

TOURISM MARKETING AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

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This act modifies provisions of the Utah Code relating to tourism marketing. The act defines certain terms. The act increases the money in the Tourism Marketing Performance Fund. The act modifies the Tourism Marketing Performance Fund Committee to include members of the tourism industry. The act allows the Division of Travel Development to consult with counties and travel regions about effective tourism promotion. The act clarifies the purposes of the transient room tax and the tourism, recreation, cultural, and convention facilities tax. The act requires counties with no existing tourism tax advisory boards to create and utilize a tourism tax advisory board. The act makes technical changes.

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

AMENDS:

9-2-1702, as enacted by Chapter 301, Laws of Utah 1997

9-2-1703, as enacted by Chapter 301, Laws of Utah 1997

9-2-1704, as enacted by Chapter 301, Laws of Utah 1997

9-2-1705, as enacted by Chapter 301, Laws of Utah 1997

9-3-204, as last amended by Chapter 109, Laws of Utah 1994

17-31-2, as last amended by Chapter 146, Laws of Utah 1998

59-12-603, as last amended by Chapter 319, Laws of Utah 2000

ENACTS:

9-2-1703.5, Utah Code Annotated 1953

9-2-1706, Utah Code Annotated 1953

17-31-8, Utah Code Annotated 1953

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

Section 1. Section **9-2-1702** is amended to read:

9-2-1702. Definitions.

As used in this part:

~~[(1) "Administrator" means the Department of Community and Economic Development.]~~

~~[(2) "Commissioners" means the board of commissioners on the Division of Travel Development.]~~

~~[(3)]~~ (1) "Committee" means the Tourism Marketing Performance Fund Committee as created in Section 9-2-1705.

~~[(4)]~~ (2) "Department" means the Department of Community and Economic Development.

(3) "Division" means the Division of Travel Development created in Section 9-3-204.

~~[(5)]~~ (4) "Fund" means the restricted account known as the Tourism Marketing Performance Fund created in Section 9-2-1703.

~~[(6)]~~ (5) "Industry" means the following travel and tourism industry groups ~~[as described in Subsections 9-2-1703(2)(c)(ii)(A) through (E).]~~:

(a) retail/eating and drinking;

(b) services/hotels and lodging;

(c) services/automotive rental;

(d) services/amusement and recreation; and

(e) transportation.

~~[(7) "Institutional advertising" means advertising of Utah's cultural, historical, recreational, scenic, and tourist attractions to consumers outside of Utah.]~~

~~[(8) "Performance measurement" means a standard to measure the economic growth in the travel and tourism industry in comparison with the previous year's sales tax receipts based on criteria as provided in Section 9-2-1703.]~~

(6) "Tourism marketing" means an activity to develop, encourage, solicit, or promote tourism within this state that attracts transient guests to the state, including:

(a) planning;

(b) product development; and

(c) advertising directed to out of state consumers that promotes leisure travel products or attractions specific to Utah.

(7) "Tourism oriented sales and use taxes" means a state sales and use tax imposed under Section 59-12-103 for amounts paid or charged for taxable items or services:

(a) described under Subsection 59-12-103(1); and

(b) provided by a person described by the following SIC Codes of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget:

(i) SIC Codes 4011 through 4789;

(ii) SIC Codes 5812 and 5813;

(iii) SIC Codes 7011 through 7041;

(iv) SIC Codes 7513 through 7519; and

(v) SIC Codes 7812 through 7999.

(8) "Utah Tourism Industry Coalition" means the private nonprofit corporation created under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, composed of tourism-related businesses, organizations, and associations authorized to nominate committee members under Section 9-2-1705.

Section 2. Section **9-2-1703** is amended to read:

9-2-1703. Creation and administration of fund.

(1) (a) There is created within the General Fund a restricted account known as the "Tourism Marketing Performance Fund."

(b) The fund shall be administered by the ~~[administrator upon the advice and recommendations of the committee]~~ department in accordance with Section 9-2-1704.

(2) The fund shall be funded by appropriations made to the fund by the Legislature in accordance with Section 9-2-1703.5.

(3) Any undistributed monies in the fund at the end of the fiscal year are nonlapsing except that any balance greater than \$200,000 at the end of the fiscal year shall lapse to the General Fund.

~~[(2) (a) The annual appropriation for the fund shall be determined by measuring the economic growth in the travel and tourism industry in excess of the previous year's taxable sales. In no event shall the annual appropriation exceed \$200,000.]~~

~~[(b) If the economic growth in the travel and tourism industry exceeds 4% growth, as measured by taxable sales, based on the previous year's taxable sales, the administrator may receive funding through distribution of revenues from the fund.]~~

~~[(c) The department shall utilize this criteria to qualify for an annual appropriation:]~~

~~[(i) the expenditures by the industry for promoting and marketing Utah's cultural, recreational, and scenic attractions to consumers outside of Utah in the previous fiscal year;]~~

~~[(A) as reported to the State Tax Commission on a form designed by the State Tax Commission;]~~

~~[(B) for the year beginning July 1 and ending June 30; and]~~

~~[(C) filed with the State Tax Commission prior to July 31 of each year; and]~~

~~[(ii) the amount of sales tax collected from the following industry groups:]~~

~~[(A) retail/eating and drinking;]~~

~~[(B) services/hotels and lodging;]~~

~~[(C) services/automotive rental;]~~

~~[(D) services/amusement and recreation; and]~~

~~[(E) transportation.]~~

~~[(d) If the department determines the industry's economic growth exceeds the previous year's taxable sales by 4%, the Legislature shall appropriate \$200,000 for the upcoming fiscal year. The appropriation shall be the amount determined under Subsection (2)(c)(i) or (ii), whichever is the lesser amount.]~~

Section 3. Section **9-2-1703.5** is enacted to read:

9-2-1703.5. Appropriations to the fund.

(1) The Legislature shall appropriate \$200,000 to the fund each fiscal year for which the State Tax Commission finds that the industry growth for the prior fiscal year equals or exceeds 4%.

(2) To determine the prior fiscal year industry growth the State Tax Commission shall:

(a) calculate the tourism-oriented sales and use taxes for the fiscal year two years preceding the fiscal year of appropriation;

(b) calculate the tourism-oriented sales and use taxes for the fiscal year three years preceding

the fiscal year of the appropriation; and

(c) determine whether the tourism-oriented sales and use taxes calculated in Subsection (2)(a) increased from the tourism-oriented sales and use taxes calculated under Subsection (2)(b).

(3) The State Tax Commission shall report its determination under Subsection (2) to the State Budget Office by no later than September 30 of each year.

Section 4. Section **9-2-1704** is amended to read:

9-2-1704. Distribution of fund monies -- Determination of recipients.

The appropriation to the [~~Tourism Marketing Performance Fund~~] fund required by Section 9-2-1703.5 shall be distributed [in the following manner: (1) the administrator shall distribute the monies in the fund] by the department to the [Division of Travel Development] division to be used [for the purposes as provided in Section 9-3-204, with 75% of the funds allocated to marketing and 25% of the funds allocated to infrastructure; and] to fund the tourism marketing plan developed in accordance with Section 9-2-1706.

~~[(2) any undistributed appropriation at the end of the fiscal year shall be nonlapsing except any balance greater than \$200,000 shall lapse to the General Fund.]~~

Section 5. Section **9-2-1705** is amended to read:

9-2-1705. Creation of Tourism Marketing Performance Fund Committee -- Members -- Appointment -- Qualifications -- Terms -- Quorum -- Per diem and expenses -- Staff.

(1) There is created a Tourism Marketing Performance Fund Committee which shall consist of ~~[24]~~ 11 voting members and one nonvoting member.

~~[(2) The members of the committee shall include:]~~

~~[(a) five members appointed by the Board of Commissioners of the Division of Travel Development, three of whom are members of the Board of Commissioners; and]~~

~~[(b) 16 members of a private coalition of the industry known as the Utah Tourism Industry Coalition recommended by the board of directors of the coalition.]~~

~~[(3) The governor shall appoint the committee members in Subsection (2)(b).]~~

(2) (a) The governor shall appoint 11 voting members to the committee including:

(i) one member from the automobile rental industry;

- (ii) one member representing public lands;
- (iii) one member representing Utah Travel Regions;
- (iv) the director of the Division of Travel Development;
- (v) one member representing county tourism selected from a list of three qualified individuals nominated by the Utah Association of Counties;
- (vi) one member representing the restaurant industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition;
- (vii) one member representing the hotel and lodging industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition;
- (viii) one member representing the ski industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition;
- (ix) one member representing the amusement and recreation industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition;
- (x) one member representing the transportation industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition; and
- (xi) one at large member representing the Utah tourism industry selected from a list of three qualified individuals nominated by the Utah Tourism Industry Coalition.

(b) The president of the Senate and the speaker of the House of Representatives shall nominate and the governor shall appoint one nonvoting member of the committee from the Economic Development and Human Resources Appropriations Subcommittee.

(c) Members of the committee shall be nominated to provide geographic balance in representation on the committee.

~~[(4)]~~ (3) (a) The first committee appointments shall be for terms as follows:

~~[(a) seven]~~ (i) five members shall be appointed for terms of ~~[two years]~~ one year; and

~~[(b) seven]~~ (ii) six members shall be appointed for terms of ~~[three]~~ two years~~[-and]~~.

~~[(c) seven members shall be appointed for terms of four years.]~~

(b) All subsequent appointments shall be for terms of two years.

(c) A member may not serve more than two full consecutive terms unless the governor

determines that an additional term is in the best interest of the state.

~~[(5)]~~ (4) If a vacancy occurs, the ~~[Board of Commissioners or the]~~ governor shall appoint a qualified replacement to fill the unexpired term.

~~[(6)]~~ (5) The committee shall elect a chair and a vice chair from its membership.

~~[(7) Eleven]~~ (6) Six voting members of the committee shall constitute a quorum.

~~[(8) The committee shall advise the administrator on the recommended allocation of the monies in the fund as provided in Section 9-2-1704. The administrator shall distribute the monies in the fund to the Division of Travel Development.]~~

~~[(9) The committee shall determine the time and place of meetings and any other procedural matter not specified in this chapter.]~~

~~[(10)]~~ (7) Members shall receive no compensation or benefits for their services, and shall receive no per diem and expenses incurred in the performance of the member's official duties.

(8) Staff services to the committee shall be provided by the division.

(9) The terms of the members who are serving on the committee on April 30, 2001, shall terminate on that date. The governor shall appoint members to the committee in accordance with this section as in effect on May 1, 2001.

Section 6. Section **9-2-1706** is enacted to read:

9-2-1706. Duties of Tourism Marketing Performance Fund Committee.

(1) The committee and the division shall jointly develop a tourism marketing plan to determine the best use of the funds in the Tourism Marketing Performance Fund.

(2) Any plan provided for under Subsection (1) shall address:

(a) enhancing the state's image;

(b) promoting Utah as a year-round destination;

(c) encouraging expenditures by visitors to the state; and

(d) the diversity of the state's travel regions.

(3) The committee shall comply with Title 52, Chapter 4, Open and Public Meetings, in determining and giving notice of the time and place of any meetings.

(4) The committee may not perform any function not authorized by this section.

Section 7. Section **9-3-204** is amended to read:

9-3-204. Division of Travel Development -- Powers and duties -- Travel development plan.

- (1) There is created within the department the Division of Travel Development under the administration and general supervision of the director.
- (2) The division shall be under the policy direction of the director.
- (3) The division shall:
 - (a) be the travel development authority of the state;
 - (b) develop a travel promotion program for the state;
 - (c) develop a plan to increase the economic contribution by tourists visiting the state;
 - (d) plan and conduct a program of information, advertising, and publicity relating to the recreational, scenic, historic, highway, and tourist advantages and attractions of the state at large; and
 - (e) encourage and assist in the coordination of the activities of persons, firms, associations, corporations, travel regions, counties, and governmental agencies engaged in publicizing, developing, and promoting the scenic attractions and tourist advantages of the state.
- (4) Any plan provided for under Subsection (3) shall address, but not be limited to, enhancing the state's image, promoting Utah as a year-round destination, encouraging expenditures by visitors to the state, and expanding the markets where the state is promoted.

Section 8. Section **17-31-2** is amended to read:

17-31-2. Purposes of transient room tax -- Purchase or lease of facilities -- Mitigating impacts of recreation, tourism, or conventions -- Issuance of bonds.

- (1) Any county legislative body may impose the transient room tax provided for in Section 59-12-301 for the purposes of:
 - (a) establishing and promoting recreation, tourism, film production, and conventions;
 - (b) acquiring, leasing, constructing, furnishing, or operating convention meeting rooms, exhibit halls, visitor information centers, museums, and related facilities;
 - (c) acquiring or leasing land required for or related to the purposes listed in Subsection (1)(b); and

(d) as required to mitigate the impacts of recreation, tourism, or conventions in counties of the fourth, fifth, and sixth class, paying for:

- (i) solid waste disposal operations;
- (ii) emergency medical services;
- (iii) search and rescue activities; and
- (iv) law enforcement activities.

(2) ~~[Counties]~~ A county may use not more than 1/3 of the proceeds of the transient room tax provided in Section 59-12-301 ~~[either]~~ for any combination of the following purposes:

(a) ~~(i) [to acquire, lease, construct, furnish, maintain, or operate]~~ acquiring, leasing, constructing, furnishing, maintaining, or operating:

- (A) convention meeting rooms[;];
- (B) exhibit halls[;];
- (C) visitor information centers[;];
- (D) museums[;]; and
- (E) related facilities[;]; and ~~[to acquire or lease]~~

(ii) acquiring or leasing land required for or related to ~~[these]~~ the purposes[; or] described in Subsection (2)(a)(i);

(b) as required to mitigate the impacts of recreation, tourism, or conventions in counties of the fourth, fifth, and sixth class, to pay for:

- (i) solid waste disposal operations;
- (ii) emergency medical services;
- (iii) search and rescue activities; and
- (iv) law enforcement activities[; or]

(c) making the annual payment of principal, interest, premiums, and necessary reserves for any or the aggregate of bonds authorized under Subsection (3).

(3) (a) The county legislative body may~~[-(i)]~~ issue bonds or cause bonds to be issued, as permitted by law, to pay all or part of any costs incurred for the purposes set forth in ~~[Subsection]~~ Subsection (2)(a) or (b) that are permitted to be paid from bond proceeds~~[-and]~~.

~~[(ii) use up to 1/3 of the proceeds of the transient room tax as provided in Section 59-12-301 to make the annual payment of principal, interest, premiums, and necessary reserves for any or the aggregate of bonds issued.]~~

(b) When the proceeds of the transient room tax provided in Section 59-12-301 are not needed for payment of principal, interest, premiums, and reserves on bonds issued as provided in Subsection ~~[(3)]~~ (2)(c), the county legislative body shall use those proceeds as provided in ~~[Subsections]~~ Subsection (1) [and], subject to the limitation of Subsection (2).

Section 9. Section **17-31-8** is enacted to read:

17-31-8. Tourism tax advisory boards.

(1) (a) Except as provided in Subsection (1)(b), any county that collects the following taxes shall operate a tourism tax advisory board:

(i) the transient room tax allowed under Section 59-12-301; or

(ii) the tourism, recreation, cultural, and convention facilities tax allowed under Section 59-12-603.

(b) Notwithstanding Subsection (1)(a), a county is exempt from Subsection (1)(a) if the county has an existing board, council, committee, convention visitor's bureau, or body that substantially conforms with Subsections (2), (3), and (4).

(2) A tourism tax advisory board created under Subsection (1) shall consist of at least five members.

(3) A tourism tax advisory board shall be composed of any of the following members that:

(a) are residents of the county; and

(b) represent the local:

(i) hotel and lodging industry;

(ii) restaurant industry;

(iii) recreational facilities;

(iv) convention facilities;

(v) museums;

(vi) cultural attractions; or

(vii) other tourism-related industries.

(4) A tourism tax advisory board shall advise the county legislative body on the best use of revenues collected from:

(a) the transient room tax allowed under Section 59-12-301; and

(b) the tourism, recreation, cultural, and convention facilities tax allowed under Section 59-12-603.

(5) A member of any county tourism tax advisory board:

(a) may not receive compensation or benefits for the member's services; and

(b) may receive per diem and expenses incurred in the performance of the member's official duties.

Section 10. Section **59-12-603** is amended to read:

59-12-603. County tax -- Bases -- Rates -- Ordinance required -- Collection -- Administration -- Distribution -- Imposition of tax -- Tax rate change -- Effective date -- Notice requirements.

(1) In addition to any other taxes, a county legislative body may, as provided in this part, impose a tourism, recreation, cultural, and convention tax as follows:

(a) (i) a county legislative body of any county may impose a tax of not to exceed 3% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement;

(ii) beginning on or after January 1, 1999, a county legislative body of any county imposing a tax under Subsection (1)(a)(i) may, in addition to imposing the tax under Subsection (1)(a)(i), impose a tax of not to exceed 4% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement;

(b) a county legislative body of any county may impose a tax of not to exceed 1% of all sales of prepared foods and beverages that are sold by restaurants; and

(c) a county legislative body of any county may impose a tax of not to exceed 1/2% of the rent for every occupancy of a suite, room, or rooms on all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar public accommodations.

(2) The revenue from the imposition of the taxes provided for in Subsections (1)(a) through (c) may be used for the purposes of financing~~[-, in whole or in part,]~~ tourism promotion, and the development, operation, and maintenance of tourist, recreation, cultural, and convention facilities as defined in Section 59-12-602.

(3) The tax imposed under Subsection (1)(c) shall be in addition to the transient room tax imposed under Part 3, Transient Room Tax, and may be imposed only by a county of the first class.

(4) (a) A tax imposed under this part shall be levied at the same time and collected in the same manner as provided in Part 2, Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is not subject to the provisions of Subsection 59-12-205(2).

(b) A tax imposed under this part may be pledged as security for bonds, notes, or other evidences of indebtedness incurred by a county under Title 11, Chapter 14, Utah Municipal Bond Act, to finance tourism, recreation, cultural, and convention facilities.

(5) (a) In order to impose the tax under Subsection (1), each county legislative body shall annually adopt an ordinance imposing the tax.

(b) (i) The ordinance under Subsection (5)(a) shall include provisions substantially the same as those contained in Part 1, Tax Collection, except that the tax shall be imposed only on those items and sales described in Subsection (1).

(ii) A county legislative body imposing a tax under this part shall impose the tax as provided in this section on the leases, rentals, and sales described in Subsection (1) relating to the Olympic Winter Games of 2002 made to or by an organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code, except for leases, rentals, and sales described in Subsection (1):

(A) paid for in full by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002;

(B) exclusively used by:

(I) an officer, a trustee, or an employee of the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; or

(II) a volunteer supervised by the Salt Lake Organizing Committee for the Olympic Winter Games of 2002; and

(C) for which the Salt Lake Organizing Committee for the Olympic Winter Games of 2002 does not receive reimbursement.

(c) The name of the county as the taxing agency shall be substituted for that of the state where necessary, and an additional license is not required if one has been or is issued under Section 59-12-106.

(6) In order to maintain in effect its tax ordinance adopted under this part, each county legislative body shall, within 30 days of any amendment of any applicable provisions of Part 1, Tax Collection, adopt amendments to its tax ordinance to conform with the applicable amendments to Part 1, Tax Collection.

(7) The commission shall:

(a) administer, collect, and enforce the tax authorized under this part pursuant to:

(i) the same procedures used to administer, collect, and enforce the sales and use tax under Part 1, Tax Collection; and

(ii) Chapter 1, General Taxation Policies;

(b) (i) except as provided in Subsection (7)(c), for a tax under this part other than the tax under Subsection (1)(a)(ii), distribute the revenues to the county imposing the tax; and

(ii) except as provided in Subsection (7)(c), for a tax under Subsection (1)(a)(ii), distribute the revenues according to the distribution formula provided in Subsection (8); and

(c) deduct from the distributions under Subsection (7)(b) an administrative charge for collecting the tax as provided in Section 59-12-206.

(8) The commission shall distribute the revenues generated by the tax under Subsection (1)(a)(ii) to each county collecting a tax under Subsection (1)(a)(ii) according to the following formula:

(a) the commission shall distribute 70% of the revenues based on the percentages generated by dividing the revenues collected by each county under Subsection (1)(a)(ii) by the total revenues collected by all counties under Subsection (1)(a)(ii); and

(b) the commission shall distribute 30% of the revenues based on the percentages generated by dividing the population of each county collecting a tax under Subsection (1)(a)(ii) by the total population of all counties collecting a tax under Subsection (1)(a)(ii).

(9) (a) For purposes of this Subsection (9):

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

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

(b) (i) If, on or after May 1, 2000, a county enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

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

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(b)(ii) from the county.

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

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

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

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

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

(c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will result in a change in the rate of a tax under this part for an annexing area, the change shall take effect:

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

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(c)(ii) from the county that annexes the annexing area.

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

(A) that the annexation described in Subsection (9)(c)(i) will result in a change in the rate

of a tax under this part for the annexing area;

- (B) the statutory authority for the tax described in Subsection (9)(c)(ii)(A);
- (C) the effective date of the tax described in Subsection (9)(c)(ii)(A); and
- (D) the new rate of the tax described in Subsection (9)(c)(ii)(A).