



# AUDITOR GENERAL LETTER REPORT

DOUGLAS R. NORTON, CPA  
AUDITOR GENERAL

October 17, 1996

Letter Report No. 96-L2

Members of the Arizona Legislature

The Honorable Fife Symington, Governor

Ms. Eduarda Yates, Chair  
Developmental Disabilities Oversight Committee

**Subject:           Developmental Disabilities Oversight Committee  
                          Sunset Review**

Transmitted herewith is a letter report of the Auditor General, Sunset review of the Developmental Disabilities Oversight Committee. This letter is in response to a May 17, 1995, resolution of the Joint Legislative Audit Committee. This review was conducted as part of the Sunset review set forth in A.R.S. §§41-2951 through 41-2957. In addition to the issues normally contained in a Sunset review, one purpose of this review as directed by the Forty-First Legislature and outlined in Laws 1994, Chapter 35, §3, is:

*"... to provide for a legislative review of monies expended from the developmentally disabled client services trust fund to ensure that these monies are spent only for client services provided by the department of economic security."*

## Summary

Our review found that the Developmental Disabilities Oversight Committee (Committee) has not expended any Client Services Trust Fund (Trust Fund) monies on services for clients. Though some money was expended on non-client uses in fiscal years 1992 and 1993, the Trust Fund has been fully reimbursed. The Committee has not developed expenditure guidelines and should do so to fulfill its primary purpose of overseeing Trust Fund expenditures. In addition, we found that the Committee's responsibility for investigating and recommending compatible uses for the Coolidge and Tucson training facilities is not necessary because the Director of the Department of Economic Security also has been charged with this responsibility.

## Background

The Developmental Disabilities Oversight Committee was originally established as a result of Laws 1985, Chapter 313, §10 (A.R.S. §36-573) with the closing of the Arizona Training Program at Phoenix (ATPP). The ATPP was a state-operated facility that provided housing and training for persons with developmental disabilities. The Committee was created primarily to ensure that monies derived from the lease or sale of the ATPP property were used for persons with developmental disabilities. The same enactment (A.R.S. §36-572) also established the Client Services Trust Fund, which consists of the proceeds from the sale or lease of the ATPP property and buildings. As of June 30, 1996, the ATPP property had not sold and there was approximately \$273,000 in the Trust Fund generated from leasing the property and interest earned. Both the leasing income and interest earnings may be expended for client services. However, if and when the property is sold, the Committee is limited by statute to expending only the interest earned on the proceeds of the property sale. A.R.S. §36-572(D) requires that the money in the Trust Fund be spent only for client services provided by the Department of Economic Security (DES). A.R.S. §36-573(D) states that the Committee shall:

1. Review and approve or disapprove expenditures of monies from the Client Services Trust Fund; and
2. Investigate compatible uses for Arizona training program facilities and make recommendations to the Legislature on possible uses of those facilities.

Committee membership consists of one parent of a person with developmental disabilities, two individuals from organizations that represent people with developmental disabilities, one DES representative, and two non-voting members from the Legislature. A DES employee also provides the Committee with administrative support.

## Committee Should Complete Guidelines for Trust Fund Expenditures

The Committee should develop Trust Fund expenditure guidelines and recommend that the Legislature place the guidelines in statute. To date, no Trust Fund monies have been spent on client services due to a lack of expenditure guidelines and the limited monies available. By developing expenditure guidelines that could be placed in statute, the Committee can fulfill its general responsibility to oversee Trust Fund expenditures.

*Few Trust Fund expenditures*—The Committee has not expended money from the Trust Fund on persons with developmental disabilities. Currently, there is approximately \$273,000 in the Trust Fund generated from leasing the Arizona Training Program at Phoenix (ATPP) property and earned interest.

Some monies in the Client Services Trust Fund were spent inappropriately but have since been reimbursed. In fiscal years 1992 and 1993, approximately \$226,000 of Trust Fund monies were expended for items such as ATPP building security, demolition, and related cleanup expenditures. Since the monies were spent on building-related services, and not on client services as required by A.R.S. §36-572(D), the expenditures were inappropriate. In fiscal year 1995, the DES Assistant Director of the Division of Developmental Disabilities (Division) directed DES to reimburse the Trust Fund for the full amount expended.

*Expenditure guidelines are needed*—The Committee can fulfill its mission by developing expenditure guidelines for the Client Services Trust Fund and by recommending that the Legislature include these guidelines in the statutes. The Committee formed a subcommittee in October 1994 to begin drafting guidelines outlining the services for which the Trust Fund monies should be expended. To date, ideas generated by the subcommittee include using the monies for nonrecurring expenses related to housing or transportation.

Once the Client Services Trust Fund expenditure guidelines are completed, the Legislature should consider amending A.R.S. §36-572(D) to include these guidelines to ensure that Trust Fund monies are spent appropriately. Placing the expenditure guidelines in statute will help to ensure that Client Services Trust Fund monies are spent on clients, fulfilling the Committee's general responsibility to oversee Trust Fund expenditures.

### **Committee's Responsibility for Training Program Facilities Is Not Necessary**

Although the State continues to operate residential training facilities for persons with developmental disabilities in Coolidge and Tucson, the Committee does not have a critical role regarding these facilities. A.R.S. §36-573(D)(2) requires the Committee to investigate and recommend to the Legislature any possible compatible uses for these facilities. According to legislative staff, the Committee is to review proposals that it receives; however, the Committee is not responsible for seeking out compatible use groups, such as nursing homes, to occupy the facilities. Under A.R.S. §36-554(A)(9) the Director of the Department of Economic Security (DES) is also required to make recommendations for compatible uses to the Committee. To date, the Committee has not received any proposals for compatible uses.

Compatible uses for the existing training facilities may not be feasible in the near term because of statutory provisions and other factors. A.R.S. §36-554(A)(8) requires training facilities to be maintained for residents for whom the community lacks an appropriate residential setting, and for residents whose parents or guardians wish them to remain in state-operated facilities. As long as these facilities are statutorily required to remain open, it may be difficult to accommodate any compatible use groups. There are approximately 150 residents at the Coolidge facility. In addition, according to the Assistant Director of the Division, the need for extensive renovations to the Coolidge facility makes it difficult to accommodate an outside group.

At the Tucson facility the State must provide services for persons with developmental disabilities or lose use of the federal land on which the facility is located. A federal agreement requires the Tucson facility to continue to meet the needs of persons with developmental disabilities. The program at Tucson anticipates completely phasing out its residential services by early 1997, but it will continue to offer day programs for clients.

### **Committee Could Be Allowed to Terminate When Mandates Are Met**

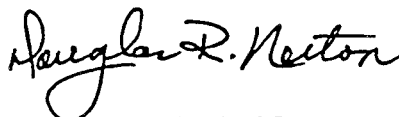
Once the Committee completes the Client Services Trust Fund expenditure guidelines and necessary legislative changes are made, it will have fulfilled its general responsibilities and could be allowed to sunset. The Committee indicates it will need no more than two years beyond its sunset date of July 1, 1997, to accomplish its responsibilities. To achieve this termination by July 1, 1999, we recommend the following:

- The Committee should develop expenditure guidelines for monies in the Client Services Trust Fund;
- The Legislature should consider amending A.R.S. §36-572(D) to include the expenditure guidelines to help ensure that the Trust Fund monies are spent appropriately;
- The Legislature should modify A.R.S. §36-572(D) to grant authority to the Division of Developmental Disabilities to expend monies from the Client Services Trust Fund using the Committee's guidelines;
- A.R.S. §36-573(D)(2), requiring the Committee to recommend compatible uses for the facilities, should be deleted.
- A.R.S. §36-554(A)(9), requiring the DES Director to make recommendations for compatible uses for the facilities to the Committee, should be deleted.

The Auditor General and staff express appreciation to the Chair and members of the Developmental Disabilities Oversight Committee and to Department of Economic Security staff for their cooperation and assistance during the review. A copy of the sunset factors and the Committee's response to this letter report are attached.

My staff and I will be pleased to discuss or clarify items in this report.

Sincerely,

A handwritten signature in cursive script that reads "Douglas R. Norton". The signature is written in black ink and is positioned above the printed name.

Douglas R. Norton  
Auditor General

Attachments

# Sunset Factors

## Developmental Disabilities Oversight Committee

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether to continue or terminate the Developmental Disabilities Oversight Committee (Committee).

### 1. The objective and purpose in establishing the Committee.

The Developmental Disabilities Oversight Committee was first established in 1985 as part of legislation outlining the closure of the Arizona Training Program at Phoenix (ATPP). The legislation also set up the Developmentally Disabled Client Services Trust Fund (Trust Fund) for proceeds from the lease or sale of ATPP property once the closure was complete. The Committee is responsible for reviewing and approving or disapproving expenditures of monies from the Client Services Trust Fund under A.R.S. §36-573(D)(1). A.R.S. §36-573(D)(2) also requires the Committee to assess compatible uses for state training facilities at Coolidge and Tucson and make recommendations to the Legislature.

The Legislature mistakenly terminated the Committee in 1993. Laws 1992, Chapter 70, repealed statutes relating to government organizations that had completed assigned tasks; §2(N) of the legislation established a termination date of October 1, 1993, for the Committee. Laws 1994, Chapter 35, §1, reestablished the Committee because it was still statutorily responsible for approving expenditures from the Client Services Trust Fund and recommending compatible uses for the Arizona training program facilities.

### 2. The effectiveness with which the Committee has met its objective and purpose and the efficiency with which it has operated.

The Committee has not spent Client Services Trust Fund monies for client services because it has yet to set expenditure guidelines; there are currently only limited monies in the Trust Fund; and it has been concentrating its efforts on the sale of the ATPP property. While monies have not been spent on client services, approximately \$226,000 from the Trust Fund was expended inappropriately in fiscal years 1992 and 1993 for items such as security for the ATPP premises and demolition of the ATPP buildings. The Department of Economic Security (DES) reimbursed the Trust Fund in fiscal year 1995.

The Committee has not recommended to the Legislature any compatible uses for the Arizona Training Program facilities at Coolidge and Tucson as required by A.R.S. §36-573(D)(2). To date, no proposals for compatible uses have been presented to the Committee.

**3. The extent to which the Committee has operated within the public interest.**

According to DES staff who work with the Committee, its meetings can generally serve the public interest by providing an opportunity to hear from developmentally disabled clients, advocates, and parents of disabled persons. However, other entities such as the Governor's Advisory Council on Developmental Disabilities already have the responsibility to receive input from the developmentally disabled community.

To the extent that DES does not keep all monies from the Client Services Trust Fund invested with the State Treasurer pursuant to A.R.S. §36-572(C) and (F), the Trust Fund is not being managed in the public interest. According to a DES official, the Agency normally keeps some cash available from funds it administers in case it needs to access a portion of the fund. The Agency keeps approximately \$2,500 of the Client Services Trust Fund available as cash. However, it would appear that there would be few, if any, instances calling for monies from the Trust Fund, particularly since none of these monies have been spent on clients. Moreover, since monies in the Trust Fund must be invested with the Treasurer, DES policy regarding this Trust Fund is inconsistent with the statutory mandate.

**4. The extent to which rules adopted by the Committee are consistent with the legislative mandate.**

This factor does not apply because the Developmental Disabilities Oversight Committee has not adopted rules, nor is this activity a component of the legislative mandate.

**5. The extent to which the Committee has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

Our review found that the subcommittee responsible for developing expenditure guidelines for the Client Services Trust Fund did not post notices of its meetings in compliance with open meeting laws under A.R.S. §38-431(5) and A.R.S. §38-431.02(A)(1). Although the subcommittee's membership includes representatives from developmental disabilities advocacy groups, to ensure future compliance with open meeting laws, the subcommittee should post notices of its meetings so the general public can provide input regarding the spending guidelines.

**6. The extent to which the Committee has been able to investigate and resolve complaints that are within its jurisdiction.**

Since the Committee does not have investigative or regulatory authority, this factor does not apply.

- 7. The extent to which the Attorney General or any other applicable committee of state government has the authority to prosecute actions under the enabling legislation.**

This factor is not applicable to the Committee.

- 8. The extent to which the Committee has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.**

The Committee has not proposed any legislation in recent years, nor does it intend to propose legislation during the next session.

- 9. The extent to which changes are necessary in the laws of the Committee to adequately comply with the factors listed in the Sunset Law.**

Once the Committee develops spending guidelines for the Client Services Trust Fund, the Legislature should consider amending A.R.S. §36-572(D) to include these guidelines to ensure that the monies in the Trust Fund are expended appropriately.

- 10. The extent to which the termination of the Committee would significantly harm the public health, safety, or welfare.**

Termination of the Committee would not significantly harm the public health, safety, or welfare if the Committee first establishes expenditure guidelines and these guidelines are added to the statutes. Expenditure guidelines, set in statute, would help ensure that the monies in the Client Services Trust Fund are expended on client services. In addition, other entities could receive input from the developmentally disabled community.

- 11. The extent to which the level of regulation exercised by the Committee is appropriate and whether less or more stringent levels of regulation would be appropriate.**

Since the Committee is not a regulatory body, this factor does not apply.

- 12. The extent to which the Committee has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

This factor does not apply since the Committee does not use private contractors.





**ARIZONA DEPARTMENT OF ECONOMIC SECURITY**

1789 W. Jefferson, Site Code 791A, 85007 - P.O. Box 6123 - Phoenix, AZ 85005

Fife Symington  
Governor

Linda J. Blessing, DPA  
Director

October 9, 1996

Mr. Douglas R. Norton  
Office of the Auditor General  
2910 North 44th Street Suite 410  
Phoenix, Arizona 85018

Dear Mr. Norton,

The Committee would like to thank you for the opportunity meet with you and your team on September 27th and to review and respond to the revised preliminary report draft of the Performance Audit to the Developmental Disabilities Oversight Committee. The Committee supports the recommendation to extend the Committee beyond the current termination date of July 1, 1997. Additionally, we agree that the Committee should continue the development of the expenditure guidelines for the Client Services Trust Fund. Once developed, we recommend that the guidelines be placed into law to ensure that trust funds are appropriately spent.

With the passage of Senate Bill 1072, a commitment was made to the people of Arizona that funds generated by the sale of the Arizona Training Program (ATPP) at Phoenix would be used to benefit people with developmental disabilities. Further, SB 1072 acknowledged the obligation to directly involve people with developmental disabilities, their families, and organizations who support them by mandating the composition of the DDOC to include this representation. The Committee believes that is was the intent of the Thirty-Seventh Legislature that the people who benefit from the funds generated should continue to have a voice in how funds are spent.

In the coming months the DDOC will:

1. Complete and implement expenditure guidelines for the Client Services Trust Fund.
2. Design and pilot a process to access funds.
3. Devise a method to evaluate the Client Service Trust Fund's impact and usefulness.
4. Develop and review with the Arizona State Land Department specific plans for the aggressive marketing and sale or lease of the ATPP land to ensure a maximum return is realized.

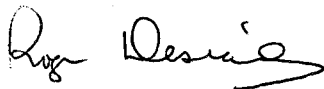
As these plans and processes are developed, the Committee will be in a position to evaluate and to provide a recommendation as to the need for continued oversight.

In closing, I have provided you with a copy of our initial response and request that it be submitted along with this letter with your final report.

Sincerely,

A handwritten signature in cursive script that reads "Eduarda Yates".

Eduarda Yates  
Chair, Developmental Disabilities Oversight Committee

A handwritten signature in cursive script that reads "Roger Deshaies".

Roger Deshaies  
Assistant Director, Division of Developmental Disabilities

## Developmental Disabilities Oversight Committee

### Response to the draft report of the Auditor General's Sunset Review

The Developmental Disabilities Oversight Committee (Committee) met on September 23, 1996 in executive session to review the draft report of the Auditor General's Sunset review of the Developmental Disabilities Oversight Committee. Following are the Committee's comments and feedback.

In general, it is the Developmental Disabilities Oversight Committee's opinion that the Committee should continue beyond the statutory termination date of July 1, 1997. Members of the Committee feel they have a responsibility for public oversight of the Client Services Trust Fund. While acknowledging that the statute provides for legislative oversight of expenditures, this oversight is after-the-fact and the Committee has a strong commitment to on-going oversight, at least for a non-specified period of time after the expenditure guidelines are first established and implemented. They also feel they have an inherent responsibility to work with the State Land Department to develop specific plans for the aggressive marketing of the land to ensure that the maximum return is realized when the property is leased or sold.

The Committee questions the interpretation of ARS 36-572 relating to the statement in the "background" section of the report which states "if and when the property is sold, the Committee is limited by statute to expending the interest earned on the proceeds of the property sale". It is the contention of the Committee that both the interest and principal can be expended to enhance the services presently available to the developmentally disabled and to extend such services to developmentally disabled persons on the waiting list.

The Committee agrees that expenditure guidelines need to be completed for the Client Services Trust Fund. However, under Sunset factor #4, *"The extent to which the Committee has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public"*, the report suggests that since the subcommittee did not post public notices of the subcommittee meetings, the public did not have an opportunity to provide input regarding the spending guidelines. While it is true that public notices were not posted, it is important to note that the membership of the subcommittee provides for a wide representation of the Division of Developmental Disabilities' advocacy groups. Specifically, the following advocacy groups are represented on the subcommittee: The Arc, Pilot Parents, Center for Disability Law, Developmental Disabilities Advisory Council, the Governor's Council on Developmental Disabilities, the Arizona Consortium for Children with Chronic Illnesses and the Arizona Association for People with Disabilities. These are the very organizations which receive notice of public of meetings. There is only one member who is a state employee. Future subcommittee meeting notices will be posted.

As to the Committee's responsibility to *investigate compatible uses for Arizona training facilities and make recommendations to the Legislature on possible uses of those facilities*, the Committee agrees that they do not need a formal role in reviewing and recommending compatible uses of the two remaining Arizona Training Programs.

In closing, the Developmental Disabilities Oversight Committee recommends that they continue for at least 18 months beyond the July 1, 1997 date in order that they develop clear guidelines of the Client Services Trust Fund, oversee implementation of the guidelines and provide initial oversight of the disbursement of the funds. In addition they take responsibility for aggressively pursuing, via the State Land Department, the marketing and sale or lease of the land.