

Representative Katherine M. Bryson proposes the following substitute bill:

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

4 2003 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Sheryl L. Allen**

7 Jackie Biskupski

Brent H. Goodfellow

Martin R. Stephens

8 Greg J. Curtis

Ty McCartney

David Ure

9 **This act modifies provisions relating to Revenue and Taxation. The act authorizes**
10 **certain municipalities to submit an opinion question to residents of the municipality and**
11 **to impose within the municipality a sales and use tax for botanical, cultural, recreational,**
12 **and zoological purposes if the opinion question results in a favorable vote. The act**
13 **prohibits the county from imposing the specified sales and use tax if a qualified**
14 **municipality has previously imposed the tax. The act modifies the formula for**
15 **distributing certain sales and use tax revenues to cultural, botanical, and zoological**
16 **organizations. The act expands the potential recipients of the sales and use tax revenues**
17 **in certain counties and clarifies what administrative units are eligible for receipt of**
18 **revenues. The act modifies the composition of county advisory boards. The act**
19 **authorizes county legislative bodies and the legislative bodies of certain municipalities to**
20 **retain a percentage of the applicable sales and use tax proceeds to cover administrative**
21 **costs. The act clarifies that county ordinances may be revised and provides that**
22 **municipal ordinances may be revised under certain circumstances without submitting an**
23 **opinion question to voters. The act takes effect on July 1, 2003.**

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

25 AMENDS:



26 **59-12-701**, as last amended by Chapter 209, Laws of Utah 1998

27 **59-12-702**, as last amended by Chapter 21, Laws of Utah 1999

28 **59-12-703**, as last amended by Chapter 192, Laws of Utah 2001

29 **59-12-704**, as last amended by Chapter 192, Laws of Utah 2001

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

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

32 **59-12-701. Purpose statement.**

33 The Utah Legislature finds and declares that:

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

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

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

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

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

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

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

57 **59-12-702. Definitions.**

58 As used in this part:

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

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

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

65 [~~(1)~~] (2) "Botanical organization" means [~~any~~]:

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

70 (b) an administrative unit.

71 [~~(2)~~] (3) (a) "Cultural organization":

72 (i) means:

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

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

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

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

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

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

81 (B) an administrative unit; and

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

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

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

- 88 (I) history;
- 89 (II) natural history;
- 90 (III) art;
- 91 (IV) music;
- 92 (V) theater; or
- 93 (VI) dance.
- 94 (b) "Cultural organization" does not include:
- 95 (i) any agency of the state;
- 96 (ii) except as provided in Subsection [~~(2)~~] (3)(a)(ii)(B), any political subdivision of the
- 97 state;
- 98 (iii) any educational institution whose annual revenues are directly derived more than
- 99 50% from state funds; or
- 100 (iv) in a county of the first or second class, any radio or television broadcasting
- 101 network or station, cable communications system, newspaper, or magazine.
- 102 (4) "Institution" means any of the institutions listed in Subsections 53B-1-102(1)(b)
- 103 through (1).
- 104 (5) "Qualified municipality" means a municipality that is located within a county of the
- 105 second class that has not imposed within the county the sales and use tax authorized in this
- 106 part.
- 107 [~~(3)~~] (6) "Recreational facility" means any publicly owned or operated park,
- 108 campground, marina, dock, golf course, playground, athletic field, gymnasium, swimming
- 109 pool, trail system, cultural arts facility, or other facility used for recreational purposes.
- 110 (7) "Rural radio station" means a nonprofit radio station based in a county of the third,
- 111 fourth, fifth, or sixth class.
- 112 [~~(4)~~] (8) In a county of the first class, "zoological facilities" means the facilities of an
- 113 entity accredited by the American Zoo and Aquarium Association, including any buildings,
- 114 exhibits, utilities and infrastructure, walkways, pathways, roadways, offices, administration
- 115 facilities, public service facilities, educational facilities, enclosures, public viewing areas,
- 116 animal barriers, animal housing, animal care facilities, and veterinary and hospital facilities
- 117 related to the advancement, exhibition, or preservation of mammals, birds, reptiles, or
- 118 amphibians.

119 ~~[(5)]~~ (9) (a) (i) Except as provided in Subsection ~~[(5)]~~ (9)(a)(ii), "zoological
120 organization" means a private nonprofit ~~[institutional]~~ organization having as its primary
121 purpose the advancement and preservation of zoology.

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

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

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

130 **59-12-703. Opinion question election -- Imposition of tax -- Uses of tax monies.**

131 (1) (a) (i) Except as provided in ~~[Subsection]~~ Subsections (1)(a)(ii) and (c), a county
132 legislative body or the legislative body of a qualified municipality may submit an opinion
133 question to the residents of that county or municipality, as the case may be, by majority vote of
134 all members of the legislative body, so that each resident of the county or municipality has an
135 opportunity to express the resident's opinion on the imposition of a local sales and use tax of
136 .1% on the transactions described in Subsection 59-12-103(1), to fund:

137 (A) for a county, recreational and zoological facilities ~~[and]~~, botanical, cultural, and
138 zoological organizations, and rural radio stations in that county~~[-]; or~~

139 (B) for a qualified municipality, recreational and zoological facilities and botanical,
140 cultural, and zoological organizations in that municipality.

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

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

145 (B) any amounts paid or charged by a vendor that collects a tax under Subsection
146 59-12-107(1)(b).

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

149 (c) The legislative body of a county of the second class in which a qualified

150 municipality has already imposed a tax under this part may not submit an opinion question
151 under Subsection (1)(a) or impose a tax under Subsection (2).

152 (2) (a) If the county or municipal legislative body determines that a majority of the
153 county's or municipality's registered voters voting on the imposition of the tax have voted in
154 favor of the imposition of the tax as prescribed in Subsection (1)(a), the county or municipal
155 legislative body may, except as provided in Subsection (1)(c), impose the tax by a majority
156 vote of all members of the legislative body on the transactions:

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

158 [~~b~~] (ii) (A) for a county, within the county, including the cities and towns located in
159 the county[-]; or

160 (B) for a qualified municipality, within the municipality.

161 (b) A county legislative body or the legislative body of a qualified municipality may,
162 without submitting an opinion question under Subsection (1)(a), revise county or municipal
163 ordinances to reflect statutory changes to the distribution formula or eligible recipients of
164 revenues generated from a tax imposed under Subsection (2)(a), if the county or municipal
165 legislative body has previously:

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

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

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

170 (a) recreational and zoological facilities located within:

171 (i) for a county, the county or a city or town located in the county; [~~and~~] or

172 (ii) for a qualified municipality, recreational and zoological facilities located within the
173 municipality; and

174 (b) ongoing operating expenses of:

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

176 (ii) botanical, cultural, and zoological organizations within the county[-] or
177 municipality, as the case may be; and

178 (iii) for a county, rural radio stations within the county.

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

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

181 Local Sales and Use Tax Act, except that the collection and distribution of the tax revenue is
182 not subject to Subsection 59-12-205(2); and

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

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

186 (i) "Annexation" means:

187 (A) for a county, an annexation to a county under Title 17, Chapter 2, Annexation to
188 County[-]; or

189 (B) for a qualified municipality, an annexation to the municipality under Title 10,
190 Chapter 2, Part 4, Annexation.

191 (ii) "Annexing area" means:

192 (A) for an county, an area that is annexed into a county[-]; or

193 (B) for a qualified municipality, an area that is annexed to the municipality.

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

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

198 (B) after a 75-day period beginning on the date the commission receives notice meeting
199 the requirements of Subsection (5)(b)(ii) from the county or municipality.

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

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

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

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

205 (D) if the county or municipality enacts the tax or changes the rate of the tax described
206 in Subsection (5)(b)(ii)(A), the new rate of the tax.

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

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

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

212 the requirements of Subsection (5)(c)(ii) from the county or municipality that annexes the
213 annexing area.

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

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

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

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

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

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

221 **59-12-704. Distribution of revenues -- Advisory board creation -- Determining**
222 **operating expenses.**

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

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

230 (b) ~~[(i) 12.5%]~~ 12-1/8% of the revenue collected by the county under this section shall
231 be distributed by the county legislative body to support zoological facilities and organizations
232 located within the county, with 95% of that revenue being distributed to zoological facilities
233 and organizations with average annual operating expenses of \$2,000,000 or more and 5.5% of
234 that revenue being distributed to zoological facilities and organizations with average annual
235 operating expenses of less than \$2,000,000; [and]

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

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

241 (ii) subject to Subsection (1)(c)(iii), the county legislative body shall distribute the
242 monies described in Subsection (1)(c)(i) among the organizations and in proportion to their

243 average annual operating expenses as determined under Subsection (3); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

290 (7) (a) A county legislative body and the legislative body of a qualified municipality
291 may retain up to 2% of the proceeds from a tax under this part for the cost of administering the
292 provisions of this part.

293 (b) In a county of the first class, half of the money retained under Subsection (7)(a)
294 shall be paid from funds allocated under Subsection (1)(a) and the other half shall be paid from
295 funds allocated under Subsections (1)(b), (c), and (d) in proportion to the allocation
296 percentages in those subsections.

297 [~~(7)~~] (8) The commission may retain an amount not to exceed 1-1/2% of the tax
298 collected under this part for the cost of administering this part.

299 Section 5. **Effective date.**

300 This act takes effect on July 1, 2003.