

## SB0180S01 compared with SB0180

~~{deleted text}~~ shows text that was in SB0180 but was deleted in SB0180S01.

inserted text shows text that was not in SB0180 but was inserted into SB0180S01.

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Senator Daniel R. Liljenquist proposes the following substitute bill:

### MEDICAID REFORM

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel R. Liljenquist**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends the Medical Assistance Act and the Budgetary Procedures ~~{Act and the Medical Assistance}~~ Act.

##### Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to develop a proposal to modify the Medicaid program in a way that maximizes replacement of the fee-for-service delivery model with one or more risk-based delivery models;
- ▶ specifies criteria for the proposal;
- ▶ requires the department, to the extent possible, to develop the proposal with the input of stakeholder groups representing those who will be affected by the proposal.
- ▶ requires the department to report to the Legislature on the development of the

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proposal;

- ▶ requires the department to submit a request to the Centers for Medicare and Medicaid Services for waivers from federal law to implement the proposal;
- ▶ directs the department to implement the proposal in the fiscal year following the fiscal year in which the waivers are approved;
- ▶ provides definitions;
- ▶ creates the Medicaid Growth Reduction and Budget Stabilization Account restricted account;
- ▶ specifies conditions under which Medicaid growth savings shall be transferred or appropriated to the account;
- ▶ provides that Medicaid growth savings not transferred into the account shall be included in the base budget for the second following fiscal year;
- ▶ specifies the priority of the account's claim on General Fund revenue surplus;
- ▶ specifies how money in the account ~~{ funds }~~ may be used;
- ▶ makes conforming amendments;~~†~~
- ~~makes clarifying amendments;†~~ and
- ▶ makes technical corrections.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**63J-1-312**, as renumbered and amended by Laws of Utah 2009, Chapter 183

**63J-1-314**, as last amended by Laws of Utah 2009, Chapter 389 and renumbered and amended by Laws of Utah 2009, Chapter 183

**63M-1-905**, as last amended by Laws of Utah 2010, Chapters 245 and 278

ENACTS:

**26-18-405**, Utah Code Annotated 1953

**63J-1-315**, Utah Code Annotated 1953

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

Section 1. Section **26-18-405** is enacted to read:

**26-18-405. Waivers to maximize replacement of fee-for-service delivery model.**

(1) The department shall develop a proposal to amend the state plan for the Medicaid program in a way that maximizes replacement of the fee-for-service delivery model with one or more risk-based delivery models. The proposal shall:

(a) restructure the program's provider payment provisions to reward health care providers for delivering the most appropriate services at the lowest cost and in ways that, compared to services delivered before implementation of the proposal, maintain or improve recipient health status;

(b) restructure the program's cost sharing provisions **and other incentives** to reward recipients for personal efforts to:

(i) maintain or improve their health status; and

(ii) use providers that deliver the most appropriate services at the lowest cost;

(c) identify the evidence-based practices and measures, risk adjustment methodologies, payment systems, **funding sources**, and other mechanisms necessary to reward providers for delivering the most appropriate services at the lowest cost, including mechanisms that:

(i) pay providers for packages of services delivered over entire episodes of illness rather than for individual services delivered during each patient encounter; and

(ii) reward providers for delivering services that make the most positive contribution to a recipient's health status;

(d) limit total **annual** per-patient-per-month expenditures for services delivered through fee-for-service arrangements to total **annual** per-patient-per-month expenditures for services delivered through risk-based arrangements covering similar ~~client~~**recipient** populations and services; and

(e) limit the rate of growth in per-patient-per-month General Fund expenditures for the program to the rate of growth in General Fund expenditures for all other programs, when the rate of growth in the General Fund expenditures for all other programs is greater than zero.

**(2) To the extent possible, the department shall develop the proposal with the input of stakeholder groups representing those who will be affected by the proposal.**

~~(2)~~**3** No later than June 1, 2011, the department shall submit a written report on the

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development of the proposal to the Legislature's Executive Appropriations Committee, ~~the~~ Social Services Appropriations Subcommittee, and ~~the~~ Health and Human Services Interim Committee.

~~(3)4~~ No later than July 1, 2011, the department shall submit to the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services a request for waivers from federal statutory and regulatory law necessary to implement the proposal.

(5) After the request for waivers has been made, and prior to its implementation, the department shall report to the Legislature in accordance with Section 26-18-3 on any modifications to the request proposed by the department or made by the Centers for Medicare and Medicaid Services.

~~(4)6~~ The department shall implement the proposal in the fiscal year that follows the fiscal year in which the United States Secretary of Health and Human Services approves the request for waivers.

Section 2. Section **63J-1-312** is amended to read:

**63J-1-312. Establishing a General Fund Budget Reserve Account -- Providing for deposits and expenditures from the account -- Providing for interest generated by the account.**

(1) As used in this section:

(a) "Education Fund budget deficit" means a situation where appropriations made by the Legislature from the Education Fund for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the Education Fund in that fiscal year.

(b) "General Fund appropriations" means the sum of the spending authority for a fiscal year that is:

- (i) granted by the Legislature in all appropriation acts and bills; and
- (ii) identified as coming from the General Fund.

(c) "General Fund budget deficit" means a situation where General Fund appropriations made by the Legislature for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the General Fund in that fiscal year.

(d) "General Fund revenue surplus" means a situation where actual General Fund

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revenues collected in a completed fiscal year exceed the estimated revenues for the General Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the Legislature.

(e) "Operating deficit" means that, at the end of the fiscal year, the ~~unreserved and undesignated~~ unassigned fund balance in the General Fund is less than zero.

(2) There is created within the General Fund a restricted account to be known as the General Fund Budget Reserve Account, which is designated to receive the legislative appropriations, investment earnings, and the surplus revenue required to be deposited into the account by this section.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), at the end of any fiscal year in which the Division of Finance, in consultation with the Legislative Fiscal Analyst and in conjunction with the completion of the annual audit by the state auditor, determines that there is a General Fund revenue surplus, the Division of Finance shall transfer 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account.

(ii) If the transfer of 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account would cause the balance in the account to exceed 6% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 6% of General Fund appropriations for the fiscal year in which the General Fund revenue surplus occurred.

(iii) ~~After~~ The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(a):

(A) after making the transfer of General Fund revenue surplus to the Medicaid Budget Stabilization Restricted Account ~~has been made~~, as provided in Section 63J-1-315 ~~the Division of Finance shall calculate the amount to be transferred under this Subsection (3)(a):~~

~~(A):~~

~~(A)~~ (B) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

~~(B)~~ (C) excluding ~~the~~ from the General Fund revenue surplus any General Fund investment earnings for the fiscal year and ~~excluding~~ any direct legislative

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appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(b) (i) Except as provided in Subsection (3)(b)(ii), in addition to Subsection (3)(a)(i), if a General Fund revenue surplus exists and if, within the last 10 years, the Legislature has appropriated any ~~money~~ ~~funds~~ from the General Fund Budget Reserve Account that has not been replaced by appropriation or as provided in this Subsection (3)(b), the Division of Finance shall transfer up to 25% more of the General Fund revenue surplus to the General Fund Budget Reserve Account to replace the amounts appropriated, until direct legislative appropriations, if any, and transfers from the General Fund revenue surplus under this Subsection (3)(b) have replaced the appropriations from the account.

(ii) If the transfer under Subsection (3)(b)(i) would cause the balance in the account to exceed 6% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 6% of General Fund appropriations for the fiscal year in which the revenue surplus occurred.

(iii) ~~The~~ ~~After~~ The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(b):

(A) after making the transfer of General Fund revenue surplus to the Medicaid Budget Stabilization Restricted Account ~~has been made~~, as provided in Section 63J-1-315 ~~the~~ Division of Finance shall calculate the amount to be transferred under this Subsection (3)(b):

~~(A)~~;

(A) (B) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

(B) (C) excluding ~~the~~ ~~from the General Fund revenue surplus any General Fund~~ investment earnings for the fiscal year and ~~excluding~~ any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(c) For appropriations made by the Legislature to the General Fund Budget Reserve Account, the Division of Finance shall treat those appropriations, unless otherwise specified in the appropriation, as replacement funds for appropriations made from the account if funds were appropriated from the General Fund Budget Reserve Account within the past 10 years and have not yet been replaced.

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~~[(4)(a) If, at the close of any fiscal year, there appear to be insufficient monies to pay additional debt service for any bonded debt authorized by the Legislature, the Division of Finance may hold back from any General Fund revenue surplus monies sufficient to pay the additional debt service requirements resulting from issuance of bonded debt that was authorized by the Legislature.]~~

~~[(b) The Division of Finance may not spend the hold back amount for debt service under Subsection (4)(a) unless and until it is appropriated by the Legislature.]~~

~~[(c) If, after calculating the amount for transfers to the General Fund Budget Reserve Account, the remaining General Fund revenue surplus is insufficient to cover the hold back for debt service required by Subsection (4)(a), the Division of Finance shall reduce the transfer to the General Fund Budget Reserve Account by the amount necessary to cover the debt service hold back.]~~

~~[(d) Notwithstanding Subsection (3), the Division of Finance shall hold back the General Fund balance for debt service authorized by this Subsection (4) before making any transfers to the General Fund Budget Reserve Account or any other designation or allocation of General Fund revenue surplus.]~~

~~[(5) Notwithstanding Subsection (3), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists and that holding back the transfers to the State Disaster Recovery Restricted Account under Section 63J-1-314 does not eliminate the operating deficit, the Division of Finance may reduce the transfer to the General Fund Budget Reserve Account by the amount necessary to eliminate the operating deficit.]~~

~~[(6) (4) The Legislature may appropriate [monies] funds money from the General Fund Budget Reserve Account only to:~~

~~(a) resolve a General Fund budget deficit, for the fiscal year in which the General Fund budget deficit occurs;~~

~~(b) pay some or all of state settlement agreements approved under Title 63G, Chapter 10, State Settlement Agreements Act;~~

~~(c) pay retroactive tax refunds; or~~

~~(d) resolve an Education Fund budget deficit.~~

~~[(7) (5) Interest generated from investments of {} money {} funds in the General Fund Budget Reserve Account shall be deposited into the General Fund.~~

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Section 3. Section **63J-1-314** is amended to read:

### **63J-1-314. Deposits related to the Disaster Recovery Funding Act.**

(1) As used in this section, "operating deficit" means that, at the end of the fiscal year, the ~~unreserved and undesignated~~ unassigned fund balance in the General Fund is less than zero.

(2) Except as provided under Subsection (3), ~~[beginning with the fiscal year ending June 30, 2007,]~~ at the end of each fiscal year and after the transfer of surplus General Fund revenues has been made to the Medicaid Budget Stabilization Restricted Account, as provided in Section 63J-1-315, and the General Fund Budget Reserve Account, as provided in Section 63J-1-312, the Division of Finance shall deposit an amount into the State Disaster Recovery Restricted Account, created in Section 53-2-403, calculated by:

(a) determining the amount of surplus General Fund revenues ~~that is unrestricted and undesignated~~ after the transfer to the Medicaid Budget Stabilization Restricted Account under Section 63J-1-315 and the General Fund Budget Reserve Account under Section 63J-1-312 ~~[that is unrestricted and undesignated];~~

(b) calculating an amount equal to the lesser of:

(i) 25% of the amount determined under Subsection (2)(a); or

(ii) 6% of the total of the General Fund appropriation amount for the fiscal year in which the surplus occurs; and

(c) adding to the amount calculated under Subsection (2)(b) an amount equal to the lesser of:

(i) 25% more of the amount described in Subsection (2)(a); or

(ii) the amount necessary to replace, in accordance with this Subsection (2)(c), any amount appropriated from the State Disaster Recovery Restricted Account within 10 fiscal years before the fiscal year in which the surplus occurs if:

(A) a surplus exists; and

(B) the Legislature appropriates ~~the~~ money ~~from~~ funds from the State Disaster Recovery Restricted Account that is not replaced by appropriation or as provided in this Subsection (2)(c).

(3) Notwithstanding Subsection (2) ~~if~~, if at the end of a fiscal year, the Division of Finance determines that an operating deficit exists, the ~~Division of Finance~~ division shall



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reduce the transfer to the State Disaster Recovery Restricted Account by the amount necessary to eliminate the operating deficit~~[, and]~~.

~~[(b) for FY 2008-09 and FY 2009-10 only, the Division of Finance shall suspend the deposit provided under Subsection (2) to the State Disaster Recovery Restricted Account created under Section 53-2-403.]~~

Section 4. Section **63J-1-315** is enacted to read:

### **63J-1-315. Medicaid Growth Reduction and Budget Stabilization Restricted Account -- Transfers of Medicaid growth savings -- Base budget adjustments.**

(1) As used in this section:

(a) "Department" means the Department of Health created in Section 26-1-4.

(b) "Division" means the Division of Health Care Financing created within the department under Section 26-18-2.1.

(c) "General Fund appropriations" means the sum of the spending authority for a fiscal year that is:

(i) granted by the Legislature in all appropriation acts and bills; and

(ii) identified as coming from the General Fund.

(d) "General Fund ~~budget deficit~~" means a situation where General Fund appropriations made by the Legislature for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the General Fund in that fiscal year.

~~—~~ (e) "General Fund ~~revenue surplus~~" means a situation where actual General Fund revenues collected in a completed fiscal year exceed the estimated revenues for the General Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the Legislature ~~, as determined by the Division of Finance, in consultation with the Legislative Fiscal Analyst and in conjunction with the completion of the annual audit by the state auditor.~~

(~~ff~~e) "Medicaid growth savings" means the Medicaid growth target minus Medicaid program expenditures, if Medicaid program expenditures are less than the Medicaid growth target.

(~~fg~~f) "Medicaid growth target" means Medicaid program expenditures for the previous year multiplied by 1.08.

(~~fh~~g) "Medicaid program" is as defined in Section 26-18-2.

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(f+h) "Medicaid program expenditures" means total state revenue expended for the Medicaid program from the General Fund during a fiscal year.

(f+i) "Medicaid program expenditures for the previous year" means total state revenue expended for the Medicaid program from the General Fund during the fiscal year immediately preceding a fiscal year for which Medicaid program expenditures are calculated.

(f+j) "Operating deficit" means that, at the end of the fiscal year, the ~~funreserved and undesignated~~ unassigned fund balance in the General Fund is less than zero.

(f+k) "State revenue" means revenue other than federal revenue.

(f+l) "State revenue expended for the Medicaid program" includes ~~funds~~ money transferred or appropriated to the Medicaid Growth Reduction and Budget Stabilization Account only to the extent the ~~funds are subsequently~~ money is transferred to and appropriated from the General Fund for the Medicaid program by the Legislature.

(2) There is created within the General Fund a restricted account to be known as the Medicaid Growth Reduction and Budget Stabilization Account.

(3) (a) (i) Except as provided in Subsection (6), if at the end of a fiscal year there is a General Fund revenue surplus, the Division of Finance shall transfer an amount equal to Medicaid growth savings from the General Fund to the Medicaid Growth Reduction and Budget Stabilization Account.

(ii) If the amount transferred is reduced to prevent an operating deficit, as provided in Subsection (6), the Legislature shall include, to the extent ~~funds are~~ revenue is available, an amount equal to the reduction as an appropriation from the General Fund to the account in the base budget for the second fiscal year following the fiscal year for which the reduction was made.

(b) If at the end of a fiscal year there is not a General Fund revenue surplus, the Legislature shall include, to the extent ~~funds are~~ revenue is available, an amount equal to Medicaid growth savings as an appropriation from the General Fund to the account in the base budget for the second fiscal year following the fiscal year for which the reduction was made.

(c) Subsections (3)(a) and (3)(b) apply only to the fiscal year in which the department implements the proposal developed under Section 26-18-405 to reduce the long-term growth in state expenditures for the Medicaid program, and to each fiscal year thereafter.

(4) The Division of Finance shall calculate the amount to be transferred under

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Subsection (3):

~~{~~ ~~(a) after excluding from the General Fund revenue surplus any General Fund investment earnings for the fiscal year and any direct legislative appropriations to the General Fund Budget Reserve Account for the fiscal year;~~

~~}~~ ~~(~~b~~)a) before transferring revenue from the General Fund revenue surplus to:~~

~~(i) the General Fund Budget Reserve Account under Section 63J-1-312 and;~~

~~(ii) the State Disaster Recovery Restricted Account under Section 63J-1-314; ~~{and}~~~~

~~(~~iii~~)b) before earmarking revenue from the General Fund revenue surplus to the~~

Industrial Assistance Account under Section 63M-1-905; and

(c) before making any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law.

(5) (a) If, at the close of any fiscal year, there ~~{appear}~~ appears to be insufficient ~~{funds}~~ money to pay additional debt service for any bonded debt authorized by the Legislature, the Division of Finance may hold back from any General Fund revenue surplus ~~{funds}~~ money sufficient to pay the additional debt service requirements resulting from issuance of bonded debt that was authorized by the Legislature.

(b) The Division of Finance may not spend the hold back amount for debt service under Subsection (5)(a) unless and until it is appropriated by the Legislature.

(c) If, after calculating the amount for ~~{transfers to the General Fund Budget Reserve Account}~~ transfer under Subsection (3), the remaining General Fund revenue surplus is insufficient to cover the hold back for debt service required by Subsection (5)(a), the Division of Finance shall reduce the transfer to the Medicaid Growth Reduction and Budget Stabilization Account by the amount necessary to cover the debt service hold back.

(d) Notwithstanding Subsections (3) and (4), the Division of Finance shall hold back the General Fund balance for debt service authorized by this Subsection (5) before making any transfers to the Medicaid Growth Reduction and Budget Stabilization Account or any other designation or allocation of General Fund revenue surplus.

(6) Notwithstanding Subsections (3) and (4), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists and that holding back ~~{transfers}~~ earmarks to the Industrial Assistance Account under Section 63J-1-314, transfers to the State Disaster Recovery Restricted Account under Section 63J-1-314, transfers to the

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General Fund Budget Reserve Account under Section 63J-1-312, or ~~earmarks and transfers to more than one of those accounts, in that order, does not eliminate the operating deficit, the Division of Finance may reduce the transfer to the Medicaid Growth Reduction and Budget Stabilization Account by the amount necessary to eliminate the operating deficit.~~

(7) The Legislature may appropriate ~~{funds}~~ ~~money~~ from the Medicaid Growth Reduction and Budget Stabilization Account only:

(a) if ~~{the }~~estimated~~{ amount of state revenue to be expended for the }~~ Medicaid program ~~{from the General Fund during}~~ ~~expenditures for~~ the fiscal year for which the appropriation is made ~~{is}~~ ~~are~~ at least 108% of ~~{the amount of state revenue actually expended}~~ ~~Medicaid program expenditures~~ for the ~~{program from}~~ ~~previous year; and~~

~~(b) to the General Fund {during the previous fiscal year; and~~

~~(b) }for appropriation for the Medicaid program.~~

(8) The Division of Finance shall deposit interest or other earnings derived from investment of Medicaid Growth Reduction and Budget Stabilization Account ~~{funds}~~ ~~money~~ into the General Fund.

Section 5. Section **63M-1-905** is amended to read:

### **63M-1-905. Loans, grants, and assistance -- Repayment -- Earned credits.**

(1) (a) A company that qualifies under Section 63M-1-906 may receive loans, grants, or other financial assistance from the Industrial Assistance Account for expenses related to establishment, relocation, or development of industry in Utah.

(b) A company creating an economic impediment that qualifies under Section 63M-1-908 may in accordance with this part receive loans, grants, or other financial assistance from the restricted account for the expenses of the company creating an economic impediment related to:

(i) relocation to a rural area in Utah of the company creating an economic impediment;  
and

(ii) the siting of a replacement company.

(c) An entity offering an economic opportunity that qualifies under Section 63M-1-909 may:

(i) receive loans, grants, or other financial assistance from the restricted account for expenses related to the establishment, relocation, retention, or development of industry in the

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state; and

(ii) include infrastructure or other economic development precursor activities that act as a catalyst and stimulus for economic activity likely to lead to the maintenance or enlargement of the state's tax base.

(2) (a) Subject to Subsection (2)(b), the administrator has authority to determine the structure, amount, and nature of any loan, grant, or other financial assistance from the restricted account.

(b) Loans made under Subsection (2)(a) shall be structured so the intended repayment or return to the state, including cash or credit, equals at least the amount of the assistance together with an annual interest charge as negotiated by the administrator.

(c) Payments resulting from grants awarded from the restricted account shall be made only after the administrator has determined that the company has satisfied the conditions upon which the payment or earned credit was based.

(3) (a) (i) Except as provided in Subsection (3)(b), the administrator may provide for a system of earned credits that may be used to support grant payments or in lieu of cash repayment of a restricted account loan obligation.

(ii) The value of the credits described in Subsection (3)(a)(i) shall be based on factors determined by the administrator, including:

- (A) the number of Utah jobs created;
- (B) the increased economic activity in Utah; or
- (C) other events and activities that occur as a result of the restricted account assistance.

(b) (i) The administrator shall provide for a system of credits to be used to support grant payments or in lieu of cash repayment of a restricted account loan when loans are made to a company creating an economic impediment.

(ii) The value of the credits described in Subsection (3)(b)(i) shall be based on factors determined by the administrator, including:

- (A) the number of Utah jobs created;
- (B) the increased economic activity in Utah; or
- (C) other events and activities that occur as a result of the restricted account assistance.

(4) (a) A cash loan repayment or other cash recovery from a company receiving assistance under this section, including interest, shall be deposited into the restricted account.

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(b) The administrator and the Division of Finance shall determine the manner of recognizing and accounting for the earned credits used in lieu of loan repayments or to support grant payments as provided in Subsection (3).

(5) (a) (i) At the end of each fiscal year, the ~~unrestricted, undesignated~~ General Fund revenue surplus balance after the transfers of surplus of General Fund revenues described in this Subsection (5)(a) shall be earmarked to the Industrial Assistance Account in an amount equal to any credit that has accrued under this part.

(ii) The earmark under Subsection (5)(a)(i) shall be capped at \$50,000,000, at which time no subsequent contributions may be made and any interest accrued above the \$50,000,000 cap shall be deposited into the General Fund.

(b) The earmark required by Subsection (5)(a) shall be made after the transfer of surplus General Fund revenues is made:

(i) to the Medicaid Growth Reduction and Budget Stabilization Restricted Account, as provided in Section 63J-1-315;

~~(ii)~~ (ii) to the General Fund Budget Reserve Account, as provided in Section 63J-1-312; and

~~(ii) beginning with the fiscal year ending June 30, 2007]~~

(iii) to the State Disaster Recovery Restricted Account, as provided in Section 63J-1-314.

(c) These credit amounts may not be used for purposes of the restricted account as provided in this part until appropriated by the Legislature.

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### Legislative Review Note

~~as of 2-8-11 12:07 PM~~

~~Office of Legislative Research and General Counsel~~