

**SPECIAL NEEDS OPPORTUNITY SCHOLARSHIP PROGRAM**

2020 FOURTH SPECIAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Schultz**

Senate Sponsor: Lincoln Fillmore

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**LONG TITLE**

**General Description:**

This bill creates the Special Needs Opportunity Scholarship Program and related income tax credits.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ creates the Special Needs Opportunity Scholarship Program (program);
- ▶ establishes requirements for a scholarship recipient and a private school that accepts scholarship money;
- ▶ requires the State Board of Education to oversee the program, including:
  - selection of a scholarship granting organization; and
  - reporting to the Public Education Appropriations Subcommittee;
- ▶ establishes the duties of a scholarship granting organization, including:
  - accepting program donations;
  - awarding scholarships; and
  - issuing tax credit certificates;
- ▶ creates a nonrefundable corporate income tax credit and a nonrefundable individual income tax credit for certain program donations;
- ▶ prohibits a taxpayer from claiming more than one income tax benefit from making a program donation; and
- ▶ requires the Public Education Appropriations Subcommittee to study the feasibility

29 of combining the program with the Carson Smith Scholarship Program.

30 **Money Appropriated in this Bill:**

31 This bill appropriates:

- 32 ▶ to the State Board of Education - Initiative Programs:
- 33 • from the Education Fund, \$60,000.

34 **Other Special Clauses:**

35 This bill provides a special effective date.

36 **Utah Code Sections Affected:**

37 ENACTS:

38 **53E-1-202.1**, Utah Code Annotated 1953

39 **53E-7-401**, Utah Code Annotated 1953

40 **53E-7-402**, Utah Code Annotated 1953

41 **53E-7-403**, Utah Code Annotated 1953

42 **53E-7-404**, Utah Code Annotated 1953

43 **53E-7-405**, Utah Code Annotated 1953

44 **53E-7-406**, Utah Code Annotated 1953

45 **53E-7-407**, Utah Code Annotated 1953

46 **53E-7-408**, Utah Code Annotated 1953

47 **53E-7-409**, Utah Code Annotated 1953

48 **53E-7-410**, Utah Code Annotated 1953

49 **59-7-109.1**, Utah Code Annotated 1953

50 **59-7-625**, Utah Code Annotated 1953

51 **59-10-1041**, Utah Code Annotated 1953

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

54 Section 1. Section **53E-1-202.1** is enacted to read:

55 **53E-1-202.1. Report to the Public Education Appropriations Subcommittee on the**

56 **Special Needs Opportunity Scholarship Program.**

57 (1) Beginning in 2021, the State Board of Education shall, in accordance with Section  
58 68-3-14, annually submit the report described in Section 53E-7-404 to the Public Education  
59 Appropriations Subcommittee.

60 (2) This section supersedes any conflicting provisions of Utah law.

61 Section 2. Section 53E-7-401 is enacted to read:

62 **CHAPTER 7. STUDENTS WITH DISABILITIES**

63 **Part 4. Special Needs Opportunity Scholarship Program**

64 **53E-7-401. Definitions.**

65 As used in this part:

66 (1) "Eligible student" means a student who:

67 (a) is eligible to participate in public school, in kindergarten or grades 1 through 12;

68 (b) is a resident of the state;

69 (c) (i) has an IEP; or

70 (ii) is determined by a multidisciplinary evaluation team to be eligible for services

71 under the Individuals with Disabilities Education Act, Subchapter II, 20 U.S.C. Secs. 1400 to  
72 1419; and

73 (d) during the school year for which the student is applying for the scholarship, is not:

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

76 (ii) a public school student.

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

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

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

82 (b) "Employee" does not include an individual who volunteers at the scholarship

83 granting organization or qualifying school.

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

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

89 (5) "Officer" means:

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

91 or

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

94 (6) "Program donations" means donations to the program under Section [53E-7-405](#).

95 (7) "Qualifying school" means a private school that:

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

97 (b) is approved by the state board under Section [53E-7-408](#); and

98 (c) meets the requirements described in Section [53E-7-403](#).

99 (8) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother,  
100 uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,  
101 sister-in-law, son-in-law, or daughter-in-law.

102 (9) "Scholarship" means a grant awarded to an eligible student:

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

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

105 (10) "Scholarship expense" means:

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

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

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

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

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

115 (11) "Scholarship granting organization" means an organization that is:

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

117 (b) recognized through an agreement with the state board as a scholarship granting  
118 organization, as described in Section [53E-7-404](#).

119 (12) "Scholarship student" means an eligible student who receives a scholarship under  
120 this part.

121 (13) "Special Needs Opportunity Scholarship Program" or "program" means the  
122 program established in Section [53E-7-402](#).

123 (14) "Value of the weighted pupil unit" means the amount established each year in the  
124 enacted public education budget that is multiplied by the number of weighted pupil units to  
125 yield the funding level for the basic state-supported school program.

126 Section 3. Section **53E-7-402** is enacted to read:

127 **53E-7-402. Special Needs Opportunity Scholarship Program.**

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

131 (2) A scholarship granting organization shall:

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

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

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

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

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

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

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

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

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

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

149 (4) The state board shall prepare and disseminate to a scholarship granting organization  
150 for distribution to a parent applying for a scholarship on behalf of a student:

151 (a) information on the program; and

152 (b) information on how a parent may enroll the parent's child in a public school.

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

156 Section 4. Section **53E-7-403** is enacted to read:

157 **53E-7-403. Qualifying school requirements.**

158 (1) A qualifying school shall:

159 (a) notify a scholarship granting organization of the qualifying school's intention to  
160 participate in the program;

161 (b) submit evidence to the scholarship granting organization that the qualifying school  
162 has been approved by the state board under Section [53E-7-408](#); and

163 (c) submit a signed affidavit to the scholarship granting organization that the qualifying

164 school will comply with the requirements of this part.

165 (2) A qualifying school shall comply with 42 U.S.C. Sec. 1981, and meet state and  
166 local health and safety laws and codes.

167 (3) Before the beginning of the school year immediately following a school year in  
168 which a qualifying school receives scholarship money equal to or more than \$100,000, the  
169 qualifying school shall file with a scholarship granting organization that allocates scholarship  
170 money to the qualifying school:

171 (a) a surety bond payable to the scholarship granting organization in an amount equal  
172 to the aggregate amount of scholarship money expected to be received during the school year;  
173 or

174 (b) financial information that demonstrates the financial viability of the qualifying  
175 school, as required by the scholarship granting organization.

176 (4) If a scholarship granting organization determines that a qualifying school has  
177 violated a provision of this part, the scholarship granting organization may interrupt  
178 disbursement of or withhold scholarship money from the qualifying school.

179 (5) (a) If the state board determines that a qualifying school no longer meets the  
180 eligibility requirements described in Section [53E-7-408](#), the state board may withdraw the state  
181 board's approval of the school.

182 (b) A private school that does not have the state board's approval under Section  
183 [53E-7-408](#) may not accept scholarship money under this part.

184 (6) A qualifying school shall, when administering an annual assessment required under  
185 Section [53E-7-408](#), ensure that the qualifying school uses a norm-referenced assessment.

186 Section 5. Section **53E-7-404** is enacted to read:

187 **53E-7-404. State board to administer the program.**

188 (1) The state board shall administer the program.

189 (2) The state board shall:

190 (a) provide a tax credit certificate form, for use by a scholarship granting organization

191 as described in Section 53E-7-407, that includes:

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

194 (ii) the date of the donation;

195 (iii) the amount of the donation;

196 (iv) the amount of the tax credit; and

197 (v) any other relevant information;

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

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

202 (d) establish uniform financial accounting standards for scholarship granting  
203 organizations;

204 (e) annually calculate the amount of the program donations cap described in Section  
205 53E-7-407; and

206 (f) beginning in 2021, in accordance with Section 53E-1-202.1, annually submit a  
207 report on the program to the Public Education Appropriations Subcommittee that includes:

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

210 (ii) administrative costs of the program;

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

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

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

216 (3) (a) In accordance with Subsection (4) and Title 63G, Chapter 6a, Utah Procurement  
217 Code, the state board shall issue a request for proposals and enter into at least one agreement



218 with an organization that is qualified as tax exempt under Section 501(c)(3), Internal Revenue  
219 Code, to be recognized by the state board as a scholarship granting organization.

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

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

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

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

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

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

231 (b) The state board may enter into an agreement described in Subsection (3)(a) with  
232 additional scholarship granting organizations after January 1, 2022, if the state board makes  
233 rules regarding how multiple scholarship granting organizations may issue tax credit  
234 certificates in accordance with Section [53E-7-407](#).

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

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

243 (5) (a) If the state board determines that a scholarship granting organization has  
244 violated a provision of this part or state board rule, the state board shall send written notice to

245 the scholarship granting organization explaining the violation and the remedial action required  
246 to correct the violation.

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

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

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

257 (d) A scholarship granting organization may not accept program donations while the  
258 scholarship granting organization:

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

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

261 (e) A scholarship granting organization that has an appeal pending under Subsection  
262 (5)(c)(ii) may continue to administer scholarships from previously donated program donations  
263 during the pending appeal.

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

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

268 (a) a scholarship granting organization's acceptance of program donations;

269 (b) the administration of scholarships to a qualifying school receiving scholarship  
270 money from a scholarship granting organization that is barred from participating in the  
271 program under Subsection (5)(c)(i);

272 (c) payment of scholarship money to qualifying schools by a scholarship granting  
273 organization;

274 (d) granting scholarship awards and disbursing scholarship money for nontuition  
275 scholarship expenses by a scholarship granting organization;

276 (e) when an eligible student does not continue in enrollment at a qualifying school:

277 (i) requiring the scholarship granting organization to:

278 (A) notify the state board; and

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

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

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

284 (g) requiring the scholarship granting organization, in accordance with the Family  
285 Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, to submit to the state board:

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

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

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

290 (iv) any other information requested by the state board for the purpose of completing  
291 the annual report described in Section [53E-1-202.1](#).

292 Section 6. Section **53E-7-405** is enacted to read:

293 **53E-7-405. Program donations -- Scholarship granting organization**  
294 **requirements.**

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

298 (2) In accordance with Section [53E-7-404](#), an organization may enter into an

299 agreement with the state board to be a scholarship granting organization.  
300       (3) A scholarship granting organization shall:  
301       (a) accept program donations;  
302       (b) adopt an application process in accordance with Subsection (5);  
303       (c) review scholarship applications and determine scholarship awards;  
304       (d) allocate scholarship money to a scholarship student's parent or, on the parent's  
305 behalf, to a qualifying school in which the scholarship student is enrolled;  
306       (e) adopt a process, with state board approval, that allows a parent to use a scholarship  
307 to pay for a nontuition scholarship expense for the scholarship student;  
308       (f) ensure that:  
309       (i) at least 92% of the scholarship granting organization's revenue from program  
310 donations is spent on scholarships;  
311       (ii) up to 5% of the scholarship granting organization's revenue from program  
312 donations is spent on administration of the program;  
313       (iii) up to 3% of the scholarship granting organization's revenue from program  
314 donations is spent on marketing and fundraising costs; and  
315       (iv) all revenue from program donations' interest or investments is spent on  
316 scholarships;  
317       (g) carry forward no more than 40% of the scholarship granting organization's program  
318 donations from the state fiscal year in which the scholarship granting organization received the  
319 program donations to the following state fiscal year;  
320       (h) at the end of a fiscal year, remit to the state treasurer donation amounts greater than  
321 the amount described in Subsection (3)(g);  
322       (i) prohibit a scholarship granting organization employee or officer from handling,  
323 managing, or processing program donations, if, based on a criminal background check  
324 conducted by the state board in accordance with Section [53E-7-404](#), the state board identifies  
325 the employee or officer as posing a risk to the appropriate use of program donations;

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

328 (k) report to the state board on or before June 1 of each year the following information,  
329 prepared by a certified public accountant:

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

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

333 (iii) the total number and total dollar amount of scholarships the scholarship granting  
334 organization awarded during the previous calendar year; and

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

338 (l) issue tax credit certificates as described in Section [53E-7-407](#); and

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

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

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

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

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

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

350 "I acknowledge that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

378 (A) the scholarship granting organization; and

379 (B) the scholarship granting organization's accounts and records pertaining to program

380 donations; and

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

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

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

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

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

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

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

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

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

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

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

406 (b) A scholarship granting organization shall notify a scholarship recipient if the

407 scholarship granting organization stops allocation of the recipient's scholarship money to a  
408 qualifying school under Subsection (8)(a).

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

412 (10) A scholarship granting organization may not:

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

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

417 Section 7. Section 53E-7-406 is enacted to read:

418 **53E-7-406. Private school regulation -- Student records.**

419 (1) Nothing in this part:

420 (a) grants additional authority to any state agency or LEA to regulate private schools  
421 except as expressly described in this part; or

422 (b) expands the regulatory authority of the state, a state office holder, or a local school  
423 district to impose any additional regulation of a qualifying school beyond those necessary to  
424 enforce the requirements of the program.

425 (2) A qualifying school shall be given the maximum freedom to provide for the  
426 educational needs of a scholarship recipient who attends the qualifying school without  
427 unlawful governmental control.

428 (3) Except as provided in Section 53E-7-403, a qualifying school may not be required  
429 to alter the qualifying school's creed, practices, admission policy, or curriculum in order to  
430 accept scholarship money.

431 (4) A local education agency or school in a local education agency in which a  
432 scholarship recipient was previously enrolled shall provide to a qualifying school in which the  
433 scholarship recipient is currently enrolled a copy of all requested school records relating to the



434 scholarship recipient, subject to:

435 (a) Title 53E, Chapter 9, Student Privacy and Data Protection; and

436 (b) Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g.

437 Section 8. Section **53E-7-407** is enacted to read:

438 **53E-7-407. Tax credit certificates issued by a scholarship granting organization.**

439 (1) In accordance with this section and subject to Subsection (3), a scholarship granting  
440 organization shall provide a tax credit certificate to a person that makes a donation as described  
441 in Section [53E-7-405](#).

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

444 (b) The scholarship granting organization shall provide the information from a  
445 completed tax credit certificate to the State Tax Commission electronically and in a manner  
446 prescribed by the State Tax Commission.

447 (c) A scholarship granting organization shall issue a tax credit certificate within 30  
448 days after the day on which a person makes a donation to the program.

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

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

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

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

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

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

460 (i) issue tax credit certificates in the order that the scholarship granting organization

461 received a corresponding donation; and

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

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

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

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

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

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

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

481 Section 9. Section **53E-7-408** is enacted to read:

482 **53E-7-408. Eligible private schools.**

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

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

486 (b) (i) contract with an independent licensed certified public accountant to conduct an  
487 Agreed Upon Procedures engagement as adopted by the state board, or obtain an audit and

488 report from a licensed independent certified public accountant that conforms with the following  
489 requirements:

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

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

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

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

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

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

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

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

504 (ii) tuition costs;

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

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

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

510 (ii) report the results of the assessment described in Subsection (1)(f)(i) to the  
511 scholarship student's parent;

512 (g) employ or contract with teachers who:

513 (i) hold baccalaureate or higher degrees;

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

515 (iii) have the necessary skills, knowledge, or expertise that qualifies the teacher to  
516 provide instruction:

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

518 (B) to the special needs students taught;

519 (h) maintain documentation demonstrating that teachers at the private school meet the  
520 qualifications described in Subsection (1)(g);

521 (i) require the following individuals to submit to a nationwide, fingerprint-based  
522 criminal background check and ongoing monitoring, in accordance with Section [53G-11-402](#),  
523 as a condition for employment or appointment, as authorized by the Adam Walsh Child  
524 Protection and Safety Act of 2006, Pub. L. No. 109-248:

525 (i) an employee who does not hold a current Utah educator license issued by the state  
526 board under Chapter 6, Education Professional Licensure;

527 (ii) a contract employee; and

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

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

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

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

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

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

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

541 (4) Residential treatment facilities licensed by the state are not eligible to enroll

542 scholarship students.

543 (5) A private school intending to enroll scholarship students shall submit an application  
544 to the state board by May 1 of the school year preceding the school year in which the private  
545 school intends to enroll scholarship students.

546 (6) The state board shall:

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

549 (b) make available to the public a list of private schools approved under this section.

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

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

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

554 Section 10. Section **53E-7-409** is enacted to read:

555 **53E-7-409. Public Education Appropriations Subcommittee to conduct feasibility**  
556 **study.**

557 The Public Education Appropriations Subcommittee shall:

558 (1) study the feasibility of combining the program with the Carson Smith Scholarship  
559 Program created in Section [53F-4-302](#);

560 (2) prepare a written report of the study's findings, including any legislative  
561 recommendations; and

562 (3) on or before the Executive Appropriations Committee's November 2023 meeting,  
563 submit the report to the Executive Appropriations Committee.

564 Section 11. Section **53E-7-410** is enacted to read:

565 **53E-7-410. Background checks for scholarship granting organizations -- State**  
566 **board responsibilities -- Bureau responsibilities -- Fees.**

567 (1) As used in this section:

568 (a) "Applicant" means an employee or officer of a scholarship granting organization.

569 (b) "Bureau" means the Bureau of Criminal Identification created in Section [53-10-201](#)  
570 within the Department of Public Safety.

571 (c) "Department" means the Department of Public Safety.

572 (d) "Division" means the Criminal Investigations and Technical Services Division  
573 created in Section [53-10-103](#).

574 (e) "FBI" means the Federal Bureau of Investigation.

575 (f) "FBI Rap Back System" means the rap back system maintained by the FBI.

576 (g) "Personal identifying information" means:

577 (i) current name;

578 (ii) former names;

579 (iii) nicknames;

580 (iv) aliases;

581 (v) date of birth;

582 (vi) address;

583 (vii) telephone number;

584 (viii) driver license number or other government-issued identification number;

585 (ix) social security number; and

586 (x) fingerprints.

587 (h) "Rap back system" means a system that enables authorized entities to receive  
588 ongoing status notifications of any criminal history reported on individuals whose fingerprints  
589 are registered in the system.

590 (i) "WIN Database" means the Western Identification Network Database that consists  
591 of eight western states sharing one electronic fingerprint database.

592 (2) The state board shall:

593 (a) require an applicant to submit to a nationwide criminal background check and  
594 ongoing monitoring in accordance with Section [53E-7-404](#);

595 (b) collect the following from an applicant:

- 596 (i) personal identifying information;  
597 (ii) a fee described in Subsection (4); and  
598 (iii) consent, on a form specified by the state board, for:  
599 (A) an initial fingerprint-based background check by the FBI and bureau;  
600 (B) retention of personal identifying information for ongoing monitoring through  
601 registration with the systems described in Subsection (3); and  
602 (C) disclosure of any criminal history information to the state board;  
603 (c) submit an applicant's personal identifying information to the bureau for:  
604 (i) an initial fingerprint-based background check by the FBI and bureau; and  
605 (ii) ongoing monitoring through registration with the systems described in Subsection  
606 (3) if the results of the initial background check do not contain disqualifying criminal history  
607 information as determined by the state board in accordance with Section [53E-7-404](#);  
608 (d) identify the appropriate privacy risk mitigation strategy that will be used to ensure  
609 that the state board only receives notifications for individuals with whom the state board  
610 maintains an authorizing relationship; and  
611 (e) submit the information to the bureau for ongoing monitoring through registration  
612 with the systems described in Subsection (3)(a).
- 613 (3) The bureau shall:  
614 (a) upon request from the state board, register the fingerprints submitted by the state  
615 board as part of a background check with:  
616 (i) the WIN Database rap back system, or any successor system; and  
617 (ii) the FBI Rap Back System;  
618 (b) notify the state board when a new entry is made against an individual whose  
619 fingerprints are registered with the rap back systems described in Subsection (3)(a) regarding:  
620 (i) an alleged offense; or  
621 (ii) a conviction, including a plea in abeyance;  
622 (c) assist the state board to identify the appropriate privacy risk mitigation strategy that

623 is to be used to ensure that the state board only receives notifications for individuals with  
624 whom the authorized entity maintains an authorizing relationship; and

625 (d) collaborate with the state board to provide training to appropriate state board  
626 employees on the notification procedures and privacy risk mitigation strategies described in  
627 this section.

628 (4) (a) The division shall impose fees set in accordance with Section [63J-1-504](#) for an  
629 applicant fingerprint card, name check, and to register fingerprints under this section.

630 (b) Funds generated under this Subsection (4) shall be deposited into the General Fund  
631 as a dedicated credit by the department to cover the costs incurred in providing the information.

632 Section 12. Section **59-7-109.1** is enacted to read:

633 **59-7-109.1. Charitable contributions to the Special Needs Opportunity**  
634 **Scholarship Program.**

635 (1) Notwithstanding anything to the contrary in Section [59-7-109](#), a taxpayer may not  
636 subtract a charitable contribution that meets the requirements of Section [59-7-109](#) to the extent  
637 that the taxpayer claims a tax credit under Section [59-7-625](#) for the same charitable  
638 contribution.

639 (2) This section supersedes any conflicting provisions of Utah law.

640 Section 13. Section **59-7-625** is enacted to read:

641 **59-7-625. Nonrefundable tax credit for donation to Special Needs Opportunity**  
642 **Scholarship Program.**

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

646 (2) (a) If the amount of a tax credit listed on the tax credit certificate exceeds a  
647 taxpayer's liability under this chapter for a taxable year, the taxpayer may carry forward the  
648 amount of the tax credit exceeding the liability for a period that does not exceed the next three  
649 taxable years.



650 (b) A taxpayer may not carry back the amount of the tax credit that exceeds the  
651 taxpayer's tax liability for the taxable year.

652 Section 14. Section **59-10-1041** is enacted to read:

653 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**  
654 **Scholarship Program.**

655 (1) Except as provided in Subsection (3), a claimant, estate, or trust that makes a  
656 donation to the Special Needs Opportunity Scholarship Program established in Section  
657 53E-7-402, may claim a nonrefundable tax credit equal to 100% of the amount stated on a tax  
658 credit certificate issued in accordance with Section 53E-7-407.

659 (2) (a) If the amount of a tax credit listed on the tax credit certificate exceeds a  
660 claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the claimant,  
661 estate, or trust may carry forward the amount of the tax credit exceeding the liability for a  
662 period that does not exceed the next three taxable years.

663 (b) A claimant, estate, or trust may not carry back the amount of the tax credit that  
664 exceeds the claimant's, estate's, or trust's tax liability for the taxable year.

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

669 Section 15. **Appropriation.**

670 The following sums of money are appropriated for the fiscal year beginning July 1,  
671 2020, and ending June 30, 2021. These are additions to amounts previously appropriated for  
672 fiscal year 2021. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures  
673 Act, the Legislature appropriates the following sums of money from the funds or accounts  
674 indicated for the use and support of the government of the state of Utah.

675 ITEM 1

676 To State Board of Education -- Initiative Programs

**H.B. 4003**

**Enrolled Copy**

677 From Education Fund \$60,000

678 Schedule of Programs:

679 Special Needs Opportunity Scholarship Administration \$60,000

680 The Legislature intends that the State Board of Education use the appropriation under  
681 this section for costs associated with administering the Special Needs Opportunity Scholarship  
682 Program as described in Section [53E-7-404](#).

683 Section 16. **Effective date.**

684 (1) Except as provided in Subsection (2), this bill takes effect on January 1, 2021.

685 (2) The enactment of Sections [59-7-109.1](#), [59-7-625](#), and [59-10-1041](#) take effect for a  
686 taxable year beginning on or after January 1, 2021.