

1 **COUNTY OPTION FUNDING FOR BOTANICAL,**
2 **CULTURAL, RECREATIONAL, AND ZOOLOGICAL**
3 **ORGANIZATIONS OR FACILITIES AMENDMENTS**

4 2003 GENERAL SESSION

5 STATE OF UTAH

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9 **This act modifies provisions relating to Revenue and Taxation. The act modifies the**
10 **formula for distributing certain sales and use tax revenues to cultural, botanical, and**
11 **zoological organizations. The act expands the potential recipients of the sales and use tax**
12 **revenues in certain counties and clarifies what administrative units are eligible for receipt**
13 **of revenues. The act modifies the composition of advisory boards. The act authorizes**
14 **county legislative bodies to retain a percentage of the applicable sales and use tax**
15 **proceeds to cover administrative costs. The act clarifies that county ordinances may be**
16 **revised under certain circumstances without submitting an opinion question to voters.**
17 **The act takes effect on July 1, 2003.**

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

19 AMENDS:

20 **59-12-701**, as last amended by Chapter 209, Laws of Utah 1998

21 **59-12-702**, as last amended by Chapter 21, Laws of Utah 1999

22 **59-12-703**, as last amended by Chapter 192, Laws of Utah 2001

23 **59-12-704**, as last amended by Chapter 192, Laws of Utah 2001

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

25 Section 1. Section **59-12-701** is amended to read:

26 **59-12-701. Purpose statement.**

27 The Utah Legislature finds and declares that:



28 (1) Recreational and zoological facilities and the botanical, cultural, and zoological
29 organizations of the state of Utah enhance the quality of life of Utah's citizens, as well as the
30 continuing growth of Utah's tourist, convention, and recreational industries.

31 (2) Utah was the first state in this nation to create and financially support a state arts
32 agency, now the Utah Arts Council, which is committed to the nurturing and growth of cultural
33 pursuits.

34 (3) Utah has provided, and intends to continue, the financial support of recreational and
35 zoological facilities and the botanical, cultural, and zoological organizations of this state.

36 (4) The state's support of its recreational and zoological facilities and its botanical,
37 cultural, and zoological organizations has not been sufficient to assure the continuing existence
38 and growth of these facilities and organizations, and the Legislature believes that local
39 government may wish to play a greater role in the support of these organizations.

40 (5) Without jeopardizing the state's ongoing support of its recreational and zoological
41 facilities and its botanical, cultural, and zoological organizations, the Legislature intends to
42 permit the counties of the state of Utah to enhance public financial support of Utah's publicly
43 owned or operated recreational and zoological facilities, and botanical, cultural, and zoological
44 organizations owned or operated by institutions or private nonprofit organizations, through the
45 imposition of a county sales and use tax.

46 (6) In a county of the first class, it is necessary and appropriate to allocate a tax
47 imposed under this part in a manner that provides adequate predictable support to a fixed
48 number of botanical and cultural organizations and that gives the county legislative body
49 discretion to allocate the tax revenues to other botanical and cultural organizations.

50 Section 2. Section **59-12-702** is amended to read:

51 **59-12-702. Definitions.**

52 As used in this part:

53 (1) "Administrative unit" means a division of a private nonprofit organization or
54 institution that:

55 (a) would, if it were a separate entity, be a botanical organization or cultural
56 organization; and

57 (b) consistently maintains books and records separate from those of its parent
58 organization.

59 ~~[(1)]~~ (2) "Botanical organization" means ~~[any]~~:

60 (a) a private ~~[or public]~~ nonprofit organization or ~~[administrative unit of a private or~~
61 ~~public nonprofit organization]~~ institution having as its primary purpose the advancement and
62 preservation of plant science through horticultural display, botanical research, and community
63 education~~[-];~~ or

64 (b) an administrative unit.

65 ~~[(2)]~~ (3) (a) "Cultural organization":

66 (i) means:

67 ~~[(1)]~~ (A) a private nonprofit ~~[institutional]~~ organization or ~~[an administrative unit of a~~
68 ~~nonprofit institutional organization]~~ institution having as its primary purpose the advancement
69 and preservation of:

70 ~~[(A)]~~ (I) natural history;

71 ~~[(B)]~~ (II) art;

72 ~~[(C)]~~ (III) music;

73 ~~[(D)]~~ (IV) theater; or

74 ~~[(E)]~~ (V) dance; and

75 (B) an administrative unit; and

76 (ii) includes, for purposes of Subsections 59-12-704(1)(d) and (6) ~~[includes]~~ only:

77 (A) a private nonprofit ~~[institutional]~~ organization or ~~[administrative unit of a nonprofit~~
78 ~~institutional organization]~~ institution having as its primary purpose the advancement and
79 preservation of history;

80 (B) a municipal or county cultural council having as its primary purpose the
81 advancement and preservation of:

82 (I) history;

83 (II) natural history;

84 (III) art;

85 (IV) music;

86 (V) theater; or

87 (VI) dance.

88 (b) "Cultural organization" does not include:

89 (i) any agency of the state;

90 (ii) except as provided in Subsection [~~(2)~~] (3)(a)(ii)(B), any political subdivision of the
91 state;

92 (iii) any educational institution whose annual revenues are directly derived more than
93 50% from state funds; or

94 (iv) in a county of the first or second class, any radio or television broadcasting
95 network or station, cable communications system, newspaper, or magazine.

96 (4) "Institution" means any of the institutions listed in Subsections 53B-1-102(1)(b)
97 through (1).

98 [~~(3)~~] (5) "Recreational facility" means any publicly owned or operated park,
99 campground, marina, dock, golf course, playground, athletic field, gymnasium, swimming
100 pool, trail system, ~~h~~ [cultural arts facility], ~~h~~ or other facility used for recreational purposes.

101 (6) "Rural radio station" means a nonprofit radio station based in a county of the third,
102 fourth, fifth, or sixth class.

103 [~~(4)~~] (7) In a county of the first class, "zoological facilities" means the facilities of an
104 entity accredited by the American Zoo and Aquarium Association, including any buildings,
105 exhibits, utilities and infrastructure, walkways, pathways, roadways, offices, administration
106 facilities, public service facilities, educational facilities, enclosures, public viewing areas,
107 animal barriers, animal housing, animal care facilities, and veterinary and hospital facilities
108 related to the advancement, exhibition, or preservation of mammals, birds, reptiles, or
109 amphibians.

110 [~~(5)~~] (8) (a) (i) Except as provided in Subsection [~~(5)~~] (8)(a)(ii), "zoological
111 organization" means a ~~h~~ [private] ~~h~~ nonprofit [~~institutional~~] organization having as its primary
112 purpose the advancement and preservation of zoology.

113 (ii) In a county of the first class, "zoological organization" means a ~~h~~ [private] ~~h~~ nonprofit
114 organization accredited by the American Zoo and Aquarium Association and having as its
115 primary purpose the advancement and exhibition of mammals, birds, reptiles, [~~and~~] or
116 amphibians to an audience of [~~500,000~~] 75,000 or more persons annually.

117 (b) "Zoological organization" does not include any agency of the state, educational
118 institution, radio or television broadcasting network or station, cable communications system,
119 newspaper, or magazine.

120 Section 3. Section **59-12-703** is amended to read:

121 **59-12-703. Opinion question election -- Imposition of tax -- Uses of tax monies.**

122 (1) (a) (i) Except as provided in Subsection (1)(a)(ii), a county legislative body may
123 submit an opinion question to the residents of that county, by majority vote of all members of
124 the legislative body, so that each resident of the county has an opportunity to express the
125 resident's opinion on the imposition of a local sales and use tax of .1% on the transactions
126 described in Subsection 59-12-103(1), to fund recreational and zoological facilities [~~and~~],
127 botanical, cultural, and zoological organizations, and rural radio stations in that county.

128 (ii) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a
129 tax under this section on:

130 (A) the sales and uses described in Section 59-12-104 to the extent the sales and uses
131 are exempt from taxation under Section 59-12-104; and

132 (B) any amounts paid or charged by a vendor that collects a tax under Subsection
133 59-12-107(1)(b).

134 (b) The election shall follow the procedures outlined in Title 11, Chapter 14, Utah
135 Municipal Bond Act.

136 (2) (a) If the county legislative body determines that a majority of the county's
137 registered voters voting on the imposition of the tax have voted in favor of the imposition of
138 the tax as prescribed in Subsection (1)(a), the county legislative body may impose the tax by a
139 majority vote of all members of the legislative body on the transactions:

140 [~~(a)~~] (i) described in Subsection (1); and

141 [~~(b)~~] (ii) within the county, including the cities and towns located in the county.

142 (b) A county legislative body may, without submitting an opinion question under
143 Subsection (1)(a), revise county ordinances to reflect statutory changes to the distribution
144 formula or eligible recipients of revenues generated from a tax imposed under Subsection
145 (2)(a), if the county legislative body has previously:

146 (i) submitted an opinion question to voters under Subsection (1)(a); and

147 (ii) imposed the tax under Subsection (2)(a).

148 (3) The monies generated from any tax imposed under Subsection (2) shall be used for
149 [~~financing~~] funding:

150 (a) recreational and zoological facilities located within the county or a city or town
151 located in the county; and

152 (b) ongoing operating expenses of:

153 (i) recreational facilities described in Subsection (3)(a);

154 (ii) botanical, cultural, and zoological organizations within the county[-]; and

155 (iii) rural radio stations within the county.

156 (4) Taxes imposed under this part shall be:

157 (a) levied at the same time and collected in the same manner as provided in Part 2,

158 Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is

159 not subject to Subsection 59-12-205(2); and

160 (b) levied for a period of ten years and may be reauthorized at the end of the ten-year

161 period in accordance with this section.

162 (5) (a) For purposes of this Subsection (5):

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

164 Annexation to County.

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

166 (b) (i) If, on or after May 1, 2000, a county enacts or repeals a tax or changes the rate of

167 a tax under this part, the enactment, repeal, or change shall take effect:

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

169 (B) after a 75-day period beginning on the date the commission receives notice meeting

170 the requirements of Subsection (5)(b)(ii) from the county.

171 (ii) The notice described in Subsection (5)(b)(i)(B) shall state:

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

173 (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

174 (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and

175 (D) if the county enacts the tax or changes the rate of the tax described in Subsection

176 (5)(b)(ii)(A), the new rate of the tax.

177 (c) (i) If, for an annexation that occurs on or after May 1, 2000, the annexation will

178 result in a change in the rate of a tax under this part for an annexing area, the change shall take

179 effect:

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

181 (B) after a 75-day period beginning on the date the commission receives notice meeting

182 the requirements of Subsection (5)(c)(ii) from the county that annexes the annexing area.

183 (ii) The notice described in Subsection (5)(c)(i)(B) shall state:

184 (A) that the annexation described in Subsection (5)(c)(i) will result in a change in the
185 rate of a tax under this part for the annexing area;

186 (B) the statutory authority for the tax described in Subsection (5)(c)(ii)(A);

187 (C) the effective date of the tax described in Subsection (5)(c)(ii)(A); and

188 (D) the new rate of the tax described in Subsection (5)(c)(ii)(A).

189 Section 4. Section **59-12-704** is amended to read:

190 **59-12-704. Distribution of revenues -- Advisory board creation -- Determining**
191 **operating expenses.**

192 (1) Except as provided in Subsections (3)(b) and (5), and subject to the requirements of
193 this section, any revenues collected by a county of the first class under this part shall be
194 distributed annually by the county legislative body to support recreational and zoological
195 facilities and botanical, cultural, and zoological organizations within that first class county as
196 follows:

197 (a) 30% of the revenue collected by the county under this section shall be distributed
198 by the county legislative body to support recreational facilities located within the county;

199 (b) ~~[(i) 12.5%]~~ 12-1/8% of the revenue collected by the county under this section shall
200 be distributed by the county legislative body to support zoological facilities and organizations
201 located within the county, with \hat{h} [95%] 94.5% \hat{h} of that revenue being distributed to zoological
201a facilities

202 and organizations with average annual operating expenses of \$2,000,000 or more and 5.5% of
203 that revenue being distributed to zoological facilities and organizations with average annual
204 operating expenses of less than \$2,000,000; [and]

205 ~~[(ii) the county legislative body shall determine how the monies shall be distributed~~
206 ~~among the zoological organizations;]~~

207 (c) (i) ~~[52.5%]~~ 48-7/8% of the revenue collected by the county under this section shall
208 be distributed to no more than 23 botanical and cultural organizations with average annual
209 operating expenses of more than \$250,000 as determined under Subsection (3);

210 (ii) subject to Subsection (1)(c)(iii), the county legislative body shall distribute the
211 monies described in Subsection (1)(c)(i) among the organizations and in proportion to their
212 average annual operating expenses as determined under Subsection (3); and

213 (iii) the amount distributed to any organization described in Subsection (1)(c)(i) may

214 not exceed 35% of the organization's operating budget; and

215 (d) (i) ~~[5%]~~ 9% of the revenue collected by the county under this section shall be
216 distributed to botanical and cultural organizations ~~[with average annual operating expenses of~~
217 ~~less than \$250,000 as determined under Subsection (3)]~~ that do not receive revenue under
218 Subsection (1)(c)(i); and

219 (ii) the county legislative body shall determine how the monies shall be distributed
220 among the organizations described in Subsection (1)(d)(i).

221 (2) (a) The county legislative body of each county ~~[of the first class]~~ shall create an
222 advisory board to advise the county legislative body on disbursement of funds to botanical and
223 cultural organizations under Subsection (1)(c)(i).

224 (b) (i) The advisory board under Subsection (2)(a) shall consist of seven members
225 appointed by the county legislative body.

226 (ii) ~~[Two]~~ In a county of the first class, two of the seven members of the advisory
227 board under Subsection (2)(a) shall be appointed from the Utah Arts Council.

228 (3) (a) Except as provided in Subsection (3)(b), to be eligible to receive monies
229 collected by the county under this part, a botanical, cultural, and zoological organization
230 located within a county of the first class shall, every three years:

231 (i) calculate their average annual operating expenses based upon audited operating
232 expenses for three preceding fiscal years; and

233 (ii) submit to the appropriate county legislative body:

234 (A) a verified audit of annual operating expenses for each of those three preceding
235 fiscal years; and

236 (B) the average annual operating expenses as calculated under Subsection (3)(a)(i).

237 (b) Notwithstanding Subsection (3)(a), the county legislative body may waive the
238 ~~[expense]~~ operating expenses reporting requirements under Subsection (3)(a) for organizations
239 described in Subsection (1)(d)(i).

240 (4) When calculating average annual operating expenses as described in Subsection
241 (3), each botanical, cultural, and zoological organization shall use the same three-year fiscal
242 period as determined by the county legislative body.

243 (5) (a) By July 1 of each year, the county legislative body of a first class county may
244 index the threshold amount in Subsections (1)(c) and (d).

245 (b) Any change under Subsection (5)(a) shall be rounded off to the nearest \$100.

246 (6) (a) Beginning on July 1, 2001, in a county except for a county of the first class, the
247 county legislative body shall by ordinance provide for the distribution of the entire amount of
248 the revenues generated by the tax imposed by this section as provided in this Subsection (6).

249 (b) Pursuant to an interlocal agreement established in accordance with Title 11,
250 Chapter 13, Interlocal Cooperation Act, a county described in Subsection (6)(a) may distribute
251 to a city, town, or political subdivision within the county revenues generated by a tax under this
252 part.

253 (c) The revenues distributed under Subsection (6)(a) or (b) shall be used for one or
254 more organizations or facilities defined in Section 59-12-702 regardless of whether the
255 revenues are distributed:

256 (i) directly by the county described in Subsection (6)(a) to be used for an organization
257 or facility defined in Section 59-12-702; or

258 (ii) in accordance with an interlocal agreement described in Subsection (6)(b).

259 (7) ~~h [(a)] h~~ A county legislative body may retain up to h [2%] 1.5% h of the proceeds from
259a a tax under

260 this part for the cost of administering the provisions of this part.

261 ~~h [(b) In a county of the first class, half of the money retained under Subsection (7)(a)~~
262 ~~shall be paid from funds allocated under Subsection (1)(a) and the other half shall be paid from~~
263 ~~funds allocated under Subsections (1)(b), (c), and (d) in proportion to the allocation~~
264 ~~percentages in those subsections.] h~~

265 [(7)] (8) The commission may retain an amount not to exceed 1-1/2% of the tax
266 collected under this part for the cost of administering this part.

267 Section 5. **Effective date.**

268 This act takes effect on July 1, 2003.

Legislative Review Note

as of 2-19-03 8:41 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note**Bill Number HB0294****County Option Funding for Botanical, Cultural, Recreational, and
Zoological Organizations or Facilities Amendments***25-Feb-03**12:02 PM*

State Impact

No net fiscal impact. Passage of this bill could redistribute existing revenues among receiving entities. The bill authorizes a 2 percent administration fee which could lower the funding going to receiving entities.

Individual and Business Impact

There could be a shift in revenues among receiving entities.

Office of the Legislative Fiscal Analyst