

CARBON EMISSIONS TAX ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Joel K. Briscoe

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill imposes a tax on emissions from carbon based fuels.

Highlighted Provisions:

This bill:

- defines terms related to carbon based fuels;
- imposes a tax on various carbon based fuels;
- provides for an escalation of the tax rate for several years;
- creates an expendable revenue fund;
- provides for allocation of tax proceeds in an expendable revenue fund and the Transportation Infrastructure Fund of 2005 created in Section 72-2-124;
- provides a tax credit to be paid from the revenues; and
- provides rulemaking authority.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-12-103, as last amended by Laws of Utah 2016, Chapters 184, 291, 348 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 291



ENACTS:

59-10-1038, Utah Code Annotated 1953

59-28-101, Utah Code Annotated 1953

59-28-102, Utah Code Annotated 1953

59-28-201, Utah Code Annotated 1953

59-28-202, Utah Code Annotated 1953

59-28-203, Utah Code Annotated 1953

59-28-204, Utah Code Annotated 1953

59-28-301, Utah Code Annotated 1953

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

Section 1. Section **59-10-1038** is enacted to read:

59-10-1038. Nonrefundable carbon emissions tax credit.

(1) A claimant may claim a nonrefundable carbon emissions tax credit for the taxable year against taxes otherwise due under this chapter in an amount equal to the product of:

(a) (i) for a taxable year beginning on or after January 1, 2018, but beginning on or before December 31, 2018, 89%;

(ii) for a taxable year beginning on or after January 1, 2019, but beginning on or before December 31, 2019, 121%;

(iii) for a taxable year beginning on or after January 1, 2020, but beginning on or before December 31, 2020, 155%;

(iv) for a taxable year beginning on or after January 1, 2021, but beginning on or before December 31, 2021, 190%;

(v) for a taxable year beginning on or after January 1, 2022, but beginning on or before December 31, 2022, 226%; or

(vi) for a taxable year beginning on or after January 1, 2023, 264%; and

(b) the amount the claimant is eligible to claim for a tax credit described in Section **59-10-1018** for that taxable year.

(2) A claimant may not carry forward or carry back a tax credit under this section.

(3) (a) In accordance with any rules prescribed by the commission under Subsection (3)(b), the Division of Finance shall transfer at least annually from the Carbon Emissions Tax

Expendable Revenue Fund created in Section [59-28-301](#) into the Education Fund the aggregate amount of all tax credits claimed under this section.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for making a transfer required by Subsection (3)(a).

Section 2. Section **59-12-103** is amended to read:

59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenues.

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

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

(b) amounts paid for:

(i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

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

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of prepared food;

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

(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(i) the tangible personal property; and

(ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), regardless of whether:

(A) any parts are actually used in the repairs or renovations of that tangible personal property; or

(B) the particular parts used in the repairs or renovations of that tangible personal property are exempt from a tax under this chapter;

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

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

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

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) otherwise consumed;

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

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for a sale:

(i) (A) of a product transferred electronically; or

(B) of a repair or renovation of a product transferred electronically; and

(ii) regardless of whether the sale provides:

(A) a right of permanent use of the product; or

(B) a right to use the product that is less than a permanent use, including a right:

(I) for a definite or specified length of time; and

(II) that terminates upon the occurrence of a condition.

(2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate equal to the sum of:

(A) 4.70%; and

(B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

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

(b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

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

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the

transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

(A) a state tax imposed on the entire bundled transaction equal to the sum of:

(I) the tax rate described in Subsection (2)(a)(i)(A); and

(II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates described in Subsection (2)(a)(ii).

(ii) If an optional computer software maintenance contract is a bundled transaction that consists of taxable and nontaxable products that are not separately itemized on an invoice or similar billing document, the purchase of the optional computer software maintenance contract is 40% taxable under this chapter and 60% nontaxable under this chapter.

(iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i) or (ii):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the

entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii) and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental of tangible personal property, other property, a product, or a service that is not subject to taxation under this chapter, the entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:

(A) separately states the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(ii) A purchaser and a seller may correct the taxability of a transaction if:

(A) after the transaction occurs, the purchaser and the seller discover that the portion of the transaction that is not subject to taxation under this chapter was not separately stated on an invoice, bill of sale, or similar document provided to the purchaser because of an error or

ignorance of the law; and

(B) the seller is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(f) (i) If the sales price of a transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate unless the seller, at the time of the transaction:

(A) separately states the items subject to taxation under this chapter at each of the different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business.

(ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(g) Subject to Subsections (2)(h) and (i), a tax rate repeal or tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

(i) Subsection (2)(a)(i)(A);

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

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

(iv) Subsection (2)(d)(i)(A)(I).

(h) (i) A tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the tax rate increase if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing statement for the billing period is rendered on or after the effective date of the repeal of the tax or the tax rate decrease imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(i) (i) For a tax rate described in Subsection (2)(i)(ii), if a tax due on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax rate takes effect:

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

(B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

(ii) Subsection (2)(i)(i) applies to the tax rates described in the following:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(3) (a) The following state taxes shall be deposited into the General Fund:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); or

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

(i) the tax imposed by Subsection (2)(a)(ii);

(ii) the tax imposed by Subsection (2)(b)(ii);

(iii) the tax imposed by Subsection (2)(c)(ii); and

(iv) the tax imposed by Subsection (2)(d)(i)(B).

(4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b) through (g):

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(A) by a 1/16% tax rate on the transactions described in Subsection (1); and

(B) for the fiscal year; or

(ii) \$17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

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

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

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

(c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund created in Section 4-18-106.

(d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water

Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

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

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

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

(e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(ii) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

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

(B) fund state required dam safety improvements; and

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

(f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited into the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited into the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

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

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

(iii) develop surface water sources.

(5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2006, the difference between the following amounts shall be expended as provided in this Subsection (5), if that difference is greater than \$1:

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

(ii) \$17,500,000.

(b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Department of Natural Resources as dedicated credits; and

(B) expended by the Department of Natural Resources for watershed rehabilitation or restoration.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the remaining difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Division of Water Resources as dedicated credits; and

(B) expended by the Division of Water Resources for cloud-seeding projects authorized by Title 73, Chapter 15, Modification of Weather.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(d) After making the transfers required by Subsections (5)(b) and (c), 94% of the remaining difference described in Subsection (5)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources for:

(i) preconstruction costs:

(A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter

26, Bear River Development Act; and

(B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

(ii) the cost of employing a civil engineer to oversee any project authorized by Title 73, Chapter 26, Bear River Development Act;

(iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, and 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

(e) After making the transfers required by Subsections (5)(b) and (c) and subject to Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred for employing additional technical staff for the administration of water rights.

(f) At the end of each fiscal year, any unexpended dedicated credits described in Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(6) Notwithstanding Subsection (3)(a) and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited as follows:

(a) for fiscal year 2016-17 only, 100% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124;

(b) for fiscal year 2017-18 only:

(i) 80% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 20% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(c) for fiscal year 2018-19 only:

(i) 60% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 40% of the revenue described in this Subsection (6) shall be deposited into the

Water Infrastructure Restricted Account created by Section 73-10g-103;

(d) for fiscal year 2019-20 only:

(i) 40% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 60% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(e) for fiscal year 2020-21 only:

(i) 20% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 80% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103; and

(f) for a fiscal year beginning on or after July 1, 2021, 100% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103.

(7) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(A) the tax imposed by Subsection (2)(a)(i)(A);

(B) the tax imposed by Subsection (2)(b)(i);

(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the current fiscal year from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

(b) (i) Subject to Subsections (7)(b)(ii) and (iii), in any fiscal year that the portion of

the sales and use taxes deposited under Subsection (7)(a) represents an amount that is a total lower percentage of the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) generated in the current fiscal year than the total percentage of sales and use taxes deposited in the previous fiscal year, the Division of Finance shall deposit an amount under Subsection (7)(a) equal to the product of:

(A) the total percentage of sales and use taxes deposited under Subsection (7)(a) in the previous fiscal year; and

(B) the total sales and use tax revenue generated by the taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year.

(ii) In any fiscal year in which the portion of the sales and use taxes deposited under Subsection (7)(a) would exceed 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year, the Division of Finance shall deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) for the current fiscal year under Subsection (7)(a).

(iii) In all subsequent fiscal years after a year in which 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) was deposited under Subsection (7)(a), the Division of Finance shall annually deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year under Subsection (7)(a).

(8) (a) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$64,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(b) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$63,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(c) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for a fiscal year beginning on or after July 1, 2018, the Division of Finance shall annually deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) in an amount equal to

3.68% of the revenues collected from the following taxes:

- (i) the tax imposed by Subsection (2)(a)(i)(A);
- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); and
- (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(9) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

(10) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), in addition to any amounts deposited under Subsections (6), (7), and (8), and for the 2016-17 fiscal year only, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(b) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), and in addition to any amounts deposited under Subsections (6), (7), and (8), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of revenue described as follows:

(i) for fiscal year 2017-18 only, 83.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(ii) for fiscal year 2018-19 only, 66.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iii) for fiscal year 2019-20 only, 50% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iv) for fiscal year 2020-21 only, 33.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1); and

(v) for fiscal year 2021-22 only, 16.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(c) For purposes of Subsections (10)(a) and (b), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than

food and food ingredients described in Subsection (2)(d).

(11) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the fiscal year during which the Division of Finance receives notice under Section 63N-2-510 that construction on a qualified hotel, as defined in Section 63N-2-502, has begun, the Division of Finance shall, for two consecutive fiscal years, annually deposit \$1,900,000 of the revenue generated by the taxes listed under Subsection (3)(a) into the Hotel Impact Mitigation Fund, created in Section 63N-2-512.

(12) (a) Notwithstanding Subsection (3)(a), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$26,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

(b) Notwithstanding Subsection (3)(a), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$27,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

(13) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2018, the Division of Finance shall annually deposit into the Carbon Emissions Tax Expendable Revenue Fund, created in Section 59-28-301, a portion of the taxes listed under Subsection (3)(a) in an amount equal to the lesser of:

(i) the total amount deposited into the Transportation Infrastructure Fund of 2005, created in Section 72-2-124, required under Subsections (6), (7), (8), and (10); and

(ii) the revenue deposited into the Transportation Infrastructure Fund of 2005, created in Section 72-2-124, under Sections 59-28-202 and 59-28-203.

(b) The Division of Finance shall reduce the deposits made to the Transportation Infrastructure Fund of 2005, created in Section 72-2-124, required under Subsections (6), (7), (8), and (10) in an amount equal to the deposit described in Subsection (13)(a).

~~[(13)]~~ (14) Notwithstanding Subsections (4) through ~~[(12)]~~ (13), an amount required to be expended or deposited in accordance with Subsections (4) through ~~[(12)]~~ (13) may not include an amount the Division of Finance deposits in accordance with Section 59-12-103.2.

Section 3. Section 59-28-101 is enacted to read:

CHAPTER 28. CARBON EMISSIONS TAX

Part 1. Administration

59-28-101. Title.

This chapter is known as the "Carbon Emissions Tax."

Section 4. Section **59-28-102** is enacted to read:

59-28-102. Definitions.

As used in this chapter:

(1) "Coal" includes anthracite, bituminous, subbituminous, lignite, and coke.

(2) "Distributor" means the same as that term is defined in Section [59-13-102](#).

(3) "Dyed diesel fuel" means the same as that term is defined in Section [59-13-102](#).

(4) "Motor fuel" means the same as that term is defined in Section [59-13-102](#).

(5) "Motor fuels received" means the same as that term is defined in Section [59-13-102](#).

(6) "Natural gas" means the same as that term is defined in Section [59-5-101](#).

(7) "Owner" means the same as that term is defined in Section [59-5-101](#).

(8) "Removal" means the same as that term is defined in Section [59-13-102](#).

(9) (a) Except as provided in Subsection (9)(b), "special fuel" means the same as that term is defined in Section [59-13-102](#).

(b) "Special fuel" does not include natural gas.

(10) "Supplier" means the same as that term is defined in Section [59-13-102](#).

(11) "Terminal" means the same as that term is defined in Section [59-13-102](#).

(12) "Undyed diesel fuel" means the same as that term is defined in Section [59-13-102](#).

Section 5. Section **59-28-201** is enacted to read:

Part 2. Emissions Tax

59-28-201. Imposition of an emissions tax on coal -- Rate of tax -- Rulemaking authority.

(1) (a) Except as provided in Subsection (1)(b), an emissions tax is imposed on each ton of coal produced in this state at the following rate:

(i) beginning on January 1, 2018, and through December 31, 2018, at a rate of \$42.90 per ton;

(ii) beginning on January 1, 2019, and through December 31, 2019, at a rate of \$57.20 per ton;

(iii) beginning on January 1, 2020, and through December 31, 2020, at a rate of \$71.50 per ton;

(iv) beginning on January 1, 2021, and through December 31, 2021, at a rate of \$85.80 per ton;

(v) beginning on January 1, 2022, and through December 31, 2022, at a rate of \$100.10 per ton; and

(vi) beginning on January 1, 2023, and thereafter, at a rate of \$114.40 per ton.

(b) The commission may either collect no tax on coal exported from the state or, upon application, refund the tax paid.

(2) Each coal mine operator in this state shall monthly:

(a) on electronic forms prescribed by the commission, report to the commission the amount and type of coal produced by the mine; and

(b) pay the tax imposed in Subsection (1).

(3) The commission shall deposit the emissions tax collected under this section into the Carbon Emissions Tax Expendable Revenue Fund created in Section [59-28-301](#).

(4) All refund, credit, administrative, and penalty provisions of Chapter 5, Part 2, Mining Severance Tax, apply to a tax imposed on special fuel under this section.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules governing the procedures for administering and collecting the tax imposed in this section.

Section 6. Section **59-28-202** is enacted to read:

59-28-202. Imposition of an emissions tax on motor fuel -- Rate of tax --

Rulemaking authority.

(1) An emissions tax is imposed upon all motor fuel that is sold, used, or received for sale or used in this state as follows:

(a) beginning on January 1, 2018, and through December 31, 2018, at a rate of 15 cents per gallon;

(b) beginning on January 1, 2019, and through December 31, 2019, at a rate of 20 cents per gallon;

(c) beginning on January 1, 2020, and through December 31, 2020, at a rate of 25 cents per gallon;

(d) beginning on January 1, 2021, and through December 31, 2021, at a rate of 30 cents per gallon;

586 (e) beginning on January 1, 2022, and through December 31, 2022, at a rate of 35 cents
587 per gallon; and

588 (f) beginning on January 1, 2023, and thereafter, at a rate of 40 cents per gallon.

589 (2) Any increase in tax rate applies to motor fuel that is imported to the state or sold at
590 refineries in the state on or after the effective date of the rate change.

591 (3) No motor fuel tax is imposed upon:

592 (a) motor fuel that is brought into and sold in this state in original packages as purely
593 interstate commerce sales;

594 (b) motor fuel that is exported from this state if proof of actual exportation on forms
595 prescribed by the commission is made within 180 days after exportation;

596 (c) motor fuel or components of motor fuel that is sold and used in this state and
597 distilled from coal, oil shale, rock asphalt, bituminous sand, or solid hydrocarbons located in
598 this state; or

599 (d) motor fuel that is sold to the United States government, this state, or the political
600 subdivisions of this state.

601 (4) (a) The emissions tax imposed in Subsection (1) shall be paid by the distributor.

602 (b) Each distributor in this state shall monthly:

603 (i) on electronic forms prescribed by the commission, report to the commission the
604 amount and type of motor fuel sold, used, or received for sale or used in this state; and

605 (ii) pay the tax imposed in Subsection (1).

606 (5) The commission may either collect no tax on motor fuel exported from the state or,
607 upon application, refund the tax paid.

608 (6) (a) All revenue received by the commission under this section shall be deposited
609 daily with the state treasurer and credited to the Transportation Infrastructure Fund of 2005
610 created in Section [72-2-124](#).

611 (b) An appropriation from the Transportation Infrastructure Fund of 2005 created in
612 Section [72-2-124](#) shall be made to the commission to cover expenses incurred in the
613 administration and enforcement of this part and the collection of the motor fuel tax.

614 (7) All refund, credit, administrative, and penalty provisions of Chapter 13, Part 2,
615 Motor Fuel, apply to a tax imposed on special fuel under this section.

616 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

commission may make rules governing the procedures for administering and collecting the tax imposed in this section.

Section 7. Section **59-28-203** is enacted to read:

59-28-203. Imposition of an emissions tax on special fuel -- Rate of tax --

Rulemaking authority.

(1) (a) An emissions tax is imposed at the rates set forth in Subsection (1)(b) on the:

(i) removal of undyed diesel fuel from any refinery;

(ii) removal of undyed diesel fuel from any terminal;

(iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or warehousing;

(iv) sale of undyed diesel fuel to any person that is not registered as a supplier under this part unless the tax has been collected under this section;

(v) any untaxed special fuel blended with undyed diesel fuel; or

(vi) use of untaxed special fuel other than propane or electricity.

(b) The rate of the tax imposed in Subsection (1)(a) is as follows:

(i) beginning on January 1, 2018, and through December 31, 2018, at a rate of 17 cents per gallon;

(ii) beginning on January 1, 2019, and through December 31, 2019, at a rate of 22 cents per gallon;

(iii) beginning on January 1, 2020, and through December 31, 2020, at a rate of 28 cents per gallon;

(iv) beginning on January 1, 2021, and through December 31, 2021, at a rate of 34 cents per gallon;

(v) beginning on January 1, 2022, and through December 31, 2022, at a rate of 39 cents per gallon; and

(vi) beginning on January 1, 2023, and thereafter, at a rate of 45 cents per gallon.

(c) The tax imposed under this section shall only be imposed once upon any special fuel.

(2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel that:

(i) is sold or used for any purpose other than to operate or propel a motor vehicle upon the public highways of the state, but this exemption applies only in those cases where the

purchasers or the users of special fuel establish to the satisfaction of the commission that the special fuel was used for purposes other than to operate a motor vehicle upon the public highways of the state; or

(ii) is sold to this state or any of this state's political subdivisions.

(b) No special fuel tax is imposed on undyed diesel fuel or clean fuel that is:

(i) sold to the United States government or any of the United States government's instrumentalities or to this state or any of this state's political subdivisions;

(ii) exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;

(iii) used in a vehicle off highway;

(iv) used to operate a power take-off unit of a vehicle;

(v) used for off-highway agricultural uses;

(vi) used in a separately fueled engine on a vehicle that does not propel the vehicle upon the highways of the state; or

(vii) used in machinery and equipment not registered and not required to be registered for highway use.

(3) No tax is imposed or collected on special fuel if the special fuel is:

(a) (i) purchased for business use in machinery and equipment not registered and not required to be registered for highway use; and

(ii) used pursuant to the conditions of a state implementation plan approved under Title 19, Chapter 2, Air Conservation Act; or

(b) propane or electricity.

(4) (a) The emissions tax shall be paid by the supplier.

(b) Each supplier shall monthly:

(i) on electronic forms prescribed by the commission, report to the commission the amount and type of special fuel:

(A) removed from any refinery;

(B) removed from any terminal;

(C) that enters into the state for consumption, use, sale, or warehousing;

(D) sold to any person that is not registered as a supplier under this part unless the tax has been collected under this section;

679 (E) blended with undyed diesel fuel and previously untaxed as special fuel; or

680 (F) used in this state, other than propane or electricity; and

681 (ii) pay the tax imposed under this section.

682 (5) (a) All revenue deposited under this section shall be deposited with the state
683 treasurer and credited to the Transportation Infrastructure Fund of 2005 created in Section
684 72-2-124.

685 (b) An appropriation from the Transportation Infrastructure Fund of 2005 created in
686 Section 72-2-124 shall be made to the commission to cover the expenses incurred in the
687 administration and enforcement of this part and the collection of the tax under this section.

688 (6) The commission may either collect no tax on special fuel exported from the state
689 or, upon application, refund the tax paid.

690 (7) All refund, credit, administrative, and penalty provisions of Chapter 13, Part 3,
691 Special Fuel, apply to a tax imposed on special fuel under this section.

692 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
693 commission may make rules governing the procedures for administering and collecting the tax
694 imposed in this section.

695 Section 8. Section **59-28-204** is enacted to read:

696 **59-28-204. Imposition of an emissions tax on natural gas -- Rate of tax --**
697 **Rulemaking authority.**

698 (1) (a) Except as provided in Subsection (1)(c), a person owning an interest in natural
699 gas produced from a well in the state, including a working interest, royalty interest, payment
700 out of production, or any other interest, or in the proceeds of the production of oil or gas, shall
701 pay to the state an emissions tax on the owner's interest in the taxable value of the oil or gas:

702 (i) produced; and

703 (ii) (A) saved;

704 (B) sold; or

705 (C) transported from the field where the substance was produced.

706 (b) The rate of the tax imposed in Subsection (1)(a) is as follows:

707 (i) beginning on January 1, 2018, and through December 31, 2018, at a rate of 88 cents
708 per MCF;

709 (ii) beginning on January 1, 2019, and through December 31, 2019, at a rate of \$1.17

per MCF;

(iii) beginning on January 1, 2020, and through December 31, 2020, at a rate of \$1.46

per MCF;

(iv) beginning on January 1, 2021, and through December 31, 2021, at a rate of \$1.76

per MCF;

(v) beginning on January 1, 2022, and through December 31, 2022, at a rate of \$2.05

per MCF; and

(vi) beginning on January 1, 2023, and thereafter, at a rate of \$2.34 per MCF.

(c) The emissions tax imposed by Subsection (1)(a) does not apply to an interest of:

(i) the United States in natural gas or in the proceeds of the production of natural gas;

(ii) the state or a political subdivision of the state in natural gas or in the proceeds of the production of natural gas; and

(iii) an Indian or Indian tribe as defined in Section 9-9-101 in natural gas or in the proceeds of the production of natural gas produced from land under the jurisdiction of the United States.

(2) If natural gas is shipped outside the state:

(a) the shipment constitutes a sale; and

(b) the natural gas is subject to the tax imposed by this section.

(3) Each person owning an interest in natural gas produced from a well in the state, including a working interest, royalty interest, payment out of production, or any other interest, shall monthly:

(a) on electronic forms prescribed by the commission, report to the commission the amount of natural gas:

(i) produced; and

(ii) (A) saved;

(B) sold; or

(C) transported from the field where the substance was produced; and

(b) pay the tax imposed in Subsection (1).

(4) The commission shall deposit the emissions tax collected under this section into the Carbon Emissions Tax Expendable Revenue Fund created in Section 59-28-301.

(5) All refund, credit, administrative, and penalty provisions of Chapter 5, Part 1, Oil

and Gas Severance Tax, apply to a tax imposed on natural gas under this section.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules governing the procedures for administering and collecting the tax imposed in this section.

Section 9. Section **59-28-301** is enacted to read:

Part 3. Carbon Emissions Tax Expendable Revenue Fund

59-28-301. Creation of Carbon Emissions Tax Expendable Revenue Fund.

(1) There is created an expendable special revenue fund known as the "Carbon Emissions Tax Expendable Revenue Fund."

(2) The fund shall consist of:

(a) the revenue generated from taxes imposed under Sections [59-28-201](#) and [59-28-204](#);

(b) the revenue deposited into the account required under Section [59-12-103](#);

(c) any interest and penalties levied in relation to the administration of this chapter; and

(d) any other funds received as donations for the fund and appropriations from other sources.

(3) Except as provided in Subsection (4), money in the fund shall be deposited into the Education Fund to cover the costs of the carbon emissions tax credit created in Section [59-10-1038](#).

(4) The commission shall retain and deposit an administrative charge in accordance with Section [59-1-306](#) from the revenues the commission collects from the tax imposed under this part.

Legislative Review Note
Office of Legislative Research and General Counsel