

1                   **COUNTY OPTION SALES AND USE TAX FOR**  
2                   **AGRICULTURAL LAND AND OPEN LAND**

3                                   2006 GENERAL SESSION

4                                   STATE OF UTAH

5                           **Chief Sponsor: Craig W. Butters**

6                           Senate Sponsor: \_\_\_\_\_

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies the Sales and Use Tax Act to enact the County Option Sales and Use  
11 Tax for Agricultural Land and Open Land Act.

12                   **Highlighted Provisions:**

13                   This bill:

14                   ▶ enacts the County Option Sales and Use Tax for Agricultural Land and Open Land  
15 Act;

16                   ▶ provides definitions;

17                   ▶ authorizes a qualifying county to impose the tax beginning on or after January 1,  
18 2007, and ending on or before December 31, 2011;

19                   ▶ provides procedures and requirements for the imposition, enactment, and repeal of  
20 the tax;

21                   ▶ provides procedures and requirements for the administration, collection, and  
22 enforcement of the tax by the State Tax Commission and provides that the State Tax  
23 Commission may collect an administrative fee for administering, collecting, and  
24 enforcing the tax;

25                   ▶ provides procedures and requirements for the allocation, distribution, and  
26 expenditure of tax revenues;

27                   ▶ requires a county legislative body to establish an advisory board to advise the



28 county legislative body on the expenditure of tax revenues and provides procedures and  
29 requirements for establishing an advisory board;

30       ▶ addresses a seller's or certified service provider's reliance on State Tax Commission  
31 information or certain systems;

32       ▶ requires the Natural Resources, Agriculture, and Environment Interim Committee to  
33 study the tax; and

34       ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36       None

37 **Other Special Clauses:**

38       This bill takes effect on July 1, 2006.

39 **Utah Code Sections Affected:**

40 ENACTS:

41       **59-12-1701**, Utah Code Annotated 1953

42       **59-12-1702**, Utah Code Annotated 1953

43       **59-12-1703**, Utah Code Annotated 1953

44       **59-12-1704**, Utah Code Annotated 1953

45       **59-12-1705**, Utah Code Annotated 1953

46       **59-12-1706**, Utah Code Annotated 1953

47       **59-12-1707**, Utah Code Annotated 1953



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

50       Section 1. Section **59-12-1701** is enacted to read:

51       **Part 17. County Option Sales and Use Tax for Agricultural Land and Open Land Act**

52       **59-12-1701. Title.**

53       This part is known as the "County Option Sales and Use Tax for Agricultural Land and  
54 Open Land Act."

55       Section 2. Section **59-12-1702** is enacted to read:

56       **59-12-1702. Definitions.**

57       As used in this part:

58       (1) "Agricultural land" has the same meaning as "land in agricultural use" under

59 Section 59-2-502.

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

61 Annexation to County.

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

63 (4) "Governmental entity" means:

64 (a) the United States;

65 (b) the state;

66 (c) a county;

67 (d) a city;

68 (e) a town;

69 (f) a political subdivision of an entity described in Subsections (4)(b) through (e); or

70 (g) an agency, a department, a division, or other similar instrumentality of an entity

71 described in Subsections (4)(a) through (f).

72 (5) "Municipality" means a city or town.

73 (6) "Municipality's proportionate share" means a percentage of revenues described in

74 Subsection 59-12-1704(2)(b) equal to the percentage that the population of a municipality

75 bears to the total population of the county in which the municipality is located.

76 (7) "Open land" means land that is preserved predominantly in a natural, open, and

77 undeveloped condition.

78 (8) "Public land" means land that is owned by a governmental entity.

79 (9) "Qualifying county" means a county, as determined by resolution of the county

80 legislative body on the day on which the county legislative body adopts the resolution required

81 by Subsection 59-12-1703(2)(a)(i):

82 (a) of the third, fourth, fifth, or sixth class;

83 (b) that has \$100,000,000 or more in cash receipts from farming as estimated for the

84 most recent calendar year that is reported in the Annual Bulletin issued by the Utah

85 Agricultural Statistics Service of the National Agricultural Statistics Service, United States

86 Department of Agriculture;

87 (c) in which the county legislative body has adopted by resolution a method for

88 prioritizing lands that are eligible for the establishment of a conservation easement to protect

89 agricultural land and open land;

90 (d) that has an agricultural advisory board:  
91 (i) established by resolution of the county legislative body; and  
92 (ii) in operation;  
93 (e) that has an average annual rate of change in population of 1% or more as estimated:  
94 (i) by the Utah Population Estimates Committee; and  
95 (ii) for the four-year period listed as the most recent four-year estimate that is available  
96 for the county at the time the resolution is adopted; and  
97 (f) in which 60% or less of the land within the county is public land.

98 (10) "Unincorporated area's proportionate share" means a percentage of revenues  
99 described in Subsection 59-12-1704(2)(b) equal to the percentage that the population of the  
100 unincorporated area of a county bears to the total population of the county.

101 Section 3. Section **59-12-1703** is enacted to read:

102 **59-12-1703. Imposition of tax -- Base -- Rate -- Opinion question election -- Use of**  
103 **tax revenues -- Administration, collection, and enforcement of tax by commission --**  
104 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

105 (1) (a) Beginning on or after January 1, 2007, and ending on or before December 31,  
106 2011, and subject to the other provisions of this part, a county legislative body of a qualifying  
107 county may impose a sales and use tax of .125%:

108 (i) except as provided in Subsections (1)(b) and 59-12-207.1(7)(c), on the transactions:  
109 (A) described in Subsection 59-12-103(1); and  
110 (B) within the county, including the cities and towns within the county;  
111 (ii) for the purposes described in Section 59-12-1704; and  
112 (iii) in addition to any other sales and use tax authorized under this chapter.

113 (b) A county legislative body may not impose a tax under this section on the sales and  
114 uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation  
115 under Section 59-12-104.

116 (c) For purposes of this Subsection (1), the location of a transaction shall be  
117 determined in accordance with Sections 59-12-207.1 through 59-12-207.4.

118 (2) (a) Before imposing a tax under this part, a county legislative body shall:

119 (i) adopt one resolution:

120 (A) finding that the county is a qualifying county; and

121 (B) stating the county legislative body's intent to submit an opinion question to the  
122 county's registered voters voting on the imposition of the tax in accordance with Subsection  
123 (2)(a)(ii); and

124 (ii) subject to Subsection (2)(b), submit an opinion question to the county's registered  
125 voters voting on the imposition of the tax so that each registered voter has the opportunity to  
126 express the registered voter's opinion on whether a tax should be imposed under this part.

127 (b) The election required by Subsection (2)(a)(ii) shall be held:

128 (i) (A) at a regular general election; and

129 (B) in accordance with the procedures and requirements of Title 20A, Election Code,  
130 governing regular general elections; or

131 (ii) (A) at a municipal general election; and

132 (B) in accordance with the procedures and requirements of Title 20A, Election Code,  
133 governing municipal general elections.

134 (3) Subject to the other provisions of this part, if a county legislative body of a  
135 qualifying county determines that a majority of the county's registered voters voting on the  
136 imposition of the tax have voted in favor of the imposition of the tax in accordance with  
137 Subsection (2), the county legislative body of the qualifying county shall enact the tax:

138 (a) by a majority vote of all of the members of the county legislative body;

139 (b) by enacting an ordinance:

140 (i) imposing the tax;

141 (ii) (A) creating a fund to deposit the revenues generated by the tax; and

142 (B) providing procedures and requirements for the administration of the fund described  
143 in Subsection (3)(b)(ii)(A); and

144 (iii) creating an advisory board in accordance with Section 59-12-1705 to make  
145 findings and recommendations to the county legislative body; and

146 (c) in accordance with Subsection (5).

147 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), the tax authorized under this part  
148 shall be administered, collected, and enforced in accordance with:

149 (A) the same procedures used to administer, collect, and enforce the tax under:

150 (I) Part 1, Tax Collection; or

151 (II) Part 2, Local Sales and Use Tax Act; and

152 (B) Chapter 1, General Taxation Policies.

153 (ii) Notwithstanding Subsection (4)(a)(i), a tax under this part is not subject to  
154 Subsections 59-12-205(2) through (9).

155 (b) (i) The commission may retain an amount of tax collected under this part of not to  
156 exceed the lesser of:

157 (A) 1.5%; or

158 (B) an amount equal to the cost to the commission of administering this part.

159 (ii) Any amount the commission retains under Subsection (4)(b)(i) shall be:

160 (A) placed in the Sales and Use Tax Administrative Fees Account; and

161 (B) used as provided in Subsection 59-12-206(2).

162 (5) (a) (i) Except as provided in Subsection (5)(b) or (c), if, on or after October 1,  
163 2006, a county legislative body enacts or repeals a tax under this part, the enactment or repeal  
164 shall take effect:

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

166 (B) after a 90-day period beginning on the date the commission receives notice meeting  
167 the requirements of Subsection (5)(a)(ii) from the county.

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

169 (A) that the county legislative body will enact or repeal a tax under this part;

170 (B) the statutory authority for the tax described in Subsection (5)(a)(ii)(A);

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

172 (D) if the county legislative body enacts the tax described in Subsection (5)(a)(ii)(A),  
173 the rate of the tax.

174 (b) (i) Notwithstanding Subsection (5)(a)(i), for a transaction described in Subsection  
175 (5)(b)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

176 (A) that begins after the effective date of the enactment of the tax; and

177 (B) if the billing period for the transaction begins before the effective date of the  
178 enactment of the tax under Subsection (1).

179 (ii) Notwithstanding Subsection (5)(a)(i), for a transaction described in Subsection  
180 (5)(b)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

181 (A) that began before the effective date of the repeal of the tax; and

182 (B) if the billing period for the transaction begins before the effective date of the repeal

183 of the tax imposed under Subsection (1).

184 (iii) Subsections (5)(b)(i) and (ii) apply to transactions subject to a tax under:

185 (A) Subsection 59-12-103(1)(b);

186 (B) Subsection 59-12-103(1)(c);

187 (C) Subsection 59-12-103(1)(d);

188 (D) Subsection 59-12-103(1)(e);

189 (E) Subsection 59-12-103(1)(f);

190 (F) Subsection 59-12-103(1)(g);

191 (G) Subsection 59-12-103(1)(h);

192 (H) Subsection 59-12-103(1)(i);

193 (I) Subsection 59-12-103(1)(j); or

194 (J) Subsection 59-12-103(1)(k).

195 (c) (i) Notwithstanding Subsection (5)(a)(i), if a tax due under this chapter on a  
196 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an  
197 enactment or repeal of a tax described in Subsection (5)(a)(i) takes effect:

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

199 (B) beginning 60 days after the effective date of the enactment or repeal under  
200 Subsection (5)(a)(i).

201 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
202 the commission may by rule define the term "catalogue sale."

203 (d) (i) Except as provided in Subsection (5)(e) or (f), if, for an annexation that occurs  
204 on or after October 1, 2006, the annexation will result in the enactment or repeal of a tax under  
205 this part for an annexing area, the enactment or repeal shall take effect:

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

207 (B) after a 90-day period beginning on the date the commission receives notice meeting  
208 the requirements of Subsection (5)(d)(ii) from the county legislative body that annexes the  
209 annexing area.

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

211 (A) that the annexation described in Subsection (5)(d)(i)(B) will result in an enactment  
212 or repeal of a tax under this part for the annexing area;

213 (B) the statutory authority for the tax described in Subsection (5)(d)(ii)(A);

- 214 (C) the effective date of the tax described in Subsection (5)(d)(ii)(A); and  
215 (D) if the county legislative body enacts the tax described in Subsection (5)(d)(ii)(A),  
216 the rate of the tax.
- 217 (e) (i) Notwithstanding Subsection (5)(d)(i), for a transaction described in Subsection  
218 (5)(e)(iii), the enactment of a tax shall take effect on the first day of the first billing period:  
219 (A) that begins after the effective date of the enactment of the tax; and  
220 (B) if the billing period for the transaction begins before the effective date of the  
221 enactment of the tax under Subsection (1).
- 222 (ii) Notwithstanding Subsection (5)(d)(i), for a transaction described in Subsection  
223 (5)(e)(iii), the repeal of a tax shall take effect on the first day of the last billing period:  
224 (A) that began before the effective date of the repeal of the tax; and  
225 (B) if the billing period for the transaction begins before the effective date of the repeal  
226 of the tax imposed under Subsection (1).
- 227 (iii) Subsections (5)(e)(i) and (ii) apply to transactions subject to a tax under:  
228 (A) Subsection 59-12-103(1)(b);  
229 (B) Subsection 59-12-103(1)(c);  
230 (C) Subsection 59-12-103(1)(d);  
231 (D) Subsection 59-12-103(1)(e);  
232 (E) Subsection 59-12-103(1)(f);  
233 (F) Subsection 59-12-103(1)(g);  
234 (G) Subsection 59-12-103(1)(h);  
235 (H) Subsection 59-12-103(1)(i);  
236 (I) Subsection 59-12-103(1)(j); or  
237 (J) Subsection 59-12-103(1)(k).
- 238 (f) (i) Notwithstanding Subsection (5)(d)(i), if a tax due under this chapter on a  
239 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an  
240 enactment or repeal of a tax described in Subsection (5)(d)(i) takes effect:  
241 (A) on the first day of a calendar quarter; and  
242 (B) beginning 60 days after the effective date of the enactment or repeal under  
243 Subsection (5)(d)(i).
- 244 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,



245 the commission may by rule define the term "catalogue sale."

246 Section 4. Section **59-12-1704** is enacted to read:

247 **59-12-1704. Allocation, distribution, and expenditure of tax revenues.**

248 (1) After the commission subtracts the amount described in Subsection  
249 59-12-1703(4)(b), the remaining revenues generated by a tax under this part shall be:

250 (a) transmitted:

251 (i) by the commission;

252 (ii) to the county legislative body imposing the tax;

253 (iii) monthly; and

254 (iv) by electronic funds transfer; and

255 (b) allocated, distributed, and expended as provided in this section.

256 (2) A county legislative body that imposes a tax under this part shall:

257 (a) expend 90% of the revenues distributed to the county legislative body under

258 Subsection (1) as provided in Subsection (3)(a); and

259 (b) allocate or distribute 10% of the revenues distributed to the county legislative body  
260 under Subsection (1) as provided in Subsection (3)(b).

261 (3) (a) Except as provided in Subsections (4) through (6), a county legislative body  
262 shall expend the revenues described in Subsection (2)(a):

263 (i) to establish conservation easements as provided in Title 57, Chapter 18, Land  
264 Conservation Easement Act, to protect agricultural land;

265 (ii) for per diem and expenses for members of a county board as provided in Section  
266 59-12-1705; or

267 (iii) for a combination of the purposes described in Subsections (3)(a)(i) and (ii).

268 (b) (i) Except as provided in Subsections (4) through (6), the revenues described in  
269 Subsection (2)(b) shall be allocated, distributed, and expended in accordance with this  
270 Subsection (3)(b).

271 (ii) A county legislative body imposing a tax under this part shall:

272 (A) allocate the unincorporated area's proportionate share of the revenues described in  
273 Subsection (2)(b) to be expended by the county as provided in Subsection (3)(b)(iii) within the  
274 unincorporated areas of the county; and

275 (B) distribute to each municipality within the county the municipality's proportionate

276 share of the revenues described in Subsection (2)(b) to be expended by the municipality as  
277 provided in Subsection (3)(b)(iii).

278 (iii) A county legislative body shall expend the revenues described in Subsection  
279 (2)(b):

280 (A) to establish conservation easements as provided in Title 57, Chapter 18, Land  
281 Conservation Easement Act, to protect open land;

282 (B) for another use consistent with the preservation of open land in a predominantly  
283 natural, open, and undeveloped condition; or

284 (C) for a combination of the purposes described in Subsections (3)(b)(iii)(A) and (B).

285 (4) (a) Notwithstanding Subsection (3) and except as provided in Subsection (4)(b), a  
286 county or municipality may not expend any revenues generated by a tax under this part to  
287 purchase a fee interest in real property to protect open land.

288 (b) Notwithstanding Subsection (4)(a) and subject to Subsections (4)(c) and (d), a  
289 county, city, or town, may expend revenues generated by a tax under this part to purchase a fee  
290 interest in real property to protect open land if:

291 (i) the parcel to be purchased is not more than ten acres in size; and

292 (ii) real property that is roughly equivalent in size to the real property with respect to  
293 which a fee interest is purchased is transferred to private ownership:

294 (A) within 30 days after the day on which the fee interest in real property is purchased;  
295 and

296 (B) from the county, city, or town that purchases the fee interest in real property.

297 (c) Eminent domain may not be used or threatened in connection with any purchase  
298 under this Subsection (4).

299 (d) A parcel of real property larger than ten acres in size may not be divided into  
300 separate parcels that are smaller than ten acres each to meet the requirements of Subsection  
301 (4)(b).

302 (5) Notwithstanding Subsection (3), a county may not:

303 (a) expend any revenues generated by a tax under this part to pay:

304 (i) debt service on a bond or bond anticipation note; or

305 (ii) for a cost related to the authorization or issuance of a bond or bond anticipation  
306 note, including:

307 (A) an engineering fee;  
308 (B) a legal fee;  
309 (C) a fiscal advisor's fee;  
310 (D) interest that accrues on a bond or bond anticipation note; or  
311 (E) a cost similar to a cost described in Subsections (5)(a)(ii)(A) through (D); or  
312 (b) pledge any revenues generated by a tax under this part as a source of payment for a  
313 bond or bond anticipation note.

314 (6) Notwithstanding Subsection (3), a county, city, or town may expend revenues  
315 generated by a tax under this part within a county, city, or town that is located outside of the  
316 county, city, or town expending the revenues if the county, city, or town receiving the revenues  
317 agrees to the expenditure.

318 Section 5. Section **59-12-1705** is enacted to read:

319 **59-12-1705. Advisory board.**

320 (1) A county legislative body imposing a tax under this part shall, in accordance with  
321 Section 59-12-1703, enact an ordinance establishing an advisory board to make findings and  
322 recommendations to the county legislative body on expending the revenues described in  
323 Subsection 59-12-1704(2)(a) in accordance with Subsection 59-12-1704(3)(a).

324 (2) (a) Subject to Subsection (2)(b), the advisory board required by Subsection (1) shall  
325 consist of seven members appointed by the county legislative body imposing a tax under this  
326 part as follows:

327 (i) five members shall represent agricultural interests as determined by the county  
328 legislative body;

329 (ii) one member shall be a:

330 (A) mayor of a city or town located within the county; or

331 (B) member of a municipal legislative body of a municipality located within the  
332 county; and

333 (iii) one member shall be:

334 (A) a member of the:

335 (I) county legislative body; or

336 (II) county executive body; or

337 (B) the county executive.

338 (b) A county legislative body shall select the members described in Subsection (2)(a)(i)  
339 from names submitted as follows:

340 (i) each of the local soil conservation districts created by Title 17A, Chapter 3, Part 8,  
341 Soil Conservation Districts, that are located within the county shall submit ten or more names  
342 to the county legislative body; and

343 (ii) other agricultural organizations that are located within the county may submit one  
344 or more names to the county legislative body.

345 (3) The ordinance required by Section 59-12-1703 establishing the advisory board  
346 shall:

347 (a) provide for the terms of the members;

348 (b) provide for the method of appointing members to the advisory board;

349 (c) provide a procedure for filling vacancies and removing members from office;

350 (d) provide for the appointment of a chair of the advisory board; and

351 (e) contain other provisions relating to the organization and procedure of the advisory  
352 board.

353 (4) (a) A member of an advisory board who is not an employee of a governmental  
354 entity may not receive compensation for the member's work associated with the advisory board,  
355 but may receive per diem and reimbursement for travel expenses incurred as a member of the  
356 advisory board at the rates established by the Division of Finance under Sections 63A-3-106  
357 and 63A-3-107.

358 (b) A member of an advisory board who is an employee of a governmental entity who  
359 does not receive salary, per diem, or expenses from the governmental entity for their work  
360 associated with the advisory board may receive per diem and reimbursement for travel  
361 expenses incurred as a member of the advisory board at the rates established by the Division of  
362 Finance under Sections 63A-3-106 and 63A-3-107.

363 (c) A member of an advisory board may decline to receive per diem and expenses for  
364 their work associated with the advisory board.

365 Section 6. Section **59-12-1706** is enacted to read:

366 **59-12-1706. Seller or certified service provider reliance on commission**  
367 **information or certain systems.**

368 A seller or certified service provider is not liable for failing to collect and remit a tax at

369 a tax rate imposed under this part if:

370 (1) the tax rate at which the seller or certified service provider collected the tax was  
371 derived from a database created by the commission containing:

372 (a) tax rates; or

373 (b) local taxing jurisdiction boundaries;

374 (2) the failure to collect and remit the tax is as a result of the seller's or certified service  
375 provider's reliance on incorrect data provided by the commission in the taxability matrix  
376 required by Section 328 of the agreement;

377 (3) for a model 2 seller, the failure to collect and remit the tax:

378 (a) is due to an error in the certified automated system used by the model 2 seller; and

379 (b) occurs prior to an audit of the certified automated system that reveals the error in  
380 the certified automated system; or

381 (4) for a model 3 seller, the failure to collect and remit the tax:

382 (a) is due to an error in the proprietary system used by the model 3 seller; and

383 (b) occurs prior to an audit of the proprietary system that reveals the error in the  
384 proprietary system.

385 Section 7. Section **59-12-1707** is enacted to read:

386 **59-12-1707. Natural Resources, Agriculture, and Environment Interim**

387 **Committee study.**

388 (1) On or before the November 2010 interim meeting, the Natural Resources,  
389 Agriculture, and Environment Interim Committee shall study the tax authorized by this part.

390 (2) As part of the study required by this section, the Natural Resources, Agriculture,  
391 and Environment Interim Committee shall:

392 (a) hear testimony from counties imposing the tax; and

393 (b) make findings regarding whether the authority to impose a tax under this part  
394 should be extended.

395 Section 8. **Effective date.**

396 This bill takes effect on July 1, 2006.

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**Legislative Review Note**

**as of 1-16-06 2:02 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**State Impact**

Passage of this bill could increase local revenues by as much as \$2,365,000 if adopted by all eligible entities. The Tax Commission would require an appropriation of \$66,000 from their restricted account to implement the provisions of the bill.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
Restricted Funds	\$66,000	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$66,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual and Business Impact**

There is a potential increase of 1/8th percent for sales purchased by individuals in counties which adopt the local option.

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**Office of the Legislative Fiscal Analyst**