

1                                   **DEVELOPMENTAL CENTER MODIFICATIONS**

2   2018 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: David G. Buxton**

5                                   House Sponsor: Michael S. Kennedy

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7 **LONG TITLE**

8 **General Description:**

9                   This bill makes amendments regarding the sale or lease of land, water rights, or water  
10 shares associated with the Utah State Developmental Center.

11 **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ creates a special revenue fund, subject to appropriation for the money received from
- 14 the sale or lease of land, water rights, or water shares associated with the
- 15 developmental center;
- 16                   ▶ repeals the expendable special revenue fund for developmental center land; and
- 17                   ▶ establishes terms and management procedures for the newly created special revenue
- 18 fund.

19 **Money Appropriated in this Bill:**

20                   None

21 **Other Special Clauses:**

22                   None

23 **Special Voting Requirements:**

24                   As required by Section [62A-5-206.6](#), amendments to Section [62A-5-206.6](#) must pass by  
25 the affirmative vote of two-thirds of all the members elected to each house of the  
26 Legislature.

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **62A-5-101**, as last amended by Laws of Utah 2017, Chapter 43

30 **62A-5-206.6**, as enacted by Laws of Utah 2016, Chapter 300

31 **63A-5-215**, as last amended by Laws of Utah 2016, Chapter 298

32 ENACTS:

33 **62A-5-206.7**, Utah Code Annotated 1953

34 **62A-5-206.8**, Utah Code Annotated 1953

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

37 Section 1. Section **62A-5-101** is amended to read:

38 **62A-5-101. Definitions.**

39 As used in this chapter:

40 (1) "Approved provider" means a person approved by the division to provide  
41 home-based services.

42 (2) "Board" means the Utah State Developmental Center Board created under Section  
43 **62A-5-202.5**.

44 (3) (a) "Brain injury" means an acquired injury to the brain that is neurological in  
45 nature, including a cerebral vascular accident.

46 (b) "Brain injury" does not include a deteriorating disease.

47 (4) "Designated intellectual disability professional" means:

48 (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act,  
49 who:

50 (i) (A) has at least one year of specialized training in working with persons with an  
51 intellectual disability; or

52 (B) has at least one year of clinical experience with persons with an intellectual  
53 disability; and

54 (ii) is designated by the division as specially qualified, by training and experience, in  
55 the treatment of an intellectual disability; or

56 (b) a clinical social worker, certified social worker, marriage and family therapist, or  
57 professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional  
58 Practice Act, who:

- 59 (i) has at least two years of clinical experience with persons with an intellectual
- 60 disability; and
- 61 (ii) is designated by the division as specially qualified, by training and experience, in
- 62 the treatment of an intellectual disability.
- 63 (5) "Deteriorating disease" includes:
- 64 (a) multiple sclerosis;
- 65 (b) muscular dystrophy;
- 66 (c) Huntington's chorea;
- 67 (d) Alzheimer's disease;
- 68 (e) ataxia; or
- 69 (f) cancer.
- 70 (6) "Developmental center" means the Utah State Developmental Center, established in
- 71 accordance with Part 2, Utah State Developmental Center.
- 72 (7) "Director" means the director of the Division of Services for People with
- 73 Disabilities.
- 74 (8) "Direct service worker" means a person who provides services to a person with a
- 75 disability:
- 76 (a) when the services are rendered in:
- 77 (i) the physical presence of the person with a disability; or
- 78 (ii) a location where the person rendering the services has access to the physical
- 79 presence of the person with a disability; and
- 80 (b) (i) under a contract with the division;
- 81 (ii) under a grant agreement with the division; or
- 82 (iii) as an employee of the division.
- 83 (9) (a) "Disability" means a severe, chronic disability that:
- 84 (i) is attributable to:
- 85 (A) an intellectual disability;
- 86 (B) a condition that qualifies a person as a person with a related condition, as defined
- 87 in 42 C.F.R. 435.1009;
- 88 (C) a physical disability; or
- 89 (D) a brain injury;

- 90 (ii) is likely to continue indefinitely;
- 91 (iii) (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a
- 92 substantial functional limitation in three or more of the following areas of major life activity:
- 93 (I) self-care;
- 94 (II) receptive and expressive language;
- 95 (III) learning;
- 96 (IV) mobility;
- 97 (V) self-direction;
- 98 (VI) capacity for independent living; or
- 99 (VII) economic self-sufficiency; or
- 100 (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial
- 101 limitation in three or more of the following areas:
- 102 (I) memory or cognition;
- 103 (II) activities of daily life;
- 104 (III) judgment and self-protection;
- 105 (IV) control of emotions;
- 106 (V) communication;
- 107 (VI) physical health; or
- 108 (VII) employment; and
- 109 (iv) requires a combination or sequence of special interdisciplinary or generic care,
- 110 treatment, or other services that:
- 111 (A) may continue throughout life; and
- 112 (B) must be individually planned and coordinated.
- 113 (b) "Disability" does not include a condition due solely to:
- 114 (i) mental illness;
- 115 (ii) personality disorder;
- 116 (iii) deafness or being hard of hearing;
- 117 (iv) visual impairment;
- 118 (v) learning disability;
- 119 (vi) behavior disorder;
- 120 (vii) substance abuse; or

- 121 (viii) the aging process.
- 122 (10) "Division" means the Division of Services for People with Disabilities.
- 123 (11) "Eligible to receive division services" or "eligibility" means qualification, based  
124 on criteria established by the division in accordance with Subsection [62A-5-102\(4\)](#), to receive  
125 services that are administered by the division.
- 126 (12) "Endorsed program" means a facility or program that:
- 127 (a) is operated:
- 128 (i) by the division; or
- 129 (ii) under contract with the division; or
- 130 (b) provides services to a person committed to the division under Part 3, Admission to  
131 an Intermediate Care Facility for People with an Intellectual Disability.
- 132 (13) "Licensed physician" means:
- 133 (a) an individual licensed to practice medicine under:
- 134 (i) Title 58, Chapter 67, Utah Medical Practice Act; or
- 135 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
- 136 (b) a medical officer of the United States Government while in this state in the  
137 performance of official duties.
- 138 (14) "Physical disability" means a medically determinable physical impairment that has  
139 resulted in the functional loss of two or more of a person's limbs.
- 140 (15) "Public funds" means state or federal funds that are disbursed by the division.
- 141 (16) "Resident" means an individual under observation, care, or treatment in an  
142 intermediate care facility for people with an intellectual disability.
- 143 (17) "Sustainability fund" means the Utah State Developmental Center Long-Term  
144 Sustainability Fund created in Section [62A-5-206.7](#).
- 145 Section 2. Section **62A-5-206.6** is amended to read:
- 146 **62A-5-206.6. Utah State Developmental Center land and water rights.**
- 147 (1) As used in this section, "long-term lease" means:
- 148 (a) a lease with a term of five years or more; or
- 149 (b) a lease with a term of less than five years that may be unilaterally renewed by the  
150 lessee.
- 151 [~~(2) Notwithstanding Section [63A-5-215](#), any money received by the board from the~~

152 sale, lease, except any lease existing on May 1, 1995, or other disposition of real property  
153 associated with the developmental center shall be deposited in the expendable special revenue  
154 fund created in Subsection (3).]

155 ~~[(3) (a) There is created an expendable special revenue fund known as the "Utah State  
156 Developmental Center Land Fund."]~~

157 ~~[(b) The Division of Finance shall deposit the following money into the expendable  
158 special revenue fund:]~~

159 ~~[(i) money from the sale, long-term lease, except any lease existing on May 1, 1995, or  
160 other disposition of real property associated with the developmental center, and]~~

161 ~~[(ii) money from the sale, long-term lease, or other disposition of water rights  
162 associated with the developmental center.]~~

163 ~~[(c) The state treasurer shall invest money in the fund described in Subsection (3)  
164 according to the procedures and requirements of Title 51, Chapter 7, State Money Management  
165 Act, and the revenue from the investment shall remain with the expendable special revenue  
166 fund, except as provided in Subsection (4).]~~

167 ~~[(d) (i) Except as provided in Subsection (4), the money or revenue in the fund may not  
168 be diverted, appropriated, expended, or committed to be expended for a purpose that is not  
169 listed in this section.]~~

170 ~~[(ii) Notwithstanding Section 63J-1-211, the Legislature may not appropriate money or  
171 revenue from the fund to eliminate or otherwise reduce an operating deficit if the money or  
172 revenue appropriated from the fund is expended or committed to be expended for a purpose  
173 other than one listed in this section.]~~

174 ~~[(iii) The Legislature may not amend the purposes for which money or revenue in the  
175 fund may be expended or committed to be expended except by the affirmative vote of  
176 two-thirds of all the members elected to each house.]~~

177 ~~[(4) The board may expend money or revenue from the Utah State Developmental  
178 Center Land Fund to:]~~

179 ~~[(a) fulfill the functions of the Utah State Developmental Center as described in  
180 Sections 62A-5-201 and 62A-5-203, and]~~

181 ~~[(b) assist the division in the division's administration of services and supports, as  
182 described in Sections 62A-5-102 and 62A-5-103.]~~

183           ~~[(5)]~~ (2) (a) Notwithstanding Section [65A-4-1](#), any sale, long-term lease, or other  
 184 disposition of real property ~~[or]~~, water rights, or water shares associated with the  
 185 developmental center shall be conducted as provided in this Subsection ~~[(5)]~~ (2).

186           (b) The board shall:

187           (i) approve the sale, long-term lease, or other disposition of real property ~~[or]~~, water  
 188 rights, or water shares associated with the developmental center;

189           (ii) secure the approval of the Legislature before offering the real property ~~[or]~~, water  
 190 rights, or water shares for sale, long-term lease, or other disposition; and

191           (iii) if the Legislature's approval is secured, as described in Subsection ~~[(5)]~~ (2)(b)(ii),  
 192 direct the Division of Facilities Construction and Management to convey, lease, or dispose of  
 193 the real property ~~[or]~~, water rights, or water shares associated with the developmental center  
 194 according to the board's determination.

195           Section 3. Section **62A-5-206.7** is enacted to read:

196           **62A-5-206.7. Utah State Developmental Center Long-Term Sustainability Fund.**

197           (1) There is created a special revenue fund entitled the "Utah State Developmental  
 198 Center Long-Term Sustainability Fund."

199           (2) The sustainability fund consists of:

200           (a) revenue generated from the lease, except any lease existing on May 1, 1995, of land  
 201 associated with the Utah State Developmental Center;

202           (b) all proceeds from the sale or other disposition of real property, water rights, or  
 203 water shares associated with the Utah State Developmental Center; and

204           (c) all existing money in the Utah State Developmental Center Land Fund, created in  
 205 Section [62A-5-206.6](#).

206           (3) The state treasurer shall invest sustainability fund money by following the  
 207 procedures and requirements in Section [62A-5-206.8](#).

208           (4) (a) The board shall ensure that money or revenue deposited into the ~~Ŝ~~→ ~~[trust]~~  
 208a sustainability ←Ŝ fund is  
 209 irrevocable and is expended only as provided in Subsection (5).

210           (b) The Legislature may not amend the purposes in Subsection (5) for which money or  
 211 revenue in the fund may be expended or committed to be expended, except by the affirmative  
 212 vote of two-thirds of all the members elected to each house.

213           (5) (a) Money may be expended from the ~~Ŝ~~→ ~~[trust]~~ sustainability ←Ŝ fund to:

214 (i) fulfill the functions of the Utah State Developmental Center described in Sections  
 215 62A-5-201 and 62A-5-203; and

216 (ii) assist the division in the division's administration of services and supports  
 217 described in Sections 62A-5-102 and 62A-5-103.

218 (b) Money from the sustainability fund may not be expended:

219 (i) for a purpose other than the purposes described in Subsection (5)(a); or

220 (ii) to reduce the amount of money that the Legislature appropriates from the General  
 221 Fund for the purposes described in Subsection (5)(a).

222 (6) Money may be expended from the ~~the~~ ~~trust~~ sustainability fund only under the  
 222a following conditions:

223 (a) if the balance of the sustainability fund is at least \$15,000,000 at the end of the  
 224 fiscal year, the board may expend the earnings generated by the sustainability fund during the  
 225 fiscal year;

226 (b) if the balance of the sustainability fund is at least \$50,000,000 at the end of the  
 227 fiscal year, the Legislature may appropriate to the division up to 5% of the balance of the  
 228 sustainability fund for a purpose described in Subsection (5)(a); and

229 (c) the board or the division may not expend any money from the sustainability fund,  
 230 except as provided in Subsection (6)(a), without legislative appropriation.

231 (7) The sustainability fund is revocable only by the affirmative vote of two-thirds of all  
 232 the members elected to each house of the Legislature.

233 Section 4. Section **62A-5-206.8** is enacted to read:

234 **62A-5-206.8. Management of the Utah State Developmental Center Sustainability**  
 235 **Fund.**

236 (1) The state treasurer shall invest the assets of the sustainability fund with the primary  
 237 goal of providing for the stability, income, and growth of the principal.

238 (2) Nothing in this section requires a specific outcome in investing.

239 (3) The state treasurer may deduct any administrative costs incurred in managing  
 240 sustainability fund assets from earnings before depositing earnings into the sustainability fund.

241 (4) (a) The state treasurer may employ professional asset managers to assist in the  
 242 investment of assets of the sustainability fund.

243 (b) The state treasurer may only provide compensation to asset managers from earnings  
 244 generated by the sustainability fund's investments.



245           (5) The state treasurer shall invest and manage the sustainability fund assets as a  
246 prudent investor would, by:

247           (a) considering the purposes, terms, distribution requirements, and other circumstances  
248 of the sustainability fund; and

249           (b) exercising reasonable care, skill, and caution in order to meet the standard of care  
250 of a prudent investor.

251           Section 5. Section **63A-5-215** is amended to read:

252           **63A-5-215. Disposition of proceeds received by division from sale of property.**

253           (1) [~~The~~] Except as provided in Section [62A-5-206.7](#), the money received by the  
254 division from the sale or other disposition of property shall be paid into the state treasury and  
255 becomes a part of the funds provided by law for carrying out the building program of the state,  
256 and are appropriated for that purpose.

257           (2) The proceeds from sales of property belonging to or used by a particular state  
258 agency shall, to the extent practicable, be expended for the construction of buildings or in the  
259 performance of other work for the benefit of that agency.