

Representative James A. Ferrin proposes the following substitute bill:

TUITION TAX CREDITS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: James A. Ferrin

LONG TITLE

General Description:

This bill modifies the Individual Income Tax Act to provide a tax credit for tuition expenses for private school education.

Highlighted Provisions:

This bill:

- ▶ provides a refundable tax credit against individual income tax for tuition expenses paid or incurred during the taxable year for private school education received by a qualifying student;
- ▶ provides legislative findings;
- ▶ establishes maximum tax credit amounts based upon a taxpayer's federal adjusted gross income and household size;
- ▶ provides that a qualifying student is an individual who ~~H→ [was not enrolled in a private school on January 1, 2005, unless the adjusted gross income of the taxpayer who paid or incurred the private school tuition expenses is less than or equal to 100% of the income eligibility guideline for reduced price school meals;]~~ :

- was born after September 1, 1999;
- was enrolled as a full-time student in a Utah public school on January 1, 2005;
- was not a Utah resident on January 1, 2005; or
- was a private school student for whom a taxpayer paid or incurred the tuition expenses, and the adjusted gross income of the taxpayer was less than or equal to 100% of the income guideline for reduced price school meals. ←H



- 22 ▶ defines a private school as an elementary or secondary school that:
- 23 • has a physical location in Utah ~~H~~→ where, for at least 90% of the days within the
- 23a school year, the students attend classes and have direct contact with the school's teachers ←~~H~~ ;
- 23b ~~H~~→ • does not operate in a residence; ←~~H~~
- 24 • enrolls at least 25 students;
- 25 • annually assesses the achievement of each qualifying student; and

- 26 • provides information to parents on teachers' credentials and school
- 27 accreditation; and
- 28 ▶ requires the parent of a school-age minor who transfers from a public school to a
- 29 private school to notify the school district or charter school of the transfer.

30 **Monies Appropriated in this Bill:**

31 This bill appropriates:

- 32 ▶ \$1,500,000 from the General Fund for fiscal year 2005-06 only, to the State Board
- 33 of Education.

34 **Other Special Clauses:**

35 This bill provides for retrospective operation.

36 **Utah Code Sections Affected:**

37 ENACTS:

- 38 **53A-11-102.3**, Utah Code Annotated 1953
- 39 **53A-17a-152**, Utah Code Annotated 1953
- 40 **59-10-136**, Utah Code Annotated 1953



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

43 Section 1. Section **53A-11-102.3** is enacted to read:

44 **53A-11-102.3. Transfers to private school.**

45 The parent of a school-age minor who transfers from a public school to a private school
46 as defined in Section 59-10-136 shall notify the school district or charter school where the
47 minor was enrolled of the transfer:

48 (1) before the starting date of the school district's or charter school's school year, if the
49 transfer will occur at the beginning of a school year; or

50 (2) before the date the minor transfers to the private school, if the transfer occurs
51 within a school year.

52 Section 2. Section **53A-17a-152** is enacted to read:

53 **53A-17a-152. Appropriation for school districts affected by tuition tax credits.**

54 (1) There is appropriated \$1,500,000 from the General Fund, for fiscal year 2005-06
55 only, to the State Board of Education to be distributed to school districts that demonstrate
56 measurable financial harm that can be attributed to the enactment of the tuition tax credit under

57 Section 59-10-136.

58 (2) The appropriation under Subsection (1) shall be nonlapsing.

59 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
60 board shall make rules establishing criteria and procedures for the distribution of funds

61 appropriated under Subsection (1).

62 Section 3. Section **59-10-136** is enacted to read:

63 **59-10-136. Refundable tuition tax credit.**

64 (1) As used in this section:

65 (a) "Applicable household size" means the household size of the qualifying student.

66 (b) "Disabled" means having a disability and qualifying for special education services
67 pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et. seq.

68 (c) "Income eligibility guideline" means the maximum annual income allowed to
69 qualify for reduced price meals for the applicable household size as published by the U.S.
70 Department of Agriculture by notice in the Federal Register and as established pursuant to
71 Subsection (3).

72 (d) (i) "Private school" means an elementary or secondary school that:

73 (A) is not owned and controlled by a governmental entity;

74 (B) provides instruction for one or more grades kindergarten through 12;

75 (C) is generally supported, in part at least, by tuition charges;

76 (D) is established to operate indefinitely and independently, not dependent upon the
77 age of students available or upon individual family situations;

78 (E) has a physical location in Utah ~~H~~→ where, for at least 90% of the days within
78a the school year, the students attend classes and have direct contact with the school's
78b teachers ←H ;

79 (F) is on file with the Division of Corporations and Commercial Code pursuant to
80 Section 42-2-5;

81 (G) is in compliance with local governmental business licensing requirements;

82 (H) (I) annually assesses the achievement of each student by administering a
83 norm-referenced test scored by an independent party that provides a comparison of the student's
84 performance to other students on a national basis;

85 (II) reports the test results to the student's parents; and

86 (III) upon request, makes test results available to other persons, in a manner that does
87 not reveal the identity of any student;

88 (I) provides to parents the relevant credentials of teachers who will be teaching their
 89 children; and

90 (J) provides, upon request to any person, a statement indicating which, if any,
 91 organizations have accredited the private school.

92 (ii) "Private school" does not include a school that ~~H→~~ :

92a (A) ~~←H~~ has an enrollment of fewer than 25
 93 students ~~H→~~ [:] ; or

93a (B) operates in a residence. ~~←H~~

94 (e) (i) "Qualifying student" means an individual:

95 (A) who is enrolled at a private school as a full-time student as determined by the
 96 private school and is not participating in a dual enrollment program pursuant to Section
 97 53A-11-102.5;

98 (B) who will be under 19 years of age on the last day of the school year as determined
 99 by the private school, or, if the individual is disabled and has not graduated from high school
 100 with a regular diploma, will be under 22 years of age on the last day of the school year as
 101 determined by the private school; and

102 (C) who ~~H→~~ [~~was not enrolled at a private school on January 1, 2005, except as provided in~~
 103 ~~Subsection (1)(e)(ii):~~

104 ~~—— (ii) Subsection (1)(e)(i)(C) does not apply if the adjusted gross income of the taxpayer~~
 105 ~~who paid or incurred the private school tuition expenses is less than or equal to 100% of the~~
 106 ~~income eligibility guideline as defined in Subsection (1)(c);] meets one or more of the following~~
 106a ~~criteria:~~

106b ~~(I) the individual was born after September 1, 1999;~~

106c ~~(II) the individual was enrolled as a full-time student in a Utah public school on~~
 106d ~~January 1, 2005;~~

106e ~~(III) the individual was not a Utah resident on January 1, 2005; or~~

106f ~~(IV) the individual is a private school student for whom a taxpayer has paid or incurred~~
 106g ~~the tuition expenses, and the adjusted gross income of the taxpayer is less than or equal to~~
 106h ~~100% of the income eligibility guideline as defined in Subsection (1)(c).~~

106i ~~(f)(i) "Tuition expenses" means amounts charged for attending a private school minus~~
 106j ~~any amounts paid for with scholarship monies received from the state.~~

106k ~~(ii) "Tuition expenses" do not include fees for extracurricular activities or~~
 106l ~~transportation to the private school. ~~←H~~~~

107 (2) The Legislature finds:

- 108 (a) parents are best equipped to make decisions for their children, including the
109 educational setting that will best serve the interests and educational needs of their children;
110 (b) children, parents, and families are the primary beneficiaries of the tuition tax credit
111 authorized in this section and any benefit to private schools, sectarian or otherwise, is purely
112 incidental; and
113 (c) the tuition tax credit authorized in this section:
114 (i) is enacted for the valid secular purpose of tailoring a student's education to that
115 student's specific needs;
116 (ii) is neutral with respect to religion; and
117 (iii) provides tax relief to a broad class of persons who are then able to direct their
118 resources to religious and secular schools solely as a result of their genuine and independent

119 private choices.

120 (3) The reduced price meals income guidelines in effect on July 1 of the taxable year
121 for which a taxpayer applies for a tax credit under this section shall be used to establish the
122 income eligibility guideline.

123 (4) (a) For taxable years beginning on or after January 1, 2005, a taxpayer may claim,
124 as provided in this section, a refundable tax credit against the taxes imposed by this chapter for
125 tuition expenses paid or incurred by the taxpayer during the taxable year for private school
126 education received by a qualifying student to the extent the taxpayer did not claim a tax credit
127 for those tuition expenses in the previous taxable year.

128 (b) For the purposes of this section, tuition expenses shall be considered to be incurred
129 when the qualifying student receives the private school education.

130 (c) A taxpayer may claim a refundable tax credit under Subsection (4)(a) for tuition
131 expenses paid or incurred by the taxpayer during the taxable year for private school education
132 received by one or more qualifying students.

133 (d) The refundable tax credit for each qualifying student's tuition expenses may not
134 exceed the total tuition expenses paid or incurred during the taxable year for the private school
135 education received by the qualifying student, up to the maximum amount shown in the
136 following table, except as provided in Subsections (4)(e) and (4)(f):

<u>-----</u> <u>If the taxpayer's adjusted gross income</u> <u>on the taxpayer's federal individual</u> <u>income tax return for the taxable year is:</u> <u>-----</u>	<u>-----</u> <u>The maximum refundable tax credit for</u> <u>each qualifying student's tuition expenses</u> <u>is:</u> <u>-----</u>
<u>Less than or equal to 100% of the</u> <u>income eligibility guideline</u>	<u>\$3750</u>
<u>Greater than 100% but less than or equal to</u> <u>125% of the income eligibility guideline</u>	<u>\$3500</u>
<u>Greater than 125% but less than or equal to</u> <u>150% of the income eligibility guideline</u>	<u>\$3250</u>
<u>Greater than 150% but less than or equal to</u> <u>175% of the income eligibility guideline</u>	<u>\$3000</u>

150	<u>Greater than 175% but less than or equal to</u>	
151	<u>200% of the income eligibility guideline</u>	<u>\$2750</u>
152	<u>Greater than 200% but less than or equal to</u>	
153	<u>225% of the income eligibility guideline</u>	<u>\$2500</u>
154	<u>Greater than 225% but less than or equal to</u>	
155	<u>250% of the income eligibility guideline</u>	<u>\$1750</u>
156	<u>Greater than 250% but less than or equal to</u>	
157	<u>275% of the income eligibility guideline</u>	<u>\$1000</u>
158	<u>Greater than 275% but less than or equal to</u>	
159	<u>300% of the income eligibility guideline</u>	<u>\$500</u>

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161 (e) The maximum refundable tax credit amounts shown in the table in Subsection
162 (4)(d) apply to tuition expenses for all grades except kindergarten. The maximum refundable
163 tax credit for tuition expenses for kindergarten shall be .55 times the amounts shown in the
164 table in Subsection (4)(d).

165 (f) The maximum refundable tax credits amounts shown in the table in Subsection
166 (4)(d) apply to tuition expenses of qualifying students who are enrolled in a private school for
167 140 school days or more within the taxable year. For tuition expenses of qualifying students
168 who are enrolled in a private school for fewer than 140 school days within the taxable year, the
169 maximum refundable tax credit amounts are 50% of the amounts shown in the table in
170 Subsection (4)(d), except the maximum refundable tax credit for a kindergarten student is 50%
171 of the amount provided in Subsection (4)(e).

172 (5) The tax credit provided for in this section ~~H→~~ [may not be carried forward or carried
173 back.

174 ~~_____ (6) (a) Only one taxpayer may claim a refundable tax credit for each qualifying student~~
175 ~~each taxable year.~~

176 ~~_____ (b) The taxpayer who claims a personal exemption for the qualifying student shall have~~
177 ~~the right to claim the refundable tax credit, unless that taxpayer authorizes another person to~~
178 ~~claim the refundable tax credit.~~

179 ~~_____ (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the~~
180 ~~commission shall make rules to administer Subsections (6)(a) and (6)(b)] :~~

- 180a (a) may be claimed only by the taxpayer who:
- 180b (i) is the parent or legal guardian of the qualifying student; and
- 180c (ii) claims a personal exemption for the qualifying student; and
- 180d (b) may not be carried forward or carried back. ~~←H~~ .

181 Section 4. **Retrospective operation.**

182 This bill has retrospective operation for taxable years beginning on or after January 1,

183 2005.

State Impact

The estimated net fiscal impact for FY 2006 is a positive fund balance of \$3,413,000. For FY 2007 the estimated net balance is a negative (\$133,800).

The issuance of tuition tax credits would reduce income tax revenue to the State by an estimated \$6,433,700 in FY 2006, and \$24,210,100 in FY 2007. Provisions of the bill would only allow half of the tax credit amount in the first year for those choosing to leave public schools. Losses in revenue would be offset by reduced appropriations to the Minimum School Program for students leaving the Public Education system to go to private school. The offset amount for FY 2006 is estimated at \$11,346,700, and for FY 2007 the amount is estimated at \$24,076,300. The estimates for FY 2006 are based upon 3,734 private and public school students who are eligible under income criteria of the bill and would attend private school and apply for the tax credit. This would increase to 8,352 for FY 2007 based on the estimates.

The bill excludes existing private school students with the exception of those whose income category is equal to or under the 100% of the free and reduced lunch criteria.

The bill appropriates \$1,500,000 in non-lapsing one time monies from the general fund to the State Board of Education for use by districts that demonstrate measurable financial harm attributed to enactment of this bill.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$1,500,000	\$0	\$0	\$0
Uniform School Fund	(\$11,346,700)	(\$24,076,300)	\$0	\$0
Uniform School Fund	\$0	\$0	\$0	\$0
Income Tax	\$0	\$0	(\$6,433,700)	(\$24,210,100)
TOTAL	<u><u>(\$9,846,700)</u></u>	<u><u>(\$24,076,300)</u></u>	<u><u>(\$6,433,700)</u></u>	<u><u>(\$24,210,100)</u></u>

Individual and Business Impact

Local School Districts could potentially benefit by savings in school construction costs over time depending on how many students choose private schooling over Public Education. Savings in construction costs assumes that there would be comparable costs to private entities. Local School District tax revenues are not affected by this bill.
