

**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: \_\_\_\_\_

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



26 which a scholarship will be offered;

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

29       ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       This bill provides retrospective operation.

34 **Utah Code Sections Affected:**

35 AMENDS:

36       **53E-7-401**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

37       **53E-7-402**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

38       **53E-7-404**, as last amended by Laws of Utah 2021, Chapter 341

39       **53E-7-405**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

40       **53E-7-407**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

41       **53E-7-408**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

42       **59-7-625**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

43       **59-10-1041**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3



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

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

47       **53E-7-401. Definitions.**

48       As used in this part:

49       (1) "Eligible student" means:

50       (a) a student who:

51       ~~[(a)]~~ (i) is eligible to participate in public school, in kindergarten or grades 1 through  
52 12;

53       ~~[(b)]~~ (ii) is a resident of the state;

54       ~~[(c)-(i)]~~ (iii) (A) has an IEP; or

55       ~~[(ii)]~~ (B) is determined by a multidisciplinary evaluation team to be eligible for

56 services under ~~[the Individuals with Disabilities Education Act, Subchapter H, 20 U.S.C. Secs.~~

57 ~~1400 to 1419]~~ 20 U.S.C. Sec. 1401(3); and

58 ~~[(iv)]~~ (iv) during the school year for which the student is applying for the scholarship, is  
59 not:

60 ~~[(i)]~~ (A) a student who receives a scholarship under the Carson Smith Scholarship

61 Program created in Section [53F-4-302](#); or

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

63 (b) a student who:

64 (i) meets the requirement of Subsections (1)(a)(i) and (ii); and

65 (ii) is a sibling of and resides in the same household as a student described in

66 Subsection (1)(a) if:

67 (A) the student described in Subsection (1)(a) is a scholarship student and has verified  
68 enrollment or intent to enroll at a qualifying school; and

69 (B) the sibling is applying for a scholarship to attend the same qualifying school.

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

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

73 (ii) scholarship money allocated to a qualifying school by a scholarship granting  
74 organization under Section [53E-7-405](#).

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

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

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

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

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

84 (b) who evaluate a child.

85 ~~[(5)]~~ (6) "Officer" means:

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

87 or

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

90 [~~(6)~~] (7) "Program [~~donations~~] donation" means [~~donations~~] a donation to the program  
91 under Section 53E-7-405.

92 [~~(7)~~] (8) "Qualifying school" means a private school that:

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

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

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

96 [~~(8)~~] (9) "Relative" means a father, mother, husband, wife, son, daughter, sister,  
97 brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,  
98 sister-in-law, son-in-law, or daughter-in-law.

99 [~~(9)~~] (10) "Scholarship" means a grant awarded to an eligible student:

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

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

102 [~~(10)~~] (11) "Scholarship expense" means:

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

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

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

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

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

112 [~~(11)~~] (12) "Scholarship granting organization" means an organization that is:

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

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

116 [~~(12)~~] (13) "Scholarship student" means an eligible student who receives a scholarship  
117 under this part.

118 [~~(13)~~] (14) "Special Needs Opportunity Scholarship Program" or "program" means the

119 program established in Section [53E-7-402](#).

120 ~~[(14)]~~ (15) "Value of the weighted pupil unit" means the amount established each year  
121 in the enacted public education budget that is multiplied by the number of weighted pupil units  
122 to yield the funding level for the basic state-supported school program.

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

124 **53E-7-402. Special Needs Opportunity Scholarship Program.**

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

128 (2) (a) A scholarship granting organization shall:

129 ~~[(a)]~~ (i) award, in accordance with this part, scholarships to eligible students; and

130 ~~[(b)]~~ (ii) determine the amount of a scholarship in accordance with Subsection (3).

131 (b) In awarding scholarships, a scholarship granting organization shall give priority to  
132 an eligible student described in Subsection [53E-7-401\(1\)\(a\)](#) by:

133 (i) establishing an August 10 deadline for an eligible student described in Subsection  
134 [53E-7-401\(1\)\(b\)](#) to apply for a scholarship; and

135 (ii) awarding a scholarship to an eligible student described in Subsection  
136 [53E-7-401\(1\)\(b\)](#) only if funds exist after awarding scholarships to all eligible students  
137 described in Subsection [53E-7-401\(1\)\(a\)](#) who have applied and qualify.

138 (c) Subject to available funds, a scholarship awarded to an eligible student described in  
139 Subsection [53E-7-401\(1\)\(b\)](#) shall be for a similar term as a scholarship awarded to the eligible  
140 student's sibling.

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

143 (a) for an eligible student described in Subsection [53E-7-401\(1\)\(a\)](#) who is:

144 (i) in grades 1 through 12 with an IEP~~;~~ and whose family income is:

145 ~~[(i)]~~ (A) at or below 185% of the federal poverty level, the value of the weighted pupil  
146 unit multiplied by 2.5;

147 ~~[(ii)]~~ (B) between 185% and 555% of the federal poverty level, the value of the  
148 weighted pupil unit multiplied by two; or

149 ~~[(iii)]~~ (C) above 555% of the federal poverty level, the value of the weighted pupil unit

150 multiplied by 1.5;

151 ~~[(b) for an eligible student]~~ (ii) in grades 1 through 12 and who does not have an IEP,  
152 the value of the weighted pupil unit;

153 ~~[(c) for an eligible student]~~ (iii) in kindergarten with an IEP, the value of the weighted  
154 pupil unit; or

155 ~~[(d) for an eligible student]~~ (iv) in kindergarten and who does not have an IEP, half the  
156 value of the weighted pupil unit~~[-]; or~~

157 (b) for an eligible student described in Subsection 53E-7-401(1)(b), half the value of  
158 the weighted pupil unit.

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

164 ~~[(4)]~~ (5) The ~~[state board shall prepare and disseminate to a scholarship granting~~  
165 ~~organization for distribution]~~ scholarship granting organizations shall prepare and disseminate  
166 information on the program to a parent applying for a scholarship on behalf of a student~~[-].~~

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

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

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

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

173 **53E-7-404. State board duties.**

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

175 ~~[(2)]~~ (1) The state board shall:

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

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

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

- 181 ~~[(iii) the amount of the donation;]~~  
182 ~~[(iv) the amount of the tax credit; and]~~  
183 ~~[(v) any other relevant information;]~~  
184 (a) publish on the state board's website:  
185 (i) information about the program; and  
186 (ii) information about each scholarship granting organization;  
187 (b) conduct a financial review or audit of a scholarship granting organization, if the  
188 state board receives evidence of fraudulent practice by the scholarship granting organization;  
189 (c) conduct a criminal background check on each scholarship granting organization  
190 employee and scholarship granting organization officer;  
191 (d) establish uniform financial accounting standards for scholarship granting  
192 organizations;  
193 (e) annually calculate the amount of the program donations cap described in Section  
194 [53E-7-407](#); and  
195 (f) ~~[beginning in 2021,]~~ in accordance with Section [53E-1-202.1](#), annually submit a  
196 report on the program to the Public Education Appropriations Subcommittee that includes:  
197 (i) for the 2020-21, 2021-22, 2022-23, and 2023-24 school years, the amount of tuition  
198 and fees a qualifying school charges;  
199 (ii) administrative costs of the program;  
200 (iii) the number of scholarship students that are eligible students described in  
201 Subsection [53E-7-401](#)(1)(a) and the number of scholarship students that are eligible students  
202 described in Subsection [53E-7-401](#)(1)(b) from each school district;  
203 (iv) standards used by the scholarship granting organization to determine whether a  
204 student is an eligible student; and  
205 (v) savings to the state and LEAs as a result of scholarship students exiting the public  
206 school system.  
207 ~~[(3)]~~ (2) (a) In accordance with Subsection ~~[(4)]~~ (3) and Title 63G, Chapter 6a, Utah  
208 Procurement Code, the state board shall issue a request for proposals and enter into at least one  
209 agreement with an organization that is qualified as tax exempt under Section 501(c)(3), Internal  
210 Revenue Code, to be recognized by the state board as a scholarship granting organization.  
211 (b) An organization that responds to a request for proposals described in Subsection

212 [~~(3)~~] (2)(a) shall submit the following information in the organization's response:

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

214 (ii) a copy of the organization's Internal Revenue Service determination letter

215 qualifying the organization as being tax exempt under Section 501(c)(3), Internal Revenue  
216 Code;

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

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

220 [~~(4)~~] (3) (a) The state board shall enter into an agreement described in Subsection [~~(3)~~]  
221 (2)(a) with one scholarship granting organization on or before January 1, 2021.

222 (b) The state board may enter into an agreement described in Subsection [~~(3)~~] (2)(a)  
223 with additional scholarship granting organizations after January 1, 2023, if the state board  
224 makes rules regarding how multiple scholarship granting organizations may issue tax credit  
225 certificates in accordance with Section [53E-7-407](#).

226 (c) (i) No later than 10 days after the day on which the state board enters into an  
227 agreement with a scholarship granting organization, the state board shall forward the name and  
228 contact information of the scholarship granting organization to the State Tax Commission.

229 (ii) If, under Subsection [~~(5)~~] (4)(c)(i), the state board bars a scholarship granting  
230 organization from further participation in the program, the state board shall, no later than 10  
231 days after the day on which the state board bars the scholarship granting organization, forward  
232 the name and contact information of the barred scholarship granting organization to the State  
233 Tax Commission.

234 [~~(5)~~] (4) (a) If the state board determines that a scholarship granting organization has  
235 violated a provision of this part or state board rule, the state board shall send written notice to  
236 the scholarship granting organization explaining the violation and the remedial action required  
237 to correct the violation.

238 (b) A scholarship granting organization that receives a notice described in Subsection  
239 [~~(5)~~] (4)(a) shall, no later than 60 days after the day on which the scholarship granting  
240 organization receives the notice, correct the violation and report the correction to the state  
241 board.

242 (c) (i) If a scholarship granting organization that receives a notice described in



243 Subsection ~~[(5)]~~ (4)(a) fails to correct a violation in the time period described in Subsection  
244 ~~[(5)]~~ (4)(b), the state board may bar the scholarship granting organization from further  
245 participation in the program.

246 (ii) A scholarship granting organization may appeal a decision made by the state board  
247 under Subsection ~~[(5)]~~ (4)(c)(i) in accordance with Title 63G, Chapter 4, Administrative  
248 Procedures Act.

249 (d) A scholarship granting organization may not accept program donations while the  
250 scholarship granting organization:

251 (i) is barred from participating in the program under Subsection ~~[(5)]~~ (4)(c)(i); or

252 (ii) has an appeal pending under Subsection ~~[(5)]~~ (4)(c)(ii).

253 (e) A scholarship granting organization that has an appeal pending under Subsection  
254 ~~[(5)]~~ (4)(c)(ii) may continue to administer scholarships from previously donated program  
255 donations during the pending appeal.

256 ~~[(6)]~~ (5) The state board shall provide for a process for a scholarship granting  
257 organization to report information as required under Section 53E-7-405.

258 ~~[(7)]~~ (6) The state board shall make rules in accordance with Title 63G, Chapter 3,  
259 Utah Administrative Rulemaking Act, to administer the program, including rules for:

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

261 ~~[(b)]~~ (a) the administration of scholarships to a qualifying school receiving scholarship  
262 money from a scholarship granting organization that is barred from participating in the  
263 program under Subsection ~~[(5)]~~ (4)(c)(i);

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

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

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

270 (i) requiring the scholarship granting organization to:

271 (A) notify the state board; and

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

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

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

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

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

281 (ii) the number of scholarship students that are eligible students described in  
282 Subsection 53E-7-401(1)(a) and the number of scholarship students that are eligible students  
283 described in Subsection 53E-7-401(1)(b) from each school district;

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

285 (iv) any other information requested by the ~~[state board for the purpose of completing]~~  
286 Public Education Appropriations Subcommittee for the state board to include in the annual  
287 report described in Section 53E-1-202.1.

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

289 **53E-7-405. Program donations -- Scholarship granting organization**  
290 **requirements.**

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

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

296 (3) A scholarship granting organization shall:

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

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

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

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

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

- 305 (f) ensure that during the state fiscal year:
- 306 (i) at least 92% of the scholarship granting organization's revenue from program  
307 donations is spent on scholarships;
- 308 (ii) up to 5% of the scholarship granting organization's revenue from program  
309 donations is spent on administration of the program;
- 310 (iii) up to 3% of the scholarship granting organization's revenue from program  
311 donations is spent on marketing and fundraising costs; and
- 312 (iv) all revenue from program donations' interest or investments is spent on  
313 scholarships;
- 314 (g) carry forward no more than 40% of the scholarship granting organization's program  
315 donations from the state fiscal year in which the scholarship granting organization received the  
316 program donations to the following state fiscal year;
- 317 (h) at the end of a state fiscal year, remit to the state treasurer donation amounts greater  
318 than the amount described in Subsection (3)(g);
- 319 (i) prohibit a scholarship granting organization employee or officer from handling,  
320 managing, or processing program donations, if, based on a criminal background check  
321 conducted by the state board in accordance with Section 53E-7-404, the state board identifies  
322 the employee or officer as posing a risk to the appropriate use of program donations;
- 323 (j) ensure that a scholarship can be transferred during the school year to a different  
324 qualifying school that accepts the scholarship student;
- 325 (k) report to the state board on or before [~~June~~] October 1 of each year the following  
326 information, prepared by a certified public accountant:
- 327 (i) the name and address of the scholarship granting organization;
- 328 (ii) the total number and total dollar amount of program donations that the scholarship  
329 granting organization received during the previous calendar year;
- 330 (iii) (A) the total number and total dollar amount of scholarships the scholarship  
331 granting organization awarded during the previous [~~calendar year; and~~] state fiscal year to  
332 eligible students described in Subsection 53E-7-401(1)(a); and
- 333 (B) the total number and total dollar amount of scholarships the scholarship granting  
334 organization awarded during the previous state fiscal year to eligible students described in  
335 Subsection 53E-7-401(1)(b); and

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

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

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

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

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

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

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

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

351 "I acknowledge that:

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

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

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

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

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

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

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

366 (i) imply that a public school did not provide a free and appropriate public education

367 for a student; or

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

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

372 (a) complies with the uniform financial accounting standards described in Section  
373 53E-7-404; and

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

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

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

379 (A) the scholarship granting organization; and

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

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

384 (b) For the report described in Subsection (7)(a)(ii), the scholarship granting  
385 organization shall:

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

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

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

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

397 (ii) A scholarship granting organization shall provide a revised report or supplement to

398 the report no later than 45 days after the day on which the state board makes a request  
399 described in Subsection (7)(d)(i).

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

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

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

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

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

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

413 (10) A scholarship granting organization may not:

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

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

418 Section 5. Section ~~53E-7-407~~ is amended to read:

419 **53E-7-407. Tax credit certificates issued by a scholarship granting organization.**

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

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

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

428 [~~(c)~~] (b) A scholarship granting organization shall issue a tax credit certificate within

429 30 days after the day on which a person makes a donation to the program.

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

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

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

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

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

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

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

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

445 (d) If a scholarship granting organization accepts a donation that, when added to the  
446 current total amount of program donations received that year, will exceed the program  
447 donations cap described in Subsection (4), the scholarship granting organization shall issue a  
448 tax credit certificate in the amount that is the difference between the program donations cap  
449 and the total amount of program donations received before the donation was received.

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

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

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

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

459 (5) A person that receives a tax credit certificate in accordance with this section shall

460 retain the certificate for the same time period a person is required to keep books and records  
461 under Section 59-1-1406.

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

463 **53E-7-408. Eligible private schools.**

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

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

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

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

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

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

477 (ii) submit the audit report or report of the agreed upon procedure to the state board  
478 when the private school applies to accept scholarship students;

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

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

481 (e) provide a written disclosure to the parent of each prospective student, before the  
482 student is enrolled, of:

483 (i) the special education services that will be provided to the student, including the cost  
484 of those services;

485 (ii) tuition costs;

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

487 (iv) the skill or grade level of the curriculum in which the prospective student will  
488 participate;

489 (f) (i) administer an annual assessment of each scholarship student's academic  
490 progress; and



- 491 (ii) report the results of the assessment described in Subsection (1)(f)(i) to the  
492 scholarship student's parent;
- 493 (g) employ or contract with teachers who:  
494 (i) hold baccalaureate or higher degrees;  
495 (ii) have at least three years of teaching experience in public or private schools; or  
496 (iii) have the necessary skills, knowledge, or expertise that qualifies the teacher to  
497 provide instruction:
- 498 (A) in the subject or subjects taught; and  
499 (B) to the special needs students taught;
- 500 (h) maintain documentation demonstrating that teachers at the private school meet the  
501 qualifications described in Subsection (1)(g);
- 502 (i) require the following individuals to submit to a nationwide, fingerprint-based  
503 criminal background check and ongoing monitoring, in accordance with Section [53G-11-402](#),  
504 as a condition for employment or appointment, as authorized by the Adam Walsh Child  
505 Protection and Safety Act of 2006, Pub. L. No. 109-248:
- 506 (i) an employee who does not hold a current Utah educator license issued by the state  
507 board under Chapter 6, Education Professional Licensure;  
508 (ii) a contract employee; and  
509 (iii) a volunteer who is given significant unsupervised access to a student in connection  
510 with the volunteer's assignment; and
- 511 (j) provide to the parent of a scholarship student the relevant credentials of the teachers  
512 who will be teaching the scholarship student.
- 513 (2) A private school is not eligible to enroll scholarship students if:  
514 (a) the private school requires a student to sign a contract waiving the student's rights  
515 to transfer to another qualifying school during the school year;  
516 (b) the audit report submitted under Subsection (1)(b) contains a going concern  
517 explanatory paragraph; or  
518 (c) the report of the agreed upon procedures submitted under Subsection (1)(b) shows  
519 that the private school does not have adequate working capital to maintain operations for the  
520 first full year, as determined under Subsection (1)(b).
- 521 (3) A home school is not eligible to enroll scholarship students.

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

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

527 (6) The state board shall:

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

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

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

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

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

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

537 **59-7-625. Nonrefundable tax credit for donation to Special Needs Opportunity**  
538 **Scholarship Program.**

539 (1) A taxpayer that makes a donation to the Special Needs Opportunity Scholarship  
540 Program established in Section **53E-7-402** may claim a nonrefundable tax credit equal to 100%  
541 of the amount stated on a tax credit certificate issued in accordance with Section **53E-7-407**.

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

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

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

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

549 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**  
550 **Scholarship Program.**

551 (1) Except as provided in Subsection (3), a claimant, estate, or trust that makes a  
552 donation to the Special Needs Opportunity Scholarship Program established in Section

553 [53E-7-402](#)[;] may claim a nonrefundable tax credit equal to 100% of the amount stated on a tax  
554 credit certificate issued in accordance with Section 53E-7-407.

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

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

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

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

566 Section 9. **Retrospective operation.**

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

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

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