

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

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David L. Hogue**

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

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**LONG TITLE**

**General Description:**

This bill amends the County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities part relating to cultural facilities.

**Highlighted Provisions:**

This bill:

- ▶ repeals "cultural facility" from the definition of "recreational facility";
- ▶ allows revenues generated by the county option tax for botanical, cultural, recreational, and zoological organizations or facilities to be expended for the ongoing operating expenses of cultural facilities;
- ▶ addresses the distribution and expenditure of revenues generated by the tax;
- ▶ provides that the advisory board created to advise a county legislative body on the disbursement of tax revenues to botanical organizations and cultural organizations also advises the county legislative body on the disbursement of tax revenues to cultural facilities;
- ▶ addresses the reporting of annual operating expenses by cultural facilities;
- ▶ addresses a cultural facility offering a waived or reduced admission fee; and
- ▶ makes technical changes.



**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2006.

**Utah Code Sections Affected:****AMENDS:**

**59-12-702**, as last amended by Chapter 186, Laws of Utah 2004

**59-12-703 (See 59-1-1201 re: Eff)**, as last amended by Chapter 105, Laws of Utah 2005

**59-12-704**, as last amended by Chapter 296, Laws of Utah 2003

**59-12-705**, as enacted by Chapter 284, Laws of Utah 1996

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

Section 1. 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.

(2) "Botanical organization" means:

(a) a private nonprofit organization or 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.

(3) "Cultural facility" is as defined in Section 59-12-602.

(4) (a) "Cultural organization":

(i) means:

(A) a private nonprofit organization or institution having as its primary purpose the

- 59 advancement and preservation of:
- 60 (I) natural history;
- 61 (II) art;
- 62 (III) music;
- 63 (IV) theater; or
- 64 (V) dance; and
- 65 (B) an administrative unit; and
- 66 (ii) includes, for purposes of Subsections 59-12-704(1)(d) and (6) only:
- 67 (A) a private nonprofit organization or institution having as its primary purpose the
- 68 advancement and preservation of history;
- 69 (B) a municipal or county cultural council having as its primary purpose the
- 70 advancement and preservation of:
- 71 (I) history;
- 72 (II) natural history;
- 73 (III) art;
- 74 (IV) music;
- 75 (V) theater; or
- 76 (VI) dance.
- 77 (b) "Cultural organization" does not include:
- 78 (i) any agency of the state;
- 79 (ii) except as provided in Subsection (4)(a)(ii)(B), any political subdivision of the state;
- 80 (iii) any educational institution whose annual revenues are directly derived more than
- 81 50% from state funds; or
- 82 (iv) in a county of the first or second class, any radio or television broadcasting
- 83 network or station, cable communications system, newspaper, or magazine.
- 84 (5) "Institution" means any of the institutions listed in Subsections 53B-1-102(1)(b)
- 85 through (l).
- 86 (6) "Recreational facility" means any publicly owned or operated park, campground,
- 87 marina, dock, golf course, playground, athletic field, gymnasium, swimming pool, trail system,
- 88 ~~[cultural facility,]~~ or other facility used for recreational purposes.
- 89 (7) "Rural radio station" means a nonprofit radio station based in a county of the third,

fourth, fifth, or sixth class.

(8) 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.

(9) (a) (i) Except as provided in Subsection (9)(a)(ii), "zoological organization" means a public, public-private partnership, or private nonprofit 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, or amphibians to an audience of 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 2. Section **59-12-703 (See 59-1-1201 re: Eff)** is amended to read:

**59-12-703 (See 59-1-1201 re: Eff). Opinion question election -- Imposition of tax -- Uses of tax monies -- Enactment or repeal of tax -- Effective date -- Notice requirements.**

(1) (a) (i) Except as provided in Subsections (1)(a)(ii) and 59-12-207.1(7)(c), 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, except residents in municipalities that have already imposed a sales and use tax under Part 14, City or Town Option Funding For Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, 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) located within the county, to fund recreational and zoological facilities, botanical organizations, cultural facilities, cultural organizations, 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) sales and uses within municipalities that have already imposed a sales and use tax under Part 14, City or Town Option Funding For Botanical, Cultural, Recreational, and Zoological Organizations or Facilities.

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

(c) The election shall follow the procedures outlined in Title 11, Chapter 14, Local Government Bonding 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:

(i) described in Subsection (1); and

(ii) within the county, including the cities and towns located in the county, except those cities and towns that have already imposed a sales and use tax under Part 14, City or Town Option Funding For Botanical, Cultural, Recreational, and Zoological Organizations or Facilities.

(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) 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 funding:

(a) recreational and zoological facilities located within the county or a city or town located in the county, except a city or town that has already imposed a sales and use tax under Part 14, City or Town Option Funding For Botanical, Cultural, Recreational, and Zoological

Organizations or Facilities; 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) cultural facilities within the county; and

~~[(iii)]~~ (iv) rural radio stations within the county.

(4) (a) A tax authorized under this part shall be:

(i) except as provided in Subsection (4)(b), administered, collected, and enforced in accordance with:

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

(I) Part 1, Tax Collection; or

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

(B) Chapter 1, General Taxation Policies; and

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

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

(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) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a county enacts or repeals a tax under this part, the enactment or repeal shall take effect:

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

(B) after a 90-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 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 described in Subsection (5)(b)(ii)(A), the rate of the

183 tax.

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

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

187 (B) if the billing period for the transaction begins before the effective date of the  
188 enactment of the tax under this section.

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

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

192 (B) if the billing period for the transaction begins before the effective date of the repeal  
193 of the tax imposed under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

209 (B) beginning 60 days after the effective date of the enactment or repeal under  
210 Subsection (5)(b)(i).

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

213 (e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs

on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this part for an annexing area, the enactment or repeal shall take effect:

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

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

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

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

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

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

(D) the rate of the tax described in Subsection (5)(e)(ii)(A).

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

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

(B) if the billing period for the transaction begins before the effective date of the enactment of the tax under this section.

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

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

(B) if the billing period for the transaction begins before the effective date of the repeal of the tax imposed under this section.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

Section 3. 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, cultural, 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) 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;

(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) 48-7/8% of the revenue collected by the county under this section shall be distributed to no more than 23 botanical ~~[and]~~ organizations, cultural facilities, 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 facilities in proportion to their average annual operating expenses as determined under Subsection (3); and

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

(d) (i) 9% of the revenue collected by the county under this section shall be distributed to botanical organizations, cultural facilities, and cultural organizations 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 or facilities described in Subsection (1)(d)(i).

(2) (a) The county legislative body of each county shall create an advisory board to advise the county legislative body on disbursement of funds to botanical organizations, cultural facilities, 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) 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 organization, cultural facility, cultural organization, 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 operating expenses reporting requirements under Subsection (3)(a) for organizations or facilities described in Subsection (1)(d)(i).

(4) When calculating average annual operating expenses as described in Subsection (3), each botanical organization, cultural facility, cultural organization, 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.

(8) The commission may retain an amount not to exceed [~~1-1/2%~~] 1.5% of the tax collected under this part for the cost of administering this part.

Section 4. Section **59-12-705** is amended to read:

**59-12-705. Free or reduced admission day available to all state residents.**

338           Each botanical organization, cultural facility, cultural organization, or zoological  
339 organization that receives monies from a tax imposed under the authority of this part and that  
340 periodically offers a waived or discounted admission fee shall make such waived or discounted  
341 admission available to all residents of the state.

342           Section 5. **Effective date.**

343           This bill takes effect on July 1, 2006.

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**Legislative Review Note**  
**as of 1-18-06 3:01 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**

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**Fiscal Note****Bill Number HB0300****County Option Funding for Botanical, Cultural, Recreational, and  
Zoological Organizations or Facilities Amendments***23-Jan-06**9:31 AM*

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**State Impact**

Passage of this bill would have no net revenue impact. There could be a shift of existing revenue between categories.

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**Individual and Business Impact**

There could be a shift in funding between entities.

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**Office of the Legislative Fiscal Analyst**