

1 **EDUCATION DEADLINE AND FISCAL FLEXIBILITY**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Lincoln Fillmore**

5 House Sponsor: Jefferson Moss

7 **LONG TITLE**

8 **General Description:**

9 This bill extends or provides flexibility regarding certain education deadlines and
10 spending restrictions.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ delays the date after which the State Board of Education may enter into an
14 agreement with additional scholarship granting organizations;
- 15 ▶ allows a local education agency (LEA) to transfer a portion of state restricted funds
16 in the LEA's general fund to be used without the state restrictions under certain
17 conditions;
- 18 ▶ extends certain expenditure deadlines by one fiscal year;
- 19 ▶ delays by one year a requirement that a student fee be equal to or less than the cost
20 to the LEA of providing an activity, course, or program;
- 21 ▶ establishes a repeal date; and
- 22 ▶ makes technical and conforming changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **53E-7-404**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

30 **53G-7-503**, as last amended by Laws of Utah 2020, Chapters 51 and 408

31 **63I-2-253**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 13

32 ENACTS:

33 **53F-2-209**, Utah Code Annotated 1953

34

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

36 Section 1. Section **53E-7-404** is amended to read:

37 **53E-7-404. State board to administer the program.**

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

39 (2) The state board shall:

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

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

44 (ii) the date of the donation;

45 (iii) the amount of the donation;

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

47 (v) any other relevant information;

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

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

52 (d) establish uniform financial accounting standards for scholarship granting
53 organizations;

54 (e) annually calculate the amount of the program donations cap described in Section
55 **53E-7-407**; and

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

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

60 (ii) administrative costs of the program;

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

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

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

66 (3) (a) In accordance with Subsection (4) and Title 63G, Chapter 6a, Utah Procurement
67 Code, the state board shall issue a request for proposals and enter into at least one agreement
68 with an organization that is qualified as tax exempt under Section 501(c)(3), Internal Revenue
69 Code, to be recognized by the state board as a scholarship granting organization.

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

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

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

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

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

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

81 (b) The state board may enter into an agreement described in Subsection (3)(a) with
82 additional scholarship granting organizations after January 1, [~~2022~~] 2023, if the state board
83 makes rules regarding how multiple scholarship granting organizations may issue tax credit
84 certificates in accordance with Section [53E-7-407](#).

85 (c) (i) No later than 10 days after the day on which the state board enters into an

86 agreement with a scholarship granting organization, the state board shall forward the name and
87 contact information of the scholarship granting organization to the State Tax Commission.

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

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

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

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

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

107 (d) A scholarship granting organization may not accept program donations while the
108 scholarship granting organization:

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

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

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

114 (6) The state board shall provide for a process for a scholarship granting organization
115 to report information as required under Section 53E-7-405.

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

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

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

122 (c) payment of scholarship money to qualifying schools by a scholarship granting
123 organization;

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

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

127 (i) requiring the scholarship granting organization to:

128 (A) notify the state board; and

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

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

133 (f) audit and report requirements as described in Section 53E-7-405; and

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

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

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

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

140 (iv) any other information requested by the state board for the purpose of completing
141 the annual report described in Section 53E-1-202.1.

142 Section 2. Section 53F-2-209 is enacted to read:

143 **53F-2-209. Limited LEA budgetary flexibility.**

144 (1) Notwithstanding any other provision of the Utah Code, for fiscal year 2021:

145 (a) except as provided in Subsection (1)(b), an LEA may:

146 (i) use up to 35% of the LEA's state restricted funding for each formula-based program
147 to flexibly and without restriction respond to changing circumstances and student needs

148 resulting from the COVID-19 emergency, as that term is defined in Section 53-2c-102;

149 (ii) transfer fund balances between funds as necessary to flexibly expend funds as
150 described in Subsection (1)(a)(i); and

151 (b) an LEA may not:

152 (i) transfer funds under Subsection (1)(a)(i) related to the school LAND Trust Program,
153 established in Section 53G-7-1206, or a qualified grant program; or

154 (ii) expend the transferred funds for capital projects or improvements.

155 (2) Notwithstanding any other provision of the Utah Code, for any funds for which the
156 state imposes restrictions on the use of the funds:

157 (a) any expenditure that would have been required to be made before the end of fiscal
158 year 2021 without the application of this section is extended to fiscal year 2022; and

159 (b) any expenditure that would have been required to be made before the end of fiscal
160 year 2022 without the application of this section is extended to fiscal year 2023.

161 (3) (a) Nothing in this section authorizes an LEA to violate federal law or federal
162 restrictions on the LEA's funds.

163 (b) An LEA that takes an action that this section authorizes shall ensure that the LEA
164 continues to meet federal maintenance of effort requirements.

165 Section 3. Section 53G-7-503 is amended to read:

166 **53G-7-503. Fees -- Prohibitions -- Voluntary supplies -- Enforcement --**

167 **Reporting.**

168 (1) An LEA may only charge a fee if the fee is authorized and noticed by the LEA
169 governing board in accordance with Section 53G-7-505.

170 (2) (a) An LEA may not require a fee for elementary school activities that are part of
171 the regular school day or for supplies used during the regular school day.

172 (b) An elementary school or elementary school teacher may compile and provide to a
173 student's parent a suggested list of supplies for use during the regular school day so that a
174 parent may furnish on a voluntary basis those supplies for student use.

175 (c) A list provided to an elementary student's parent in accordance with Subsection
176 (2)(b) shall include and be preceded by the following language:

177 "NOTICE: THE ITEMS ON THIS LIST WILL BE USED DURING THE REGULAR
178 SCHOOL DAY. THEY MAY BE BROUGHT FROM HOME ON A VOLUNTARY BASIS,
179 OTHERWISE, THEY WILL BE FURNISHED BY THE SCHOOL."

180 (3) (a) Beginning with or after the [~~2021-2022~~] 2022-2023 school year, if an LEA
181 imposes a fee, the fee shall be equal to or less than the expense incurred by the LEA in
182 providing for a student the activity, course, or program for which the LEA imposes the fee.

183 (b) An LEA may not impose an additional fee or increase a fee to supplant or subsidize
184 another fee.

185 (4) (a) Beginning with or after the 2021-2022 school year, and notwithstanding Section
186 [53E-3-401](#), if the state board finds that an LEA has violated a provision of this part or Part 6,
187 Textbook Fees, the state board shall impose corrective action against the LEA, which may
188 include:

- 189 (i) requiring an LEA to repay improperly charged fees;
- 190 (ii) withholding state funds; and
- 191 (iii) suspending the LEA's authority to charge fees for an amount of time specified by
192 the state board.

193 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
194 state board shall make rules:

- 195 (i) that require notice and an opportunity to be heard for an LEA affected by a state
196 board action described in Subsection (4)(a); and
- 197 (ii) to administer this Subsection (4).

198 (5) (a) For each fee on an LEA's fee schedule described in Section 53G-7-505, the LEA
199 shall:

200 (i) by July 1, 2020, determine whether the fee is curricular, co-curricular, or
201 extracurricular;

202 (ii) for the 2020-2021 school year, measure the total number of:

203 (A) students who pay each fee; and

204 (B) money received for each fee;

205 (iii) for the 2020-2021 school year, measure the total:

206 (A) number of students who receive a fee waiver; and

207 (B) value of each waiver for each waived fee; and

208 (iv) by July 1, 2021, report the separate categories of data gathered under Subsections
209 (5)(a)(ii) and (iii) to the state board.

210 (b) The state board shall report on the data the board receives under Subsection (5)(a)
211 to the Education Interim Committee on or before the date of the November interim meeting in
212 2021.

213 Section 4. Section 63I-2-253 is amended to read:

214 **63I-2-253. Repeal dates -- Titles 53 through 53G.**

215 (1) (a) Section 53-2a-217, regarding procurement during an epidemic or pandemic
216 emergency, is repealed on December 31, 2021.

217 (b) When repealing Section 53-2a-217, the Office of Legislative Research and General
218 Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make
219 necessary changes to subsection numbering and cross references.

220 (2) Section 53B-2a-103 is repealed July 1, 2021.

221 (3) Section 53B-2a-104 is repealed July 1, 2021.

222 (4) (a) Subsection 53B-2a-108(5), regarding exceptions to the composition of a
223 technical college board of trustees, is repealed July 1, 2022.

224 (b) When repealing Subsection 53B-2a-108(5), the Office of Legislative Research and
225 General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make

226 necessary changes to subsection numbering and cross references.

227 (5) Section 53B-6-105.7 is repealed July 1, 2024.

228 (6) (a) Subsection 53B-7-705(6)(b)(ii)(A), the language that states "Except as provided
229 in Subsection (6)(b)(ii)(B)," is repealed July 1, 2021.

230 (b) Subsection 53B-7-705(6)(b)(ii)(B), regarding comparing a technical college's
231 change in performance with the technical college's average performance, is repealed July 1,
232 2021.

233 (7) (a) Subsection 53B-7-707(3)(a)(ii), the language that states "Except as provided in
234 Subsection (3)(b)," is repealed July 1, 2021.

235 (b) Subsection 53B-7-707(3)(b), regarding performance data of a technical college
236 during a fiscal year before fiscal year 2020, is repealed July 1, 2021.

237 (8) Section 53B-8-114 is repealed July 1, 2024.

238 (9) (a) The following sections, regarding the Regents' scholarship program, are
239 repealed on July 1, 2023:

240 (i) Section 53B-8-202;

241 (ii) Section 53B-8-203;

242 (iii) Section 53B-8-204; and

243 (iv) Section 53B-8-205.

244 (b) (i) Subsection 53B-8-201(2), regarding the Regents' scholarship program for
245 students who graduate from high school before fiscal year 2019, is repealed on July 1, 2023.

246 (ii) When repealing Subsection 53B-8-201(2), the Office of Legislative Research and
247 General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make
248 necessary changes to subsection numbering and cross references.

249 (10) Section 53B-10-101 is repealed on July 1, 2027.

250 (11) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project, is
251 repealed July 1, 2023.

252 (12) Section 53E-3-519 regarding school counselor services is repealed July 1, 2020.

253 (13) Section 53E-3-520 is repealed July 1, 2021.

254 (14) Subsection [53E-5-306\(3\)\(b\)\(ii\)\(B\)](#), related to improving school performance and
255 continued funding relating to the School Recognition and Reward Program, is repealed July 1,
256 2020.

257 (15) Section [53E-5-307](#) is repealed July 1, 2020.

258 (16) Subsection [53E-10-309\(7\)](#), related to the PRIME pilot program, is repealed July 1,
259 2024.

260 (17) In Subsections [53F-2-205\(4\)](#) and (5), regarding the State Board of Education's
261 duties if contributions from the minimum basic tax rate are overestimated or underestimated,
262 the language that states "or [53F-2-301.5](#), as applicable" is repealed July 1, 2023.

263 (18) Section [53F-2-209](#), regarding local education agency budgetary flexibility, is
264 repealed July 1, 2024.

265 [~~(18)~~] (19) Subsection [53F-2-301\(1\)](#), relating to the years the section is not in effect, is
266 repealed July 1, 2023.

267 [~~(19)~~] (20) In Subsection [53F-2-515\(1\)](#), the language that states "or [53F-2-301.5](#), as
268 applicable" is repealed July 1, 2023.

269 [~~(20)~~] (21) Section [53F-4-207](#) is repealed July 1, 2022.

270 [~~(21)~~] (22) In Subsection [53F-9-302\(3\)](#), the language that states "or [53F-2-301.5](#), as
271 applicable" is repealed July 1, 2023.

272 [~~(22)~~] (23) In Subsection [53F-9-305\(3\)\(a\)](#), the language that states "or [53F-2-301.5](#), as
273 applicable" is repealed July 1, 2023.

274 [~~(23)~~] (24) In Subsection [53F-9-306\(3\)\(a\)](#), the language that states "or [53F-2-301.5](#), as
275 applicable" is repealed July 1, 2023.

276 [~~(24)~~] (25) In Subsection [53G-3-304\(1\)\(c\)\(i\)](#), the language that states "or [53F-2-301.5](#),
277 as applicable" is repealed July 1, 2023.

278 [~~(25)~~] (26) Subsections [53G-10-204\(1\)\(c\)](#) through (e), and Subsection [53G-10-204\(7\)](#),
279 related to the civics engagement pilot program, are repealed on July 1, 2023.

280 [~~(26)~~] (27) On July 1, 2023, when making changes in this section, the Office of
281 Legislative Research and General Counsel shall, in addition to the office's authority under

282 Subsection 36-12-12(3), make corrections necessary to ensure that sections and subsections
283 identified in this section are complete sentences and accurately reflect the office's perception of
284 the Legislature's intent.