



CLARIFYING STATUTE GOVERNING DEDICATED CREDITS AND NONLAPSING AUTHORITY

EXECUTIVE APPROPRIATIONS COMMITTEE
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ISSUE BRIEF

SUMMARY

During the 2017 General Session, the Legislature appropriated over \$2 billion in dedicated credits across all state agencies for FY 2018. Over the years, statutory provisions governing these dedicated credits have been sprinkled throughout code, primarily in the Budgetary Procedures Act (63J-1) and the Revenue Procedures and Control Act (63J-2). While the Division of Finance has interpreted and applied the provisions to the best of their ability, statutory clarifications are needed to ensure compliance with legislative policy. The Legislative Fiscal Analyst recommends the Executive Appropriations Committee run legislation to reorganize, consolidate, and clarify laws regarding dedicated credits and nonlapsing authority.

BACKGROUND

“Dedicated Credits” means revenues from collections by an agency that are deposited directly into an account for expenditure on a separate line item and program (63J-1-102 and 63J-2-102). An agency may expend dedicated credits for any purpose within the program or line item (63J-1-104).

Agencies collect dedicated credits revenue for a large variety of activities, most prominently including:

- Assessments
- Sales of goods and materials
- Sales of services
- Permit, license and other fees
- Fines, penalties, and forfeitures
- Rental revenue
- Donations and grants

The Budgetary Procedures Act requires the Division of Finance, on or before August 31 of each year, to close out to the proper fund or account all remaining unexpended and unencumbered balances of appropriations made by the Legislature except for those granted exceptions in statute or intent language. Those appropriations that have an exception are generally known as having “nonlapsing authority.” Statute grants nonlapsing authority to appropriations from dedicated credits under certain circumstances; however, the statutory language could be made clearer.

ISSUES

1. Commonly used terms aren’t well defined. Perhaps the most important example is the word “program” and several phrases such as “work program” and “schedule of programs”. Other terms such as “appropriation item”, “item of appropriation”, “surplus of appropriation” and “excess dedicated credits” are used but not defined. Please see Appendix A for highlighted versions of 63J-1-206 and 63J-2-202.

To illustrate the importance of defined terms, consider language in 63J-2-202 which states that agencies may expend excess dedicated credit collections up to 25% of the amount appropriated. However, if an agency’s dedicated credits revenues represent over 90% of the budget of the program for which they are collected, the agency may expend 100% of the excess. To a fiscal analyst, “program” is a budget term, also known as an “appropriation unit”, that shows under the

Schedule of Programs in an appropriations act. However, it could also be interpreted under the common English definition as the function or service being provided.

2. Both the Budgetary Procedures Act and the Revenue Procedures and Control Act refer to “fixed collections” as a revenue type. “Fixed collections” is defined as “revenue from collections fixed by law or the appropriations act to a specific amount and required to be deposited into a separate line item and program.” “Fixed collections” is not a revenue source used in appropriations acts, and appropriations acts provide specific amounts and line items. References to “fixed collections” as a revenue type can be deleted. Please see Appendix 2 for a sample of “fixed collections” language.
3. Some apparent conflicts exist that could be clarified. For example:
 - a. 63J-1-104(4)(b)(i): Except as provided in Subsection (4)(b)(ii), an agency may not expend dedicated credits in excess of the amount appropriated as dedicated credits by the Legislature. [Subsection (4)(b)(ii) allows an agency to submit a new work program.]
 - b. 63J-1-104(4)(c): All excess dedicated credits lapse to the appropriate fund at the end of the fiscal year unless the Legislature has designated the entire program or line item that is partially or fully funded from dedicated credits as nonlapsing.
 - c. 63J-1-104(6): When an agency has a program or line item that is funded by more than one major revenue type, the agency shall expend its dedicated credits first.
 - d. 63J-2-202(2)(a)(i): Each agency that receives dedicated credits revenues greater than the amount appropriated to them by the Legislature in the annual appropriations act may expend the excess up to 25 percent of the amount appropriated if the expenditure is authorized by an amended work program.
 - e. 63J-2-202(2)(a)(ii): The Division of Finance shall deposit the balance of that excess into the General Fund or other appropriate fund as free or restricted revenue.

Several of these provisions are in conflict with each other, without a clear priority order. The Division of Finance resolves the conflict by giving priority to item c). If an agency has nonlapsing authority as stated in item b), and is funded by more than one revenue type as stated in item c), then it may collect *any* amount of dedicated credits – not limited to 25% more than the appropriation as stated in item d) – and the Division of Finance requires the agency to expend all of its dedicated credits first. Thus the agency will probably not carry forward dedicated credits, but rather some other revenue type. These interpretations are beneficial by increasing the use of dedicated credits and leaving more unrestricted funds (such as the General and Education Funds) available for other uses. However, this means that agencies could spend far more dedicated credits than were appropriated, which may or may not reflect legislative intent, thus the Legislature could more explicitly state its policy.

4. Statute (see 63J-5) allows agencies to expend excess federal funds collections up to 25% of the amount appropriated under some circumstances. This is similar to how statute treats dedicated credits. However, the Act also sets up a process by which agencies can submit new federal grants during the Interim to the Governor, Executive Appropriations Committee, or full Legislature (depending on the impact of the grant) for approval. While the Legislature has no formal interim review process for dedicated credits, the Legislature has established an Interim review process for new non-federal grants, most of which default to being considered dedicated credits. The Legislature may consider adding an interim review process for other dedicated credits. Please see Appendix 3 for provisions governing interim review of non-federal grants. These provisions could also be applied to dedicated credits.

5. As already stated, statute allows agencies to expend excess dedicated credits and federal funds collections up to 25% of the amount appropriated under some circumstances. However, statute and legislative rules are silent as to whether the same flexibility applies to dedicated credits and federal funds in base budgets. JR3-2-402 defines “base budget” and procedures for calculating base budgets for the General and Education Funds (previous fiscal year ongoing amounts), but is not clear regarding base budget amounts for dedicated credits and federal funds. The Legislature may wish to state whether base budget amounts for dedicated credits and federal funds should be allowed to increase by 25% above the previous year’s appropriation, and whether base budget amounts should reflect federal and non-federal grants approved during the interim review process. Benefits of doing so include giving agencies flexibility to manage minor changes in sometimes unpredictable revenue streams without requiring legislative time and attention. Drawbacks include the potential for gradually increasing dedicated credits and federal funds appropriations (“budget creep”) without specific legislative review of underlying reasons.
6. 63J-1-602 through 602.5 designate all accounts and programs that have statutorily nonlapsing authority, meaning authority to expend appropriations from these accounts and to these programs does not lapse at the end of a fiscal year. Each section could be reorganized so that appropriations from an account are in one subsection, and appropriations to a program are in another subsection. Currently statute also refers to some “revenue collections” being nonlapsing; however, making revenue collections or funds already in an account nonlapsing is unnecessary. As stated in 63J-1-104, “Revenues in a restricted account or fund do not lapse to another account or fund unless otherwise specifically provided for by law or legislative appropriation.” Please see Appendix 4.

RECOMMENDATION

The Analyst recommends the Executive Appropriations Committee direct the Legislative Fiscal Analyst’s Office staff to work with the committee co-chairs and staff from the Division of Finance and the Governor’s Office of Management and Budget to draft clarifying language for inclusion in a bill during the 2018 General Session. Such clarifications may include:

1. improved definitions of budgeting terms;
2. removal of references to “Fixed Collections”;
3. consolidation of provisions and elimination of apparent conflicts governing nonlapsing status of dedicated credits;
4. clarification of whether dedicated credits and federal funds are allowed to increase by 25 percent in base budgets bills;
5. reorganization of sections granting nonlapsing authority to appropriations from specific accounts and to specific programs; and
6. consideration of adding an interim review process for dedicated credits collections that exceed appropriations.

APPENDIX 1: EXAMPLES OF TERMINOLOGY NEEDING CLEARER DEFINITIONS

63J-1-206 Appropriations governed by chapter -- Restrictions on expenditures -- Transfer of funds -- Exclusion.

- (1) As used in this section, “work program” means a budget that contains revenues and expenditures for specific purposes or functions within an item of appropriation.
- (2)(a) Except as provided in Subsection (2)(b), (3)(e), or where expressly exempted in the appropriating act:
- (i) all money appropriated by the Legislature is appropriated upon the terms and conditions set forth in this chapter; and
 - (ii) any department, agency, or institution that accepts money appropriated by the Legislature does so subject to the requirements of this chapter.
- (b) This section does not apply to:
- (i) the Legislature and its committees; and
 - (ii) the Investigation Account of the Water Resources Construction Fund, which is governed by Section 73-10-8.
- (3)(a) Each appropriation item is to be expended subject to any schedule of programs and any restriction attached to the appropriation item, as designated by the Legislature.
- (b) Each schedule of programs or restriction attached to an appropriation item:
- (i) is a restriction or limitation upon the expenditure of the respective appropriation made;
 - (ii) does not itself appropriate any money; and
 - (iii) is not itself an item of appropriation.
- (c) An appropriation or any surplus of any appropriation may not be diverted from any department, agency, institution, or division to any other department, agency, institution, or division.
- (d) The money appropriated subject to a schedule or programs or restriction may be used only for the purposes authorized.
- (e) In order for a department, agency, or institution to transfer money appropriated to it from one program to another program within an item of appropriation, the following procedure shall be followed:
- (i) The department, agency, or institution seeking to make the transfer shall prepare:
 - (A) a new work program for the fiscal year involved that consists of the currently approved work program and the transfer sought to be made; and
 - (B) a written justification for the new work program that sets forth the purpose and necessity for the transfer.
 - (ii) The Division of Finance shall process the new work program with written justification and make this information available to the Governor’s Office of Management and Budget and the legislative fiscal analyst.
- (f)(i) Except as provided in Subsection (3)(f)(ii), money may not be transferred from one item of appropriation to any other item of appropriation.
- (ii) The state superintendent may transfer money appropriated for the Minimum School Program between line items of appropriation in accordance with Section 53A-17a-105.
- (g)(i) The procedures for transferring money between programs within an item of appropriation as provided by Subsection (3)(e) do not apply to money appropriated to the State Board of Education for the Minimum School Program or capital outlay programs created in Title 53A, Chapter 21, Public Education Capital Outlay Act.
- (ii) The state superintendent may transfer money appropriated for the programs specified in Subsection (3)(g)(i) only as provided by Section 53A-17a-105.

63J-2-202 Disposition of revenues -- Reporting of balances in dedicated credits and fixed collections.

(2)(a)(i)(A) Except as provided in Subsection (2)(a)(i)(B) or (2)(b), each agency that receives dedicated credits and fixed collections revenues greater than the amount appropriated to them by the Legislature in the annual appropriations act may expend the excess up to 25% of the amount appropriated if the expenditure is authorized by an amended work program approved as provided in Section 63J-1-209.

(B) Except for **line items** covering tuition and federal vocational funds at institutions of higher learning, any expenditure of dedicated credits in excess of amounts appropriated by the Legislature may not be used to permanently increase personnel within the agency unless approved by the Legislature.

(ii) The Division of Finance shall deposit the balance of that excess into the General Fund or other appropriate fund as free or restricted revenue.

(b) Notwithstanding the requirements of Subsection (2)(a), when an agency's dedicated credits and fixed collections revenues represent over 90% of the budget of the **program** for which they are collected, the agency may expend 100% of the excess of the amount appropriated if the expenditure is authorized by an amended **work program** approved as provided in Section 63J-1-209.

APPENDIX 2: EXAMPLE OF “FIXED COLLECTIONS” LANGUAGE

63J-1-102 Definitions.

- (1) “Debt service” means the money that is required annually to cover the repayment of interest and principal on state debt.
- (2) “Dedicated credits” means collections by an agency that are deposited directly into an account for expenditure on a separate line item and program.
- (3) “Federal revenues” means collections by an agency from a federal source that are deposited into an account for expenditure on a separate line item and program.
- (4) “Fixed collections” means collections that are:
 - (a) fixed at a specific amount by law or by an appropriation act; and
 - (b) required to be deposited into a separate line item and program.
- (5) “Free revenue” includes:
 - (a) collections that are required by law to be deposited in:
 - (i) the General Fund;
 - (ii) the Education Fund;
 - (iii) the Uniform School Fund; or
 - (iv) the Transportation Fund;
 - (b) collections that are not otherwise designated by law;
 - (c) collections that are not externally restricted; and
 - (d) collections that are not included in an approved work program.
- (6) “Major revenue types” means:
 - (a) free revenue;
 - (b) restricted revenue;
 - (c) dedicated credits; and
 - (d) fixed collections.
- (7) “Restricted revenue” means collections that are:
 - (a) deposited, by law, into a separate fund, subfund, or account; and
 - (b) designated for a specific program or purpose.

APPENDIX 3: NON-FEDERAL GRANTS INTERIM APPROVAL PROCESS

63J-7-201 Governor to approve certain grant requests.

- (1)(a) Before obligating the state to accept or receive a grant, an executive branch agency shall submit a grant summary to the governor or the governor’s designee for approval or rejection when:
 - (i) the executive branch agency would receive a grant of at least \$10,000 but no more than \$50,000 if the grant is approved;
 - (ii) receipt of the grant will require no additional permanent full-time employees, permanent part-time employees, or combination of additional permanent full-time employees and permanent part-time employees; and
 - (iii) no new state money will be required to match the grant.
- (b) The Governor’s Office of Management and Budget shall report each grant authorized under this section to:
 - (i) the Legislature’s Executive Appropriations Committee; and
 - (ii) the Office of the Legislative Fiscal Analyst.
- (2) The governor or the governor’s designee shall approve or reject each grant submitted under the authority of this section.
- (3)
 - (a) If the governor or the governor’s designee approves the grant, the executive branch agency may accept the grant.
 - (b) If the governor or the governor’s designee rejects the grant, the executive branch agency may not accept the grant.
- (4) If an executive branch agency fails to obtain the governor’s or the governor’s designee’s approval under this section, the governor may require the agency to return the grant.

63J-7-203 Legislative review and approval of certain grant requests.

- (1) As used in this section:
 - (a) “High impact grant” means a grant that will or could:
 - (i) result in the state receiving total payments of \$1,000,000 or more per year from the grantor;
 - (ii) require the state to add 11 or more permanent full-time employees, 11 or more permanent part-time employees, or combination of permanent full-time employees and permanent part-time employees equal to 11 or more in order to receive the grant; or
 - (iii) require the state to expend more than \$1,000,000 of new state money in a fiscal year in order to receive or administer the grant.
 - (b) “Medium impact grant” means a grant that will or could:
 - (i) result in the state receiving total payments of more than \$50,000 but less than \$1,000,000 per year from the grantor;
 - (ii) require the state to add more than zero but less than 11 permanent full-time employees, more than zero but less than 11 permanent part-time employees, or a combination of permanent full-time employees and permanent part-time employees equal to more than zero but less than 11 in order to receive or administer the grant; or
 - (iii) require the state to expend \$1 to \$1,000,000 of new state money in a fiscal year in order to receive or administer the grant.
- (2)(a) Before obligating the state to accept or receive a medium impact grant, and, where possible, before formally submitting a request for a medium impact grant to the grantor, an agency shall:
 - (i) submit the grant summary to the governor or the Judicial Council, as appropriate, for approval or rejection; and
 - (ii) if the governor or Judicial Council approves the grant, submit the grant summary to the Legislative Executive Appropriations Committee for its review and recommendations.
- (b) The Legislative Executive Appropriations Committee shall review the grant summary and may:
 - (i) recommend that the agency accept the grant;
 - (ii) recommend that the agency not accept the grant; or
 - (iii) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the acceptance of the grant.
- (3)(a) Before obligating the state to accept or receive a high impact grant, and, where possible, before formally submitting a request for a high impact grant to the grantor, an agency shall:
 - (i) submit the grant summary to the governor or Judicial Council, as appropriate, for approval or rejection; and
 - (ii) if the governor or Judicial Council approves the grant, submit the grant summary to the Legislature for its

approval or rejection in an annual general session or a special session.

(b)

(i) If the Legislature approves the grant, the agency may accept the grant.

(ii) If the Legislature fails to approve the grant, the agency may not accept the grant.

(c) If an agency fails to obtain the Legislature's approval under this Subsection (3):

(i) the governor or Judicial Council, as appropriate, may require the agency to return the grant;

(ii) the Legislature may direct the agency to return the grant to the grantor; or

(iii) the Legislature may reduce the agency's appropriation in an amount less than, equal to, or greater than the amount of the grant received by the agency.

APPENDIX 4: EXAMPLE OF PROPOSED REORGANIZATION OF STATUTORY NONLAPSING AUTHORITY

63J-1-602 Nonlapsing ~~[accounts and funds]~~ appropriations.

- (1) The ~~[revenue collections,]~~ appropriations from a fund or account~~[,]~~ and appropriations to a program that are listed in Sections 63J-1-602.1 through 63J-1-602.5 are nonlapsing~~[,]~~, subject to 63J-2-202 governing dedicated credits and 63J-5-205 governing federal funds.
- (2) No ~~[revenue collection,]~~ appropriation from a fund or account~~[,]~~ or appropriation to a program may be treated as nonlapsing unless:
 - (a) it is listed in Sections 63J-1-602.1 through 63J-1-602.5;
 - (b) it is designated in a condition of appropriation in the appropriations bill; or
 - (c) nonlapsing authority is granted under Section 63J-1-603.
- (3) Each legislative appropriations subcommittee shall review the accounts and funds that have been granted nonlapsing authority under the provisions of this section or Section 63J-1-603.

63J-1-602.5 List of nonlapsing ~~[funds and accounts]~~ appropriations -- Title 64 and thereafter.

- (1) Appropriations made to:
 - (a) ~~[Funds collected by the housing of state probationary inmates or state parole inmates, as provided in Subsection 64-13e-104(2).]~~
 - (b) ~~[Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and State Lands, as provided in Section 65A-8-103.]~~
 - (c) The Department of Human Resource Management user training program, as provided in Section 67-19-6.
 - (d) ~~[Funds for]~~ The University of Utah Poison Control Center program, as provided in Section 69-2-5.5.
 - (e) The Traffic Noise Abatement Program created in Section 72-6-112.
 - (f) ~~[Certain funds received by the Office of the State Engineer for well drilling fines or bonds, as provided in Section 73-3-25.]~~
 - (g) ~~[Certain money appropriated from the Water Resources Conservation and Development Fund, as provided in Section 73-23-2.]~~
 - (h) ~~[Certain funds appropriated]~~ The Judicial Council for compensation for special prosecutors, as provided in Section 77-10a-19.
 - (i) ~~[Funds donated or paid to a juvenile court by private sources, as provided in Subsection 78A-6-203(1)(c).]~~
 - (j) A state rehabilitative employment program, as provided in Section 78A-6-210.
 - (k) ~~[Fees for certificate of admission created under Section 78A-9-102.]~~
 - (l) ~~[The money for]~~ The Utah Geological Survey, as provided in Section 79-3-401.
 - (m) ~~[Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State Park, Jordan River State Park, and Green River State Park, as provided under Section 79-4-403.]~~
 - (n) ~~[Certain funds received by the Division of Parks and Recreation from the sale or disposal of buffalo, as provided under Section 79-4-1001.]~~
 - (o) The Bonneville Shoreline Trail Program created under Section 79-5-503.
 - (p) ~~[Funds appropriated and collected for]~~ Adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.
 - (q) ~~[Funds appropriated and collected for]~~ Indigent defense as provided in Title 77, Chapter 32, Part 8, Utah Indigent Defense Commission.
- (2) Appropriations made from:
 - (a) Funds collected by the housing of state probationary inmates or state parole inmates, as provided in Subsection 64-13e-104(2).
 - (b) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and State Lands, as provided in Section 65A-8-103.
 - (c) Certain funds received by the Office of the State Engineer for well drilling fines or bonds, as provided in Section 73-3-25.
 - (d) The Water Resources Conservation and Development Fund, as provided in Section 73-23-2.
 - (e) Funds donated or paid to a juvenile court by private sources, as provided in Subsection 78A-6-203(1)(c).

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- (f) Fees for certificate of admission created under Section 78A-9-102.
- (g) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State Park, Jordan River State Park, and Green River State Park, as provided under Section 79-4-403.
- (h) Certain funds received by the Division of Parks and Recreation from the sale or disposal of buffalo, as provided under Section 79-4-1001.
- (i) Funds collected for adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.
- (j) Funds collected for indigent defense as provided in Title 77, Chapter 32, Part 8, Utah Indigent Defense Commission.