

Senator Lincoln Fillmore proposes the following substitute bill:

COUNTY SALES AND USE TAX AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Jordan D. Teuscher

LONG TITLE

General Description:

This bill modifies distribution provisions of the County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities.

Highlighted Provisions:

This bill:

- ▶ revises the distribution of 16% of the revenue from the county botanical, cultural, recreational, and zoological organizations or facilities tax in a county of the first class.

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 2017, Chapter 382

59-12-704, as last amended by Laws of Utah 2021, Chapter 396

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



26 Section 1. Section 59-12-702 is amended to read:

27 **59-12-702. Definitions.**

28 As used in this part:

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

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

33 (b) consistently maintains books and records separate from those of ~~[its]~~ the
34 administrative unit's parent organization.

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

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

39 (4) "Botanical organization" means:

40 (a) a private nonprofit organization or institution having as ~~[its]~~ the private nonprofit
41 organization's or institution's primary purpose the advancement and preservation of plant
42 science through horticultural display, botanical research, and community education; or

43 (b) an administrative unit.

44 (5) (a) "Certified audit" means an opinion, provided in conformity with generally
45 accepted accounting principles, from a Utah licensed certified public accounting firm that the
46 overall financial statements of an organization fairly represent the financial position of the
47 organization.

48 (b) "Certified audit" includes any disclosure required by generally accepted accounting
49 principles.

50 ~~[(5)]~~ (6) "Cultural facility" means the same as that term is defined in Section
51 59-12-602.

52 ~~[(6)]~~ (7) (a) "Cultural organization" means:

53 ~~[(i) means:]~~

54 ~~[(A)]~~ (i) a private nonprofit organization or institution having as ~~[its]~~ the private
55 nonprofit organization's or institution's primary purpose the advancement and preservation of:

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

57 ~~[(H)]~~ (B) art;

58 ~~[(HH)]~~ (C) music;

59 ~~[(HV)]~~ (D) theater;

60 ~~[(V)]~~ (E) dance; or

61 ~~[(VH)]~~ (F) cultural arts, including literature, a motion picture, or storytelling; and

62 ~~[(B)]~~ (ii) an administrative unit~~[-and]~~.

63 ~~[(ii)]~~ (b) "Cultural organization" includes, for purposes of Subsections 59-12-704(1)(d)

64 and ~~[(6)]~~ (10) only:

65 ~~[(A)]~~ (i) a private nonprofit organization or institution having as [its] the private

66 nonprofit organization's or institution's primary purpose the advancement and preservation of

67 history; or

68 ~~[(B)]~~ (ii) a municipal or county cultural council having as [its] the municipal or county

69 cultural council's primary purpose the advancement and preservation of:

70 ~~[(H)]~~ (A) history;

71 ~~[(H)]~~ (B) natural history;

72 ~~[(HH)]~~ (C) art;

73 ~~[(HV)]~~ (D) music;

74 ~~[(V)]~~ (E) theater; or

75 ~~[(VH)]~~ (F) dance.

76 ~~[(b)]~~ (c) "Cultural organization" does not include:

77 (i) an agency of the state;

78 (ii) except as provided in Subsection ~~[(6)(a)(ii)(B)]~~ (7)(b)(ii), a political subdivision of

79 the state;

80 (iii) an educational institution ~~[whose annual revenues are]~~ for which annual revenue is

81 directly derived more than 50% from state funds; or

82 (iv) in a county of the first or second class, a radio or television broadcasting network

83 or station, cable communications system, newspaper, or magazine.

84 ~~[(7)]~~ (8) "Institution" means an institution of higher education listed in Subsection

85 53B-1-102(1)(a).

86 (9) "Non-qualifying expenditures" means:

87 (a) a capital construction expense, including a capital acquisition, an improvement to

88 real property, or depreciation of real property;

89 (b) a payment into an endowment corpus;

90 (c) an expenditure for programs conducted outside of the county in which the
91 organization is located;

92 (d) a fundraising expense related to a capital or an endowment campaign;

93 (e) repayment of a loan or interest on the loan;

94 (f) rent payments in excess of 6% of total operating expenses;

95 (g) all non-cash expenditures including in-kind services and products, all trades,
96 exchange transactions, or other similar non-cash consideration;

97 (h) an expenditure for direct political lobbying;

98 (i) salary expenditures in excess of \$95,000, adjusted for inflation as determined by the
99 advisory board, per staff member for all functions;

100 (i) including bonuses and any other compensation for services rendered; and

101 (ii) excluding retirement, health, social security or Medicare benefits;

102 (j) a grant or a fiscal sponsorship distributed to an outside group, institution,
103 organization, or other unit;

104 (k) gift shop and concession expenses, including inventory or related expenses that do
105 not meet the requirements of Subsection (10)(b)(ii);

106 (l) a bad debt expense;

107 (m) depreciation and amortization of an asset;

108 (n) more than \$500 in non-deductible tax penalty, including a federal and state
109 employment tax penalty;

110 (o) an expense related to unrelated business income activities or that is used in
111 calculating federal unrelated business income tax;

112 (p) funding under this part allocated in the previous year regardless of whether the
113 organization expended the funds in the previous year;

114 (q) related party transactions; and

115 (r) another expense not related to the organization's primary purpose.

116 (10) (a) "Operating expenses" means an organization's total expenditures for ongoing
117 operations for a fiscal year as documented by official certified audit records minus
118 non-qualifying expenditures.

119 (b) "Operating expenses" includes:

120 (i) property taxes paid to the county; and

121 (ii) inventory or related expenses that are:

122 (A) classified as costs of goods;

123 (B) sold; and

124 (C) combined, less than 10% of total operating expenses.

125 ~~[(8)]~~ (11) "Recreational facility" means a publicly owned or operated park,
126 campground, marina, dock, golf course, playground, athletic field, gymnasium, swimming
127 pool, trail system, or other facility used for recreational purposes.

128 (12) "Related party transaction" means a transaction with any board member, staff
129 member, or a board or staff member's affiliates or family members that is more than \$5,000 and
130 is disallowed by the advisory board after considering:

131 (a) whether the organization certifies that the organization has adopted the Utah
132 Nonprofit Association Standard of Ethics and satisfies Part III (B) of the standards;

133 (b) whether the organization complied with the standards in approving the transaction,
134 including rejecting any transaction that is not fair to the organization; and

135 (c) the content of the minutes from the organization board meeting where the
136 disclosure was made and the details of the transaction and accompanying analysis as set forth
137 in the disclosure to the organization's board.

138 ~~[(9)]~~ (13) "Rural radio station" means a nonprofit radio station based in a county of the
139 third, fourth, fifth, or sixth class.

140 ~~[(10)]~~ (14) In a county of the first class, "zoological facility" means a public,
141 public-private partnership, or private nonprofit building, exhibit, utility and infrastructure,
142 walkway, pathway, roadway, office, administration facility, public service facility, educational
143 facility, enclosure, public viewing area, animal barrier, animal housing, animal care facility,
144 and veterinary and hospital facility related to the advancement, exhibition, or preservation of a
145 mammal, bird, reptile, fish, or an amphibian.

146 ~~[(11)]~~ (15) (a) (i) Except as provided in Subsection ~~[(11)(a)(ii)]~~ (15)(a)(ii), "zoological
147 organization" means a public, public-private partnership, or private nonprofit organization
148 having as its primary purpose the advancement and preservation of zoology.

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

150 organization having as [its] nonprofit organization's primary purpose the advancement and
 151 exhibition of a mammal, bird, reptile, fish, or an amphibian to an audience of 75,000 or more
 152 persons annually.

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

156 ~~[(12)]~~ (16) "Zoological park" means a park or garden where a collection of wild
 157 animals is kept for study, conservation, and public exhibition.

158 Section 2. Section **59-12-704** is amended to read:

159 **59-12-704. Distribution of revenue -- Advisory board creation -- Determining**
 160 **operating expenses -- Administrative charge.**

161 (1) Except as provided in Subsections ~~[(3)(b)]~~ (7)(b) and ~~[(5)]~~ (9), and subject to the
 162 requirements of this section, ~~[any revenues collected by a county of the first class under this~~
 163 ~~part shall be distributed annually by the county legislative body]~~ the county legislative body of
 164 a county of the first class shall distribute annually any revenue collected under this part to
 165 support cultural facilities, recreational facilities, and zoological facilities and botanical
 166 organizations, cultural organizations, and zoological organizations within that first class county
 167 as follows:

168 ~~[(a) 30% of the revenue collected by the county under this section shall be distributed~~
 169 ~~by the county legislative body to support cultural facilities and recreational facilities located~~
 170 ~~within the county;]~~

171 ~~[(b) (i) subject to Subsection (1)(b)(ii) and except as provided in Subsection (1)(b)(iii);~~
 172 ~~16% of the revenue collected by the county under this section shall be distributed by the county~~
 173 ~~legislative body to support no more than three zoological facilities and zoological organizations~~
 174 ~~located within the county, having average annual operating expenses of \$1,500,000 or more as~~
 175 ~~determined under Subsection (3), with:]~~

176 ~~[(A) 63.5% of that revenue being distributed to support a zoological organization~~
 177 ~~having as its primary purpose the operation of a zoological park, or a zoological facility that is~~
 178 ~~part of or integrated with a zoological park;]~~

179 ~~[(B) 28.25% of that revenue being distributed to support a zoological organization~~
 180 ~~having as its primary purpose the operation of an aquarium, or a zoological facility that is part~~

181 of or integrated with an aquarium; and]

182 ~~[(C) 8.25% of that revenue being distributed to support a zoological organization~~
183 ~~having as its primary purpose the operation of an aviary, or a zoological facility that is part of~~
184 ~~or integrated with an aviary;]~~

185 ~~[(ii) if more than one zoological organization or zoological facility qualifies to receive~~
186 ~~the money described in Subsection (1)(b)(i)(A), (B), or (C), the county legislative body shall~~
187 ~~distribute the money described in the subsection for which more than one zoological~~
188 ~~organization or zoological facility qualifies to whichever zoological organization or zoological~~
189 ~~facility the county legislative body determines is most appropriate, except that a zoological~~
190 ~~organization or zoological facility may not receive money under more than one subsection~~
191 ~~under Subsection (1)(b)(i); and]~~

192 ~~[(iii) if no zoological organization or zoological facility qualifies to receive money~~
193 ~~described in Subsection (1)(b)(i)(A), (B), or (C), the county legislative body shall distribute the~~
194 ~~money described in the subsection for which no zoological organization or zoological facility~~
195 ~~qualifies among the zoological organizations or zoological facilities qualifying for and~~
196 ~~receiving money under the other subsections in proportion to the zoological organizations' or~~
197 ~~zoological facilities' average annual operating expenses as determined under Subsection (3);]~~

198 ~~[(c) (i) 45% of the revenue collected by the county under this section shall be~~
199 ~~distributed to no more than 22 botanical organizations and cultural organizations:]~~

200 ~~[(A) each of which has average annual operating expenses of more than \$250,000 as~~
201 ~~determined under Subsection (3); and]~~

202 ~~[(B) whose activities impact all or a significant region of the county or state;]~~

203 ~~[(ii) subject to Subsection (1)(c)(iii), the county legislative body shall distribute the~~
204 ~~money described in Subsection (1)(c)(i) among the botanical organizations and cultural~~
205 ~~organizations in proportion to their average annual operating expenses as determined under~~
206 ~~Subsection (3); and]~~

207 ~~[(iii) the amount distributed to any botanical organization or cultural organization~~
208 ~~described in Subsection (1)(c)(i) may not exceed 35% of the botanical organization's or cultural~~
209 ~~organization's operating budget; and]~~

210 ~~[(d) (i) 9% of the revenue collected by the county under this section shall be distributed~~
211 ~~to botanical organizations and cultural organizations that do not receive revenue under~~

212 Subsection (1)(c)(i) in communities throughout the county; and]
213 ~~[(ii) the county legislative body shall determine how the money shall be distributed~~
214 ~~among the botanical organizations and cultural organizations described in Subsection (1)(d)(i).]~~
215 (a) 30% of the revenue to support cultural facilities and recreational facilities located
216 within the county;
217 (b) 16% of the revenue to support zoological facilities and zoological organizations
218 located within the county as provided in Subsection (2);
219 (c) as provided in Subsection (5), 45% of the revenue to support no more than 22
220 botanical organizations and cultural organizations:
221 (i) each of which has average annual operating expenses of more than \$250,000 as
222 determined under Subsection (7); and
223 (ii) whose activities impact all or a significant region of the county or state; and
224 (d) 9% of the revenue to botanical organizations and cultural organizations that do not
225 receive revenue under Subsection (1)(c) in communities throughout the county as determined
226 by the county legislative body.
227 (2) (a) The distribution described in Subsection (1)(b) shall support no more than three
228 zoological facilities and zoological organizations located within the county and having average
229 annual operating expenses of \$1,500,000 or more as determined under Subsection (7).
230 (b) For the calendar years that begin on or after January 1, 2025, and on or before
231 January 1, 2029, the county shall distribute the 16% of the revenue as follows:
232 (i) 8.25% of the revenue to support a zoological organization having as the zoological
233 organization's primary purpose the operation of an aviary, or a zoological facility that is part of
234 or integrated with an aviary;
235 (ii) an amount equal to the amount distributed during the previous calendar year to
236 support a zoological organization having as the zoological organization's primary purpose the
237 operation of a zoological park, or a zoological facility that is part of or integrated with a
238 zoological park; and
239 (iii) the remaining amount to a zoological organization having as the zoological
240 organization's primary purpose the operation of an aquarium, or a zoological facility that is part
241 of or integrated with an aquarium.
242 (c) For a calendar year that begins on or after January 1, 2030, the county shall provide

243 for the distribution of the 16% of revenue in proportion to the zoological facilities' and
244 zoological organizations' average annual operating expenses as determined under Subsection
245 (7).

246 (3) If more than one zoological organization or zoological facility qualifies to receive
247 the money described in Subsection (2), the county legislative body shall distribute the money
248 described in the subsection for which more than one zoological organization or zoological
249 facility qualifies to whichever zoological organization or zoological facility the county
250 legislative body determines is most appropriate, except that a zoological organization or
251 zoological facility may not receive money under more than one subsection under Subsection
252 (2).

253 (4) If no zoological organization or zoological facility qualifies to receive money
254 described in Subsection (2), the county legislative body shall distribute the money described in
255 the subsection for which no zoological organization or zoological facility qualifies among the
256 zoological organizations or zoological facilities qualifying for and receiving money under the
257 other subsections in proportion to the zoological organizations' or zoological facilities' average
258 annual operating expenses as determined under Subsection (7).

259 (5) (a) Subject to Subsection (5)(b), the county legislative body shall distribute the
260 money described in Subsection (1)(c) among the botanical organizations and cultural
261 organizations in proportion to the botanical organizations' and cultural organizations' average
262 annual operating expenses as determined under Subsection (7).

263 (b) The county may not distribute to any botanical organization or cultural organization
264 described in Subsection (1)(c) an amount that exceeds 35% of the botanical organization's or
265 cultural organization's operating budget.

266 ~~[(2)]~~ (6) (a) The county legislative body of each county shall create an advisory board
267 to advise the county legislative body on disbursement of funds to botanical organizations and
268 cultural organizations under Subsection ~~[(1)(c)]~~ (1)(c).

269 (b) (i) The advisory board under Subsection ~~[(2)(a)]~~ (6)(a) shall consist of seven
270 members appointed by the county legislative body.

271 (ii) ~~[In a county of the first class, two of the seven members of the advisory board~~
272 ~~under Subsection (2)(a) shall be appointed by the Division of Arts and Museums created in~~
273 ~~Section 9-6-201~~ In a county of the first class, the Division of Arts and Museums created in

274 Section 9-6-201 shall appoint two of the seven members of the advisory board under
275 Subsection (6)(a).

276 ~~[(3)]~~ (7) (a) Except as provided in Subsection ~~[(3)(b)]~~ (7)(b), to be eligible to receive
277 money collected by the county under this part, a botanical organization, cultural organization,
278 zoological organization, and zoological facility located within a county of the first class shall,
279 every year:

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

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

283 (A) a ~~[verified]~~ certified audit of annual operating expenses for each of those three
284 preceding fiscal years; ~~[and]~~

285 (B) the average annual operating expenses as calculated under Subsection ~~[(3)(a)(i)]~~
286 (7)(a)(i);

287 (C) if there has been a sale, lease, or other transaction with a board member, a staff
288 member, or an affiliate of either, a disclosure of the costs and expenses the board member, staff
289 member, or affiliate incurred; and

290 (D) if there are related party transactions, a copy of the organization's conflicts of
291 interest policies with any explanations.

292 (b) The county legislative body may waive the operating expenses reporting
293 requirements under Subsection ~~[(3)(a)]~~ (7)(a) for organizations described in Subsection
294 ~~[(1)(d)(i)]~~ (1)(d).

295 ~~[(4)]~~ (8) When calculating average annual operating expenses as described in
296 Subsection ~~[(3)]~~ (7), each botanical organization, cultural organization, and zoological
297 organization shall use the same three-year fiscal period as determined by the county legislative
298 body.

299 ~~[(5)]~~ (9) (a) By July 1 of each year, the county legislative body of a first class county
300 may index the threshold amount in Subsections (1)(c) and (d).

301 (b) Any change under Subsection ~~[(5)(a)]~~ (9)(a) shall be rounded off to the nearest
302 \$100.

303 ~~[(6)]~~ (10) (a) In a county except for a county of the first class, the county legislative
304 body shall by ordinance provide for the distribution of the entire amount of the ~~[revenues]~~

305 revenue generated by the tax imposed by this section:

306 (i) as provided in this Subsection [~~(6)~~] (10); and

307 (ii) as stated in the opinion question described in Subsection 59-12-703(1).

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

312 (c) The [~~revenues~~] revenue distributed under Subsection [~~(6)(a)~~] (10)(a) or (b) shall be
313 used for one or more organizations or facilities defined in Section 59-12-702 regardless of
314 whether the [~~revenues are~~] revenue is distributed:

315 (i) directly by the county described in Subsection [~~(6)(a)~~] (10)(a) to be used for an
316 organization or facility defined in Section 59-12-702; or

317 (ii) in accordance with an interlocal agreement described in Subsection [~~(6)(b)~~] (10)(b).

318 [~~(7)~~] (11) A county legislative body may retain up to 1.5% of the proceeds from a tax
319 under this part for the cost of administering this part.

320 [~~(8)~~] (12) The commission shall retain and deposit an administrative charge in
321 accordance with Section 59-1-306 from the [~~revenues~~] revenue the commission collects from a
322 tax under this part.

323 Section 3. **Effective date.**

324 This bill takes effect on January 1, 2025.