

**Representative James A. Ferrin** proposes the following substitute bill:

**TUITION TAX CREDITS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: James A. Ferrin**

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**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 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;
- ▶ defines a private school as an elementary or secondary school that:
  - has a physical location in Utah;
  - enrolls at least 25 students;
  - 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;

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 has an enrollment of fewer than 25  
93 students.

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 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).

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 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).

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)
<b>TOTAL</b>	<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>

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**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.

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