highway authority that assesses the management costs or franchise fees is a
1417 political subdivision of the state and the utility service provider serves customers within the
1418 boundaries of that highway authority, the management costs may be recovered from those
1419 customers.

1420 (f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1421 department shall adopt a schedule of fees to be assessed for management costs incurred in
1422 connection with issuing and administering a permit on a state highway under this section.

1423 (g) In addition to the requirements of this Subsection (4), a telecommunications tax or
1424 fee imposed by a municipality on a telecommunications provider, as defined in Section
1425 10-1-402, is subject to Section 10-1-406.

1426 (5) Permit fees collected by the department under this section shall be deposited with
1427 the state treasurer and credited to the Transportation Fund.

1428 (6) Nothing in this section shall affect the authority of a municipality under:

1429 (a) Section 11-26-1 [~~and~~];

1430 (b) Section 10-1-203;

1431 (c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act[-]; or

1432 (d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

1433 (7) A person who violates the provisions of Subsection (2) is guilty of a class B
1434 misdemeanor.

1435 Section 19. Section **72-7-108** is amended to read:

1436 **72-7-108. Longitudinal telecommunication access in the interstate highway**
1437 **system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.**

1438 (1) As used in this section:

1439 (a) "Longitudinal access" means access to or use of any part of a right-of-way of a
1440 highway on the interstate system that extends generally parallel to the right-of-way for a total of
1441 30 or more linear meters.

1442 (b) "Statewide telecommunications purposes" means the further development of the
1443 statewide network that meets the telecommunications needs of state agencies and enhances the
1444 learning purposes of higher and public education.

1445 (c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire,
1446 conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting
1447 equipment, receiving equipment, power equipment, or other equipment, system, and device
1448 used to transmit, receive, produce, or distribute via wireless, wireline, electronic, or optical
1449 signal for communication purposes.

1450 (2) (a) Except as provided in Subsection (4), the department may allow a
1451 telecommunication facility provider longitudinal access to the right-of-way of a highway on the

1452 interstate system for the installation, operation, and maintenance of a telecommunication
1453 facility.

1454 (b) The department shall enter into an agreement with a telecommunication facility
1455 provider and issue a permit before granting it any longitudinal access under this section.

1456 (i) Except as specifically provided by the agreement, a property interest in a
1457 right-of-way may not be granted under the provisions of this section.

1458 (ii) An agreement entered into by the department under this section shall:

1459 (A) specify the terms and conditions for the renegotiation of the agreement;

1460 (B) specify maintenance responsibilities for each telecommunication facility;

1461 (C) be nonexclusive; and

1462 (D) be limited to a maximum term of 30 years.

1463 (3) (a) The department shall require compensation from a telecommunication facility
1464 provider under this section for longitudinal access to the right-of-way of a highway on the
1465 interstate system.

1466 (b) The compensation charged shall be:

1467 (i) fair and reasonable;

1468 (ii) competitively neutral;

1469 (iii) nondiscriminatory;

1470 (iv) open to public inspection;

1471 (v) established to promote access by multiple telecommunication facility providers;

1472 (vi) established for zones of the state, with zones determined based upon factors that
1473 include population density, distance, numbers of telecommunication subscribers, and the
1474 impact upon private right-of-way users;

1475 (vii) established to encourage the deployment of digital infrastructure within the state;

1476 (viii) set after the department conducts a market analysis to determine the fair and
1477 reasonable values of the right-of-way based upon adjacent property values;

1478 (ix) a lump sum payment or annual installment, at the option of the
1479 telecommunications facility provider; and

1480 (x) set in accordance with Subsection (3)(f).

1481 (c) (i) The compensation charged may be cash, in-kind compensation, or a combination
1482 of cash and in-kind compensation.

1483 (ii) In-kind compensation requires the agreement of both the telecommunication
1484 facility provider and the department.

1485 (iii) The department shall, in consultation with the Telecommunications Advisory
1486 Council created in Section 72-7-109, determine the present value of any in-kind compensation
1487 based upon the incremental cost to the telecommunication facility provider.

1488 (iv) The value of in-kind compensation or a combination of cash and in-kind
1489 compensation shall be equal to or greater than the amount of cash compensation that would be
1490 charged if the compensation is cash only.

1491 (d) (i) The department shall provide for the proportionate sharing of costs among the
1492 department and telecommunications providers for joint trenching or trench sharing based on
1493 the amount of conduit innerduct space that is authorized in the agreement for the trench.

1494 (ii) If two or more telecommunications facility providers are required to share a single
1495 trench, each telecommunications facility provider in the trench shall share the cost and benefits
1496 of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively
1497 neutral, and nondiscriminatory basis.

1498 (e) The market analysis under Subsection (3)(b)(viii) shall be conducted at least every
1499 five years and any adjustments warranted shall apply only to agreements entered after the date
1500 of the new market analysis.

1501 (f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1502 department shall establish a schedule of rates of compensation for any longitudinal access
1503 granted under this section.

1504 (4) The department may not grant any longitudinal access under this section that results
1505 in a significant compromise of the safe, efficient, and convenient use of the interstate system
1506 for the traveling public.

1507 (5) The department may not pay any cost of relocation of a telecommunication facility
1508 granted longitudinal access to the right-of-way of a highway on the interstate system under this
1509 section.

1510 (6) (a) Monetary compensation collected by the department in accordance with this
1511 section shall be deposited with the state treasurer and credited to the Transportation Fund.

1512 (b) Any telecommunications capacity acquired as in-kind compensation shall be used:

1513 (i) exclusively for statewide telecommunications purposes and may not be sold or

1514 leased in competition with telecommunication or Internet service providers; and

1515 (ii) as determined by the department after consultation with the Telecommunications
1516 Advisory Council created in Section 72-7-109.

1517 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1518 department shall make rules:

1519 (a) governing the installation, operation, and maintenance of a telecommunication
1520 facility granted longitudinal access under this section;

1521 (b) specifying the procedures for establishing an agreement for longitudinal access for
1522 a telecommunication facility provider;

1523 (c) providing for the relocation or removal of a telecommunication facility for:

1524 (i) needed changes to a highway on the interstate system;

1525 (ii) expiration of an agreement; or

1526 (iii) a breach of an agreement; and

1527 (d) providing an opportunity for all interested providers to apply for access within open
1528 right-of-way segments.

1529 (8) (a) Except for a right-of-way of a highway on the interstate system, nothing in this
1530 section shall be construed to allow a highway authority to require compensation from a
1531 telecommunication facility provider for longitudinal access to the right-of-way of a highway
1532 under the highway authority's jurisdiction.

1533 (b) Nothing in this section shall affect the authority of a municipality under:

1534 (i) Section 11-26-1 [and];

1535 (ii) Section 10-1-203;

1536 (iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act[-]; or

1537 (iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

1538 (9) Compensation paid to the department under Subsection (3) may not be used by any
1539 person as evidence of the market or other value of the access for any other purpose, including
1540 condemnation proceedings, other litigation, or the application of rates of taxation or the
1541 establishment of franchise fees relating to longitudinal access rights.

1542 Section 20. **Repealer.**

1543 This act repeals:

1544 Section **11-26-3, Local charge on certain revenues of public utility or telephone**

1545 **service suppliers -- Notice and hearing requirements.**

1546 Section 21. **Effective date.**

1547 This act takes effect on July 1, 2003 except the following take effect on July 1, 2004:

1548 (1) the amendments in this act to:

1549 (a) Section 10-1-203;

1550 (b) Section 11-26-1;

1551 (c) Section 72-7-102;

1552 (d) Section 72-7-108; and

1553 (2) the repeal of Section 11-26-3.