

Senator Lincoln Fillmore proposes the following substitute bill:

1 **SPECIAL NEEDS OPPORTUNITY SCHOLARSHIP PROGRAM**

2 **AMENDMENTS**

3 2022 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lincoln Fillmore**

6 House Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Special Needs Opportunity Scholarship Program (the program).

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ expands eligibility for the program to include siblings of scholarship students;
- 14 ▶ modifies the duties and rulemaking authority of the State Board of Education in
15 relation to the program;
- 16 ▶ provides that eligibility for a scholarship does not effect eligibility for an
17 individualized education program;
- 18 ▶ authorizes the scholarship granting organizations to prepare and distribute
19 information about the program to parents who apply for a scholarship under the
20 program;
- 21 ▶ clarifies what constitutes a fiscal year for purposes of reporting and administering
22 the program;
- 23 ▶ modifies a scholarship granting organization's reporting deadline;
- 24 ▶ allows a person that makes a donation to direct a donation to a particular school to
25 which a scholarship will be offered;



- 26 ▶ provides for a one-year carry back of the income tax credit for making a donation to
- 27 the program; and
- 28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides retrospective operation.

33 **Utah Code Sections Affected:**

34 AMENDS:

- 35 **53E-7-401**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 36 **53E-7-402**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 37 **53E-7-404**, as last amended by Laws of Utah 2021, Chapter 341
- 38 **53E-7-405**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 39 **53E-7-407**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 40 **53E-7-408**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 41 **59-7-625**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 42 **59-10-1041**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3



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

45 Section 1. Section **53E-7-401** is amended to read:

46 **53E-7-401. Definitions.**

47 As used in this part:

48 (1) "Eligible student" means:

49 (a) a student who:

50 ~~(a)~~ (i) is eligible to participate in public school, in kindergarten or grades 1 through

51 12;

52 ~~(b)~~ (ii) is a resident of the state;

53 ~~(c)~~ (i) (iii) (A) has an IEP; or

54 ~~(i)~~ (B) is determined by a multidisciplinary evaluation team to be eligible for

55 services under selected elements of the Individuals with Disabilities Education Act, Subchapter

56 II, 20 U.S.C. Secs. 1400 to 1419; and

57 ~~(d)~~ (iv) during the school year for which the student is applying for the scholarship, is
58 not:

59 ~~(i)~~ (A) a student who receives a scholarship under the Carson Smith Scholarship
60 Program created in Section 53F-4-302; or

61 ~~(ii)~~ (B) a public school student~~[-];~~ or

62 (b) a student who is a sibling of and resides in the same household as a student
63 described in Subsection (1)(a) if the student described in Subsection (1)(a) is a scholarship
64 student.

65 (2) (a) "Employee" means an individual working in a position in which the individual's
66 salary, wages, pay, or compensation, including as a contractor, is paid from:

67 (i) program donations to a scholarship granting organization; or

68 (ii) scholarship money allocated to a qualifying school by a scholarship granting
69 organization under Section 53E-7-405.

70 (b) "Employee" does not include an individual who volunteers at the scholarship
71 granting organization or qualifying school.

72 (3) "Family income" means the annual income of the parent, parents, legal guardian, or
73 legal guardians with whom a scholarship student lives.

74 (4) "Federal poverty level" means the poverty level as defined by the most recently
75 revised poverty income guidelines published by the United States Department of Health and
76 Human Services in the Federal Register.

77 (5) "Multidisciplinary evaluation team" means one or more individuals:

78 (a) who are qualified in two or more separate disciplines or professions; and

79 (b) who evaluate a child.

80 ~~(5)~~ (6) "Officer" means:

81 (a) a member of the board of a scholarship granting organization or qualifying school;

82 or

83 (b) the chief administrative officer of a scholarship granting organization or qualifying
84 school.

85 ~~(6)~~ (7) "Program ~~[donations]~~ donation" means ~~[donations]~~ a donation to the program
86 under Section 53E-7-405.

87 ~~(7)~~ (8) "Qualifying school" means a private school that:

88 (a) provides kindergarten, elementary, or secondary education;

89 (b) is approved by the state board under Section 53E-7-408; and

90 (c) meets the requirements described in Section 53E-7-403.

91 ~~[(8)]~~ (9) "Relative" means a father, mother, husband, wife, son, daughter, sister,
92 brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,
93 sister-in-law, son-in-law, or daughter-in-law.

94 ~~[(9)]~~ (10) "Scholarship" means a grant awarded to an eligible student:

95 (a) by a scholarship granting organization out of program donations; and

96 (b) for the purpose of paying for a scholarship expense.

97 ~~[(10)]~~ (11) "Scholarship expense" means:

98 (a) tuition, fees, or textbooks for a qualifying school;

99 (b) educational therapy, if the educational therapy is provided by a licensed physician
100 or licensed practitioner, including occupational, behavioral, physical, or speech-language
101 therapies;

102 (c) textbooks, curriculum, or other instructional materials, including supplemental
103 materials or associated online instruction required by a curriculum;

104 (d) tuition and fees for an online learning course or program; or

105 (e) fees associated with a state-recognized industry certification examination or any
106 examination related to college or university admission.

107 ~~[(11)]~~ (12) "Scholarship granting organization" means an organization that is:

108 (a) qualified as tax exempt under Section 501(c)(3), Internal Revenue Code; and

109 (b) recognized through an agreement with the state board as a scholarship granting
110 organization, as described in Section 53E-7-404.

111 ~~[(12)]~~ (13) "Scholarship student" means an eligible student who receives a scholarship
112 under this part.

113 ~~[(13)]~~ (14) "Special Needs Opportunity Scholarship Program" or "program" means the
114 program established in Section 53E-7-402.

115 ~~[(14)]~~ (15) "Value of the weighted pupil unit" means the amount established each year
116 in the enacted public education budget that is multiplied by the number of weighted pupil units
117 to yield the funding level for the basic state-supported school program.

118 Section 2. Section 53E-7-402 is amended to read:

119 **53E-7-402. Special Needs Opportunity Scholarship Program.**

120 (1) There is established the Special Needs Opportunity Scholarship Program under
121 which a parent may apply to a scholarship granting organization on behalf of the parent's
122 student for a scholarship to help cover the cost of a scholarship expense.

123 (2) A scholarship granting organization shall:

124 (a) award, in accordance with this part, scholarships to eligible students; and

125 (b) determine the amount of a scholarship in accordance with Subsection (3).

126 (3) A scholarship granting organization shall determine a full-year scholarship award to
127 pay for the cost of one or more scholarship expenses in an amount not more than:

128 (a) for an eligible student in grades 1 through 12 with an IEP, whose family income is:

129 (i) at or below 185% of the federal poverty level, the value of the weighted pupil unit
130 multiplied by 2.5;

131 (ii) between 185% and 555% of the federal poverty level, the value of the weighted
132 pupil unit multiplied by two; and

133 (iii) above 555% of the federal poverty level, the value of the weighted pupil unit
134 multiplied by 1.5;

135 (b) for an eligible student in grades 1 through 12 who does not have an IEP, the value
136 of the weighted pupil unit;

137 (c) for an eligible student in kindergarten with an IEP, the value of the weighted pupil
138 unit; or

139 (d) for an eligible student in kindergarten who does not have an IEP, half the value of
140 the weighted pupil unit.

141 (4) Eligibility for a scholarship as determined by a multidisciplinary evaluation team
142 under this program does not establish eligibility for an IEP under the Individuals with
143 Disabilities Education Act, Subchapter II, 20 U.S.C. Secs. 1400 to 1419, and is not binding on
144 any LEA that is required to provide an IEP under the Individuals with Disabilities Education
145 Act.

146 ~~[(4)]~~ (5) The ~~[state board shall prepare and disseminate to a scholarship granting~~
147 ~~organization for distribution]~~ scholarship granting organizations shall prepare and disseminate
148 information on the program to a parent applying for a scholarship on behalf of a student[?].

149 ~~[(a) information on the program; and]~~

150 ~~[(b) information on how a parent may enroll the parent's child in a public school.]~~

151 ~~[(5) A scholarship granting organization shall distribute the information described in~~
152 ~~Subsection (4) to a parent who applies to the scholarship granting organization for a~~
153 ~~scholarship on behalf of the parent's student.]~~

154 Section 3. Section **53E-7-404** is amended to read:

155 **53E-7-404. State board duties.**

156 ~~[(1) The state board shall administer the program.]~~

157 (1) Nothing in this part:

158 (a) grants additional authority to the state board to regulate a scholarship granting
159 organization except as expressly described in this part; or

160 (b) expands the regulatory authority of the state board to impose any additional
161 regulation beyond the regulations necessary to enforce the requirements of the program.

162 (2) The state board shall:

163 ~~[(a) provide a tax credit certificate form, for use by a scholarship granting organization~~
164 ~~as described in Section ~~53E-7-407~~, that includes:]~~

165 ~~[(i) the name, address, and social security number or federal employer identification~~
166 ~~number of the person that makes a donation under Section ~~53E-7-405~~;~~

167 ~~[(ii) the date of the donation;]~~

168 ~~[(iii) the amount of the donation;]~~

169 ~~[(iv) the amount of the tax credit; and]~~

170 ~~[(v) any other relevant information;]~~

171 (a) publish on the state board's website:

172 (i) information about the program; and

173 (ii) information about each scholarship granting organization;

174 (b) conduct a financial review or audit of a scholarship granting organization, if the
175 state board receives evidence of fraudulent practice by the scholarship granting organization;

176 (c) conduct a criminal background check on each scholarship granting organization
177 employee and scholarship granting organization officer;

178 (d) establish uniform financial accounting standards for scholarship granting
179 organizations;

180 (e) annually calculate the amount of the program donations cap described in Section

181 [53E-7-407](#); and

182 (f) [~~beginning in 2021,~~] in accordance with Section [53E-1-202.1](#), annually submit a
183 report on the program to the Public Education Appropriations Subcommittee that includes:

184 (i) for the 2020-21, 2021-22, 2022-23, and 2023-24 school years, the amount of tuition
185 and fees a qualifying school charges;

186 (ii) administrative costs of the program;

187 (iii) the number of scholarship students from each school district;

188 (iv) standards used by the scholarship granting organization to determine whether a
189 student is an eligible student; and

190 (v) savings to the state and LEAs as a result of scholarship students exiting the public
191 school system.

192 (3) (a) In accordance with Subsection (4) and Title 63G, Chapter 6a, Utah Procurement
193 Code, the state board shall issue a request for proposals and enter into at least one agreement
194 with an organization that is qualified as tax exempt under Section 501(c)(3), Internal Revenue
195 Code, to be recognized by the state board as a scholarship granting organization.

196 (b) An organization that responds to a request for proposals described in Subsection
197 (3)(a) shall submit the following information in the organization's response:

198 (i) a copy of the organization's incorporation documents;

199 (ii) a copy of the organization's Internal Revenue Service determination letter
200 qualifying the organization as being tax exempt under Section 501(c)(3), Internal Revenue
201 Code;

202 (iii) a description of the methodology the organization will use to verify that a student
203 is an eligible student under this part; and

204 (iv) a description of the organization's proposed scholarship application process.

205 (4) (a) The state board shall enter into an agreement described in Subsection (3)(a) with
206 one scholarship granting organization on or before January 1, 2021.

207 (b) The state board may enter into an agreement described in Subsection (3)(a) with
208 additional scholarship granting organizations after January 1, 2023, if the state board makes
209 rules regarding how multiple scholarship granting organizations may issue tax credit
210 certificates in accordance with Section [53E-7-407](#).

211 (c) Any agreement entered into or amended under this Subsection (3) after May 4,

212 2022, shall:

213 (i) be limited to memorializing the items required by this part; and

214 (ii) not impose additional regulations on a scholarship granting organization.

215 ~~[(c)]~~ (d) (i) No later than 10 days after the day on which the state board enters into an
216 agreement with a scholarship granting organization, the state board shall forward the name and
217 contact information of the scholarship granting organization to the State Tax Commission.

218 (ii) If, under Subsection (5)(c)(i), the state board bars a scholarship granting
219 organization from further participation in the program, the state board shall, no later than 10
220 days after the day on which the state board bars the scholarship granting organization, forward
221 the name and contact information of the barred scholarship granting organization to the State
222 Tax Commission.

223 (5) (a) If the state board determines that a scholarship granting organization has
224 violated a provision of this part or state board rule, the state board shall send written notice to
225 the scholarship granting organization explaining the violation and the remedial action required
226 to correct the violation.

227 (b) A scholarship granting organization that receives a notice described in Subsection
228 (5)(a) shall, no later than 60 days after the day on which the scholarship granting organization
229 receives the notice, correct the violation and report the correction to the state board.

230 (c) (i) If a scholarship granting organization that receives a notice described in
231 Subsection (5)(a) fails to correct a violation in the time period described in Subsection (5)(b),
232 the state board may bar the scholarship granting organization from further participation in the
233 program.

234 (ii) A scholarship granting organization may appeal a decision made by the state board
235 under Subsection (5)(c)(i) in accordance with Title 63G, Chapter 4, Administrative Procedures
236 Act.

237 (d) A scholarship granting organization may not accept program donations while the
238 scholarship granting organization:

239 (i) is barred from participating in the program under Subsection (5)(c)(i); or

240 (ii) has an appeal pending under Subsection (5)(c)(ii).

241 (e) A scholarship granting organization that has an appeal pending under Subsection
242 (5)(c)(ii) may continue to administer scholarships from previously donated program donations

243 during the pending appeal.

244 (6) The state board shall provide for a process for a scholarship granting organization
245 to report information as required under Section [53E-7-405](#).

246 (7) The state board shall make rules in accordance with Title 63G, Chapter 3, Utah
247 Administrative Rulemaking Act, to administer the program, including rules for:

248 [~~(a)~~ a scholarship granting organization's acceptance of program donations;]

249 [~~(b)~~] (a) the administration of scholarships to a qualifying school receiving scholarship
250 money from a scholarship granting organization that is barred from participating in the
251 program under Subsection (5)(c)(i);

252 [~~(c)~~ payment of scholarship money to qualifying schools by a scholarship granting
253 organization;]

254 [~~(d)~~ granting scholarship awards and disbursing scholarship money for nontuition
255 scholarship expenses by a scholarship granting organization;]

256 [~~(e)~~] (b) when an eligible student does not continue in enrollment at a qualifying
257 school:

258 (i) requiring the scholarship granting organization to:

259 (A) notify the state board; and

260 (B) obtain reimbursement of scholarship money from the qualifying school in which
261 the eligible student is no longer enrolled; and

262 (ii) requiring the qualifying school in which the eligible student is no longer enrolled to
263 reimburse scholarship money to the scholarship granting organization;

264 [~~(f)~~] (c) audit and report requirements as described in Section [53E-7-405](#); and

265 [~~(g)~~] (d) requiring the scholarship granting organization, in accordance with the Family
266 Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, to submit to the state board:

267 (i) for the 2020-21, 2021-22, 2022-23, and 2023-24 school years, the amount of tuition
268 and fees a qualifying school charges;

269 (ii) the number of scholarship students from each school district;

270 (iii) standards used to determine whether a student is an eligible student; and

271 (iv) any other information requested by the [~~state board for the purpose of completing~~]

272 Public Education Appropriations Subcommittee for the state board to include in the annual
273 report described in Section [53E-1-202.1](#).

274 Section 4. Section 53E-7-405 is amended to read:

275 **53E-7-405. Program donations -- Scholarship granting organization**
276 **requirements.**

277 (1) A person that makes a donation to a scholarship granting organization to help fund
278 scholarships through the program may be eligible to receive a nonrefundable tax credit as
279 described in Sections 59-7-625 and 59-10-1041.

280 (2) In accordance with Section 53E-7-404, an organization may enter into an
281 agreement with the state board to be a scholarship granting organization.

282 (3) A scholarship granting organization shall:

283 (a) accept program donations and allow a person that makes a program donation to
284 designate a qualifying school to which the donation shall be directed for scholarships;

285 (b) adopt an application process in accordance with Subsection (5);

286 (c) review scholarship applications and determine scholarship awards;

287 (d) allocate scholarship money to a scholarship student's parent or, on the parent's
288 behalf, to a qualifying school in which the scholarship student is enrolled;

289 (e) adopt a process, with state board approval, that allows a parent to use a scholarship
290 to pay for a nontuition scholarship expense for the scholarship student;

291 (f) ensure that during the state fiscal year:

292 (i) at least 92% of the scholarship granting organization's revenue from program
293 donations is spent on scholarships;

294 (ii) up to 5% of the scholarship granting organization's revenue from program
295 donations is spent on administration of the program;

296 (iii) up to 3% of the scholarship granting organization's revenue from program
297 donations is spent on marketing and fundraising costs; and

298 (iv) all revenue from program donations' interest or investments is spent on
299 scholarships;

300 (g) carry forward no more than 40% of the scholarship granting organization's program
301 donations from the state fiscal year in which the scholarship granting organization received the
302 program donations to the following state fiscal year;

303 (h) at the end of a state fiscal year, remit to the state treasurer donation amounts greater
304 than the amount described in Subsection (3)(g);

305 (i) prohibit a scholarship granting organization employee or officer from handling,
306 managing, or processing program donations, if, based on a criminal background check
307 conducted by the state board in accordance with Section 53E-7-404, the state board identifies
308 the employee or officer as posing a risk to the appropriate use of program donations;

309 (j) ensure that a scholarship can be transferred during the school year to a different
310 qualifying school that accepts the scholarship student;

311 (k) report to the state board on or before [~~June~~] October 1 of each year the following
312 information, prepared by a certified public accountant:

313 (i) the name and address of the scholarship granting organization;

314 (ii) the total number and total dollar amount of program donations that the scholarship
315 granting organization received during the previous calendar year;

316 (iii) the total number and total dollar amount of scholarships the scholarship granting
317 organization awarded during the previous [~~calendar~~] state fiscal year; and

318 (iv) the percentage of first-time scholarship recipients who were enrolled in a public
319 school during the previous school year or who entered kindergarten or a higher grade for the
320 first time in Utah;

321 (l) issue tax credit certificates as described in Section 53E-7-407; and

322 (m) require a parent to notify a scholarship granting organization if the parent's
323 scholarship recipient:

324 (i) receives scholarship money for tuition expenses; and

325 (ii) does not have continuing enrollment and attendance at a qualifying school.

326 (4) The state treasurer shall deposit the money described in Subsection (3)(h) into the
327 Education Fund.

328 (5) (a) An application for a scholarship shall contain an acknowledgment by the
329 applicant's parent that the qualifying school selected by the parent for the applicant to attend
330 using a scholarship is capable of providing the level of disability services required for the
331 student.

332 (b) A scholarship application form shall contain the following statement:

333 "I acknowledge that:

334 (1) A private school may not provide the same level of disability services that are
335 provided in a public school;

336 (2) I will assume full financial responsibility for the education of my scholarship
337 recipient if I accept this scholarship;

338 (3) Acceptance of this scholarship has the same effect as a parental refusal to consent
339 to services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals with
340 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; and

341 (4) My child may return to a public school at any time."

342 (c) Upon acceptance of a scholarship, the parent assumes full financial responsibility
343 for the education of the scholarship recipient.

344 (d) Acceptance of a scholarship has the same effect as a parental refusal to consent to
345 services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals with Disabilities
346 Education Act, 20 U.S.C. Sec. 1400 et seq.

347 (e) The creation of the program or granting of a scholarship does not:

348 (i) imply that a public school did not provide a free and appropriate public education
349 for a student; or

350 (ii) constitute a waiver or admission by the state.

351 (6) A scholarship granting organization shall demonstrate the scholarship granting
352 organization's financial accountability by annually submitting to the state board a financial
353 information report that:

354 (a) complies with the uniform financial accounting standards described in Section
355 [53E-7-404](#); and

356 (b) is prepared by a certified public accountant.

357 (7) (a) If a scholarship granting organization allocates \$500,000 or more in
358 scholarships annually through the program, the scholarship granting organization shall:

359 (i) contract for an annual audit, conducted by a certified public accountant who is
360 independent from:

361 (A) the scholarship granting organization; and

362 (B) the scholarship granting organization's accounts and records pertaining to program
363 donations; and

364 (ii) in accordance with Subsection (7)(b), report the results of the audit to the state
365 board for review.

366 (b) For the report described in Subsection (7)(a)(ii), the scholarship granting

367 organization shall:

368 (i) include the scholarship granting organization's financial statements in a format that
369 meets generally accepted accounting standards; and

370 (ii) submit the report to the state board no later than 180 days after the last day of a
371 scholarship granting organization's fiscal year.

372 (c) The certified public accountant shall conduct an audit described in Subsection
373 (7)(a)(i) in accordance with generally accepted auditing standards and rules made by the state
374 board.

375 (d) (i) The state board shall review a report submitted under this section and may
376 request that the scholarship granting organization revise or supplement the report if the report
377 is not in compliance with the provisions of this Subsection (7) or rules adopted by the state
378 board.

379 (ii) A scholarship granting organization shall provide a revised report or supplement to
380 the report no later than 45 days after the day on which the state board makes a request
381 described in Subsection (7)(d)(i).

382 (8) (a) A scholarship granting organization may not allocate scholarship money to a
383 qualifying school if:

384 (i) the scholarship granting organization determines that the qualifying school
385 intentionally or substantially misrepresented information on overpayment;

386 (ii) the qualifying school fails to refund an overpayment in a timely manner; or

387 (iii) the qualifying school routinely fails to provide scholarship recipients with
388 promised educational goods or services.

389 (b) A scholarship granting organization shall notify a scholarship recipient if the
390 scholarship granting organization stops allocation of the recipient's scholarship money to a
391 qualifying school under Subsection (8)(a).

392 (9) If a scholarship recipient transfers to another qualifying school during the school
393 year, the scholarship granting organization may prorate scholarship money between the
394 qualifying schools according to the time the scholarship recipient spends at each school.

395 (10) A scholarship granting organization may not:

396 (a) award a scholarship to a relative of the scholarship granting organization's officer or
397 employee; or

398 (b) allocate scholarship money to a qualifying school at which the scholarship recipient
399 has a relative who is an officer or an employee of the qualifying school.

400 Section 5. Section **53E-7-407** is amended to read:

401 **53E-7-407. Tax credit certificates issued by a scholarship granting organization.**

402 (1) In accordance with this section and subject to Subsection (3), a scholarship granting
403 organization shall provide a tax credit certificate, on a form provided by the State Tax
404 Commission, to a person that makes a donation as described in Section **53E-7-405**.

405 ~~[(2)(a) The scholarship granting organization shall issue a tax credit certificate~~
406 ~~described in Subsection (1) on the tax credit certificate form described in Section **53E-7-404**.]~~

407 ~~[(b)]~~ (2) (a) The scholarship granting organization shall provide the information from a
408 completed tax credit certificate to the State Tax Commission electronically and in a manner
409 prescribed by the State Tax Commission.

410 ~~[(c)]~~ (b) A scholarship granting organization shall issue a tax credit certificate within
411 30 days after the day on which a person makes a donation to the program.

412 (3) (a) A scholarship granting organization may not issue a tax credit certificate for a
413 calendar year if issuing the tax credit certificate will cause the total amount of the tax credit
414 certificates issued for the calendar year to exceed the program donations cap amount described
415 in Subsection (4).

416 (b) Before accepting a donation to the program from a person, the scholarship granting
417 organization shall provide the person with notice:

418 (i) that the donation may not be eligible for a tax credit;

419 (ii) of the process described in Subsection (3)(c); and

420 (iii) of the total amount of tax credit certificates that the scholarship granting
421 organization has issued for the calendar year.

422 (c) During a calendar year, a scholarship granting organization shall:

423 (i) issue tax credit certificates in the order that the scholarship granting organization
424 received a corresponding donation; and

425 (ii) track the total amount of program donations received during the year as
426 corresponding tax credit certificates are issued.

427 (d) If a scholarship granting organization accepts a donation that, when added to the
428 current total amount of program donations received that year, will exceed the program

429 donations cap described in Subsection (4), the scholarship granting organization shall issue a
430 tax credit certificate in the amount that is the difference between the program donations cap
431 and the total amount of program donations received before the donation was received.

432 (4) (a) The program donations cap for the 2021 calendar year is \$5,940,000.

433 (b) For a calendar year after 2021, the state board shall calculate the program donations
434 cap as follows:

435 (i) if the total program donations for the previous calendar year exceed 90% of the cap
436 amount for that calendar year, the cap for the current calendar year is the cap amount for the
437 previous calendar year increased by 10%; or

438 (ii) if the total program donations for the previous calendar year did not exceed 90% of
439 the cap amount for that calendar year, the cap for the current calendar year is the same as the
440 cap amount for the previous calendar year.

441 (5) A person that receives a tax credit certificate in accordance with this section shall
442 retain the certificate for the same time period a person is required to keep books and records
443 under Section [59-1-1406](#).

444 Section 6. Section **53E-7-408** is amended to read:

445 **53E-7-408. Eligible private schools.**

446 (1) To be eligible to enroll a scholarship student, a private school shall:

447 (a) have a physical location in Utah where the scholarship students attend classes and
448 have direct contact with the school's teachers;

449 (b) (i) contract with an independent licensed certified public accountant to conduct an
450 Agreed Upon Procedures engagement as adopted by the state board, or obtain an audit and
451 report from a licensed independent certified public accountant that conforms with the following
452 requirements:

453 (A) the audit shall be performed in accordance with generally accepted auditing
454 standards;

455 (B) the financial statements shall be presented in accordance with generally accepted
456 accounting principles; and

457 (C) the audited financial statements shall be as of a period within the last 12 months;
458 and

459 (ii) submit the audit report or report of the agreed upon procedure to the state board

460 when the private school applies to accept scholarship students;

461 (c) comply with the antidiscrimination provisions of 42 U.S.C. 2000d;

462 (d) meet state and local health and safety laws and codes;

463 (e) provide a written disclosure to the parent of each prospective student, before the

464 student is enrolled, of:

465 (i) the special education services that will be provided to the student, including the cost

466 of those services;

467 (ii) tuition costs;

468 (iii) additional fees a parent will be required to pay during the school year; and

469 (iv) the skill or grade level of the curriculum in which the prospective student will

470 participate;

471 (f) (i) administer an annual assessment of each scholarship student's academic

472 progress; and

473 (ii) report the results of the assessment described in Subsection (1)(f)(i) to the

474 scholarship student's parent;

475 (g) employ or contract with teachers who:

476 (i) hold baccalaureate or higher degrees;

477 (ii) have at least three years of teaching experience in public or private schools; or

478 (iii) have the necessary skills, knowledge, or expertise that qualifies the teacher to

479 provide instruction:

480 (A) in the subject or subjects taught; and

481 (B) to the special needs students taught;

482 (h) maintain documentation demonstrating that teachers at the private school meet the

483 qualifications described in Subsection (1)(g);

484 (i) require the following individuals to submit to a nationwide, fingerprint-based

485 criminal background check and ongoing monitoring, in accordance with Section [53G-11-402](#),

486 as a condition for employment or appointment, as authorized by the Adam Walsh Child

487 Protection and Safety Act of 2006, Pub. L. No. 109-248:

488 (i) an employee who does not hold a current Utah educator license issued by the state

489 board under Chapter 6, Education Professional Licensure;

490 (ii) a contract employee; and

491 (iii) a volunteer who is given significant unsupervised access to a student in connection
492 with the volunteer's assignment; and

493 (j) provide to the parent of a scholarship student the relevant credentials of the teachers
494 who will be teaching the scholarship student.

495 (2) A private school is not eligible to enroll scholarship students if:

496 (a) the private school requires a student to sign a contract waiving the student's rights
497 to transfer to another qualifying school during the school year;

498 (b) the audit report submitted under Subsection (1)(b) contains a going concern
499 explanatory paragraph; or

500 (c) the report of the agreed upon procedures submitted under Subsection (1)(b) shows
501 that the private school does not have adequate working capital to maintain operations for the
502 first full year, as determined under Subsection (1)(b).

503 (3) A home school is not eligible to enroll scholarship students.

504 (4) Residential treatment facilities licensed by the state are not eligible to enroll
505 scholarship students.

506 (5) A private school intending to enroll scholarship students shall submit an application
507 to the state board ~~[by May 1 of the school year preceding the school year in which the private~~
508 ~~school intends to enroll scholarship students]~~.

509 (6) The state board shall:

510 (a) approve a private school's application to enroll scholarship students, if the private
511 school meets the eligibility requirements of this section; and

512 (b) ~~[make available to the public]~~ publish on the state board's website, a list of private
513 schools approved under this section.

514 (7) A private school approved under this section that changes ownership shall:

515 (a) submit a new application to the state board; and

516 (b) demonstrate that the private school continues to meet the eligibility requirements of
517 this section.

518 Section 7. Section **59-7-625** is amended to read:

519 **59-7-625. Nonrefundable tax credit for donation to Special Needs Opportunity**
520 **Scholarship Program.**

521 (1) A taxpayer that makes a donation to the Special Needs Opportunity Scholarship

522 Program established in Section [53E-7-402](#) may claim a nonrefundable tax credit equal to 100%
523 of the amount stated on a tax credit certificate issued in accordance with Section [53E-7-407](#).

524 (2) ~~[(a)]~~ If the amount of a tax credit listed on the tax credit certificate exceeds a
525 taxpayer's liability under this chapter for a taxable year, the taxpayer:

526 (a) may carry forward the amount of the tax credit exceeding the liability for a period
527 that does not exceed the next three taxable years~~[-];~~ and

528 (b) ~~[A taxpayer may not]~~ may carry back the amount of the tax credit that exceeds the
529 taxpayer's tax liability ~~[for the]~~ to the previous taxable year.

530 Section 8. Section **59-10-1041** is amended to read:

531 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**
532 **Scholarship Program.**

533 (1) Except as provided in Subsection (3), a claimant, estate, or trust that makes a
534 donation to the Special Needs Opportunity Scholarship Program established in Section
535 [53E-7-402](#)~~[-]~~ may claim a nonrefundable tax credit equal to 100% of the amount stated on a tax
536 credit certificate issued in accordance with Section [53E-7-407](#).

537 (2) ~~[(a)]~~ If the amount of a tax credit listed on the tax credit certificate exceeds a
538 claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the claimant,
539 estate, or trust:

540 (a) may carry forward the amount of the tax credit exceeding the liability for a period
541 that does not exceed the next three taxable years~~[-];~~ and

542 (b) ~~[A claimant, estate, or trust may not]~~ may carry back the amount of the tax credit
543 that exceeds the claimant's, estate's, or trust's tax liability ~~[for the]~~ to the previous taxable year.

544 (3) A claimant, estate, or trust may not claim a credit described in Subsection (1) to the
545 extent the claimant, estate, or trust claims a donation described in Subsection (1) as an itemized
546 deduction on the claimant's, estate's, or trust's federal individual income tax return for that
547 taxable year.

548 Section 9. **Retrospective operation.**

549 The changes to the following sections have retrospective operation for a taxable year
550 beginning on or after January 1, 2022:

551 (1) Section [59-7-625](#); and

552 (2) Section [59-10-1041](#).