LFA LEGISLATIVE FISCAL ANALYST

SOCIAL SERVICES RELATED REVENUE OPTIONS

HEALTH AND HUMAN SERVICES APPROPRIATIONS SUBCOMMITTEE
STAFF: RUSSELL FRANDSEN & STEPHEN JARDINE

ISSUE BRIEF

SUMMARY

The Analyst has identified eight funding sources that could provide ongoing and/or one-time funding to replace or support traditional General Fund expenditures: (1) State Endowment Fund (formerly known as the Tobacco Permanent Endowment Fund), (2) Tobacco Settlement Restricted Account, (3) Cigarette Tax Restricted Account, (4) Medicaid Restricted Account, (5) Victims of Domestic Violence Service Account, (6) Children's Trust Account, (7) Trust Fund for People with Disabilities, and (8) Social Services Block Grant. In total these options provide $17,944,700 of ongoing resources and $99,786,500 in one-time resources beginning in FY 2010. The only one of the eight accounts or funding sources that has restrictions beyond a change in statute and/or an appropriation is the State Endowment Fund, where the one-time balance can only be accessed by a ¾ vote of each house of the legislature and the signature of the governor. The ongoing revenue from the fund could be accessed by a change in statute. All funds shown below that are restricted accounts in the General Fund can be accessed by inclusion in the annual appropriation bills when passed and would not require a change in statute under the following section of Utah law found in UCA 63J-1-211:

> ***63J-1-211. Appropriating from restricted accounts.***
> *(1) As used in this section, "operating deficit" means that estimated General Fund or Uniform School Fund revenues are less than budgeted for the current or next fiscal year.*
> *(2) 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 monies from a restricted account into the General Fund.*

DISCUSSION AND ANALYSIS

Each of the eight funding sources discussed in this brief is shown in the table below:

Fund/Source Name	Statute	Money Available FY 2010	
		One-time	Ongoing
State Endowment Fund	51-9-202	$ 79,480,100	$ 17,548,000
Tobacco Settlement Restricted Account	51-9-201	$ 5,055,400	$ (254,100)
Cigarette Tax Restricted Account	59-14-204	$ -	$ 650,800
Medicaid Restricted Account	26-18-402	$ 5,630,600	$ -
Victims of Domestic Violence Service Account	51-9-401	$ 1,246,400	
Children's Trust Account	62-4a-309	$ 610,000	
Trust Fund for People with Disabilities	63A-5-220	$ 4,164,000	
Social Services Block Grant		$ 3,600,000	$ -
Total		**$ 99,786,500**	**$ 17,944,700**

State Endowment Fund

The State Endowment Fund currently receives 40% of the annual payments in April from tobacco companies from the 1998 Master Settlement Agreement (UCA 51-9-202). Article XXII, Section 4 of the Utah Constitution explains the purpose of the fund: "the state treasurer shall, as provided by statute, hold all trust funds and assets in trust and invest them for the benefit of the people of the state in perpetuity." Additionally, Article XXII, Section 4 of the Utah Constitution directs that money currently in the fund can only be accessed by a ¾

vote of each house of the Legislature and the approval of the Governor. A change in the ongoing funding to the fund would require the normal approval process for a statutory change. There are no regular expenditures approved for this trust fund. UCA 51-7-12.1 outlines the restrictions on investments for the State Endowment Fund.

Additionally, UCA 51-9-202 directs that the fund keep half of its interest earnings from the tobacco payments and the other half be deposited into the General Fund. The amount deposited into the General Fund for the last 5 fiscal years has ranged from $259,200 in FY 2005 to $622,500 in FY 2009. The State Endowment Fund made a five year contribution to the General Fund totaling $2,363,600. Any changes to the fund balance would impact the interest deposited into the General Fund and interest retained by the fund.

This fund also receives excess severance tax revenues over statutory limits at the end of each year as per UCA 51-9-305. FY 2009 was the first year for these type of transfers to the fund and $7,193,200 was transferred. The General Fund receives 100% of the interest on this portion of the fund's balance. In FY 2010, the estimated interest that will be transferred from this portion of the balance is $45,000. Any changes to the fund balance would impact the interest deposited into the General Fund and interest retained by the fund.

Tobacco Settlement Restricted Account

The Tobacco Settlement Restricted Account currently receives 60% of the annual payments in April from tobacco companies from the 1998 Master Settlement Agreement (UCA 51-9-201). The statute has specific appropriations and also allows the Legislature the option of appropriating the fund for other purposes. The table below details the appropriations listed in statute and the additional funds that the Legislature has appropriated for FY 2010.

Agency	Program/Purpose (From Statute)	Statute UCA 51-9-201	Additional Appropriations	Report Status since FY 2004
Health	Children's Health Insurance Program	$10,452,900	$ 3,644,100	Has submitted annually.
Health	alcohol, tobacco and drug prevention programs	$ 3,847,100	$ 2,429,500	Has submitted annually.
Courts	drug court	$ 193,700	$ 159,100	Submitted a separate report for FY 2007. Combined report w/ Human Services in FY 2008 & FY 2009.
Human Services	drug court	$ 1,471,700	$ 343,700	Did not submit for FY 2004. Has submitted their report late every other year.
Board of Pardons	drug board pilot	$ 77,400	$ -	Submitted a report late for FY 2009. Has never submitted another report.
Corrections	drug board pilot	$ 81,700	$ -	Submitted a report for FY 2007. Did not submit any other year.
Human Services	drug board pilot	$ 175,500	$ 175,400	Did not submit for FY 2004. Has submitted their report late every other year.
University of Utah	in-state research, treatment, and educational activities	$ 4,000,000	$ -	Submitted a report late for FY 2009. Has not submitted another report since FY 2005.
Attorney General		$ -	$ 275,300	Not required.
Tax Commission		$ -	$ 76,800	Not required.
Total		**$ 20,300,000**	**$ 7,103,900**	

As noted in the table above, the FY 2010 distribution from this account is $27,403,900. The revenue is estimated at $27,149,800. This results in a current ongoing shortfall of $(254,100), which is noted in the summary table on page 1. This shortfall may be offset if Utah receives some of the $1,867,400 currently being held by tobacco companies in the disputed payments account. If this money is received, this fund would receive 60% or $1,120,400, while the State Endowment Fund would receive 40% or $747,000. Additionally, the fund has an unobligated balance of $5,055,400, this is available as a one-time resource. If appropriations exceeded funds available in the account, the money would be distributed first based on the order and amounts as they appear in statute, which is listed in the table above.

Statute also requires an annual report by September 1st from each of the agencies listed in statute that receive funds from this account. In the table above, in the far right column, a status report of reports submitted is noted from records from the Office of Legislative Research and General Counsel and the Office of the Legislative Fiscal Analyst. Since FY 2004, the Board of Pardons has never submitted a report, the University of Utah has not provided a report since FY 2005, and the Department of Corrections submitted a report only for FY 2007. Courts provided their first report in FY 2007 and in FY 2008 and FY 2009 combined their report with the Department of Human Services. The Department of Human Services did not submit a report for FY 2004. The other years Human Services reported, but the report has been one to four months late every year. The Department of Health has reported annually on-time or within 3 days of the deadline every year.

Upon receiving a draft copy of this brief in December 2009, the University of Utah and the Board of Pardons provided their FY 2009 report in January 2010.

Cigarette Tax Restricted Account

The cigarette tax was increased part-way through FY 2002 by $0.18 per pack with 58% of the revenue increase going to three areas, tobacco prevention & control in the Department of Health, Huntsman Cancer Institute, and medical education at the University of Utah. Additionally, $250,000 goes to the Department of Health from the 1998 tobacco tax increase. The distribution of funds as per UCA 59-14-204 and appropriation listed in parenthesis is listed below:

1. 22% & $250,000 to Health for tobacco prevention and control programs ($3,131,700)
2. 15% for cancer research the Huntsman Cancer Institute ($1,785,200)
3. 21% for medical education the University of Utah School of Medicine ($2,499,300)

As per Utah Code 59-14-204, if there is an ending balance, the monies are to be disbursed to these three purposes in the following year. It would appear the balances are accruing to the fund. In practice the agencies funding has been set by the Legislature and has remained flat since FY 2004. The Legislature used $8,299,200 of the fund's balance during the September 2008 Special Session. This resulted in the fund ending FY 2009 with a balance of $0. Since FY 2003, revenues have exceeded ongoing expenses by at least $650,800, which represents a potential ongoing funding source. On average revenues have exceeded ongoing expenses by $954,500. As revenues exceed appropriations, the balance in this fund will grow as it did from FY 2008 up to the September 2008 Special Session.

Statute also requires an annual report by September 1st from both of the agencies listed in statute that receive funds from this account. Since FY 2004, no one submitted a report in FY 2004, except the University of Utah. The University of Utah has not submitted a report since FY 2005. The Department of Health has submitted a report annually since FY 2005.

Upon receiving a draft copy of this brief in December 2009, the University of Utah provided their FY 2009 report in January 2010.

Medicaid Restricted Account

Unlike the three funds discussed above, the Medicaid Restricted Account does not receive constant, consistent revenues. The $5,630,600 unobligated balance represents a one-time funding resource. As per Utah Code 26-18-402, the account usually receives all the unspent monies in the Medicaid program; however, due to requirements of the federal stimulus package, unspent funds will not be coming to this fund for FY 2009 through FY 2011. Unspent Medicaid funds during this time will remain with the Department of Health as non-lapsing balances.

Statute also says that the money in the account may be used to expand medical assistance coverage to low income persons not traditionally covered by Medicaid. Historically the fund has been used for items like Medicaid caseload growth, provider rates, a lawsuit settlement, replacing federal funding, and paying for a redesign study of the Medicaid Management Information Systems.

Victims of Domestic Violence Service Account:

The Victims of Domestic Violence Service Account is a restricted account within the General Fund. This account, by statute, allocates 4.0 percent of the surcharge assessed in 51-9-401 to the Division of Child and Family Services for domestic violence services.

The restricted funds amount from this account budgeted in FY 2010 for domestic violence services is $840,700. There is also $1,174,400 General Fund appropriated to this program for FY 2010. The department anticipates that the current expenditure level will likely not be met by current year revenues. As a result, the department anticipates that approximately $1,100,000 of the total $1,246,395 ending balance is not committed for the current fiscal year.

The goal of the program is to protect from harm those who are at risk of being abused, neglected, or exploited. The objective of the program is to provide prompt services to children, adults, and the elderly who are in abusive or neglectful situations. The goal and objective are met by:

1) Domestic violence case workers who are specifically trained and experienced in dealing with issues related to domestic violence. In addition, domestic violence workers: 1) provide other DCFS workers with information about domestic violence as it relates to child abuse, 2) staff cases to assist in risk determination, and 3) provide resources and referrals to assist DCFS workers in keeping children and adult victims safe. Other services include services to adults without children, community collaboration, support to contract providers, and data collections and reporting.

2) Domestic violence treatment provides a range of treatment options available for both court ordered and voluntary services. Services are available (but limited) to perpetrators, victims, and children who have witnessed domestic violence. Services may be provided directly or by contract with a treatment provider.

3) Family Violence Shelters provide adults and their children who have been abused with a safe, short-term refuge where they can assess their situation and evaluate available options and opportunities to choose a course of action to end the abuse. Services include temporary shelter, case planning, information and referral to community resources, adult victim and children counseling, educational supports for families with children, and transportation assistance.

The number of clients served was 3,099 in FY 2009, projected at 3,140 for FY 2010, projected at 3,184 for FY 2011, and anticipated at 3,206 for FY 2012.

Children's Trust Account:

The Children's Trust Account is a restricted account within the General Fund. The Children's Trust Account, by statute, may be used only to implement programs to fight against abuse and neglect as described in 62A-4a-305. HB 306, *Health and Human Services-related Commission, Committee, and Council Amendments* (Bigelow, 2009 GS) eliminated the Board of Child and Family Services and also changed statute to require that funds may not be expended unless approved by the director of the Division of Child and Family Services within the Department of Human Services (instead of the previous DCFS board), and added " in consultation with the executive director of the department." Language found at 62A-4a-305 about these prevention and treatment programs states:

> *Programs contracted under this part shall be designed to provide voluntary primary abuse and neglect prevention, and voluntary or court-ordered treatment services, including, without limiting the generality of the foregoing, the following community-based programs:*
> *(1) those relating to prenatal care, perinatal bonding, child growth and development, basic child care, care of children with special needs, and coping with family stress;*
> *(2) those relating to crisis care, aid to parents, abuse counseling, support groups for abusive or potentially abusive parents and their children, and early identification of families where the potential for abuse and neglect exists;*
> *(3) those clearly designed to prevent the occurrence or recurrence of abuse, neglect, sexual abuse, sexual exploitation, medical or educational neglect, and such other programs as the division and council may from time to time consider potentially effective in reducing the incidence of family problems leading to abuse or neglect; and*
> *(4) those designed to establish and assist community resources that prevent abuse and neglect.*

This program is entirely funded with restricted funds. The FY 2010 appropriated budget for the Children's Trust Account is $400,000. The current balance is $610,677. The department anticipates that only $500,000 of this balance would not be committed if it maintains current service levels for the current fiscal year. Currently, the Children's Trust Account funds over 30 contracts which range in services from school-based personal body safety education for elementary and middle school children to home visiting for teen parents of infants and toddlers as well as home visiting for families whose first language is Spanish to parenting education and support.

Trust Fund for People with Disabilities

The Trust Fund for People with Disabilities was initially created during the 1995 General Session of the Legislature by HB 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 HB251, *Disability Center Trust Fund Amendments* (Davis), changed the statute so that the principal of the fund cannot be appropriated. Additionally, fund monies appropriated may not be expended unless approved by the Board of Services for People with Disabilities. Currently there is $945,600 available in the non-principal portion of the fund. $100,000 from the fund has been appropriated for FY 2010, which the department states will be used to help cover the costs of federal required additional needs for individuals in Medicaid waivers. The department had requested a building block of $500,000 during the 2009 General Session to cover the anticipated increased costs of federally required additional needs. This building block was not funded. Through HB 132, *Sale of State Lands at Developmental Center* (Dayton, 2002 GS), DSPD is required to obtain Legislative approval to sell or long-term lease any land or water rights associated with the State Developmental Center. Also, the sale or lease price cannot be below the average of two real estate appraisals. HB 306, *Health and Human Services-related Commission, Committee, and Council Amendments* (Bigelow, 2009 GS) (2009 GS) 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 within the Department of Human Services (instead of the board), and adds " in consultation with the executive director of the department."

Social Services Block Grant

Title XX of the *Social Security Act*, also referred to as the Social Services Block Grant (SSBG), is a capped entitlement program. As a result, states are entitled to their share, according to a formula, of a nationwide funding ceiling or “cap,'' which is specified in federal statute. Funds are allocated to the states on the basis of population. These federal funds are available to states without a state matching requirement. Block grant funds are given to states to help them achieve a wide range of social services policy goals, which include preventing child abuse and providing community-based care for the elderly and disabled. Annual federal allotments to states of SSBG are for two years. States are given wide discretion to determine the services to be provided and the groups that may be eligible for services, usually low income families and individuals. In addition to supporting social services, the law allows states to use their allotment for staff training, administration, planning, evaluation, and purchasing technical assistance in developing, implementing, or administering a state social service program. States decide what amount of the federal allotment to spend on services, training, and administration. Some restrictions are placed on the use of title XX funds.

Although Title XX of the *Social Security Act* was initially created in 1975, it was the *Omnibus Reconciliation Act* (*OBRA) of 1981* that amended Title XX to establish a ``block grant to States for social services.'' The initial national allotment was $2.9 billion. Under the *Transportation Equity Act* enacted in 1998 the Title XX entitlement ceiling was scheduled to be permanently reduced to $1.7 billion beginning in Federal Fiscal Year 2001. The $1.7 billion level was again approved by Congress in December 2009 for Federal Fiscal Year 2010.

Over a number of years the Department of Human Services has built up a one-time reserve of Social Services Block Grant. This reserve, or some lesser amount of it, may be appropriated one time in lieu of state General Fund throughout the department where doing so would meet the general purposes of SSBG and would not create federal matching issues. The department indicated, in its presentation materials passed out in the January 12, 2010 meeting of the Health and Human Services Appropriations Subcommittee, that the excess balance of the SSBG is $3.6 million. The department has stated the following with regard to its desires to maintain the current level of SSBG reserve:

The one-time amount of unexpended SSBG is prudent management to meet the following risks:

1. *DHS manages a $700 million budget that includes somewhat volatile caseloads driven by some factors beyond department control including court-orders. This balance represents less than 2 days spending, or only .5% of the DHS budget.*
2. *SSBG cash flow is subject to federal funding risks such as failure to pass timely budgets or increases in the debt ceiling. A prudent reserve is needed to prevent temporary disruptions caused by federal budget management failures.*
3. *SSBG budgeted amounts are subject to federal funding reductions, so a prudent reserve is needed to ensure compliance with the Federal Funds Procedure portion of the Budgetary Procedures Act. The long term trend for SSBG funding is significantly downward. SSBG funding for Utah declined from $20 million in federal FY 1995 to $14 million in federal FY 2008.*
4. *CMS intends to cut federal Medicaid funding for Utah (DCFS and JJS) beginning in FY 2011.*

RECOMMENDATIONS

The Committee has at least the following options when considering these eight funding sources:

1. Do nothing and allow the fund balances to remain at current levels, grow, and earn interest
2. Appropriate up to $17,944,700 in ongoing funding and/or $99,786,500 in one-time resources (some of these options would also require statutory changes)
3. Change which agencies and programs receive funding from the three funds with annual recipients
4. Change the level of funds provided to current recipients from the five funds with regular, annual appropriations