

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

2003 GENERAL SESSION

STATE OF UTAH

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This act modifies provisions relating to Revenue and Taxation. The act modifies the formula for distributing certain sales and use tax revenues to cultural, botanical, and zoological organizations. The act expands the potential recipients of the sales and use tax revenues in certain counties and clarifies what administrative units are eligible for receipt of revenues. The act modifies how certain counties are to distribute specified sales and use tax money to zoological facilities and organizations. The act modifies the composition of advisory boards. The act authorizes county legislative bodies to retain a percentage of the applicable sales and use tax proceeds to cover administrative costs. The act provides that county ordinances may be revised under certain circumstances after submitting an opinion question to voters. The act takes effect on July 1, 2003.

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

AMENDS:

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

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

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

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

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

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

59-12-701. Purpose statement.

The Utah Legislature finds and declares that:

(1) Recreational and zoological facilities and the botanical, cultural, and zoological

organizations of the state of Utah enhance the quality of life of Utah's citizens, as well as the continuing growth of Utah's tourist, convention, and recreational industries.

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

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

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

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

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

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

59-12-702. Definitions.

As used in this part:

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

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

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

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

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

(b) an administrative unit.

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

(i) means:

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

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

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

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

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

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

(B) an administrative unit; and

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

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

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

(I) history;

(II) natural history;

(III) art;

(IV) music;

(V) theater; or

(VI) dance.

(b) "Cultural organization" does not include:

(i) any agency of the state;

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

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

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

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

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

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

[~~(4)~~] (7) In a county of the first class, "zoological facilities" means any public, public-private partnership, or private nonprofit buildings, exhibits, utilities and infrastructure, walkways, pathways, roadways, offices, administration facilities, public service facilities, educational facilities, enclosures, public viewing areas, animal barriers, animal housing, animal care facilities, and veterinary and hospital facilities related to the advancement, exhibition, or preservation of mammals, birds, reptiles, or amphibians.

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

(ii) In a county of the first class, "zoological organization" means a nonprofit

organization having as its primary purpose the advancement and exhibition of mammals, birds, reptiles, ~~[and]~~ or amphibians to an audience of ~~[500,000]~~ 75,000 or more persons annually.

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

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

59-12-703. Opinion question election -- Imposition of tax -- Revision of county ordinances to reflect statutory changes -- Uses of tax monies.

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

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

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

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

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

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

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

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

(b) A county legislative body may revise county ordinances to reflect statutory changes to the distribution formula or eligible recipients of revenues generated from a tax imposed under Subsection (2)(a):

(i) after the county legislative body submits an opinion question to residents of the county in accordance with Subsection (1)(b) giving them the opportunity to express their opinion on the proposed revisions to county ordinances; and

(ii) if the county legislative body determines that a majority of those voting on the opinion question have voted in favor of the revisions.

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

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

(b) ongoing operating expenses of:

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

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

(iii) rural radio stations within the county.

(4) Taxes imposed under this part shall be:

(a) 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 Subsection 59-12-205(2); and

(b) levied for a period of ten years and may be reauthorized at the end of the ten-year period in accordance with this section.

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

(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 (5)(b)(ii) from the county.

(ii) The notice described in Subsection (5)(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 (5)(b)(ii)(A);
(C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and
(D) if the county enacts the tax or changes the rate of the tax described in Subsection (5)(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 (5)(c)(ii) from the county that annexes the annexing area.

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

(A) that the annexation described in Subsection (5)(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 (5)(c)(ii)(A);
(C) the effective date of the tax described in Subsection (5)(c)(ii)(A); and
(D) the new rate of the tax described in Subsection (5)(c)(ii)(A).

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

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

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

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

(b) (i) ~~[12.5%]~~ subject to Subsection (1)(b)(ii) and except as provided in Subsection (1)(b)(iii), 12-1/8% of the revenue collected by the county under this section shall be distributed by the county legislative body to support no more than three zoological facilities and organizations located within the county, with 94.5% of that revenue being distributed to zoological facilities and organizations with average annual operating expenses of \$2,000,000 or more and 5.5% of that revenue being distributed to zoological facilities and organizations with average annual operating expenses of less than \$2,000,000; [and]

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

(ii) except as provided in Subsection (1)(b)(iii), the county legislative body shall distribute the monies described in Subsection (1)(b)(i) among the zoological facilities and organizations in proportion to their average annual operating expenses as determined under Subsection (3); and

(iii) if a zoological facility or organization is created or relocated within the county after June 1, 2003, the county legislative body shall distribute the monies described in Subsection (1)(b)(i) as it determines appropriate;

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

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

(iii) the amount distributed to any organization described in Subsection (1)(c)(i) may not exceed 35% of the organization's operating budget; and

(d) (i) ~~[5%]~~ 9% of the revenue collected by the county under this section shall be distributed to botanical and cultural organizations ~~[with average annual operating expenses of~~

less than \$250,000 as determined under Subsection (3)] that do not receive revenue under Subsection (1)(c)(i); and

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

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

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

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

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

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

(ii) submit to the appropriate county legislative body:

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

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

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

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

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

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

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

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

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

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

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

(7) A county legislative body may retain up to 1.5% of the proceeds from a tax under this part for the cost of administering the provisions of this part.

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

Section 5. **Effective date.**

This act takes effect on July 1, 2003.