

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides an effective date.

32 This bill provides revisor instructions.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **59-12-102 (Effective 01/01/07)**, as last amended by Chapter 9, Laws of Utah 2006, Third
36 Special Session

37 **72-2-117.5**, as enacted by Chapter 284, Laws of Utah 2005

38 **72-2-121**, as last amended by Chapter 329, Laws of Utah 2006

39 ENACTS:

40 **17-50-322**, Utah Code Annotated 1953

41 **59-12-1701**, Utah Code Annotated 1953

42 **59-12-1702**, Utah Code Annotated 1953

43 **59-12-1703**, Utah Code Annotated 1953

44 **59-12-1704**, Utah Code Annotated 1953

45 **59-12-1705**, Utah Code Annotated 1953



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

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

49 **17-50-322. County funding for a fixed guideway.**

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

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

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

54 (2) (a) Except as provided in Subsection (2)(b), a county legislative body may not levy a
55 property tax or expend revenues from uniform fees or any tax or fee imposed in lieu of a property
56 tax, to purchase, erect, repair, rebuild, maintain, or otherwise fund a fixed guideway.

57 (b) Subsection (2)(a) does not apply to a property tax levy imposed by a county for the
58 purpose of paying for bonds if:

59 (i) before January 1, 2007, the bonds were issued or approved by voters for issuance to
60 fund a fixed guideway; and

61 (ii) the county does not impose a sales and use tax authorized by Section 59-12-1703.

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

63 **59-12-102 (Effective 01/01/07). Definitions.**

64 As used in this chapter:

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

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

68 (2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in Section
69 59-12-102.1.

70 (3) "Agreement combined tax rate" means the sum of the tax rates:

71 (a) listed under Subsection (4); and

72 (b) that are imposed within a local taxing jurisdiction.

73 (4) "Agreement sales and use tax" means a tax imposed under:

74 (a) Subsection 59-12-103(2)(a)(i) or (2)(b)(iii)(A);

75 (b) Section 59-12-204;

76 (c) Section 59-12-401;

77 (d) Section 59-12-402;

78 (e) Section 59-12-501;

79 (f) Section 59-12-502;

80 (g) Section 59-12-703;

81 (h) Section 59-12-802;

82 (i) Section 59-12-804;

83 (j) Section 59-12-1001;

84 (k) Section 59-12-1102;

85 (l) Section 59-12-1302;

86 (m) Section 59-12-1402; or

87 (n) Section 59-12-1503.

88 (5) "Aircraft" is as defined in Section 72-10-102.

89 (6) "Alcoholic beverage" means a beverage that:

90 (a) is suitable for human consumption; and

91 (b) contains .5% or more alcohol by volume.

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

93 (8) "Assisted amusement device" means an amusement device, skill device, or ride device

94 that is started and stopped by an individual:

95 (a) who is not the purchaser or renter of the right to use or operate the amusement device,

96 skill device, or ride device; and

97 (b) at the direction of the seller of the right to use the amusement device, skill device, or ride

98 device.

99 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or washing

100 of tangible personal property if the cleaning or washing labor is primarily performed by an individual:

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

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

103 (10) "Authorized carrier" means:

104 (a) in the case of vehicles operated over public highways, the holder of credentials indicating

105 that the vehicle is or will be operated pursuant to both the International Registration Plan and the

106 International Fuel Tax Agreement;

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

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

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

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

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

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

116 (B) animal waste;

117 (C) methane produced:

118 (I) at landfills; or

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

120 (D) aquatic plants; and

121 (E) agricultural products.

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

123 (i) black liquor;

124 (ii) treated woods; or

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

126 (A) at landfills; or

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

128 (12) (a) "Bundled transaction" means the sale of two or more items of tangible personal
129 property if:

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

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

- 132 (A) distinct and identifiable; and
- 133 (B) sold for one price that is not itemized.
- 134 (b) "Bundled transaction" does not include the sale of tangible personal property if the sales
- 135 price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible
- 136 personal property included in the transaction.
- 137 (c) For purposes of Subsection (12)(a)(ii)(A), tangible personal property that is distinct and
- 138 identifiable does not include:
 - 139 (i) packaging that:
 - 140 (A) accompanies the sale of the tangible personal property; and
 - 141 (B) is incidental or immaterial to the sale of the tangible personal property;
 - 142 (ii) tangible personal property provided free of charge with the purchase of another item of
 - 143 tangible personal property; or
 - 144 (iii) an item of tangible personal property included in the definition of "purchase price."
- 145 (d) For purposes of Subsection (12)(c)(ii), an item of tangible personal property is provided
- 146 free of charge with the purchase of another item of tangible personal property if the sales price of the
- 147 purchased item of tangible personal property does not vary depending on the inclusion of the tangible
- 148 personal property provided free of charge.
- 149 (13) "Certified automated system" means software certified by the governing board of the
- 150 agreement in accordance with Section 59-12-102.1 that:
 - 151 (a) calculates the agreement sales and use tax imposed within a local taxing jurisdiction:
 - 152 (i) on a transaction; and
 - 153 (ii) in the states that are members of the agreement;
 - 154 (b) determines the amount of agreement sales and use tax to remit to a state that is a member
 - 155 of the agreement; and
 - 156 (c) maintains a record of the transaction described in Subsection (13)(a)(i).
- 157 (14) "Certified service provider" means an agent certified:

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

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

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

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

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

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

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

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

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

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

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

180 (19) "Component part" includes:

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

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

183 (c) fuel used for providing temperature control of orchards and commercial greenhouses

184 doing a majority of their business in wholesale sales, and for providing power for off-highway type
185 farm machinery; and

186 (d) feed, seeds, and seedlings.

187 (20) "Computer" means an electronic device that accepts information:

188 (a) (i) in digital form; or

189 (ii) in a form similar to digital form; and

190 (b) manipulates that information for a result based on a sequence of instructions.

191 (21) "Computer software" means a set of coded instructions designed to cause:

192 (a) a computer to perform a task; or

193 (b) automatic data processing equipment to perform a task.

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

196 (23) "Delivered electronically" means delivered to a purchaser by means other than tangible
197 storage media.

198 (24) (a) "Delivery charge" means a charge:

199 (i) by a seller of:

200 (A) tangible personal property; or

201 (B) services; and

202 (ii) for preparation and delivery of the tangible personal property or services described in
203 Subsection (24)(a)(i) to a location designated by the purchaser.

204 (b) "Delivery charge" includes a charge for the following:

205 (i) transportation;

206 (ii) shipping;

207 (iii) postage;

208 (iv) handling;

209 (v) crating; or

- 210 (vi) packing.
- 211 (25) "Dietary supplement" means a product, other than tobacco, that:
- 212 (a) is intended to supplement the diet;
- 213 (b) contains one or more of the following dietary ingredients:
- 214 (i) a vitamin;
- 215 (ii) a mineral;
- 216 (iii) an herb or other botanical;
- 217 (iv) an amino acid;
- 218 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 219 dietary intake; or
- 220 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 221 described in Subsections (25)(b)(i) through (v);
- 222 (c) (i) except as provided in Subsection (25)(c)(ii), is intended for ingestion in:
- 223 (A) tablet form;
- 224 (B) capsule form;
- 225 (C) powder form;
- 226 (D) softgel form;
- 227 (E) gelcap form; or
- 228 (F) liquid form; or
- 229 (ii) notwithstanding Subsection (25)(c)(i), if the product is not intended for ingestion in a form
- 230 described in Subsections (25)(c)(i)(A) through (F), is not represented:
- 231 (A) as conventional food; and
- 232 (B) for use as a sole item of:
- 233 (I) a meal; or
- 234 (II) the diet; and
- 235 (d) is required to be labeled as a dietary supplement:

- 236 (i) identifiable by the "Supplemental Facts" box found on the label; and
237 (ii) as required by 21 C.F.R. Sec. 101.36.
- 238 (26) (a) "Direct mail" means printed material delivered or distributed by United States mail or
239 other delivery service:
- 240 (i) to:
- 241 (A) a mass audience; or
242 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
243 (ii) if the cost of the printed material is not billed directly to the recipients.
- 244 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
245 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 246 (c) "Direct mail" does not include multiple items of printed material delivered to a single
247 address.
- 248 (27) (a) "Drug" means a compound, substance, or preparation, or a component of a
249 compound, substance, or preparation that is:
- 250 (i) recognized in:
- 251 (A) the official United States Pharmacopoeia;
252 (B) the official Homeopathic Pharmacopoeia of the United States;
253 (C) the official National Formulary; or
254 (D) a supplement to a publication listed in Subsections (27)(a)(i)(A) through (C);
- 255 (ii) intended for use in the:
- 256 (A) diagnosis of disease;
257 (B) cure of disease;
258 (C) mitigation of disease;
259 (D) treatment of disease; or
260 (E) prevention of disease; or
261 (iii) intended to affect:

262 (A) the structure of the body; or

263 (B) any function of the body.

264 (b) "Drug" does not include:

265 (i) food and food ingredients;

266 (ii) a dietary supplement;

267 (iii) an alcoholic beverage; or

268 (iv) a prosthetic device.

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

271 (i) can withstand repeated use;

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

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

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

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

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

279 (29) "Electronic" means:

280 (a) relating to technology; and

281 (b) having:

282 (i) electrical capabilities;

283 (ii) digital capabilities;

284 (iii) magnetic capabilities;

285 (iv) wireless capabilities;

286 (v) optical capabilities;

287 (vi) electromagnetic capabilities; or

- 288 (vii) capabilities similar to Subsections (29)(b)(i) through (vi).
- 289 (30) "Employee" is as defined in Section 59-10-401.
- 290 (31) "Fixed guideway" means a public transit facility that uses and occupies:
- 291 (a) rail for the use of public transit; or
- 292 (b) a separate right-of-way for the use of public transit.
- 293 [~~31~~] (32) (a) "Food and food ingredients" means substances:
- 294 (i) regardless of whether the substances are in:
- 295 (A) liquid form;
- 296 (B) concentrated form;
- 297 (C) solid form;
- 298 (D) frozen form;
- 299 (E) dried form; or
- 300 (F) dehydrated form; and
- 301 (ii) that are:
- 302 (A) sold for:
- 303 (I) ingestion by humans; or
- 304 (II) chewing by humans; and
- 305 (B) consumed for the substance's:
- 306 (I) taste; or
- 307 (II) nutritional value.
- 308 (b) "Food and food ingredients" includes an item described in Subsection [~~62~~] (63)(b)(iii).
- 309 (c) "Food and food ingredients" does not include:
- 310 (i) an alcoholic beverage;
- 311 (ii) tobacco; or
- 312 (iii) prepared food.
- 313 [~~32~~] (33) (a) "Fundraising sales" means sales:

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

319 (b) For purposes of Subsection [~~(32)~~] (33)(a)(iii), "officially sanctioned school activity"
320 means a school activity:

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

327 [~~(33)~~] (34) "Geothermal energy" means energy contained in heat that continuously flows
328 outward from the earth that is used as the sole source of energy to produce electricity.

329 [~~(34)~~] (35) "Governing board of the agreement" means the governing board of the agreement
330 that is:

- 331 (a) authorized to administer the agreement; and
- 332 (b) established in accordance with the agreement.

333 [~~(35)~~] (36) (a) "Hearing aid" means:

- 334 (i) an instrument or device having an electronic component that is designed to:
 - 335 (A) (I) improve impaired human hearing; or
 - 336 (II) correct impaired human hearing; and
 - 337 (B) (I) be worn in the human ear; or
 - 338 (II) affixed behind the human ear;
- 339 (ii) an instrument or device that is surgically implanted into the cochlea; or

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

- 366 (i) a hearing aid neck loop;
- 367 (ii) a hearing aid cord;
- 368 (iii) a hearing aid ear mold;
- 369 (iv) hearing aid tubing;
- 370 (v) a hearing aid ear hook; or
- 371 (vi) a hearing aid remote control.
- 372 (c) "Hearing aid accessory" does not include:
- 373 (i) a component, attachment, or accessory designed to be used only with an:
- 374 (A) instrument or device described in Subsection [~~35~~] (36)(b)(i); or
- 375 (B) assistive listening device or system described in Subsection [~~35~~] (36)(b)(ii) or (iii); or
- 376 (ii) a hearing aid battery.
- 377 [~~37~~] (38) "Hydroelectric energy" means water used as the sole source of energy to
- 378 produce electricity.
- 379 [~~38~~] (39) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 380 other fuels:
- 381 (a) in mining or extraction of minerals;
- 382 (b) in agricultural operations to produce an agricultural product up to the time of harvest or
- 383 placing the agricultural product into a storage facility, including:
- 384 (i) commercial greenhouses;
- 385 (ii) irrigation pumps;
- 386 (iii) farm machinery;
- 387 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not registered
- 388 under Title 41, Chapter 1a, Part 2, Registration; and
- 389 (v) other farming activities;
- 390 (c) in manufacturing tangible personal property at an establishment described in SIC Codes
- 391 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office

392 of the President, Office of Management and Budget;

393 (d) by a scrap recycler if:

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

396 (A) iron;

397 (B) steel;

398 (C) nonferrous metal;

399 (D) paper;

400 (E) glass;

401 (F) plastic;

402 (G) textile; or

403 (H) rubber; and

404 (ii) the new products under Subsection [~~38~~] (39)(d)(i) would otherwise be made with
405 nonrecycled materials; or

406 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
407 cogeneration facility as defined in Section 54-2-1.

408 [~~39~~] (40) (a) Except as provided in Subsection [~~39~~] (40)(b), "installation charge" means a
409 charge for installing tangible personal property.

410 (b) Notwithstanding Subsection [~~39~~] (40)(a), "installation charge" does not include a
411 charge for repairs or renovations of tangible personal property.

412 [~~40~~] (41) (a) "Lease" or "rental" means a transfer of possession or control of tangible
413 personal property for:

414 (i) (A) a fixed term; or

415 (B) an indeterminate term; and

416 (ii) consideration.

417 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the

418 amount of consideration may be increased or decreased by reference to the amount realized upon
419 sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue Code.

420 (c) "Lease" or "rental" does not include:

421 (i) a transfer of possession or control of property under a security agreement or deferred
422 payment plan that requires the transfer of title upon completion of the required payments;

423 (ii) a transfer of possession or control of property under an agreement that requires the
424 transfer of title:

425 (A) upon completion of required payments; and

426 (B) if the payment of an option price does not exceed the greater of:

427 (I) \$100; or

428 (II) 1% of the total required payments; or

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

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

433 (i) set-up of tangible personal property;

434 (ii) maintenance of tangible personal property; or

435 (iii) inspection of tangible personal property.

436 [~~(41)~~] (42) "Load and leave" means delivery to a purchaser by use of a tangible storage
437 media if the tangible storage media is not physically transferred to the purchaser.

438 [~~(42)~~] (43) "Local taxing jurisdiction" means a:

439 (a) county that is authorized to impose an agreement sales and use tax;

440 (b) city that is authorized to impose an agreement sales and use tax; or

441 (c) town that is authorized to impose an agreement sales and use tax.

442 [~~(43)~~] (44) "Manufactured home" is as defined in Section 58-56-3.

443 [~~(44)~~] (45) For purposes of Section 59-12-104, "manufacturing facility" means:

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

447 (b) a scrap recycler if:

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

450 (A) iron;

451 (B) steel;

452 (C) nonferrous metal;

453 (D) paper;

454 (E) glass;

455 (F) plastic;

456 (G) textile; or

457 (H) rubber; and

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

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

461 [~~45~~] 46 "Member of the immediate family of the producer" means a person who is related
462 to a producer described in Subsection 59-12-104(20)(a) as a:

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

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

465 (ii) a foster child or foster stepchild;

466 (b) grandchild or stepgrandchild;

467 (c) grandparent or stepgrandparent;

468 (d) nephew or stepnephew;

469 (e) niece or stepniece;

- 470 (f) parent or stepparent;
- 471 (g) sibling or stepsibling;
- 472 (h) spouse;
- 473 (i) person who is the spouse of a person described in Subsections [~~(45)~~] (46)(a) through (g);
- 474 or
- 475 (j) person similar to a person described in Subsections [~~(45)~~] (46)(a) through (i) as
- 476 determined by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
- 477 Administrative Rulemaking Act.
- 478 [~~(46)~~] (47) "Mobile home" is as defined in Section 58-56-3.
- 479 [~~(47)~~] (48) "Mobile telecommunications service" is as defined in the Mobile
- 480 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 481 [~~(48)~~] (49) (a) Except as provided in Subsection [~~(48)~~] (49)(c), "mobility enhancing
- 482 equipment" means equipment that is:
- 483 (i) primarily and customarily used to provide or increase the ability to move from one place
- 484 to another;
- 485 (ii) appropriate for use in a:
- 486 (A) home; or
- 487 (B) motor vehicle; and
- 488 (iii) not generally used by persons with normal mobility.
- 489 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of the
- 490 equipment described in Subsection [~~(48)~~] (49)(a).
- 491 (c) Notwithstanding Subsection [~~(48)~~] (49)(a), "mobility enhancing equipment" does not
- 492 include:
- 493 (i) a motor vehicle;
- 494 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor vehicle
- 495 manufacturer;

496 (iii) durable medical equipment; or

497 (iv) a prosthetic device.

498 [~~(49)~~] (50) "Model 1 seller" means a seller that has selected a certified service provider as
499 the seller's agent to perform all of the seller's sales and use tax functions for agreement sales and use
500 taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the seller's own
501 purchases.

502 [~~(50)~~] (51) "Model 2 seller" means a seller that:

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

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

507 (i) collected by the seller; and

508 (ii) to the appropriate local taxing jurisdiction.

509 [~~(51)~~] (52) (a) Subject to Subsection [~~(51)~~] (52)(b), "model 3 seller" means a seller that has:

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

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

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

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

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

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

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

518 [~~(52)~~] (53) "Modular home" means a modular unit as defined in Section 58-56-3.

519 [~~(53)~~] (54) "Motor vehicle" is as defined in Section 41-1a-102.

520 [~~(54)~~] (55) "Oil shale" means a group of fine black to dark brown shales containing
521 bituminous material that yields petroleum upon distillation.

522 [~~55~~] (56) (a) "Other fuels" means products that burn independently to produce heat or
523 energy.

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

526 [~~56~~] (57) "Pawnbroker" is as defined in Section 13-32a-102.

527 [~~57~~] (58) "Pawn transaction" is as defined in Section 13-32a-102.

528 [~~58~~] (59) (a) "Permanently attached to real property" means that for tangible personal
529 property attached to real property:

530 (i) the attachment of the tangible personal property to the real property:

531 (A) is essential to the use of the tangible personal property; and

532 (B) suggests that the tangible personal property will remain attached to the real property in
533 the same place over the useful life of the tangible personal property; or

534 (ii) if the tangible personal property is detached from the real property, the detachment
535 would:

536 (A) cause substantial damage to the tangible personal property; or

537 (B) require substantial alteration or repair of the real property to which the tangible personal
538 property is attached.

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

540 (i) the attachment of an accessory to the tangible personal property if the accessory is:

541 (A) essential to the operation of the tangible personal property; and

542 (B) attached only to facilitate the operation of the tangible personal property;

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

546 (iii) an attachment of the following tangible personal property to real property, regardless of
547 whether the attachment to real property is only through a line that supplies water, electricity, gas,

548 telephone, cable, or supplies a similar item as determined by the commission by rule made in
549 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

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

552 (B) a hot water heater;

553 (C) a water softener system; or

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

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

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

559 (A) convenience;

560 (B) stability; or

561 (C) for an obvious temporary purpose;

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

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

568 (A) a refrigerator;

569 (B) a washer;

570 (C) a dryer;

571 (D) a stove;

572 (E) a television;

573 (F) a computer;

574 (G) a telephone; or

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

578 [~~59~~] 60 "Person" includes any individual, firm, partnership, joint venture, association,
579 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality,
580 district, or other local governmental entity of the state, or any group or combination acting as a unit.

581 [~~60~~] 61 "Place of primary use":

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

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

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

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

589 [~~61~~] 62 "Postproduction" means an activity related to the finishing or duplication of a
590 medium described in Subsection 59-12-104(56)(a).

591 [~~62~~] 63 (a) "Prepared food" means:

592 (i) food:

593 (A) sold in a heated state; or

594 (B) heated by a seller;

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

596 (iii) except as provided in Subsection [~~62~~] 63(c), food sold with an eating utensil

597 provided by the seller, including a:

598 (A) plate;

599 (B) knife;

- 600 (C) fork;
- 601 (D) spoon;
- 602 (E) glass;
- 603 (F) cup;
- 604 (G) napkin; or
- 605 (H) straw.
- 606 (b) "Prepared food" does not include:
- 607 (i) food that a seller only:
- 608 (A) cuts;
- 609 (B) repackages; or
- 610 (C) pasteurizes; or
- 611 (ii) (A) the following:
- 612 (I) raw egg;
- 613 (II) raw fish;
- 614 (III) raw meat;
- 615 (IV) raw poultry; or
- 616 (V) a food containing an item described in Subsections [~~(62)~~] (63)(b)(ii)(A)(I) through (IV);
- 617 and
- 618 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the Food
- 619 and Drug Administration's Food Code that a consumer cook the items described in Subsection [~~(62)~~]
- 620 (63)(b)(ii)(A) to prevent food borne illness; or
- 621 (iii) the following if sold without eating utensils provided by the seller:
- 622 (A) food and food ingredients sold by a seller if the seller's proper primary classification
- 623 under the 2002 North American Industry Classification System of the federal Executive Office of the
- 624 President, Office of Management and Budget, is manufacturing in Sector 311, Food Manufacturing,
- 625 except for Subsector 3118, Bakeries and Tortilla Manufacturing;

- 626 (B) food and food ingredients sold in an unheated state:
- 627 (I) by weight or volume; and
- 628 (II) as a single item; or
- 629 (C) a bakery item, including:
- 630 (I) a bagel;
- 631 (II) a bar;
- 632 (III) a biscuit;
- 633 (IV) bread;
- 634 (V) a bun;
- 635 (VI) a cake;
- 636 (VII) a cookie;
- 637 (VIII) a croissant;
- 638 (IX) a danish;
- 639 (X) a donut;
- 640 (XI) a muffin;
- 641 (XII) a pastry;
- 642 (XIII) a pie;
- 643 (XIV) a roll;
- 644 (XV) a tart;
- 645 (XVI) a torte; or
- 646 (XVII) a tortilla.
- 647 (c) Notwithstanding Subsection [~~(62)~~] (63)(a)(iii), an eating utensil provided by the seller
- 648 does not include the following used to transport the food:
- 649 (i) a container; or
- 650 (ii) packaging.
- 651 [~~(63)~~] (64) "Prescription" means an order, formula, or recipe that is issued:

652 (a) (i) orally;

653 (ii) in writing;

654 (iii) electronically; or

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

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

657 ~~[(64)]~~ (65) (a) Except as provided in Subsection ~~[(64)]~~ (65)(b)(ii) or (iii), "prewritten

658 computer software" means computer software that is not designed and developed:

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

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

661 (b) "Prewritten computer software" includes:

662 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer

663 software is not designed and developed:

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

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

666 (ii) notwithstanding Subsection ~~[(64)]~~ (65)(a), computer software designed and developed

667 by the author or other creator of the computer software to the specifications of a specific purchaser if

668 the computer software is sold to a person other than the purchaser; or

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

670 (65)(c), prewritten computer software or a prewritten portion of prewritten computer software:

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

672 (B) if the modification or enhancement described in Subsection ~~[(64)]~~ (65)(b)(iii)(A) is

673 designed and developed to the specifications of a specific purchaser.

674 (c) Notwithstanding Subsection ~~[(64)]~~ (65)(b)(iii), "prewritten computer software" does not

675 include a modification or enhancement described in Subsection ~~[(64)]~~ (65)(b)(iii) if the charges for the

676 modification or enhancement are:

677 (i) reasonable; and

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

679 [~~65~~] 66 (a) "Prosthetic device" means a device that is worn on or in the body to:

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

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

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

683 (b) "Prosthetic device" includes:

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

685 (ii) replacement parts for a prosthetic device.

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

687 (i) corrective eyeglasses;

688 (ii) contact lenses;

689 (iii) hearing aids; or

690 (iv) dental prostheses.

691 [~~66~~] 67 (a) "Protective equipment" means an item:

692 (i) for human wear; and

693 (ii) that is:

694 (A) designed as protection:

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

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

697 (B) not suitable for general use.

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

699 commission shall make rules:

700 (i) listing the items that constitute "protective equipment"; and

701 (ii) that are consistent with the list of items that constitute "protective equipment" under the

702 agreement.

703 [~~67~~] 68 (a) "Purchase price" and "sales price" mean the total amount of consideration:

- 704 (i) valued in money; and
705 (ii) for which tangible personal property or services are:
706 (A) sold;
707 (B) leased; or
708 (C) rented.
- 709 (b) "Purchase price" and "sales price" include:
710 (i) the seller's cost of the tangible personal property or services sold;
711 (ii) expenses of the seller, including:
712 (A) the cost of materials used;
713 (B) a labor cost;
714 (C) a service cost;
715 (D) interest;
716 (E) a loss;
717 (F) the cost of transportation to the seller; or
718 (G) a tax imposed on the seller; or
719 (iii) a charge by the seller for any service necessary to complete the sale.
- 720 (c) "Purchase price" and "sales price" do not include:
721 (i) a discount:
722 (A) in a form including:
723 (I) cash;
724 (II) term; or
725 (III) coupon;
726 (B) that is allowed by a seller;
727 (C) taken by a purchaser on a sale; and
728 (D) that is not reimbursed by a third party; or
729 (ii) the following if separately stated on an invoice, bill of sale, or similar document provided

730 to the purchaser:

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

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

733 (I) interest charges;

734 (II) financing charges; or

735 (III) carrying charges;

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

737 (D) a delivery charge; or

738 (E) an installation charge.

739 [~~(68)~~] (69) "Purchaser" means a person to whom:

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

741 (b) a service is furnished.

742 [~~(69)~~] (70) "Regularly rented" means:

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

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

745 [~~(70)~~] (71) "Renewable energy" means:

746 (a) biomass energy;

747 (b) hydroelectric energy;

748 (c) geothermal energy;

749 (d) solar energy; or

750 (e) wind energy.

751 [~~(71)~~] (72) (a) "Renewable energy production facility" means a facility that:

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

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

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

755 (i) connected to an electric grid; or

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

757 [~~(72)~~] (73) "Rental" is as defined in Subsection [~~(40)~~] (41).

758 [~~(73)~~] (74) "Repairs or renovations of tangible personal property" means:

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

761 (b) attaching tangible personal property to other tangible personal property if the other
762 tangible personal property to which the tangible personal property is attached is not permanently
763 attached to real property.

764 [~~(74)~~] (75) "Research and development" means the process of inquiry or experimentation
765 aimed at the discovery of facts, devices, technologies, or applications and the process of preparing
766 those devices, technologies, or applications for marketing.

767 [~~(75)~~] (76) "Residential use" means the use in or around a home, apartment building, sleeping
768 quarters, and similar facilities or accommodations.

769 [~~(76)~~] (77) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
770 than:

771 (a) resale;

772 (b) sublease; or

773 (c) subrent.

774 [~~(77)~~] (78) (a) "Retailer" means any person engaged in a regularly organized business in
775 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who
776 is selling to the user or consumer and not for resale.

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

779 [~~(78)~~] (79) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
780 otherwise, in any manner, of tangible personal property or any other taxable transaction under
781 Subsection 59-12-103(1), for consideration.

- 782 (b) "Sale" includes:
- 783 (i) installment and credit sales;
- 784 (ii) any closed transaction constituting a sale;
- 785 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;
- 786 (iv) any transaction if the possession of property is transferred but the seller retains the title as
- 787 security for the payment of the price; and
- 788 (v) any transaction under which right to possession, operation, or use of any article of
- 789 tangible personal property is granted under a lease or contract and the transfer of possession would
- 790 be taxable if an outright sale were made.
- 791 [~~(79)~~] (80) "Sale at retail" is as defined in Subsection [~~(76)~~] (77).
- 792 [~~(80)~~] (81) "Sale-leaseback transaction" means a transaction by which title to tangible
- 793 personal property that is subject to a tax under this chapter is transferred:
- 794 (a) by a purchaser-lessee;
- 795 (b) to a lessor;
- 796 (c) for consideration; and
- 797 (d) if:
- 798 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase of
- 799 the tangible personal property;
- 800 (ii) the sale of the tangible personal property to the lessor is intended as a form of financing:
- 801 (A) for the property; and
- 802 (B) to the purchaser-lessee; and
- 803 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee is
- 804 required to:
- 805 (A) capitalize the property for financial reporting purposes; and
- 806 (B) account for the lease payments as payments made under a financing arrangement.
- 807 [~~(81)~~] (82) "Sales price" is as defined in Subsection [~~(67)~~] (68).

808 [~~(82)~~] (83) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
809 amounts charged by a school:

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

811 (A) the sale of:

812 (I) textbooks;

813 (II) textbook fees;

814 (III) laboratory fees;

815 (IV) laboratory supplies; or

816 (V) safety equipment;

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

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

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

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

824 (I) food and food ingredients; or

825 (II) prepared food; or

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

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

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

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

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

832 (A) clothing;

833 (B) clothing accessories or equipment;

- 834 (C) protective equipment; or
- 835 (D) sports or recreational equipment; or
- 836 (iii) amounts paid to or amounts charged by a school for admission to a school-related event
- 837 or school-related activity if the amounts paid or charged are passed through to a person:
- 838 (A) other than a:
 - 839 (I) school;
 - 840 (II) nonprofit organization authorized by a school board or a governing body of a private
 - 841 school to organize and direct a competitive secondary school activity; or
 - 842 (III) nonprofit association authorized by a school board or a governing body of a private
 - 843 school to organize and direct a competitive secondary school activity; and
 - 844 (B) that is required to collect sales and use taxes under this chapter.
- 845 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 846 commission may make rules defining the term "passed through."
- 847 [~~83~~] (84) For purposes of this section and Section 59-12-104, "school" means:
- 848 (a) an elementary school or a secondary school that:
 - 849 (i) is a:
 - 850 (A) public school; or
 - 851 (B) private school; and
 - 852 (ii) provides instruction for one or more grades kindergarten through 12; or
 - 853 (b) a public school district.
- 854 [~~84~~] (85) "Seller" means a person that makes a sale, lease, or rental of:
 - 855 (a) tangible personal property; or
 - 856 (b) a service.
- 857 [~~85~~] (86) (a) "Semiconductor fabricating, processing, research, or development materials"
- 858 means tangible personal property:
 - 859 (i) used primarily in the process of:

- 860 (A) (I) manufacturing a semiconductor;
- 861 (II) fabricating a semiconductor; or
- 862 (III) research or development of a:
- 863 (Aa) semiconductor; or
- 864 (Bb) semiconductor manufacturing process; or
- 865 (B) maintaining an environment suitable for a semiconductor; or
- 866 (ii) consumed primarily in the process of:
- 867 (A) (I) manufacturing a semiconductor;
- 868 (II) fabricating a semiconductor; or
- 869 (III) research or development of a:
- 870 (Aa) semiconductor; or
- 871 (Bb) semiconductor manufacturing process; or
- 872 (B) maintaining an environment suitable for a semiconductor.
- 873 (b) "Semiconductor fabricating, processing, research, or development materials" includes:
- 874 (i) parts used in the repairs or renovations of tangible personal property described in
- 875 Subsection ~~[(85)]~~ (86)(a); or
- 876 (ii) a chemical, catalyst, or other material used to:
- 877 (A) produce or induce in a semiconductor a:
- 878 (I) chemical change; or
- 879 (II) physical change;
- 880 (B) remove impurities from a semiconductor; or
- 881 (C) improve the marketable condition of a semiconductor.
- 882 ~~[(86)]~~ (87) "Senior citizen center" means a facility having the primary purpose of providing
- 883 services to the aged as defined in Section 62A-3-101.
- 884 ~~[(87)]~~ (88) "Simplified electronic return" means the electronic return:
- 885 (a) described in Section 318(C) of the agreement; and

886 (b) approved by the governing board of the agreement.

887 [~~88~~] (89) "Solar energy" means the sun used as the sole source of energy for producing
888 electricity.

889 [~~89~~] (90) (a) "Sports or recreational equipment" means an item:

890 (i) designed for human use; and

891 (ii) that is:

892 (A) worn in conjunction with:

893 (I) an athletic activity; or

894 (II) a recreational activity; and

895 (B) not suitable for general use.

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

898 (i) listing the items that constitute "sports or recreational equipment"; and

899 (ii) that are consistent with the list of items that constitute "sports or recreational equipment"
900 under the agreement.

901 [~~90~~] (91) "State" means the state of Utah, its departments, and agencies.

902 [~~91~~] (92) "Storage" means any keeping or retention of tangible personal property or any
903 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in
904 the regular course of business.

905 [~~92~~] (93) (a) "Tangible personal property" means personal property that:

906 (i) may be:

907 (A) seen;

908 (B) weighed;

909 (C) measured;

910 (D) felt; or

911 (E) touched; or

912 (ii) is in any manner perceptible to the senses.

913 (b) "Tangible personal property" includes:

914 (i) electricity;

915 (ii) water;

916 (iii) gas;

917 (iv) steam; or

918 (v) prewritten computer software.

919 [~~93~~] (94) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
920 and require further processing other than mechanical blending before becoming finished petroleum
921 products.

922 [~~94~~] (95) (a) "Telecommunications enabling or facilitating equipment, machinery, or
923 software" means an item listed in Subsection [~~94~~] (95)(b) if that item is purchased or leased
924 primarily to enable or facilitate one or more of the following to function:

925 (i) telecommunications switching or routing equipment, machinery, or software; or

926 (ii) telecommunications transmission equipment, machinery, or software.

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

928 (i) a pole;

929 (ii) software;

930 (iii) a supplementary power supply;

931 (iv) temperature or environmental equipment or machinery;

932 (v) test equipment;

933 (vi) a tower; or

934 (vii) equipment, machinery, or software that functions similarly to an item listed in
935 Subsections [~~94~~] (95)(b)(i) through (vi) as determined by the commission by rule made in
936 accordance with Subsection [~~94~~] (95)(c).

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

938 commission may by rule define what constitutes equipment, machinery, or software that functions
939 similarly to an item listed in Subsections [~~(94)~~] (95)(b)(i) through (vi).

940 [~~(95)~~] (96) "Telecommunications equipment, machinery, or software required for 911
941 service" means equipment, machinery, or software that is required to comply with 47 C.F.R. Sec.
942 20.18.

943 [~~(96)~~] (97) "Telecommunications maintenance or repair equipment, machinery, or software"
944 means equipment, machinery, or software purchased or leased primarily to maintain or repair one or
945 more of the following, regardless of whether the equipment, machinery, or software is purchased or
946 leased as a spare part or as an upgrade or modification to one or more of the following:

- 947 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 948 (b) telecommunications switching or routing equipment, machinery, or software; or
- 949 (c) telecommunications transmission equipment, machinery, or software.

950 [~~(97)~~] (98) (a) "Telecommunications switching or routing equipment, machinery, or software"
951 means an item listed in Subsection [~~(97)~~] (98)(b) if that item is purchased or leased primarily for
952 switching or routing:

- 953 (i) voice communications;
 - 954 (ii) data communications; or
 - 955 (iii) telephone service.
- 956 (b) The following apply to Subsection [~~(97)~~] (98)(a):
- 957 (i) a bridge;
 - 958 (ii) a computer;
 - 959 (iii) a cross connect;
 - 960 (iv) a modem;
 - 961 (v) a multiplexer;
 - 962 (vi) plug in circuitry;
 - 963 (vii) a router;

964 (viii) software;
965 (ix) a switch; or
966 (x) equipment, machinery, or software that functions similarly to an item listed in Subsections
967 [~~97~~] (98)(b)(i) through (ix) as determined by the commission by rule made in accordance with
968 Subsection [~~97~~] (98)(c).

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

972 [~~98~~] (99) (a) "Telecommunications transmission equipment, machinery, or software" means
973 an item listed in Subsection [~~98~~] (99)(b) if that item is purchased or leased primarily for sending,
974 receiving, or transporting:

- 975 (i) voice communications;
- 976 (ii) data communications; or
- 977 (iii) telephone service.

978 (b) The following apply to Subsection [~~98~~] (99)(a):

- 979 (i) an amplifier;
- 980 (ii) a cable;
- 981 (iii) a closure;
- 982 (iv) a conduit;
- 983 (v) a controller;
- 984 (vi) a duplexer;
- 985 (vii) a filter;
- 986 (viii) an input device;
- 987 (ix) an input/output device;
- 988 (x) an insulator;
- 989 (xi) microwave machinery or equipment;

- 990 (xii) an oscillator;
- 991 (xiii) an output device;
- 992 (xiv) a pedestal;
- 993 (xv) a power converter;
- 994 (xvi) a power supply;
- 995 (xvii) a radio channel;
- 996 (xviii) a radio receiver;
- 997 (xix) a radio transmitter;
- 998 (xx) a repeater;
- 999 (xxi) software;
- 1000 (xxii) a terminal;
- 1001 (xxiii) a timing unit;
- 1002 (xxiv) a transformer;
- 1003 (xxv) a wire; or
- 1004 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1005 Subsections [~~98~~] (99)(b)(i) through (xxv) as determined by the commission by rule made in
- 1006 accordance with Subsection [~~98~~] (99)(c).

1007 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1008 commission may by rule define what constitutes equipment, machinery, or software that functions

1009 similarly to an item listed in Subsections [~~98~~] (99)(b)(i) through (xxv).

1010 [~~99~~] (100) (a) "Telephone service" means a two-way transmission:

- 1011 (i) by:
 - 1012 (A) wire;
 - 1013 (B) radio;
 - 1014 (C) lightwave; or
 - 1015 (D) other electromagnetic means; and

1016 (ii) of one or more of the following:

1017 (A) a sign;

1018 (B) a signal;

1019 (C) writing;

1020 (D) an image;

1021 (E) sound;

1022 (F) a message;

1023 (G) data; or

1024 (H) other information of any nature.

1025 (b) "Telephone service" includes:

1026 (i) mobile telecommunications service;

1027 (ii) private communications service; or

1028 (iii) automated digital telephone answering service.

1029 (c) "Telephone service" does not include a service or a transaction that a state or a political

1030 subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet Tax Freedom

1031 Act, Pub. L. No. 105-277.

1032 [~~(100)~~] (101) Notwithstanding where a call is billed or paid, "telephone service address"

1033 means:

1034 (a) if the location described in this Subsection [~~(100)~~] (101)(a) is known, the location of the

1035 telephone service equipment:

1036 (i) to which a call is charged; and

1037 (ii) from which the call originates or terminates;

1038 (b) if the location described in Subsection [~~(100)~~] (101)(a) is not known but the location

1039 described in this Subsection [~~(100)~~] (101)(b) is known, the location of the origination point of the

1040 signal of the telephone service first identified by:

1041 (i) the telecommunications system of the seller; or

1042 (ii) if the system used to transport the signal is not that of the seller, information received by
1043 the seller from its service provider; or

1044 (c) if the locations described in Subsection [~~(100)~~] (101)(a) or (b) are not known, the
1045 location of a purchaser's primary place of use.

1046 [~~(101)~~] (102) (a) "Telephone service provider" means a person that:

1047 (i) owns, controls, operates, or manages a telephone service; and

1048 (ii) engages in an activity described in Subsection [~~(101)~~] (102)(a)(i) for the shared use with
1049 or resale to any person of the telephone service.

1050 (b) A person described in Subsection [~~(101)~~] (102)(a) is a telephone service provider
1051 whether or not the Public Service Commission of Utah regulates:

1052 (i) that person; or

1053 (ii) the telephone service that the person owns, controls, operates, or manages.

1054 [~~(102)~~] (103) "Tobacco" means:

1055 (a) a cigarette;

1056 (b) a cigar;

1057 (c) chewing tobacco;

1058 (d) pipe tobacco; or

1059 (e) any other item that contains tobacco.

1060 [~~(103)~~] (104) "Unassisted amusement device" means an amusement device, skill device, or
1061 ride device that is started and stopped by the purchaser or renter of the right to use or operate the
1062 amusement device, skill device, or ride device.

1063 [~~(104)~~] (105) (a) "Use" means the exercise of any right or power over tangible personal
1064 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property,
1065 item, or service.

1066 (b) "Use" does not include the sale, display, demonstration, or trial of that property in the
1067 regular course of business and held for resale.

1068 [~~(105)~~] (106) (a) Subject to Subsection [~~(105)~~] (106)(b), "vehicle" means the following that
1069 are required to be titled, registered, or titled and registered:

- 1070 (i) an aircraft as defined in Section 72-10-102;
- 1071 (ii) a vehicle as defined in Section 41-1a-102;
- 1072 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1073 (iv) a vessel as defined in Section 41-1a-102.

1074 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1075 (i) a vehicle described in Subsection [~~(105)~~] (106)(a); or
- 1076 (ii) (A) a locomotive;
- 1077 (B) a freight car;
- 1078 (C) railroad work equipment; or
- 1079 (D) other railroad rolling stock.

1080 [~~(106)~~] (107) "Vehicle dealer" means a person engaged in the business of buying, selling, or
1081 exchanging a vehicle as defined in Subsection [~~(105)~~] (106).

1082 [~~(107)~~] (108) (a) Except as provided in Subsection [~~(107)~~] (108)(b), "waste energy facility"
1083 means a facility that generates electricity:

1084 (i) using as the primary source of energy waste materials that would be placed in a landfill or
1085 refuse pit if it were not used to generate electricity, including:

- 1086 (A) tires;
- 1087 (B) waste coal; or
- 1088 (C) oil shale; and
- 1089 (ii) in amounts greater than actually required for the operation of the facility.

1090 (b) "Waste energy facility" does not include a facility that incinerates:

- 1091 (i) municipal solid waste;
- 1092 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
- 1093 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1094 [~~(108)~~] (109) "Watercraft" means a vessel as defined in Section 73-18-2.

1095 [~~(109)~~] (110) "Wind energy" means wind used as the sole source of energy to produce
1096 electricity.

1097 [~~(110)~~] (111) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
1098 geographic location by the United States Postal Service.

1099 Section 3. Section **59-12-1701** is enacted to read:

1100 **Part 17. County Option Sales and Use Tax for Transportation Act**

1101 **59-12-1701. Title.**

1102 This part is known as the "County Option Sales and Use Tax for Transportation Act."

1103 Section 4. Section **59-12-1702** is enacted to read:

1104 **59-12-1702. Definitions.**

1105 As used in this part:

1106 (1) "Annexation" means an annexation to a county under Title 17, Chapter 2, Annexation to
1107 County.

1108 (2) "Annexing area" means an area that is annexed into a county.

1109 (3) "Council of governments" is as defined in Subsection 72-2-117.5(1)(a).

1110 (4) "Fixed guideway" means a public transit facility that uses and occupies:

1111 (a) rail for the use of public transit; or

1112 (b) a separate right-of-way for the use of public transit.

1113 (5) "Metropolitan planning organization" is as defined in Section 72-1-208.5.

1114 (6) "Regionally significant transportation facility" means:

1115 (a) in a county of the first or second class:

1116 (i) a principal arterial highway as defined in Subsection 72-4-102.5(1)(g);

1117 (ii) a minor arterial highway as defined in Subsection 72-4-102.5(1)(f);

1118 (iii) a fixed guideway that:

1119 (A) extends across two or more cities or unincorporated areas; or

- 1120 (B) is an extension to an existing fixed guideway; or
- 1121 (iv) an airport of regional significance, as defined by the Transportation Commission; or
- 1122 (b) in a county of the third, fourth, fifth, or sixth class:
- 1123 (i) a principal arterial highway as defined in Section 72-4-102.5;
- 1124 (ii) a minor arterial highway as defined in Section 72-4-102.5;
- 1125 (iii) a major collector highway as defined in Section 72-4-102.5;
- 1126 (iv) a minor collector road as defined in Section 72-4-102.5; or
- 1127 (v) an airport of regional significance, as defined by the Transportation Commission.

1128 Section 5. Section **59-12-1703** is enacted to read:

1129 **59-12-1703. Opinion question election -- Base -- Rate -- Imposition of tax -- Use of**
1130 **tax revenues -- Administration, collection, and enforcement of tax by commission --**
1131 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

1132 (1) (a) Beginning on or after April 1, 2007, and subject to the other provisions of this part, a
1133 county legislative body may impose a sales and use tax of up to .25%:

1134 (i) on the transactions:

1135 (A) described in Subsection 59-12-103(1); and

1136 (B) within the county, including the cities and towns within the county;

1137 (ii) for the purposes described in Subsection (4); and

1138 (iii) in addition to any other sales and use tax authorized under this chapter.

1139 (b) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a tax
1140 under this section on:

1141 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are
1142 exempt from taxation under Section 59-12-104; or

1143 (ii) any amounts paid or charged by a seller that collects a tax under Subsection
1144 59-12-107(1)(b).

1145 (c) For purposes of this Subsection (1), the location of a transaction shall be determined in

1146 accordance with Section 59-12-207.

1147 (2) (a) Except as provided in Subsection (2)(d), before imposing a tax under this part, a
1148 county legislative body shall:

1149 (i) obtain approval from a majority of the members of the county legislative body to impose
1150 the tax; and

1151 (ii) submit an opinion question to the county's registered voters voting on the imposition of
1152 the tax so that each registered voter has the opportunity to express the registered voter's opinion on
1153 whether a tax should be imposed under this part.

1154 (b) (i) In a county of the first or second class, the opinion question required by Subsection
1155 (2)(a)(ii) shall state the following:

1156 "Shall (insert the name of the county), Utah, be authorized to impose a (insert the amount of
1157 the sales and use tax up to .25%) sales and use tax for corridor preservation, congestion mitigation,
1158 or to expand capacity for regionally significant transportation facilities?"

1159 (ii) In a county of the third, fourth, fifth, or sixth class, the opinion question required by
1160 Subsection (2)(a)(ii) shall state the following:

1161 "Shall (insert the name of the county), Utah, be authorized to impose a (insert the amount of
1162 the sales and use tax up to .25%) sales and use tax for transportation projects, corridor preservation,
1163 congestion mitigation, or to expand capacity for regionally significant transportation facilities?"

1164 (c) Except as provided in Subsection (2)(d), the election required by this Subsection (2) shall
1165 be held:

1166 (i) at a regular general election conducted in accordance with the procedures and
1167 requirements of Title 20A, Election Code, governing regular elections; or

1168 (ii) at a special election called by the county legislative body that is:

1169 (A) held only on the date of a municipal general election as provided in Subsection
1170 20A-1-202(1); and

1171 (B) authorized in accordance with the procedures and requirements of Section 20A-1-203.

1172 (d) Notwithstanding Subsection (2)(a) or (c), if a county seeks to impose a tax under this
1173 part on or after April 1, 2007, but on or before December 31, 2007, the county legislative body shall:
1174 (i) obtain the approval required by Subsection (2)(a)(i) within five calendar days of the
1175 effective date of this bill;
1176 (ii) direct the county clerk to submit the opinion question required by Subsection (2)(a)(ii)
1177 during the November 7, 2006 general election; and
1178 (iii) hold the election required by this section on November 7, 2006.
1179 (3) If a county legislative body determines that a majority of the county's registered voters
1180 voting on the imposition of the tax have voted in favor of the imposition of the tax in accordance with
1181 Subsection (2), the county legislative body shall impose the tax in accordance with this section.
1182 (4) (a) Subject to Subsections (5) and (6), the revenues generated by a tax under this part
1183 may only be expended for:
1184 (i) a project or service:
1185 (A) relating to a regionally significant transportation facility;
1186 (B) for the portion of the project or service that is performed within the county;
1187 (C) for new capacity or congestion mitigation if the project or service is performed within a
1188 county:
1189 (I) of the first class;
1190 (II) of the second class; or
1191 (III) that is part of an area metropolitan planning organization;
1192 (D) (I) if the project or service is a principal arterial highway or a minor arterial highway in a
1193 county of the first or second class, that is part of the county and municipal master plan and part of:
1194 (Aa) the statewide long-range plan; or
1195 (Bb) the regional transportation plan of the area metropolitan planning organization if a
1196 metropolitan planning organization exists for the area; or
1197 (II) if the project or service is for a fixed guideway or an airport, that is part of the regional

1198 transportation plan of the area metropolitan planning organization if a metropolitan planning
1199 organization exists for the area; and

1200 (E) that is on a priority list:

1201 (I) created by the county's council of governments in accordance with Subsection (5); and

1202 (II) approved by the county legislative body in accordance with Subsection (6);

1203 (ii) corridor preservation for a project described in Subsection (4)(a)(i) as provided in

1204 Subsection (7)(b); or

1205 (iii) any debt service and bond issuance costs related to a project described in Subsection

1206 (4)(a)(i) or (ii).

1207 (b) In a county of the first or second class, a regionally significant transportation facility

1208 project or service described in Subsection (4)(a)(i)(A) must have a funded year priority designation

1209 on a Statewide Transportation Improvement Program and Transportation Improvement Program if

1210 the project or service described in Subsection (4)(a)(i) is:

1211 (i) a principal arterial highway as defined in Section 72-4-102.5;

1212 (ii) a minor arterial highway as defined in Section 72-4-102.5; or

1213 (iii) a major collector highway:

1214 (A) as defined in Section 72-4-102.5; and

1215 (B) in a rural area.

1216 (c) Notwithstanding the designated use of revenues in Subsection (4)(a), of the revenues

1217 generated by the tax imposed under this section by any county of the first or second class, 25% or

1218 more shall be expended for the purpose described in Subsection (4)(a)(ii).

1219 (d) For purposes of this Subsection (4), the revenues a county will receive from a tax under

1220 this part do not include amounts retained by the commission in accordance with Subsection (8).

1221 (5) (a) The county's council of governments shall create a priority list of regionally significant

1222 transportation facility projects described in Subsection (4)(a) using the process described in

1223 Subsection (5)(b) and present the priority list to the county's legislative body for approval as

1224 described in Subsection (6).

1225 (b) Subject to Sections 59-12-1704 and 59-12-1705, a council of governments shall
1226 establish a council of governments' endorsement process which includes prioritization and application
1227 procedures for use of the revenues a county will receive from a tax under this part.

1228 (6) (a) The council of governments shall submit the priority list described in Subsection (5) to
1229 the county's legislative body and obtain approval of the list from a majority of the members of the
1230 county legislative body.

1231 (b) A county's council of governments may only submit one priority list per calendar year.

1232 (c) A county legislative body may only consider and approve one priority list per calendar
1233 year.

1234 (7) (a) (i) Except as provided in Subsections (7)(a)(ii) and (7)(b), revenues described in
1235 Subsection (4) shall be transmitted:

1236 (A) by the commission;

1237 (B) to the county;

1238 (C) monthly; and

1239 (D) by electronic funds transfer.

1240 (ii) A county may request that the commission transfer a portion of the revenues described in
1241 Subsection (4):

1242 (A) directly to a public transit district:

1243 (I) organized under Title 17A, Chapter 2, Part 10, Utah Public Transit District Act; and

1244 (II) designated by the county; and

1245 (B) by providing written notice to the commission:

1246 (I) requesting the revenues to be transferred directly to a public transit district as provided in
1247 Subsection (7)(a)(ii)(A); and

1248 (II) designating the public transit district to which the revenues are requested to be
1249 transferred.

1250 (b) (i) Except as provided in Subsection (7)(b)(ii), revenues generated by a tax under this
1251 part that are allocated for a purpose described in Subsection (4)(a)(ii) shall be:
1252 (A) deposited in or transferred to the Local Transportation Corridor Preservation Fund
1253 created by Section 72-2-117.5; and
1254 (B) expended as provided in Section 72-2-117.5.
1255 (ii) In a county of the first class, revenues generated by a tax under this part that are allocated
1256 for a purpose described in Subsection (4)(a)(ii) shall be:
1257 (A) deposited in or transferred to the Public Transportation System Tax Highway Fund
1258 created by Section 72-2-121; and
1259 (B) expended as provided in Section 72-2-121.
1260 (8) (a) (i) Except as provided in Subsection (8)(b), the tax authorized under this part shall be
1261 administered, collected, and enforced in accordance with:
1262 (A) the same procedures used to administer, collect, and enforce the tax under:
1263 (I) Part 1, Tax Collection; or
1264 (II) Part 2, Local Sales and Use Tax Act; and
1265 (B) Chapter 1, General Taxation Policies.
1266 (ii) A tax under this part is not subject to Subsections 59-12-205(2) through (7).
1267 (b) (i) The commission may retain an amount of tax collected under this part of not to exceed
1268 the lesser of:
1269 (A) 1.5%; or
1270 (B) an amount equal to the cost to the commission of administering this part.
1271 (ii) Any amount the commission retains under Subsection (8)(b)(i) shall be:
1272 (A) placed in the Sales and Use Tax Administrative Fees Account; and
1273 (B) used as provided in Subsection 59-12-206(2).
1274 (9) (a) (i) Except as provided in Subsection (9)(b) or (c), if, on or after April 1, 2007, a
1275 county enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or

1276 change shall take effect:
1277 (A) on the first day of a calendar quarter; and
1278 (B) after a 90-day period beginning on the date the commission receives notice meeting the
1279 requirements of Subsection (9)(a)(ii) from the county.
1280 (ii) The notice described in Subsection (9)(a)(i)(B) shall state:
1281 (A) that the county will enact, repeal, or change the rate of a tax under this part;
1282 (B) the statutory authority for the tax described in Subsection (9)(a)(ii)(A);
1283 (C) the effective date of the tax described in Subsection (9)(a)(ii)(A); and
1284 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
1285 (9)(a)(ii)(A), the rate of the tax.
1286 (b) (i) For a transaction described in Subsection (9)(b)(iii), if the billing period for the
1287 transaction begins before the effective date of the enactment of the tax or tax rate increase under
1288 Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first day of the
1289 first billing period that begins after the effective date of the enactment of the tax or the tax rate
1290 increase.
1291 (ii) For a transaction described in Subsection (9)(b)(iii), if the billing period for the
1292 transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed
1293 under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the first day of the
1294 last billing period that began before the effective date of the repeal of the tax or the tax rate decrease.
1295 (iii) Subsections (9)(b)(i) and (ii) apply to transactions subject to a tax under:
1296 (A) Subsection 59-12-103(1)(b);
1297 (B) Subsection 59-12-103(1)(c);
1298 (C) Subsection 59-12-103(1)(d);
1299 (D) Subsection 59-12-103(1)(e);
1300 (E) Subsection 59-12-103(1)(f);
1301 (F) Subsection 59-12-103(1)(g);

1302 (G) Subsection 59-12-103(1)(h);

1303 (H) Subsection 59-12-103(1)(i);

1304 (I) Subsection 59-12-103(1)(j); or

1305 (J) Subsection 59-12-103(1)(k).

1306 (c) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales
1307 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
1308 described in Subsection (9)(a)(i) takes effect:

1309 (A) on the first day of a calendar quarter; and

1310 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the rate
1311 of the tax under Subsection (9)(a)(i).

1312 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1313 commission may by rule define the term "catalogue sale."

1314 (d) (i) Except as provided in Subsection (9)(e) or (f), if, for an annexation that occurs on or
1315 after April 1, 2007, the annexation will result in the enactment, repeal, or change in the rate of a tax
1316 under this part for an annexing area, the enactment, repeal, or change shall take effect:

1317 (A) on the first day of a calendar quarter; and

1318 (B) after a 90-day period beginning on the date the commission receives notice meeting the
1319 requirements of Subsection (9)(d)(ii) from the county that annexes the annexing area.

1320 (ii) The notice described in Subsection (9)(d)(i)(B) shall state:

1321 (A) that the annexation described in Subsection (9)(d)(i)(B) will result in an enactment,
1322 repeal, or change in the rate of a tax under this part for the annexing area;

1323 (B) the statutory authority for the tax described in Subsection (9)(d)(ii)(A);

1324 (C) the effective date of the tax described in Subsection (9)(d)(ii)(A); and

1325 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
1326 (9)(d)(ii)(A), the rate of the tax.

1327 (e) (i) For a transaction described in Subsection (9)(e)(iii), if the billing period for the

1328 transaction begins before the effective date of the enactment of the tax or a tax rate increase under
1329 Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first day of the
1330 first billing period that begins after the effective date of the enactment of the tax or the tax rate
1331 increase.

1332 (ii) For a transaction described in Subsection (9)(e)(iii), if the billing period for the transaction
1333 begins before the effective date of the repeal of the tax or the tax rate decrease imposed under
1334 Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
1335 billing period that began before the effective date of the repeal of the tax or the tax rate decrease.

1336 (iii) Subsections (9)(e)(i) and (ii) apply to transactions subject to a tax under:

1337 (A) Subsection 59-12-103(1)(b);

1338 (B) Subsection 59-12-103(1)(c);

1339 (C) Subsection 59-12-103(1)(d);

1340 (D) Subsection 59-12-103(1)(e);

1341 (E) Subsection 59-12-103(1)(f);

1342 (F) Subsection 59-12-103(1)(g);

1343 (G) Subsection 59-12-103(1)(h);

1344 (H) Subsection 59-12-103(1)(i);

1345 (I) Subsection 59-12-103(1)(j); or

1346 (J) Subsection 59-12-103(1)(k).

1347 (f) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales
1348 and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax
1349 described in Subsection (9)(d)(i) takes effect:

1350 (A) on the first day of a calendar quarter; and

1351 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the rate
1352 under Subsection (9)(d)(i).

1353 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

1354 commission may by rule define the term "catalogue sale."

1355 Section 6. Section **59-12-1704** is enacted to read:

1356 **59-12-1704. Written project prioritization process for new transportation capacity**
1357 **projects.**

1358 (1) The council of governments shall develop a written prioritization process for the
1359 prioritization of projects to be funded by revenues a county will receive from a tax under this part.

1360 (2) (a) The following shall be included in the written prioritization process under Subsection
1361 (1):

1362 (i) a definition of the type of projects to which the written prioritization process applies;

1363 (ii) specification of a weighted criteria system that is used to rank proposed projects and
1364 how the weighted criteria system will be used to determine which projects will be prioritized;

1365 (iii) specification of the data that is necessary to apply the weighted ranking criteria; and

1366 (iv) any other provisions the council of governments considers appropriate.

1367 (b) The weighted criteria system described in Subsection (2)(a)(ii) shall include the following
1368 considerations:

1369 (i) the cost-effectiveness of a project;

1370 (ii) the degree to which a project will mitigate regional congestion;

1371 (iii) the compliance requirements of applicable federal laws or regulations;

1372 (iv) the economic impact of a project;

1373 (v) the degree to which a project will require tax revenues to fund maintenance and operation
1374 expenses; and

1375 (vi) any other provisions the council of governments considers appropriate.

1376 (3) The council of governments of a county of the first or second class shall submit the
1377 proposed written prioritization process described in this section to the Executive Appropriations

1378 Committee for approval prior to taking final action on the proposed written prioritization process or
1379 any proposed amendment to the written prioritization process.

1380 Section 7. Section **59-12-1705** is enacted to read:

1381 **59-12-1705. Project selection using the written prioritization process -- Report.**

1382 (1) Except as provided in Subsection (4), in determining priorities and funding levels of
1383 projects to be funded by the revenues a county will receive from a tax under this part, the council of
1384 governments shall use the weighted criteria system adopted in the written prioritization process under
1385 Section 59-12-1704 to create a priority list of regionally significant transportation facility projects as
1386 described in Subsection 59-12-1703(5).

1387 (2) Prior to finalizing priorities and funding levels of projects, the council of governments shall
1388 conduct a public meeting on:

1389 (a) the written prioritization process; and

1390 (b) the merits of the projects that will be prioritized under this section.

1391 (3) The council of governments shall make the weighted criteria system ranking for each
1392 project publicly available prior to the public hearings held under Subsection (2).

1393 (4) (a) If the council of governments prioritizes a project over another project with a higher
1394 rank under the weighted criteria system, the council of governments shall identify the change at a
1395 meeting held under this section on the merits of prioritizing the project above higher ranked projects.

1396 (b) The council of governments shall make the reasons for the prioritization under Subsection
1397 (4)(a) publicly available.

1398 Section 8. Section **72-2-117.5** is amended to read:

1399 **72-2-117.5. Local Transportation Corridor Preservation Fund -- Distribution.**

1400 (1) As used in this section:

1401 (a) "Council of governments" means a decision-making body in each county composed of
1402 the county governing body and the mayors of each municipality in the county[~~;~~and].

1403 (b) "Metropolitan planning organization" has the same meaning as defined in Section
1404 72-1-208.5.

1405 (2) There is created the Local Transportation Corridor Preservation Fund within the

1406 Transportation Fund.

1407 (3) The fund shall be funded from the following sources:

1408 (a) a local option transportation corridor preservation fee imposed under Section

1409 41-1a-1222;

1410 (b) appropriations made to the fund by the Legislature;

1411 (c) contributions from other public and private sources for deposit into the fund;

1412 (d) interest earnings on cash balances;

1413 (e) all monies collected from rents and sales of real property acquired with fund monies;

1414 [~~and~~]

1415 (f) proceeds from general obligation bonds, revenue bonds, or other obligations issued as

1416 authorized by Title 63B, Bonds[~~;~~]; and

1417 (g) the portion of the sales and use tax described in Subsection 59-12-1703(4)(a)(ii) and

1418 required by Subsection 59-12-1703(7)(b)(i) to be deposited into the fund.

1419 (4) (a) All monies appropriated to the Local Transportation Corridor Preservation Fund are

1420 nonlapsing.

1421 (b) The Tax Commission shall provide the department with sufficient data for the department

1422 to allocate the revenues;

1423 (i) provided under Subsection (3)(a) to each county imposing a local option transportation

1424 corridor preservation fee under Section 41-1a-1222[~~;~~]; and

1425 (ii) provided under Subsection 59-12-1703(4)(a)(ii) to each county imposing a county

1426 option sales and use tax for transportation.

1427 (c) The monies allocated under Subsection (4)(b):

1428 (i) shall be used for the purposes provided in this section for each county; and

1429 (ii) are allocated to each county as provided in this section:

1430 (A) with the condition that the state will not be charged for any asset purchased with the

1431 monies allocated under Subsection (4)(b); and

1432 (B) are considered a local matching contribution for the purposes described under Section
1433 72-2-123 if used on a state highway.

1434 (d) Administrative costs of the department to implement this section shall be paid from the
1435 fund.

1436 (5) (a) The department shall authorize the expenditure of fund monies to allow a highway
1437 authority to acquire real property or any interests in real property for state, county, and municipal
1438 transportation corridors subject to:

1439 (i) monies available in the fund to each county under Subsection (4)(b); and

1440 (ii) the provisions of this section.

1441 (b) Fund monies may be used to pay interest on debts incurred in accordance with this
1442 section.

1443 (c) (i) (A) Fund monies may be used to pay maintenance costs of properties acquired under
1444 this section but limited to a total of 5% of the purchase price of the property.

1445 (B) Any additional maintenance cost shall be paid from funds other than under this section.

1446 (C) Revenue generated by any property acquired under this section is excluded from the
1447 limitations under this Subsection (5)(c)(i).

1448 (ii) Fund monies may be used to pay direct costs of acquisition of properties acquired under
1449 this section.

1450 (d) Fund monies allocated under Subsection (4)(b) may be used by a county highway
1451 authority for countywide transportation planning if:

1452 (i) the county is not included in a metropolitan planning organization;

1453 (ii) the transportation planning is part of the county's continuing, cooperative, and
1454 comprehensive process for transportation planning, corridor preservation, right-of-way acquisition,
1455 and project programming;

1456 (iii) no more than four years allocation every 20 years to each county is used for
1457 transportation planning under this Subsection (5)(d); and

- 1458 (iv) the county otherwise qualifies to use the fund monies as provided under this section.
- 1459 (e) (i) Fund monies allocated under Subsection (4)(b) may be used by a county highway
1460 authority for transportation corridor planning that is part of the corridor elements of an ongoing work
1461 program of transportation projects.
- 1462 (ii) The transportation corridor planning under Subsection (5)(e)(i) shall be under the
1463 direction of:
- 1464 (A) the metropolitan planning organization if the county is within the boundaries of a
1465 metropolitan planning organization; or
- 1466 (B) the department if the county is not within the boundaries of a metropolitan planning
1467 organization.
- 1468 (6) (a) (i) The Local Transportation Corridor Preservation Fund shall be used to preserve
1469 transportation corridors, promote long-term statewide transportation planning, save on acquisition
1470 costs, and promote the best interests of the state in a manner which minimizes impact on prime
1471 agricultural land.
- 1472 (ii) The Local Transportation Corridor Preservation Fund may not be used for a
1473 transportation corridor that is primarily a recreational trail as defined under Section 63-11a-101.
- 1474 (b) (i) The department shall develop and implement a program to educate highway
1475 authorities on the objectives, application process, use, and responsibilities of the Local Transportation
1476 Corridor Preservation Fund as provided under this section to promote the most efficient and effective
1477 use of fund monies including priority use on designated high priority corridor preservation projects.
- 1478 (ii) The department shall develop a model transportation corridor property acquisition policy
1479 or ordinance that meets federal requirements for the benefit of a highway authority to acquire real
1480 property or any interests in real property under this section.
- 1481 (c) The department shall authorize the expenditure of fund monies after determining that the
1482 expenditure is being made in accordance with this section from applications that are:
- 1483 (i) made by a highway authority; and

1484 (ii) endorsed by the council of governments.

1485 (7) (a) (i) A council of governments may establish a council of governments endorsement
1486 process which includes prioritization and application procedures for use of the monies allocated to
1487 each county under this section.

1488 (ii) The endorsement process under Subsection (7)(a)(i) may include review or endorsement
1489 of the preservation project by the:

1490 (A) metropolitan planning organization if the county is within the boundaries of a metropolitan
1491 planning organization; or

1492 (B) the department if the county is not within the boundaries of a metropolitan planning
1493 organization.

1494 (b) All fund monies shall be prioritized by each highway authority and council of governments
1495 based on considerations, including:

1496 (i) areas with rapidly expanding population;

1497 (ii) the willingness of local governments to complete studies and impact statements that meet
1498 department standards;

1499 (iii) the preservation of corridors by the use of local planning and zoning processes;

1500 (iv) the availability of other public and private matching funds for a project;

1501 (v) the cost-effectiveness of the preservation projects;

1502 (vi) long and short-term maintenance costs for property acquired; and

1503 (vii) whether the transportation corridor is included as part of:

1504 (A) the county and municipal master plan; and

1505 (B) (I) the statewide long range plan; or

1506 (II) the regional transportation plan of the area metropolitan planning organization if one
1507 exists for the area.

1508 (8) (a) Unless otherwise provided by written agreement with another highway authority, the
1509 highway authority that holds the deed to the property is responsible for maintenance of the property.

1510 (b) The transfer of ownership for property acquired under this section from one highway
1511 authority to another shall include a recorded deed for the property and a written agreement between
1512 the highway authorities.

1513 (9) (a) The proceeds from any bonds or other obligations secured by revenues of the Local
1514 Transportation Corridor Preservation Fund shall be used for the purposes authorized for funds under
1515 this section.

1516 (b) The highway authority shall pledge the necessary part of the revenues of the Local
1517 Transportation Corridor Preservation Fund to the payment of principal and interest on the bonds or
1518 other obligations.

1519 (10) (a) A highway authority may not apply for monies under this section unless the highway
1520 authority has:

1521 (i) a transportation corridor property acquisition policy or ordinance in effect that meets
1522 federal requirements for the acquisition of real property or any interests in real property under this
1523 section; and

1524 (ii) an access management policy or ordinance in effect that meets the requirements under
1525 Subsection 72-2-117(9).

1526 (b) The provisions of Subsection (10)(a)(i) do not apply if the highway authority has a
1527 written agreement with the department for the acquisition of real property or any interests in real
1528 property under this section.

1529 Section 9. Section **72-2-121** is amended to read:

1530 **72-2-121. Public Transportation System Tax Highway Fund.**

1531 (1) There is created a special revenue fund entitled the Public Transportation System Tax
1532 Highway Fund.

1533 (2) The fund consists of monies generated from the following revenue sources:

1534 (a) any voluntary contributions received for new construction, major renovations, and
1535 improvements to Interstate 15 and state highways within a county of the first class; [~~and~~]

1536 (b) the portion of the sales and use tax described in Subsection 59-12-502(5)(a)(ii)
1537 deposited in or transferred to the fund through an interlocal agreement[-]; and

1538 (c) the portion of the sales and use tax described in Subsection 59-12-1703(4)(a)(ii) and
1539 required by Subsection 59-12-1703(7)(b)(ii) to be deposited in or transferred to the fund.

1540 (3) (a) The fund shall earn interest.

1541 (b) All interest earned on fund monies shall be deposited into the fund.

1542 (4) The executive director may use fund monies, as prioritized by the Transportation
1543 Commission[-];

1544 (a) for the portion of the monies generated from the revenue sources described in
1545 Subsections (2)(a) and (b), only for new construction, major renovations, and improvements to
1546 Interstate 15 and state highways within a county of the first class and to pay any debt service and
1547 bond issuance costs related to those projects[-]; and

1548 (b) for the portion of the monies generated from the revenue sources described in Subsection
1549 (2)(c), only for state highway corridor preservation for new state highway projects within a county of
1550 the first class, to pay any debt service and bond issuance costs related to those projects, and shall not
1551 supplant monies already designated for state projects.

1552 (5) The additional administrative costs of the department to administer this fund shall be paid
1553 from the monies in the fund.

1554 Section 10. **Effective date.**

1555 If approved by two-thirds of all the members elected to each house, this bill takes effect upon
1556 approval by the governor, or the day following the constitutional time limit of Utah Constitution
Article

1557 VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override,
1558 except that the amendments to Section 59-12-102 (Effective 01/01/07) take effect on January 1,
1559 2007.

1560 Section 11. **Revisor instructions.**

1561 It is the intent of the Legislature that, in preparing the Utah Code database for publication, the

- 1562 Office of Legislative Research and General Counsel shall replace the reference in Subsection
1563 59-12-1703(2)(d)(i) to "the effective date of this bill" with the actual effective date of this bill.