

1                   **SPECIAL NEEDS OPPORTUNITY SCHOLARSHIP PROGRAM**

2                                   2020 FOURTH SPECIAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Mike Schultz**

5                                   Senate Sponsor: Lincoln Fillmore

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7                   **LONG TITLE**

8                   **General Description:**

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

11                   **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ defines terms;
- 14                   ▶ creates the Special Needs Opportunity Scholarship Program (program);
- 15                   ▶ establishes requirements for a scholarship recipient and a private school that accepts  
16 scholarship money;
- 17                   ▶ requires the State Board of Education to oversee the program, including:
  - 18                   • selection of a scholarship granting organization; and
  - 19                   • reporting to the Public Education Appropriations Subcommittee;
- 20                   ▶ establishes the duties of a scholarship granting organization, including:
  - 21                   • accepting program donations;
  - 22                   • awarding scholarships; and
  - 23                   • issuing tax credit certificates;
- 24                   ▶ creates a nonrefundable corporate income tax credit and a nonrefundable individual  
25 income tax credit for certain program donations;
- 26                   ▶ prohibits a taxpayer from claiming more than one income tax benefit from making a  
27 program donation; and



28           ▶ 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           **53-10-108.1**, Utah Code Annotated 1953
- 39           **53E-1-202.1**, Utah Code Annotated 1953
- 40           **53E-7-401**, Utah Code Annotated 1953
- 41           **53E-7-402**, Utah Code Annotated 1953
- 42           **53E-7-403**, Utah Code Annotated 1953
- 43           **53E-7-404**, Utah Code Annotated 1953
- 44           **53E-7-405**, Utah Code Annotated 1953
- 45           **53E-7-406**, Utah Code Annotated 1953
- 46           **53E-7-407**, Utah Code Annotated 1953
- 47           **53E-7-408**, Utah Code Annotated 1953
- 48           **53E-7-409**, 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



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

54           Section 1. Section **53-10-108.1** is enacted to read:

55           **53-10-108.1. Restrictions on access, use, and contents of division records related to**  
56 **State Board of Education employment background checks -- Limited use of records for**  
57 **employment purposes -- Challenging accuracy of records -- Usage fees -- Penalty for**  
58 **misuse of records.**

59 (1) As used in this section:

60 (a) "FBI Rap Back System" means the rap back system maintained by the Federal  
61 Bureau of Investigation.

62 (b) "Rap back system" means a system that enables authorized entities to receive  
63 ongoing status notifications of any criminal history reported on individuals whose fingerprints  
64 are registered in the system.

65 (c) "WIN Database" means the Western Identification Network Database that consists  
66 of eight western states sharing one electronic fingerprint database.

67 (2) Notwithstanding anything to the contrary in Subsection 53-10-108(2), information  
68 from a criminal history record, including information obtained from a fingerprint background  
69 check, name check, warrant of arrest information, or information from division files, may be  
70 disseminated to the State Board of Education for employment background checks of  
71 individuals in accordance with Section 53E-7-404.

72 (3) (a) Before requesting information, the State Board of Education shall obtain a  
73 signed waiver from the person whose information is requested.

74 (b) The waiver described in Subsection (3)(a) shall notify the signee:

75 (i) that a criminal history background check will be conducted;

76 (ii) who will see the information; and

77 (iii) how the information will be used.

78 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
79 division may make rules to implement this Subsection (3).

80 (4) Any criminal history record information obtained from division files under this  
81 section may be used only for the purposes for which it was provided and may not be further  
82 disseminated.

83 (5) This section does not preclude the use of the division's central computing facilities  
84 for the storage and retrieval of criminal history record information.

85 (6) Before providing information requested under this section, the division shall give  
86 priority to the needs of criminal justice agencies.

87 (7) (a) Subject to Subsection (7)(b), the State Board of Education may request that the  
88 division register fingerprints taken for the purpose of conducting current and future criminal  
89 background checks under this section with:

90 (i) the WIN Database rap back system, or any successor system;

91 (ii) the FBI Rap Back System; or

92 (iii) a system maintained by the division.

93 (b) The State Board of Education may only make a request under Subsection (7)(a) if

94 the State Board of Education:

95 (i) has the authority through state or federal statute or federal executive order;

96 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;

97 and

98 (iii) establishes a privacy risk mitigation strategy to ensure that the State Board of  
99 Education only receives notifications for individuals with whom the State Board of Education  
100 maintains an authorizing relationship.

101 (8) (a) The division shall impose fees set in accordance with Section 63J-1-504 for the  
102 fingerprint card, name check, and to register fingerprints under Subsection (7)(a).

103 (b) The department shall deposit funds generated under this Subsection (8) into the  
104 General Fund as a dedicated credit to cover the costs incurred in providing information under  
105 this section.

106 (c) The division may collect fees charged by an outside agency for services required  
107 under this section.

108 (9) This section supersedes any conflicting provisions of Utah law.

109 Section 2. Section 53E-1-202.1 is enacted to read:

110 **53E-1-202.1. Report to the Public Education Appropriations Subcommittee on the**  
111 **Special Needs Opportunity Scholarship Program.**

112 (1) Beginning in 2021, the State Board of Education shall, in accordance with Section  
113 68-3-14, annually submit the report described in Section 53E-7-404 to the Public Education  
114 Appropriations Subcommittee.

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

116 Section 3. Section 53E-7-401 is enacted to read:

117 **CHAPTER 7. STUDENTS WITH DISABILITIES**

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

119 **53E-7-401. Definitions.**

120 As used in this part:

- 121 (1) "Eligible student" means a student who:  
122 (a) is eligible to participate in public school, in kindergarten or grades 1 through 12;  
123 (b) is a resident of the state;  
124 (c) (i) has an IEP;  
125 (ii) has an individualized family service plan in accordance with the Individuals with  
126 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., if entering kindergarten; or  
127 (iii) is determined by a multidisciplinary evaluation team to be eligible for services  
128 under the Individuals with Disabilities Education Act, Subchapter II, 20 U.S.C. Secs. 1400 to  
129 1419; and  
130 (d) during the school year for which the student is applying for the scholarship, is not:  
131 (i) a student who receives a scholarship under the Carson Smith Scholarship Program  
132 created in Section [53F-4-302](#); or  
133 (ii) a public school student.  
134 (2) (a) "Employee" means an individual working in a position in which the individual's  
135 salary, wages, pay, or compensation, including as a contractor, is paid from:  
136 (i) program donations to a scholarship granting organization; or  
137 (ii) scholarship money allocated to a qualifying school by a scholarship granting  
138 organization under Section [53E-7-405](#).  
139 (b) "Employee" does not include an individual who volunteers at the scholarship  
140 granting organization or qualifying school.  
141 (3) "Officer" means:  
142 (a) a member of the board of a scholarship granting organization or qualifying school;  
143 or  
144 (b) the chief administrative officer of a scholarship granting organization or qualifying  
145 school.  
146 (4) "Program donations" means donations to the program under Section [53E-7-405](#).  
147 (5) "Qualifying school" means a private school that:  
148 (a) provides kindergarten, elementary, or secondary education;  
149 (b) is approved by the state board under Section [53E-7-408](#); and  
150 (c) meets the requirements described in Section [53E-7-403](#).  
151 (6) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother,

152 uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,  
153 sister-in-law, son-in-law, or daughter-in-law.

154 (7) "Scholarship" means a grant awarded to an eligible student:

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

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

157 (8) "Scholarship expense" means:

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

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

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

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

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

167 (9) "Scholarship granting organization" means an organization that is:

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

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

171 (10) "Scholarship student" means an eligible student who receives a scholarship under  
172 this part.

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

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

178 Section 4. Section **53E-7-402** is enacted to read:

179 **53E-7-402. Special Needs Opportunity Scholarship Program.**

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

- 183 (2) A scholarship granting organization shall:  
184 (a) award, in accordance with this part, scholarships to eligible students; and  
185 (b) determine the amount of a scholarship in accordance with Subsection (3).  
186 (3) A scholarship granting organization shall determine a full-year scholarship award to  
187 pay for the cost of one or more scholarship expenses in an amount not more than:  
188 (a) for an eligible student in grades 1 through 12 with an IEP, whose parent's adjusted  
189 gross household income is:  
190 (i) 185% or less of the federal poverty level, the value of the weighted pupil unit  
191 multiplied by 2.5;  
192 (ii) between 185% and 555% of the federal poverty level, the value of the weighted  
193 pupil unit multiplied by two;  
194 (iii) more than 555% of the federal poverty level, the value of the weighted pupil unit  
195 multiplied by 1.5;  
196 (b) for an eligible student in grades 1 through 12 who does not have an IEP, the value  
197 of the weighted pupil unit;  
198 (c) for an eligible student in kindergarten with an IEP, the value of the weighted pupil  
199 unit; or  
200 (d) for an eligible student in kindergarten who does not have an IEP, half the value of  
201 the weighted pupil unit.  
202 (4) The state board shall prepare and disseminate to a scholarship granting organization  
203 for distribution to a parent applying for a scholarship on behalf of a student:  
204 (a) information on the program; and  
205 (b) information on how a parent may enroll the parent's child in a public school.  
206 (5) A scholarship granting organization shall distribute the information described in  
207 Subsection (4) to a parent who applies to the scholarship granting organization for a  
208 scholarship on behalf of the parent's student.  
209 Section 5. Section **53E-7-403** is enacted to read:  
210 **53E-7-403. Qualifying school requirements.**  
211 (1) A qualifying school shall:  
212 (a) notify a scholarship granting organization of the qualifying school's intention to  
213 participate in the program;

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

216 (c) submit a signed affidavit to the scholarship granting organization that the qualifying  
217 school will comply with the requirements of this part.

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

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

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

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

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

232 (5) (a) If the state board determines that a qualifying school no longer meets the  
233 eligibility requirements described in Section 53E-7-408, the state board may withdraw the state  
234 board's approval of the school.

235 (b) A private school that does not have the state board's approval under Section  
236 53E-7-408 may not accept scholarship money under this part.

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

239 Section 6. Section 53E-7-404 is enacted to read:

240 **53E-7-404. State board to administer the program.**

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

242 (2) The state board shall:

243 (a) provide a tax credit certificate form, for use by a scholarship granting organization  
244 as described in Section 53E-7-407, that includes:

- 245 (i) the name, address, and social security number or federal employer identification  
246 number of the person that makes a donation under Section 53E-7-405;
- 247 (ii) the date of the donation;  
248 (iii) the amount of the donation;  
249 (iv) the amount of the tax credit; and  
250 (v) any other relevant information;
- 251 (b) conduct a financial review or audit of a scholarship granting organization, if the  
252 state board receives evidence of fraudulent practice by the scholarship granting organization;
- 253 (c) conduct a criminal background check on each scholarship granting organization  
254 employee and scholarship granting organization officer;
- 255 (d) establish uniform financial accounting standards for scholarship granting  
256 organizations;
- 257 (e) annually calculate the amount of the program donations cap described in Section  
258 53E-7-407; and
- 259 (f) beginning in 2021, in accordance with Section 53E-1-202.1, annually submit a  
260 report on the program to the Public Education Appropriations Subcommittee that includes:
- 261 (i) for the 2020-21, 2021-22, 2022-23, and 2023-24 school years, the amount of tuition  
262 and fees a qualifying school charges;
- 263 (ii) administrative costs of the program;  
264 (iii) the number of scholarship students from each school district;  
265 (iv) standards used by the scholarship granting organization to determine whether a  
266 student is an eligible student; and
- 267 (v) savings to the state and LEAs as a result of scholarship students exiting the public  
268 school system.
- 269 (3) (a) In accordance with Subsection (4) and Title 63G, Chapter 6a, Utah Procurement  
270 Code, the state board shall issue a request for proposals and enter into at least one agreement  
271 with an organization that is qualified as tax exempt under Section 501(c)(3), Internal Revenue  
272 Code, to be recognized by the state board as a scholarship granting organization.
- 273 (b) An organization that responds to a request for proposals described in Subsection  
274 (3)(a) shall submit the following information in the organization's response:
- 275 (i) a copy of the organization's incorporation documents;

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

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

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

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

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

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

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

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

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

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

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

310 (d) A scholarship granting organization may not accept program donations while the  
311 scholarship granting organization:

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

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

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

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

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

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

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

325 (c) payment of scholarship money to qualifying schools by a scholarship granting  
326 organization;

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

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

330 (i) requiring the scholarship granting organization to:

331 (A) notify the state board; and

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

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

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

337 (g) requiring the scholarship granting organization, in accordance with the Family

338 Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, to submit to the state board:

339 (i) for the 2020-21, 2021-22, 2022-23, and 2023-24 school years, the amount of tuition

340 and fees a qualifying school charges;

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

342 (ii) standards used to determine whether a student is an eligible student; and

343 (iii) any other information requested by the state board for the purpose of completing

344 the annual report described in Section [53E-1-202.1](#).

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

346 **53E-7-405. Program donations -- Scholarship granting organization**  
347 **requirements.**

348 (1) A person that makes a donation to a scholarship granting organization to help fund

349 scholarships through the program may be eligible to receive a nonrefundable tax credit as

350 described in Sections [59-7-625](#) and [59-10-1041](#).

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

352 agreement with the state board to be a scholarship granting organization.

353 (3) A scholarship granting organization shall:

354 (a) accept program donations;

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

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

357 (d) allocate scholarship money to a scholarship student's parent or, on the parent's

358 behalf, to a qualifying school in which the scholarship student is enrolled;

359 (e) adopt a process, with state board approval, that allows a parent to use a scholarship

360 to pay for a nontuition scholarship expense for the scholarship student;

361 (f) ensure that:

362 (i) at least 92% of the scholarship granting organization's revenue from program

363 donations is spent on scholarships;

364 (ii) up to 5% of the scholarship granting organization's revenue from program

365 donations is spent on administration of the program;

366 (iii) up to 3% of the scholarship granting organization's revenue from program

367 donations is spent on marketing and fundraising costs; and

368 (iv) all revenue from program donations' interest or investments is spent on

369 scholarships;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

398 (5) (a) An application for a scholarship shall contain an acknowledgment by the  
399 applicant's parent that the qualifying school selected by the parent for the applicant to attend

400 using a scholarship is capable of providing the level of disability services required for the  
401 student.

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

403 "I acknowledge that:

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

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

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

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

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

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

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

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

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

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

424 (a) complies with the uniform financial accounting standards described in Section  
425 53E-7-404; and

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

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

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

431 (A) the scholarship granting organization; and  
432 (B) the scholarship granting organization's accounts and records pertaining to program  
433 donations; and  
434 (ii) in accordance with Subsection (7)(b), report the results of the audit to the state  
435 board for review.  
436 (b) For the report described in Subsection (7)(a)(ii), the scholarship granting  
437 organization shall:  
438 (i) include the scholarship granting organization's financial statements in a format that  
439 meets generally accepted accounting standards; and  
440 (ii) submit the report to the state board no later than 180 days after the last day of a  
441 scholarship granting organization's fiscal year.  
442 (c) The certified public accountant shall conduct an audit described in Subsection  
443 (7)(a)(i) in accordance with generally accepted auditing standards and rules made by the state  
444 board.  
445 (d) (i) The state board shall review a report submitted under this section and may  
446 request that the scholarship granting organization revise or supplement the report if the report  
447 is not in compliance with the provisions of this Subsection (7) or rules adopted by the state  
448 board.  
449 (ii) A scholarship granting organization shall provide a revised report or supplement to  
450 the report no later than 45 days after the day on which the state board makes a request  
451 described in Subsection (7)(d)(i).  
452 (8) (a) A scholarship granting organization may not allocate scholarship money to a  
453 qualifying school if:  
454 (i) the scholarship granting organization determines that the qualifying school  
455 intentionally or substantially misrepresented information on overpayment;  
456 (ii) the qualifying school fails to refund an overpayment in a timely manner; or  
457 (iii) the qualifying school routinely fails to provide scholarship recipients with  
458 promised educational goods or services.  
459 (b) A scholarship granting organization shall notify a scholarship recipient if the  
460 scholarship granting organization stops allocation of the recipient's scholarship money to a  
461 qualifying school under Subsection (8)(a).

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

465 (10) A scholarship granting organization may not:

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

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

470 Section 8. Section **53E-7-406** is enacted to read:

471 **53E-7-406. Private school regulation -- Student records.**

472 (1) Nothing in this part:

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

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

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

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

484 (4) A local education agency or school in a local education agency in which a  
485 scholarship recipient was previously enrolled shall provide to a qualifying school in which the  
486 scholarship recipient is currently enrolled a copy of all requested school records relating to the  
487 scholarship recipient, subject to:

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

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

490 Section 9. Section **53E-7-407** is enacted to read:

491 **53E-7-407. Tax credit certificates issued by a scholarship granting organization.**

492 (1) In accordance with this section and subject to Subsection (3), a scholarship granting

493 organization shall provide a tax credit certificate to a person that makes a donation as described  
494 in Section 53E-7-405.

495 (2) (a) The scholarship granting organization shall issue a tax credit certificate  
496 described in Subsection (1) on the tax credit certificate form described in Section 53E-7-404.

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

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

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

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

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

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

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

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

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

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

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

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

523 (b) For a calendar year after 2021, the state board shall calculate the program donations

524 cap as follows:

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

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

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

534 Section 10. Section **53E-7-408** is enacted to read:

535 **53E-7-408. Eligible private schools.**

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

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

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

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

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

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

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

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

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

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

- 555 (i) the special education services that will be provided to the student, including the cost  
556 of those services;
- 557 (ii) tuition costs;  
558 (iii) additional fees a parent will be required to pay during the school year; and  
559 (iv) the skill or grade level of the curriculum in which the prospective student will  
560 participate;
- 561 (f) (i) administer an annual assessment of each scholarship student's academic  
562 progress; and
- 563 (ii) report the results of the assessment described in Subsection (1)(f)(i) to the  
564 scholarship student's parent;
- 565 (g) employ or contract with teachers who:
- 566 (i) hold baccalaureate or higher degrees;  
567 (ii) have at least three years of teaching experience in public or private schools; or  
568 (iii) have the necessary skills, knowledge, or expertise that qualifies the teacher to  
569 provide instruction:
- 570 (A) in the subject or subjects taught; and  
571 (B) to the special needs students taught;
- 572 (h) maintain documentation demonstrating that teachers at the private school meet the  
573 qualifications described in Subsection (1)(g);
- 574 (i) require the following individuals to submit to a nationwide, fingerprint-based  
575 criminal background check and ongoing monitoring, in accordance with Section [53G-11-402](#),  
576 as a condition for employment or appointment, as authorized by the Adam Walsh Child  
577 Protection and Safety Act of 2006, Pub. L. No. 109-248:
- 578 (i) an employee who does not hold a current Utah educator license issued by the state  
579 board under Chapter 6, Education Professional Licensure;
- 580 (ii) a contract employee; and  
581 (iii) a volunteer who is given significant unsupervised access to a student in connection  
582 with the volunteer's assignment; and
- 583 (j) provide to the parent of a scholarship student the relevant credentials of the teachers  
584 who will be teaching the scholarship student.
- 585 (2) A private school is not eligible to enroll scholarship students if:

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

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

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

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

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

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

599 (6) The state board shall:

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

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

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

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

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

607 Section 11. Section **53E-7-409** is enacted to read:

608 **53E-7-409. Public Education Appropriations Subcommittee to conduct feasibility**  
609 **study.**

610 The Public Education Appropriations Subcommittee shall:

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

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

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

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

618 **59-7-109.1. Charitable contributions to the Special Needs Opportunity**

619 **Scholarship Program.**

620 (1) Notwithstanding anything to the contrary in Section 59-7-109, a taxpayer may not  
621 subtract a charitable contribution that meets the requirements of Section 59-7-109 to the extent  
622 that the taxpayer claims a tax credit under Section 59-7-625 for the same charitable  
623 contribution.

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

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

626 **59-7-625. Nonrefundable tax credit for donation to Special Needs Opportunity**

627 **Scholarship Program.**

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

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

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

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

638 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**

639 **Scholarship Program.**

640 (1) Except as provided in Subsection (3), a claimant, estate, or trust that makes a  
641 donation to the Special Needs Opportunity Scholarship Program established in Section  
642 53E-7-402, may claim a nonrefundable tax credit equal to 100% of the amount stated on a tax  
643 credit certificate issued in accordance with Section 53E-7-407.

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

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

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

654 Section 15. **Appropriation.**

655 The following sums of money are appropriated for the fiscal year beginning July 1,  
656 2020, and ending June 30, 2021. These are additions to amounts previously appropriated for  
657 fiscal year 2021. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures  
658 Act, the Legislature appropriates the following sums of money from the funds or accounts  
659 indicated for the use and support of the government of the state of Utah.

660 ITEM 1

661 To State Board of Education -- Initiative Programs

662 From Education Fund

\$60,000

663 Schedule of Programs:

664 Special Needs Opportunity Scholarship Administration      \$60,000

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

668 Section 16. **Effective date.**

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

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