

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

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian E. Shiozawa

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill modifies provisions related to funding for botanical, cultural, recreational, and zoological organizations and facilities.

Highlighted Provisions:

This bill:

- ▶ amends a definition provision;
- ▶ modifies the circumstances when an opinion question is required;
- ▶ amends how money is distributed; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-12-702, as last amended by Laws of Utah 2011, Chapter 416

59-12-703, as last amended by Laws of Utah 2012, Chapter 254

59-12-704, as last amended by Laws of Utah 2011, Chapters 309 and 416



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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) "Aquarium" means a park or building where a collection of water animals and plants is kept for study, conservation, and public exhibition.

(3) "Aviary" means a park or building where a collection of birds is kept for study, conservation, and public exhibition.

~~[(2)]~~ (4) "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)]~~ (5) "Cultural facility" ~~[is as]~~ means the same as that term is defined in Section 59-12-602.

~~[(4)]~~ (6) (a) "Cultural organization":

(i) means:

(A) a private nonprofit organization or institution having as its primary purpose the advancement and preservation of:

(I) natural history;

(II) art;

(III) music;

(IV) theater;

(V) dance; or

- 59 (VI) cultural arts, including literature, a motion picture, or storytelling;
- 60 (B) an administrative unit; and
- 61 (ii) includes, for purposes of Subsections 59-12-704(1)(d) and (6) only:
- 62 (A) a private nonprofit organization or institution having as its primary purpose the
- 63 advancement and preservation of history; or
- 64 (B) a municipal or county cultural council having as its primary purpose the
- 65 advancement and preservation of:
 - 66 (I) history;
 - 67 (II) natural history;
 - 68 (III) art;
 - 69 (IV) music;
 - 70 (V) theater; or
 - 71 (VI) dance.
- 72 (b) "Cultural organization" does not include:
 - 73 (i) an agency of the state;
 - 74 (ii) except as provided in Subsection ~~[(4)]~~ (6)(a)(ii)(B), a political subdivision of the
 - 75 state;
 - 76 (iii) an educational institution whose annual revenues are directly derived more than
 - 77 50% from state funds; or
 - 78 (iv) in a county of the first or second class, a radio or television broadcasting network
 - 79 or station, cable communications system, newspaper, or magazine.
- 80 ~~[(5)]~~ (7) "Institution" means an institution listed in Subsections 53B-1-102(1)(b)
- 81 through (k).
- 82 ~~[(6)]~~ (8) "Recreational facility" means a publicly owned or operated park, campground,
- 83 marina, dock, golf course, playground, athletic field, gymnasium, swimming pool, trail system,
- 84 or other facility used for recreational purposes.
- 85 ~~[(7)]~~ (9) "Rural radio station" means a nonprofit radio station based in a county of the
- 86 third, fourth, fifth, or sixth class.
- 87 ~~[(8)]~~ (10) In a county of the first class, "zoological facility" means a public,
- 88 public-private partnership, or private nonprofit building, exhibit, utility and infrastructure,
- 89 walkway, pathway, roadway, office, administration facility, public service facility, educational

90 facility, enclosure, public viewing area, animal barrier, animal housing, animal care facility,
 91 and veterinary and hospital facility related to the advancement, exhibition, or preservation of a
 92 mammal, bird, reptile, fish, or an amphibian.

93 ~~[(9)]~~ (11) (a) (i) Except as provided in Subsection ~~[(9)]~~ (11)(a)(ii), "zoological
 94 organization" means a public, public-private partnership, or private nonprofit organization
 95 having as its primary purpose the advancement and preservation of zoology.

96 (ii) In a county of the first class, "zoological organization" means a nonprofit
 97 organization having as its primary purpose the advancement and exhibition of a mammal, bird,
 98 reptile, fish, or an amphibian to an audience of 75,000 or more persons annually.

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

102 (12) "Zoological park" means a park or garden where a collection of wild animals is
 103 kept for study, conservation, and public exhibition.

104 Section 2. Section **59-12-703** is amended to read:

105 **59-12-703. Opinion question election -- Base -- Rate -- Imposition of tax --**
 106 **Expenditure of revenues -- Administration -- Enactment or repeal of tax -- Effective date**
 107 **-- Notice requirements.**

108 (1) (a) Subject to the other provisions of this section, a county legislative body may
 109 submit an opinion question to the residents of that county, by majority vote of all members of
 110 the legislative body, so that each resident of the county, except residents in municipalities that
 111 have already imposed a sales and use tax under Part 14, City or Town Option Funding for
 112 Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, has an
 113 opportunity to express the resident's opinion on the imposition of a local sales and use tax of
 114 .1% on the transactions described in Subsection **59-12-103**(1) located within the county, to:

115 (i) fund cultural facilities, recreational facilities, and zoological facilities, botanical
 116 organizations, cultural organizations, and zoological organizations, and rural radio stations, in
 117 that county; or

118 (ii) provide funding for a botanical organization, cultural organization, or zoological
 119 organization to pay for use of a bus or facility rental if that use of the bus or facility rental is in
 120 furtherance of the botanical organization's, cultural organization's, or zoological organization's

121 primary purpose.

122 (b) The opinion question required by this section shall state:

123 "Shall (insert the name of the county), Utah, be authorized to impose a .1% sales and
124 use tax for (list the purposes for which the revenues collected from the sales and use tax shall
125 be expended)?"

126 (c) Notwithstanding Subsection (1)(a), a county legislative body may not impose a tax
127 under this section on:

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

130 (ii) sales and uses within municipalities that have already imposed a sales and use tax
131 under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and
132 Zoological Organizations or Facilities; and

133 (iii) except as provided in Subsection (1)(e), amounts paid or charged for food and
134 food ingredients.

135 (d) For purposes of this Subsection (1), the location of a transaction shall be
136 determined in accordance with Sections 59-12-211 through 59-12-215.

137 (e) A county legislative body imposing a tax under this section shall impose the tax on
138 amounts paid or charged for food and food ingredients if the food and food ingredients are sold
139 as part of a bundled transaction attributable to food and food ingredients and tangible personal
140 property other than food and food ingredients.

141 (f) The election shall follow the procedures outlined in Title 11, Chapter 14, Local
142 Government Bonding Act.

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

147 (i) described in Subsection (1); and

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

152 (b) A county legislative body may revise county ordinances to reflect a statutory
153 [~~changes to the distribution formula or eligible recipients of revenues generated from a tax~~
154 ~~imposed under Subsection (2)(a)] increase to the rate of the tax authorized under this part:~~

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

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

160 (3) Subject to Section [59-12-704](#), revenues collected from a tax imposed under
161 Subsection (2) shall be expended:

162 (a) to fund cultural facilities, recreational facilities, and zoological facilities located
163 within the county or a city or town located in the county, except a city or town that has already
164 imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical,
165 Cultural, Recreational, and Zoological Organizations or Facilities;

166 (b) to fund ongoing operating expenses of:

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

168 (ii) botanical organizations, cultural organizations, and zoological organizations within
169 the county; and

170 (iii) rural radio stations within the county; and

171 (c) as stated in the opinion question described in Subsection (1).

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

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

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

176 (I) Part 1, Tax Collection; or

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

178 (B) Chapter 1, General Taxation Policies; and

179 (ii) levied for a period of 10 years and may be reauthorized at the end of the ten-year
180 period in accordance with this section.

181 (b) A tax under this part is not subject to Subsections [59-12-205](#)(2) through (6).

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

183 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Part 2,
184 County Annexation.

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

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

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

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

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

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

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

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

195 (D) if the county enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the
196 tax.

197 (c) (i) The enactment of a tax takes effect on the first day of the first billing period:

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

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

201 (ii) The repeal of a tax applies to a billing period if the billing statement for the billing
202 period is rendered on or after the effective date of the repeal of the tax imposed under this
203 section.

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

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

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

210 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
211 commission may by rule define the term "catalogue sale."

212 (e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs
213 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this

214 part for an annexing area, the enactment or repeal shall take effect:

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

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

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

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

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

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

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

224 (f) (i) The enactment of a tax takes effect on the first day of the first billing period:

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

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

228 (ii) The repeal of a tax applies to a billing period if the billing statement for the billing
229 period is rendered on or after the effective date of the repeal of the tax imposed under this
230 section.

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

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

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

237 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
238 commission may by rule define the term "catalogue sale."

239 Section 3. Section **59-12-704** is amended to read:

240 **59-12-704. Distribution of revenues -- Advisory board creation -- Determining**
241 **operating expenses -- Administrative charge.**

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

245 facilities, and zoological facilities and botanical organizations, cultural organizations, and
246 zoological organizations within that first class county as follows:

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

250 (b) (i) subject to Subsection (1)(b)(ii) and except as provided in Subsection (1)(b)(iii),
251 ~~[12=1/8%~~ 16% of the revenue collected by the county under this section shall be distributed by
252 the county legislative body to support no more than three zoological facilities and zoological
253 organizations located within the county, ~~[with 94.5% of that revenue being distributed to~~
254 ~~zoological facilities and zoological organizations with average annual operating expenses of~~
255 ~~\$2,000,000 or more and 5.5% of that revenue being distributed to zoological facilities and~~
256 ~~zoological organizations with average annual operating expenses of less than \$2,000,000;]~~
257 having average annual operating expenses of \$1,500,000 or more as determined under
258 Subsection (3), with:

259 (A) 63.5% of that revenue being distributed to support a zoological organization
260 having as its primary purpose the operation of a zoological park, or a zoological facility that is
261 part of or integrated with a zoological park;

262 (B) 28.25% of that revenue being distributed to support a zoological organization
263 having as its primary purpose the operation of an aquarium, or a zoological facility that is part
264 of or integrated with an aquarium; and

265 (C) 8.25% of that revenue being distributed to support a zoological organization having
266 as its primary purpose the operation of an aviary, or a zoological facility that is part of or
267 integrated with an aviary; and

268 (ii) ~~[except as provided in Subsection (1)(b)(iii);]~~ if more than one zoological
269 organization or zoological facility qualifies to receive the money described in Subsection
270 (1)(b)(i)(A), (B), or (C), the county legislative body shall distribute the money described in
271 ~~[Subsection (1)(b)(i) among the zoological facilities and zoological organizations in proportion~~
272 ~~to their average annual operating expenses as determined under Subsection (3); and (iii) if a~~
273 ~~zoological facility or zoological organization is created or relocated within the county after~~
274 ~~June 1, 2003, the county legislative body shall distribute the money described in Subsection~~
275 ~~(1)(b)(i) as it determines appropriate;]~~ the subsection for which more than one zoological

276 organization or zoological facility qualifies to whichever zoological organization or zoological
277 facility the county legislative body determines is most appropriate, except that a zoological
278 organization or zoological facility may not receive money under more than one subsection
279 under Subsection (1)(b)(i); and

280 (iii) if no zoological organization or zoological facility qualifies to receive money
281 described in Subsection (1)(b)(i)(A), (B), or (C), the county legislative body shall distribute the
282 money described in the subsection for which no zoological organization or zoological facility
283 qualifies among the zoological organizations or zoological facilities qualifying for and
284 receiving money under the other subsections in proportion to the zoological organizations' or
285 zoological facilities' average annual operating expenses as determined under Subsection (3);

286 (c) (i) [~~48-7/8%~~] 45% of the revenue collected by the county under this section shall be
287 distributed to no more than [~~23~~] 22 botanical organizations and cultural organizations with
288 average annual operating expenses of more than \$250,000 as determined under Subsection (3);

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

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

296 (d) (i) 9% of the revenue collected by the county under this section shall be distributed
297 to botanical organizations and cultural organizations that do not receive revenue under
298 Subsection (1)(c)(i); and

299 (ii) the county legislative body shall determine how the money shall be distributed
300 among the botanical organizations and cultural organizations described in Subsection (1)(d)(i).

301 (2) (a) The county legislative body of each county shall create an advisory board to
302 advise the county legislative body on disbursement of funds to botanical organizations and
303 cultural organizations under Subsection (1)(c)(i).

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

306 (ii) In a county of the first class, two of the seven members of the advisory board under

307 Subsection (2)(a) shall be appointed from the Utah Arts Council.

308 (3) (a) Except as provided in Subsection (3)(b), to be eligible to receive money
309 collected by the county under this part, a botanical organization, cultural organization, [~~and~~]
310 zoological organization, and zoological facility located within a county of the first class shall,
311 every [~~three years~~] year:

312 (i) calculate [~~their~~] its average annual operating expenses based upon audited operating
313 expenses for three preceding fiscal years; and

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

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

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

318 (b) The county legislative body may waive the operating expenses reporting
319 requirements under Subsection (3)(a) for organizations described in Subsection (1)(d)(i).

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

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

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

326 (6) (a) In a county except for a county of the first class, the county legislative body shall
327 by ordinance provide for the distribution of the entire amount of the revenues generated by the
328 tax imposed by this section:

329 (i) as provided in this Subsection (6); and

330 (ii) as stated in the opinion question described in Subsection [59-12-703\(1\)](#).

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

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

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

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

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

343 (8) The commission shall retain and deposit an administrative charge in accordance
344 with Section 59-1-306 from the revenues the commission collects from a tax under this part.

345 Section 4. **Effective date.**

346 This bill takes effect on January 1, 2017.

Legislative Review Note
Office of Legislative Research and General Counsel