

## SB0245S02 compared with SB0245S01

~~deleted text~~ shows text that was in SB0245S01 but was deleted in SB0245S02.

inserted text shows text that was not in SB0245S01 but was inserted into SB0245S02.

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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

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#### 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.

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### 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

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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] the administrative unit's 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.

(4) "Botanical organization" means:

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

(b) an administrative unit.

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

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

(5) (6) "Cultural facility" means the same as that term is defined in Section

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59-12-602.

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

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

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

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

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

~~[(H)]~~ (C) music;

~~[(V)]~~ (D) theater;

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

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

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

~~[(ii)]~~ (b) "Cultural organization" includes, for purposes of Subsections 59-12-704(1)(d) and ~~[(6)]~~ (10) only:

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

~~[(B)]~~ (ii) a municipal or county cultural council having as ~~[(its)]~~ the municipal or county cultural council's primary purpose the advancement and preservation of:

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

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

~~[(H)]~~ (C) art;

~~[(V)]~~ (D) music;

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

~~[(V)]~~ (F) dance.

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

(i) an agency of the state;

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

(iii) an educational institution ~~[(whose annual revenues are)]~~ for which annual revenue is directly derived more than 50% from state funds; or

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(iv) in a county of the first or second class, a radio or television broadcasting network or station, cable communications system, newspaper, or magazine.

~~[(7)]~~ (8) "Institution" means an institution of higher education listed in Subsection 53B-1-102(1)(a).

~~[(8)]~~ (9) "Non-qualifying expenditures" means:

(a) a capital construction expense, including a capital acquisition, an improvement to real property, or depreciation of real property;

(b) a payment into an endowment corpus;

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

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

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

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

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

(h) an expenditure for direct political lobbying;

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

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

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

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

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

(l) a bad debt expense;

(m) depreciation and amortization of an asset;

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

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

(p) funding under this part allocated in the previous year regardless of whether the

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organization expended the funds in the previous year;

(q) related party transactions; and

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

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

(b) "Operating expenses" includes:

(i) property taxes paid to the county; and

(ii) inventory or related expenses that are:

(A) classified as costs of goods;

(B) sold; and

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

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

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

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

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

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

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

[10] (14) In a county of the first class, "zoological facility" means a public, public-private partnership, or private nonprofit building, exhibit, utility and infrastructure, walkway, pathway, roadway, office, administration facility, public service facility, educational facility, enclosure, public viewing area, animal barrier, animal housing, animal care facility,

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and veterinary and hospital facility related to the advancement, exhibition, or preservation of a mammal, bird, reptile, fish, or an amphibian.

~~[(11)]~~ 1(15) (a) (i) Except as provided in Subsection ~~[(11)(a)(ii)]~~ 1(15)(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]~~ nonprofit organization's primary purpose the advancement and exhibition of a mammal, bird, reptile, fish, or an amphibian to an audience of 75,000 or more persons annually.

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

~~[(12)]~~ 1(16) "Zoological park" means a park or garden where a collection of wild animals is kept for study, conservation, and public exhibition.

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

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

(1) Except as provided in Subsections ~~[(3)(b)]~~ (7)(b) and ~~[(5)]~~ (9), 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]~~ the county legislative body of a county of the first class shall distribute annually any revenue collected under this part to support cultural facilities, recreational facilities, and zoological facilities and botanical organizations, cultural organizations, 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 cultural facilities and recreational facilities located within the county;]~~

~~[(b) (i) subject to Subsection (1)(b)(ii) and except as provided in Subsection (1)(b)(iii), 16% 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 zoological organizations located within the county, having average annual operating expenses of \$1,500,000 or more as~~

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determined under Subsection (3), with:]

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

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

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

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

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

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

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

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

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

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~~Subsection (3); and]~~

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

~~[(d) (i) 9% of the revenue collected by the county under this section shall be distributed to botanical organizations and cultural organizations that do not receive revenue under Subsection (1)(c)(i) in communities throughout the county; and]~~

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

(a) 30% of the revenue to support cultural facilities and recreational facilities located within the county;

(b) 16% of the revenue to support zoological facilities and zoological organizations located within the county as provided in Subsection (2);

(c) as provided in Subsection (5), 45% of the revenue to support no more than 22 botanical organizations and cultural organizations:

(i) each of which has average annual operating expenses of more than \$250,000 as determined under Subsection (7); and

(ii) whose activities impact all or a significant region of the county or state; and

(d) 9% of the revenue to botanical organizations and cultural organizations that do not receive revenue under Subsection (1)(c) in communities throughout the county as determined by the county legislative body.

(2) (a) The distribution described in Subsection (1)(b) shall support no more than three zoological facilities and zoological organizations located within the county and having average annual operating expenses of \$1,500,000 or more as determined under Subsection (7).

(b) For the calendar years that begin on ~~or after~~ January 1, 2025, and ~~on or before~~ January 1, ~~2026~~2029, the county shall distribute the 16% of the revenue as follows:

(i) 8.25% of the revenue to support a zoological organization having as the zoological organization's primary purpose the operation of an aviary, or a zoological facility that is part of or integrated with an aviary;

(ii) an amount equal to the amount distributed during the previous calendar year to support a zoological organization having as the zoological organization's primary purpose the

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operation of a zoological park, or a zoological facility that is part of or integrated with a zoological park; and

(iii) the remaining amount to a zoological organization having as the zoological organization's primary purpose the operation of an aquarium, or a zoological facility that is part of or integrated with an aquarium.

(c) For a calendar year that begins on or after January 1, ~~2027~~2030, the county shall provide ~~by ordinance~~ for the distribution of the 16% of revenue in proportion to ~~no more than three~~the zoological ~~facilities~~facilities' and zoological ~~organizations located within the county and having~~organizations' average annual operating expenses ~~of \$1,500,000 or more~~ as determined under Subsection (7).

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

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

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

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

~~(2)~~ (6) (a) The county legislative body of each county shall create an advisory board

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to advise the county legislative body on disbursement of funds to botanical organizations and cultural organizations under Subsection ~~[(1)(c)(i)]~~ (1)(c).

(b) (i) The advisory board under Subsection ~~[(2)(a)]~~ (6)(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 by the Division of Arts and Museums created in Section 9-6-201]~~ In a county of the first class, the Division of Arts and Museums created in Section 9-6-201 shall appoint two of the seven members of the advisory board under Subsection (6)(a).

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

(i) calculate its 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]~~ certified 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)]~~ (7)(a)(i); ~~[-]~~

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

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

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

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

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body.

~~[(5)]~~ (9) (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)]~~ (9)(a) shall be rounded off to the nearest \$100.

~~[(6)]~~ (10) (a) 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]~~ revenue generated by the tax imposed by this section:

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

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

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

(c) The ~~[revenues]~~ revenue distributed under Subsection ~~[(6)(a)]~~ (10)(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]~~ revenue is distributed:

(i) directly by the county described in Subsection ~~[(6)(a)]~~ (10)(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)]~~ (10)(b).

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

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

Section 3. **Effective date.**

This bill takes effect on January 1, 2025.