

**Senator David G. Buxton** proposes the following substitute bill:

**DEVELOPMENTAL CENTER MODIFICATIONS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David G. Buxton**

House Sponsor: Michael S. Kennedy

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Special Voting Requirements:**

As required by Section [62A-5-206.6](#), amendments to Section [62A-5-206.6](#) must pass by 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 **51-7-2**, as last amended by Laws of Utah 2017, Chapters 343 and 363

30 **62A-5-101**, as last amended by Laws of Utah 2017, Chapter 43

31 **62A-5-206.6**, as enacted by Laws of Utah 2016, Chapter 300

32 **63A-5-215**, as last amended by Laws of Utah 2016, Chapter 298

33 ENACTS:

34 **62A-5-206.7**, Utah Code Annotated 1953

35 **62A-5-206.8**, Utah Code Annotated 1953



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

38 Section 1. Section **51-7-2** is amended to read:

39 **51-7-2. Exemptions from chapter.**

40 The following funds are exempt from this chapter:

41 (1) funds invested in accordance with the participating employees' designation or  
42 direction pursuant to a public employees' deferred compensation plan established and operated  
43 in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;

44 (2) funds of the Utah State Retirement Board;

45 (3) funds of the Utah Housing Corporation;

46 (4) endowment funds of higher education institutions;

47 (5) permanent and other land grant trust funds established pursuant to the Utah

48 Enabling Act and the Utah Constitution;

49 (6) the State Post-Retirement Benefits Trust Fund;

50 (7) the funds of the Utah Educational Savings Plan;

51 (8) funds of the permanent state trust fund created by and operated under Utah

52 Constitution, Article XXII, Section 4;

53 (9) the funds in the Navajo Trust Fund; [~~and~~]

54 (10) the funds in the Radioactive Waste Perpetual Care and Maintenance Account[~~;~~];

55 and

56 (11) the Utah State Developmental Center Long-Term Sustainability Fund, created in

57 Section 62A-5-206.7.

58 Section 2. Section **62A-5-101** is amended to read:

59 **62A-5-101. Definitions.**

60 As used in this chapter:

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

63 (2) "Board" means the Utah State Developmental Center Board created under Section  
64 [62A-5-202.5](#).

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

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

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

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

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

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

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

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

80 (i) has at least two years of clinical experience with persons with an intellectual  
81 disability; and

82 (ii) is designated by the division as specially qualified, by training and experience, in  
83 the treatment of an intellectual disability.

84 (5) "Deteriorating disease" includes:

85 (a) multiple sclerosis;

86 (b) muscular dystrophy;

87 (c) Huntington's chorea;

88 (d) Alzheimer's disease;

89 (e) ataxia; or

90 (f) cancer.

91 (6) "Developmental center" means the Utah State Developmental Center, established in  
92 accordance with Part 2, Utah State Developmental Center.

93 (7) "Director" means the director of the Division of Services for People with  
94 Disabilities.

95 (8) "Direct service worker" means a person who provides services to a person with a  
96 disability:

97 (a) when the services are rendered in:

98 (i) the physical presence of the person with a disability; or

99 (ii) a location where the person rendering the services has access to the physical  
100 presence of the person with a disability; and

101 (b) (i) under a contract with the division;

102 (ii) under a grant agreement with the division; or

103 (iii) as an employee of the division.

104 (9) (a) "Disability" means a severe, chronic disability that:

105 (i) is attributable to:

106 (A) an intellectual disability;

107 (B) a condition that qualifies a person as a person with a related condition, as defined  
108 in 42 C.F.R. 435.1009;

109 (C) a physical disability; or

110 (D) a brain injury;

111 (ii) is likely to continue indefinitely;

112 (iii) (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a  
113 substantial functional limitation in three or more of the following areas of major life activity:

114 (I) self-care;

115 (II) receptive and expressive language;

116 (III) learning;

117 (IV) mobility;

118 (V) self-direction;

- 119 (VI) capacity for independent living; or
- 120 (VII) economic self-sufficiency; or
- 121 (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial
- 122 limitation in three or more of the following areas:
  - 123 (I) memory or cognition;
  - 124 (II) activities of daily life;
  - 125 (III) judgment and self-protection;
  - 126 (IV) control of emotions;
  - 127 (V) communication;
  - 128 (VI) physical health; or
  - 129 (VII) employment; and
  - 130 (iv) requires a combination or sequence of special interdisciplinary or generic care,
  - 131 treatment, or other services that:
    - 132 (A) may continue throughout life; and
    - 133 (B) must be individually planned and coordinated.
- 134 (b) "Disability" does not include a condition due solely to:
  - 135 (i) mental illness;
  - 136 (ii) personality disorder;
  - 137 (iii) deafness or being hard of hearing;
  - 138 (iv) visual impairment;
  - 139 (v) learning disability;
  - 140 (vi) behavior disorder;
  - 141 (vii) substance abuse; or
  - 142 (viii) the aging process.
- 143 (10) "Division" means the Division of Services for People with Disabilities.
- 144 (11) "Eligible to receive division services" or "eligibility" means qualification, based
- 145 on criteria established by the division in accordance with Subsection [62A-5-102\(4\)](#), to receive
- 146 services that are administered by the division.
- 147 (12) "Endorsed program" means a facility or program that:
  - 148 (a) is operated:
    - 149 (i) by the division; or

150 (ii) under contract with the division; or  
151 (b) provides services to a person committed to the division under Part 3, Admission to  
152 an Intermediate Care Facility for People with an Intellectual Disability.

153 (13) "Licensed physician" means:

154 (a) an individual licensed to practice medicine under:

155 (i) Title 58, Chapter 67, Utah Medical Practice Act; or

156 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

157 (b) a medical officer of the United States Government while in this state in the  
158 performance of official duties.

159 (14) "Physical disability" means a medically determinable physical impairment that has  
160 resulted in the functional loss of two or more of a person's limbs.

161 (15) "Public funds" means state or federal funds that are disbursed by the division.

162 (16) "Resident" means an individual under observation, care, or treatment in an  
163 intermediate care facility for people with an intellectual disability.

164 (17) "Sustainability fund" means the Utah State Developmental Center Long-Term  
165 Sustainability Fund created in Section [62A-5-206.7](#).

166 Section 3. Section **62A-5-206.6** is amended to read:

167 **62A-5-206.6. Utah State Developmental Center land and water rights.**

168 (1) As used in this section, "long-term lease" means:

169 (a) a lease with a term of five years or more; or

170 (b) a lease with a term of less than five years that may be unilaterally renewed by the  
171 lessee.

172 [~~(2) Notwithstanding Section [63A-5-215](#), any money received by the board from the~~  
173 ~~sale, lease, except any lease existing on May 1, 1995, or other disposition of real property~~  
174 ~~associated with the developmental center shall be deposited in the expendable special revenue~~  
175 ~~fund created in Subsection (3).]~~

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

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

180 [~~(i) money from the sale, long-term lease, except any lease existing on May 1, 1995, or~~

181 ~~other disposition of real property associated with the developmental center; and]~~

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

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

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

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

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

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

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

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

204  ~~[(5)]~~ (2) (a) Notwithstanding Section [65A-4-1](#), any sale, long-term lease, or other  
205 disposition of real property ~~[or]~~, water rights, or water shares associated with the  
206 developmental center shall be conducted as provided in this Subsection ~~[(5)]~~ (2).

207 (b) The board shall:

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

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

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

216 Section 4. Section **62A-5-206.7** is enacted to read:

217 **62A-5-206.7. Utah State Developmental Center Long-Term Sustainability Fund.**

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

220 (2) The sustainability fund consists of:

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

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

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

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

229 (4) (a) The board shall ensure that money or revenue deposited into the trust fund is  
230 irrevocable and is expended only as provided in Subsection (5).

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

234 (5) (a) Money may be expended from the trust fund to:

235 (i) fulfill the functions of the Utah State Developmental Center described in Sections  
236 [62A-5-201](#) and [62A-5-203](#); and

237 (ii) assist the division in the division's administration of services and supports  
238 described in Sections [62A-5-102](#) and [62A-5-103](#).

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

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

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



243 (6) Money may be expended from the trust fund only under the following conditions:

244 (a) if the balance of the sustainability fund is at least \$5,000,000 at the end of the fiscal  
245 year, the board may expend the earnings generated by the sustainability fund during the fiscal  
246 year for a purpose described in Subsection (5)(a);

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

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

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

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

255 **62A-5-206.8. Management of the Utah State Developmental Center Sustainability**  
256 **Fund.**

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

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

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

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

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

266 (5) The state treasurer shall invest and manage the sustainability fund assets as a  
267 prudent investor would under Section [67-19d-302](#).

268 Section 6. Section **63A-5-215** is amended to read:

269 **63A-5-215. Disposition of proceeds received by division from sale of property.**

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

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