



SOCIAL SERVICES  
STAFF: STEPHEN JARDINE

# ACCOUNT FOR PEOPLE WITH DISABILITIES

ISSUE BRIEF

## **SUMMARY:**

The Account for People with Disabilities was created in 1995 to receive revenues from the sale, lease, or other disposition of real property associated with the Utah State Developmental Center. When created, the account was called a *Trust Fund*. In spite of its statutory name, the Division of Finance has treated the account, based upon its purpose and Generally Accepted Accounting Principles (GAAP), as a restricted account within the General Fund. Although statute states the principal of the fund cannot be appropriated, UCA 63J-1-211(2) overrides this restriction in times of an *operating deficit*. The beginning balance of the account as of July 1, 2010 was \$3,765,228. The Legislature appropriated \$3,682,100 from the account for FY 2011, a fiscal period meeting the qualifications of an operating deficit. Staff explored other fund designations as options to protect the account's future assets. No other fund designations were feasible. Some individuals raised a concern that private contributions previously going into the account were now being used for purposes the donors had not intended. Staff could find no record of private contributions going into the account for the past 20 years. There exists a separate account for private contributions associated with the Utah State Developmental Center that is not subject to the appropriations process. Three options for the Legislature's consideration regarding the account are found at the end of the brief.

## **ACCOUNT FOR PEOPLE WITH DISABILITIES:**

The Account for People with Disabilities was created during the Legislature's 1995 General Session by H.B. 21, *Trust Fund for People with Disabilities* (Haymond), to receive revenues from the sale, lease (except any lease existing on May 1, 1995), or other disposition of real property associated with the Utah State Developmental Center. The 1998 Legislature, through H.B. 251, *Disability Center Trust Fund Amendments* (Davis), changed statute so that the fund's principal cannot be appropriated. Additionally, fund monies appropriated could not be expended unless approved by the Board of Services for People with Disabilities. H.B. 132, *Sale of State Lands at Developmental Center* (Dayton, 2002 General Session), added the requirement of Legislative approval to sell or long-term lease any land or water rights associated with the State Developmental Center. This bill further specified the sale or lease price cannot be below the average of two real estate appraisals. H.B. 306, *Health and Human Services-related Commission, Committee, and Council Amendments* (Bigelow, 2009 General Session) eliminated the Board of Services for People with Disabilities and changed statutory language to require that funds may not be expended unless approved by the director of the Division of Services for People with Disabilities and added " in consultation with the executive director of the department" of Human Services.

## **A RESTRICTED ACCOUNT WITHIN THE GENERAL FUND, NOT A TRUST FUND:**

When created, the account was called a *Trust Fund*. The account retained the name *Trust Fund for People with Disabilities* for a number of years. The account's purpose has never changed over that period of time. Irrespective of its name, the Division of Finance has treated the account, based upon its purpose and Generally Accepted Accounting Principles (GAAP), as a restricted account within the General Fund. A *trust fund* involves an account where the state acts in a fiduciary responsibility regarding someone else's money. All funds deposited in the Account for People with Disabilities derive from actions taken involving the State of Utah's assets and do not qualify as a trust fund.

**LEGISLATURE APPROPRIATED FUNDS FROM THE ACCOUNT DURING A TIME OF OPERATING DEFICIT:**

Although statute states the principal of the fund cannot be appropriated, UCA 63J-1-211(2) overrides this restriction:

*Notwithstanding any other statute that limits the Legislature's power to appropriate from a restricted account, if the Legislature determines that an operating deficit exists, unless prohibited by federal law or court order, the Legislature may, in eliminating the deficit, appropriate money from a restricted account into the General Fund.*

The beginning balance of the account as of July 1, 2010 was \$3,765,228. The Legislature appropriated \$3,682,100 from the account for FY 2011, a fiscal period meeting the qualification of an *operating deficit*. Three separate Legislative actions affected the use of the account. Two actions were taken in the Human Services appropriations subcommittee: 1) \$1,700,000 to backfill a Division of Services for People with Disabilities' provider reduction and 2) \$613,900 to backfill a local mental health center reduction. An additional \$1,268,200 was taken from the account by the Executive Appropriations Committee (EAC), along with funds from other restricted accounts, to cover the general state shortfall which included the increased cost for the Medicaid caseload (March 4, 2010 EAC meeting, see *Additional Ongoing and One-time Revenue Sources*: <http://le.utah.gov/interim/2010/pdf/00000509.pdf>). The Legislature also appropriated \$100,000 from the Account for People with Disabilities for FY 2012. The Department of Human Services estimates there will be approximately \$69,000 in the account at the end of FY 2012 (\$28,000 beginning balance plus \$41,000 in estimated additional revenue during FY 2012).

**SEPARATE ACCOUNT RECEIVING VOLUNTARY CONTRIBUTIONS:**

When the Legislature appropriated funds from the account in 2010, some individuals raised a concern that private contributions going into the account were now being used for purposes the donors had not intended. After a review, staff could find no record of any private contributions to the Account for People with Disabilities in the past 20 years. However, there is an account titled *State Development Center Miscellaneous Donation Fund* which does contain private donations. This donation fund is not part of the General Fund or the appropriations process and it is unaffected by any actions the Legislature may take regarding the Account for People with Disabilities. As of June 6, 2011 the *State Development Center Miscellaneous Donation Fund* contained \$572,412. The funds in the account are used for expenditures not appropriate for state funding. An example given to staff was food provided in association with the annual Family Day parade at the Utah State Developmental Center.

**THE ACCOUNT CANNOT BE DESIGNATED DIFFERENTLY TO PROTECT ITS ASSETS:**

In response to a request from the Office of the Legislative Fiscal Analyst, the Utah Division of Finance asked the Governmental Accounting Standards Board (GASB) about the Account for People with Disabilities being made a Permanent Fund. Making the account a permanent fund would restrict its assets from the appropriations process. GASB clarified that an account is not a permanent fund if the Legislature has the ability to make it not permanent. Because this account is created in statute and under the Legislature's control, it does not meet the definition of a Permanent Fund.

**THE LEGISLATURE COULD AMEND STATUTE TO EXCLUDE THE ACCOUNT FROM THE OPERATING DEFICIT AUTHORITY:**

Although UCA 63J-1-211(2) grants the Legislature power to appropriate from any restricted account within the General Fund in a time of an operating deficit, nothing prohibits the Legislature from creating an exemption for this account as part of that statutory section.

**OPTIONS FOR CONSIDERATION:**

1. Replenish the Account for People with Disabilities from the General Fund when state revenues allow. Given the account was depleted during a state operating deficit; the account could be replenished during an operating surplus.
2. Amend UCA 63J-1-211(2) to restrict the Account for People with Disabilities from being accessed during times of an operating deficit.
3. Take no action and allow the account to replenish itself in the future through natural growth.